

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2105 OF 2016

Patilba Raoji Khemnar,
Age 53 years, Occ. Service
R/o 'Shri Swami Samarth'
Swarnanagar, Kedgaon,
Ahmednagar.

..Petitioner

Versus

Ahmednagar Municipal
Corporation, Ahmednagar
through it's Commissioner.

..Respondent

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Advocate for Petitioner : Shri Barde P.V.
Advocate for Respondent : Shri Lokhande K.N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 03, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the judgment dated 28.10.2015,

by which, Complaint (ULP) No.69 of 2012 has been dismissed by the Industrial Court.

5. Learned Advocate for the petitioner strenuously submits that the enquiry conducted against him is vitiated for the following reasons:-

- (a) False charges are levelled upon him,
- (b) The charge sheet is vague and ambiguous,
- (c) List of witnesses was not annexed to the charge sheet,
- (d) Specific clauses of the Discipline and Appeal Rules were not mentioned,
- (e) Documents were not supplied along with the charge sheet,
- (f) Insignificant witnesses have been examined by the management,
- (g) The petitioner has not committed any misconduct.
- (h) Suspension allowance has not been fully paid.
- (i) Punishment of stoppage of one increment permanently and considering the period of suspension as a part of punishment is unsustainable.

6. Learned Advocate for the respondent / Corporation has supported the impugned judgment.

7. He submits that;

- (a) the charge sheet specifies the charges of misconduct.
- (b) suspension allowance has been properly paid and if there is any deficit amount, the same will be paid,
- (c) whichever documents were produced in the enquiry, were made available to the petitioner,
- (d) management witnesses were cross examined,
- (e) a minor punishment of stoppage of one increment has been awarded, looking at the gravity of the misconduct, and that
- (f) the Industrial court has rightly dismissed the complaint.

7. I have considered the submissions of the learned Advocates.

8. The petitioner was working in the Electric Department. There were several complaints about his work and about a live electric wire having got detached from the electric pole and was lying on the road. This was brought to the notice of the petitioner. Yet he did not

perform his duties. It was the good fortune of the petitioner that no individual was injured due to the live electric wire lying on the road.

9. The enquiry cannot be set aside, merely on allegations. The Honourable Apex Court has laid down the law in the matter of State Bank of Patiala and others Vs. S.K.Sharma [AIR 1996 SC 1669], wherein it is concluded that the enquiry cannot be vitiated if procedural rights are violated. Only if substantive rights have been violated, the grievances of the delinquent can be considered on the touchstone of prejudice.

10. The respondent was right in contending that the live wire could have come into contact with any human being and that would have led to a grave injury or death. Whether such an accident has occurred or not is not to be considered since that cannot be a ground for showing leniency. The respondent has already shown leniency by awarding the punishment of stoppage of one increment only.

11. It is trite law that if the charges are not proved against an employee, his suspension period has to be treated as duty period. However, if the charges are proved, the delinquent cannot claim full wages for being under suspension during the pendency of the disciplinary proceedings.

12. It appears from the impugned judgment of the Industrial Court that the petitioner has not pointed out specific instances of the charge sheet containing vague and ambiguous charges. The enquiry cannot be set aside on trivial grounds in the light of the law laid down in the case of State Bank of Patiala (supra). Allegations against the enquiry have to be tested on the touchstone of prejudice. Not supplying documents or list of witnesses at the time of issuing the charge sheet cannot be the ground for setting aside the enquiry, since the Evidence Act and the Code of Civil Procedure are not applicable to departmental enquiries.

13. In the light of the above, this petition being devoid of merits is dismissed. Rule is discharged. However, in the event, any portion of the subsistence allowance during the suspension period has not been paid as per Rules, the respondent shall calculate the same strictly in accordance with the Rules applicable and in the event any amount stands unpaid, the same shall be paid within a period of twelve weeks from today.

(RAVINDRA V. GHUGE, J.)

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