

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5455 OF 2015

Bhika S/o Belba Dhage

Petitioner

V E R S U S

(1) The State of Maharashtra,
through Registrar General
(Appeal), Bombay High Court

Respondents

(2) The Registrar, District and
Sessions Court, Parbhani

Mr. A.L. Kanade, Advocate for the petitioner
Mr. Nitin B. Suryawanshi, Advocate for the
respondents
Mr. S.B. Yawalkar, A.G.P. for the State

CORAM : S.V.GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.

DATE : 26th APRIL, 2017

PER COURT :

Heard both the sides.

2. In the year 2005, the petitioner was
appointed as Watchman under the jurisdiction of

District & Sessions Court, Parbhani. The Departmental Enquiry bearing No.06 of 2006 was initiated against the petitioner in respect of four charges. Upon conclusion of the Departmental Enquiry, the Enquiry Officer submitted his report holding that all the charges framed against the petitioner are proved. The Disciplinary Authority issued the Show-Cause-Notice to the petitioner and held the petitioner guilty on filing his reply, the punishment of dismissal from service was awarded to the petitioner. In view of this, the petitioner filed Appeal before the Appellate Authority. The Appellate Authority dismissed the Appeal of the petitioner, and, aggrieved thereby, the present Writ Petition came to be filed.

3. Mr. Kanade, learned counsel for the petitioner states that the petitioner has replied to all the charges framed against the petitioner. The petitioner has specifically put forth his case. In the Departmental Enquiry, all the witnesses examined by the department were the subordinate employees and they could not have deposed against the wish of their

superiors. The charges framed against the petitioner were made-up charges. No such incident, as alleged, had ever taken place. The petitioner was in need of money for the medical treatment of his new born son, and as such, had asked for financial help from his colleagues. Instead of helping the petitioner, the attitude of his colleagues was negative in nature.

4. The learned counsel for the petitioner further submits that as far as reference to the other inquiry is concerned, no punishment has been imposed to the petitioner. The learned counsel further submits that even while filing an Appeal before the Appellate Authority, the petitioner has placed real facts on record. The petitioner was required to perform duties per day for 16 hours in the Court and on the next day morning he used to be directed to remain present at the residence of the Presiding Officer. The petitioner was also asked to do the domestic work at the residence of the presiding Officer. According to the learned counsel, the proper procedure is also not followed in the departmental

enquiry. The learned counsel submits that the petitioner has also sought pardon and undertaken that no such thing would be repeated in future by him. It is further submitted that said facts have also not been considered in the departmental enquiry. The learned counsel submits that even otherwise, the punishment imposed on the petitioner is disproportionate to the charges framed against him.

5. We have also heard Mr. Suryawanshi, learned counsel for the respondents.

6. In the Departmental Enquiry instituted against the petitioner, following charges were framed against him :-

(a) On 19/06/2006, in the Court building one condom was found and in that regard when Assistant Superintendent Shri Hameeduddin Ansari has made query with appellant, he threatened to him on 20/06/2006 by saying that if anybody moves complaint against them, then he will lodge the complaint by alleging that he was abused in the name of his case.

(b) On 14.11.1996, Assistant Superintendent Shri Hameeduddin Ansari filed a complaint against appellant that he obstructed in way of going on his person behaved indecently. When a show cause notice was issued to appellant on 17/11/2006, he went to Assistant Superintendent and threatened him that he is in need of money, so his bills shall be procured earliest otherwise he will file false complaints to the District Court that for procuring the bills amount of appellant, the Assistant Superintendent has claimed gratification of Rs.500/-. On the said reasons amonst other, a warning was given to the appellant not to pressurize mentally to the staff members, but there was no improvement in his conduct.

(c) On 02/12/2006 an office order was issued wherein duty of appellant was fixed and on 03/12/2006 of about 9.00 a.m. he went to residence of Shri S.B. Dighe, Civil Judge (J.D.), Pathri and threatened him as to why his duty was fixsed without his consent which casues inconvenience to him for visiting his house at Beed District and if on Monday the said duty is not fixed according to his convenience, then will not allow to work to Presiding Officer in the Court.

(d) On 04/12/2006, at about 10.30 a.m. when Shri S.B. Dighe, C.J. (J.D.) was making discussion with Assistant Superintendent and Stenographer, he entered in his chamber and stated in annoyance that he is not ready to obey the orders if duty is not assigned as per his convenience then he will commit suicide and destroy life of others and due to attitude of appellant there was fear in the mind of the staff members.

7. The Enquiry Officer has held that all the charges against the petitioner are proved.

8. The jurisdiction of this Court in entertaining the Writ Petition against the order passed in Departmental Enquiry is in a narrow compass. This Court, while exercising the jurisdiction under Article 226 of the Constitution of India, would not sit as an Appellate Authority; however, would confine to the issue of adherence to the proper procedure followed by the Enquiry Officer and same is not arbitrary.

9. Upon perusal of the charges levelled against the petitioner, referred *supra*, it is manifest that the charges with regard to giving threats, abuses, dereliction of duty and not obeying the orders are proved.

10. It is to be considered that when the said Departmental Enquiry was initiated against the petitioner, he had put in only one year of service. During the span of his service, three departmental enquiries were initiated against the petitioner. The other two departmental enquiries were bearing Nos. 04 of 2006 and 01 of 2007. As such, within two years, three departmental enquiries were initiated against the petitioner.

11. About five witnesses were examined by the department. The liberty was given to the petitioner to cross-examine them and adduce his evidence. The principles of natural justice seem to have been followed. The Appellate Authority has also considered the case put forth by the petitioner.

12. It is only for the first time in Appeal, the petitioner has raised ground about being asked to perform domestic work at the residence of Judicial officer and said stand was never taken by him before the Enquiry Officer or Disciplinary Authority. No reason is forthcoming for not taking said stand earlier.

13. The order of dismissal would debar the petitioner for future employment. Considering the age of the petitioner, we intend to modify the punishment to removal from service.

13. In view of above discussion, we modify the order passed by the Disciplinary Authority, dismissing the petitioner from service. Instead of dismissing the petitioner from service, we hold that the petitioner is removed from service with effect from 31st July, 2008.

14. Writ Petition is accordingly disposed of. No costs.

(SANGITRAO S. PATIL, J.)

(S.V. GANGAPURWALA, J.)

SRM/26/4/17