

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2423 OF 2015

Lahu S/o Raosaheb Sangle,
Age : 36 Years, Occu. : Prison Officer,
R/o Officer Quarters, A-Building,
Aurangabad, District Aurangabad. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Additional Director General
of Police, Old Central Building,
02nd Floor, Pune - 1.
3. The Deputy Inspector General Prison,
Central Region, Aurangabad,
Dist. Aurangabad.
4. The Superintendent of Prison,
Central Prison, Aurangabad,
Tal and Dist. Aurangabad. .. Respondents

Shri S. S. Thombre, Advocate for the Petitioner.
Shri B. V. Virdhe, A.G.P. for Respondent Nos. 1 to 4.

CORAM : S. V. GANGAPURWALA

K. L. WADANE, JJ.

DATE : 07TH OCTOBER, 2016.

ORAL JUDGMENT (Per S. V. Gangapurwala, J) :-

. Rule. Rule made returnable forthwith. With the consent of

parties, taken up for final hearing.

2. The petitioner is working with the respondent No. 4 as Prison Officer. The petitioner is imposed a minor penalty of stoppage of one increment vide order dated 02.12.2013. The appeal filed by the petitioner is dismissed. The petitioner approached the Maharashtra Administrative Tribunal (for short "Tribunal") by filing Original Application No. 667 of 2014. The original application is rejected. Aggrieved thereby present writ petition.

3. Mr. Thombre, the learned counsel for the petitioner submits that, the enquiry is not conducted as is required under the Rules. Even for minor penalty, the procedure of enquiry is required to be followed. The learned counsel submits that, as on the date, when cost was imposed by this Court, the petitioner was not incharge of Court working and he was allotted other work. The said aspect has not been considered by the authority. The Departmental Enquiry has not been conducted in free and fair manner. The explanation given by the petitioner is not considered. The petitioner had asked for time pursuant to show cause notice. The same was also not granted. The learned counsel submits that, even personal hearing was not given. The learned counsel further submits that, the evidence also was not recorded. The disciplinary proceeding is never conducted. The Tribunal failed to consider said aspect. The learned counsel

submits that, initially on 08th July, 2013 the petitioner was instructed to look after Court cases. However, the petitioner because of his ill health was on leave from 04.09.2013 to 14.09.2013. On 15th September, 2013 the petitioner was given charge of other work and not the Court work. The order imposing cost for non filing of affidavit by the Court in Criminal Writ Petition No. 595 of 2013 was passed on 19th September, 2013, when the petitioner was not incharge of the said matter. The said aspect needs to be considered.

4. Mr. Virdhe, the learned Assistant Government Pleader submits that, the penalty imposed is a minor penalty. Show cause notice was given. For two months, the petitioner did not file any reply and thereafter punishment is imposed. Because of the negligence of the petitioner, the authority had to tender unconditional apology before the Court and thereafter the order of cost was withdrawn. According to the learned A. G. P. the proper opportunity has been given to the petitioner. Even appellate authority has considered the record. The Tribunal has rightly considered the negligence on the part of the petitioner. No illegality has been committed by the authorities and the Tribunal while imposing punishment upon the petitioner.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. This Court naturally would be too slow in interfering with

the disciplinary proceedings and the punishment imposed by the authority. This Court certainly would not sit as an appellate authority over the punishment imposed by the authority in the disciplinary proceedings. This Court would only consider the procedure having been followed, whether the order of punishment is disproportionate to the allegations made, or that relevant aspect is not considered.

7. The allegation against the petitioner was about not attending the Court proceedings diligently. Because of his negligence, affidavit was not filed and cost of Rs. 5,000/- was imposed upon the respondents by the Court. The said order imposing cost was subsequently withdrawn by the Court. As such, no financial loss was caused to the respondents.

8. The petitioner was entrusted with the Court matter in Criminal Writ Petition No. 595 of 2013 on 08th July, 2013. Thereafter for three/four dates the affidavit was not filed. The petitioner has come with a positive assertion before the appellate authority, so also before the Tribunal that from 04th September, 2013 till 14th September, 2013, the petitioner was on leave and the leave was sanctioned and on 15th September, 2013, the petitioner was given another charge and not the Court matters. Neither the Tribunal, nor the Appellate Authority had dealt with said aspect of the matter. If the petitioner was given some other charge, then certainly it was not expected that, the petitioner

would attend the Court case. So also from 04th September, 2013 to 14th September, 2013 the petitioner was on leave. The said fact is not controverted by respondents. The order imposing cost has been passed on 19th September, 2013. However, on 15th September, 2013, the petitioner was given another charge. The said aspect does not appear to have been dealt with by the authority, nor by the Tribunal and said aspect though specifically pleaded is not controverted or denied by respondents.

9. Considering the aforesaid aspects of the matter that, at the time when cost was imposed, the petitioner was not incharge of the matter, but was given charge to look after open, after barrack, high security division, separate division, hospital division and kitchen, so also his paid leave was sanctioned from 04.09.2013 to 14.09.2013, it would be inappropriate to hold petitioner guilty.

10. In the light of the above, the punishment imposed of stoppage of one increment is set aside. All the impugned orders are quashed and set aside.

Rule accordingly is made absolute in above terms. No costs.

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]