

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5397 OF 2016

MOHAN MADHAVRAO KHAPKE
VERSUS
AHMEDNAGAR MUNICIPAL CORPORATION

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Advocate for Petitioner : Shri Barde P.V.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: November 28, 2016

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PER COURT :-

1. The petitioner is aggrieved by the judgment dated 4.7.2009, challenged in this petition filed on 16.12.2015 and circulated on 10.10.2016. By the same judgment, Complaint (ULP) No.112 of 2002, filed by the petitioner, challenging the refusal of the respondent / Corporation in promoting him has been dismissed.

2. I have heard the strenuous submissions of Shri Barde, learned Advocate for the petitioner, who has severely criticized the impugned judgment. With his assistance, I have gone through the petition paper book.

3. The only grievance of the petitioner is that in the matter of promotion, juniors to him were granted promotion by order dated 29.10.2002, w.e.f. 19.10.2002. They were posted in the Cadre IV

by promotion. One Shri N.V. Jamgaonkar, who was already punished for a serious mis-conduct, has been granted promotion.

4. The respondent / Corporation filed its written statement and brought it to the notice of the Industrial Court that the petitioner herein had misappropriated amounts of the Corporation by preparing false bills of bonus and dearness allowance in 1991. He was suspended from 20.3.1991. A crime was registered against him vide Crime No.466 of 1991 in Kotwali Police Station. The said case is still pending. In the departmental enquiry, charges of misappropriation were proved against him and he was punished. These aspects were not stated in the complaint.

5. Grievance of the petitioner is that Shri Jamgaonkar was also held guilty for the misconduct and yet he was promoted.

6. It appears that the petitioner has not brought on record factors in relation to Shri Jamgaonkar, the nature of the offence he has allegedly committed and the punishment that he was allegedly awarded.

7. In so far as the conduct of the petitioner is concerned, it appears that the petitioner has systematically avoided making any

statement in his complaint about the charges of misappropriation, the punishment awarded to him after the charge was proved and the pendency of the criminal proceedings. It, therefore, can be said that the petitioner has attempted to suppress these aspects from the Industrial Court.

8. The Honourable Apex Court in the case of Bhaskar Laxman Jadhav and Ors. Vs. Karamveer Kakasaheb Wagh Education Society and Ors. [AIR 2013 SC 523], has concluded that it is not open to a litigant to scrutinize as to what factors should be mentioned in the pleadings of his plaint. A litigant is expected to state all the factors without making an attempt to assess as to which of the factors are not required to be stated. The observations of the Honourable Apex court in paragraph No.46 and 47 read as under:-

“46. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the Court. True, there is a mention of the order dated 2nd May 2003 in the order dated 24th July 2006 passed by the JCC, but that is not enough disclosure. The Petitioners have not clearly disclosed the facts and circumstances in which the order dated 2nd May 2003 was passed or that it has attained finality.

47. We may only refer to two cases on this subject. In *Hari Narain v. Badri Das* : AIR 1963 SC 1558 stress was laid on litigants eschewing inaccurate, untrue or misleading statements, otherwise leave granted to an Appellant may be revoked. It was observed as follows:

It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the Appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The Appellant will pay the costs of the Respondent."

9. It is obvious that the petitioner has suppressed such facts, which are intricately connected with the claim put forth by him in his complaint. Apparently, the only reason to suppress these facts would be to gain advantage in the proceedings. He was exposed by the respondent in the written statement and hence the

Industrial Court, in my view, has rightly dismissed the complaint.

10. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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