

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

WRIT PETITION NO. 1429/2005

Devisingh s/o Sandusingh Rajput
Age 52 years, Occu-At present Nil
R/o Plot No.31, Vedant Nagar,
Station Road, Aurangabad

.. PETITIONER

VERSUS

1] The State of Maharashtra
Through its Secretary
Department of Industries,
Labour & Law, Mantralaya, Mumbai,
(Notice to be served through
Govt.Pleader,High Court, Bench
At Aurangabad.)

2] The Marathwada Development
Corporation Ltd., through
its Managing Director,
Vikas Bhavan, Dr.Rajendra Prasad
Road, Auragnabad.

.. RESPONDENTS

...
Mr.V.R.Dhorde with Mr.P.S.Dighe, Advocate for petitioner
Mr.D.R.Kale,AGP for respondent no.1.
Mr.N.K.Kakade,Advocate for respondent no.2.
...

**CORAM : S.V.GANGAPURWALA &
MANGESH S. PATIL,JJ.**

DATE : 31/08/2017

ORAL JUDGMENT [PER S.V.GANGAPURWALA,J.] :-

The petitioner in April, 1977 was appointed as Senior Assistant
with respondent no.2 Corporation. Thereafter, the petitioner was

promoted in the year 1983 as Field Officer. The departmental enquiry was initiated against the petitioner. In the departmental enquiry, the petitioner was found guilty. The petitioner was penalized with an order of dismissal from service. The said order is assailed in the present Writ Petition.

2] Mr.Dighe and Mr.Dhorde, learned counsel for the petitioner submit that the charges as against the present petitioner were frivolous. The Charge No.1 was with regard to grant of no objection for transfer of the unit which was standing in the name of the wife of the petitioner and Charge No.2 was with regard to the delay in making payment of the retiral benefits to one Shri S.V.Manjurkar. The learned counsel submits that as far as first charge is concerned, no monetary loss was occasioned to the respondent no.2. The evidence led, has not been properly appreciated. It is not the present petitioner, who had issued no objection certificate nor he has the authority to do so. As far as charge no.2 is concerned, the allegation that the petitioner was not present in the office, in the afternoon, is incorrect. The requisition itself was received at 5.15 p.m., the petitioner cannot be blamed for that. Even otherwise also no monetary loss has been occasioned. The payment has been made to the said employee S.V.Manjrukar within two days. For the delay, the petitioner cannot be said to be responsible. The learned counsel

relies on Rule 8(20) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 to submit that as the petitioner did not examine himself, the enquiring authority was duty bound to generally question the petitioner of the circumstance appearing against him in the evidence, for the purpose of enabling the petitioner, to explain any circumstance appearing in the evidence against him, nor adhered to the said procedure, which vitiates the enquiry. The learned counsel relies on the judgment of the Division Bench of this Court dated 7/7/2010 in Writ Petition No.5625/1997.

3] Mr.Kakade, learned counsel for respondent no.2 submits that the enquiry has been conducted in free and fair manner. The charge against the petitioner, of giving no objection certificate for transfer of the unit to his own wife without following the procedure, is a serious charge, the said charge has been proved by examining independent witnesses. This Court in writ jurisdiction, would not reappreciate the whole evidence led in the disciplinary enquiry. The punishment imposed of dismissal from service, for the charges leveled against the petitioner, cannot be said to be disproportionate. The learned counsel further submits that the petitioner had examined two witnesses, as such it cannot be said that the petitioner did not lead any evidence. Rule 8(20) would not come into operation in the present matter.

4] We have considered the submissions canvassed by the learned counsel for respective parties. There cannot be any dispute with the proposition that this Court, in exercise of its writ jurisdiction, would not re-appreciate the evidence laid in the departmental enquiry. This Court does not sit as an appellate authority over the findings of the disciplinary authority. This Court can re-appreciate the evidence, if it is shown that the appreciation is perverse or unreasonable.

5] In the present matter, our attention is also drawn to Rule 8(20) of the MCS Rules, which read as under :

“8 (20) The inquiring authority may, after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.”

6] Reading the said Rule, it is manifest that, if the delinquent does not examine himself, then an obligation is cast upon the enquiring authority, to generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstance appearing in the

evidence against him.

7] It appears that in the present matter, the petitioner did not examine himself. The enquiring officer also did not resort to Rule 8(20) of the MCS Rules as quoted supra. In view of that, the judgment of this Court in Writ Petition No.5625/1997 dated 7/7/2010 would squarely apply.

8] Considering the above, we pass the following order :

[I] The impugned order is quashed and set aside. The respondent no.2 shall further commence the enquiry from the stage of Rule 8(20) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and thereafter take fresh decision in accordance with law.

[II] The parties would be governed by order that would be passed, pursuant to the enquiry that would be concluded as per the present order. The said exercise shall be completed as expeditiously as possible. The petitioner would claim his rights depending upon a decision in the enquiry proceeding. Rule accordingly made partly absolute. No costs.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)

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