

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

WRIT PETITION NO. 9499 OF 2015

Shrikant s/o Ramrao Jedhe ...Petitioner

VERSUS

The State of Maharashtra
and others ...Respondents

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Shri A.N.Irpatgire, advocate for the petitioner
Smt. Vaishali Patil, A.G.P. for respondent nos. 1,
4 and 5
Shri P.N.Kalani, advocate for respondent no.6

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CORAM : S.V.GANGAPURWALA & K.L.WADANE, JJ.

DATED : 6th FEBRUARY, 2017

O R D E R :

Rule. Rule made returnable forthwith.
Heard finally with the consent of learned counsel
for the respective parties.

2. The petitioner was appointed as a Deputy Registrar. Thereafter he was promoted and at the relevant time was working as Managing Director in the office of the Maharashtra State Cotton Growers Cooperative Marketing Federation Limited, Mumbai.

3. The learned counsel for the petitioner submits that, the petitioner, while officiating the said post was sent on deputation and was given additional charge as Secretary, Agricultural Produce Marketing Committee, Mumbai (APMC, Mumbai) on or about 1.1.2003. On 3.1.2003 the petitioner took additional charge of APMC, Mumbai. Thereafter on 15.3.2003 the respondent had issued regular appointment order to the petitioner as a Secretary, APMC, Mumbai. The petitioner took over the charge on 17.3.2003. Thereafter on 16.6.2004 the petitioner handed over charge of the post of Secretary, APMC, Mumbai and joined the services of Maharashtra State Power Loom Corporation, Mumbai and on 20.6.2005 on attaining the age of superannuation he retired.

4. The learned counsel submits that on or about 23.5.2006 the respondent no.4 Director of Marketing ordered to hold inquiry under Section 53 and 57 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963. Thereafter the respondent no.1 on 17.10.2006 issued the letter and proposed departmental inquiry against the petitioner with regard to the affairs of APMC, Mumbai and framed the same charges of inquiry under Sections 53 and 57 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963.

5. On or about, 26.11.2006 notice was issued to the petitioner. The inquiry officer was Shri Hemant Kotwal. Thereafter on 14.9.2007 the inquiry officer was changed and Mr. Jain was appointed as inquiry officer. On 25.10.2007 the appointment of Mr. Jain as inquiry officer was cancelled and one Mr. M.D.Bhavre was appointed as an inquiry officer. The learned counsel submits

that the inquiry did not proceed further. The same was never concluded for all these years. The petitioner brought it to the notice of respondent no.1. Respondent no.2 is appointed to conduct inquiry under Rule 8 of the Maharashtra Civil Services (Pension) Rules 1982. The inquiry report is not in conformity with the said Rules and further prays to drop the inquiry.

6. Learned counsel further submits that the inquiry conducted by the Government is of that period when the petitioner was on deputation with APMC. In view of Rule 14 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 it is only the APMC who could conduct the inquiry. The learned counsel also relies on Rule 106 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 to contend that the Secretary is a Chief Executive Officer of the Market Committee and he is under the disciplinary control of the Chairman and it is only the Chairman who can initiate the

proceedings. On that count also the inquiry conducted by respondent no.2 is assailed..

7. Learned counsel submits that the inquiry is nothing but harassment to the petitioner as for such a long period no progress has been made in the inquiry.

8. Mrs. Patil, learned A.G.P. submits that the inquiry is conducted on account of misfeasance committed on the part of the petitioner. The petitioner, an employee of the State Government, was sent on deputation. During his tenure with APMC, Mumbai illegal acts were committed. The petitioner retired as a Managing Director of the Maharashtra State Power Loom Corporation. The said office is at Mumbai. The inquiry is to be conducted at Mumbai and this Court may not exercise jurisdiction.

9. Learned A.G.P. further submits that the inquiry was concluded on 16.2.2013. The

petitioner is served with inquiry report and show cause notice. The same is not replied. The disciplinary proceedings are initiated against the petitioner under Rules 8 and 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and also under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. The Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 does not bar initiation of disciplinary action against a Government servant under the Maharashtra Civil Services (Discipline and Appeal) Rules and/or Maharashtra Civil Services (Pension) Rules.

10. Learned A.G.P. further submits that after due scrutiny the Government has taken the decision to initiate departmental inquiry. According to the learned A.G.P. after appointment of Mr. Bhavre came to an end in view of appointment of Inquiry Officer ie. Secretary and Special Inquiry Officer on 28.7.2008. Five charges are proved. The procedure adopted is correct.

11. We have considered the submissions. It is not disputed that the period for which the inquiry is initiated against the petitioner is the period when the petitioner was on deputation with APMC Mumbai. The respondent/State is relying on the provisions of Rules 8 and 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982.

12. Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 deals with the procedure for imposing major penalties; whereas Rule 9 deals with action on the basis of inquiry report. Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 is limited to the extent of right of Government to withhold or withdraw the pension.

13. Rule 14 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 would be

relevant. Rule 14 reads as under : -

"14. Provisions regarding Officers lent to any Government in India, local authority, etc :-

(1) Where the Services of a Government servant are lent by one department of Government to another department of Government or to any other Government in India or to an authority subordinate thereto or to a local or other authority (including any Company or corporation owned or controlled by Government) (hereinafter in this rule referred to as "the borrowing authority") the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceedings against him.

.....

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant -

(i)

(ii) if the borrowing authority is of the opinion that any of the major penalties should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit to it, the proceedings of the inquiry, and thereupon the lending authority may, if it is the disciplinary authority, pass such orders therein as it may deem necessary.

..... " "

14. On perusal of the said provision, it is manifest that where the services of Government servant are lent by one Department to another Department of Government, then the borrowing authority shall have powers of appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceedings against him. The said Rule would make it clear that it is the borrowing authority who has to initiate the said proceedings and upon inquiry if borrowing authority is of the opinion that any of the major penalties should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit to it, the proceedings of the inquiry, and thereupon the lending authority may, if it is the disciplinary authority, pass such orders therein as it may deem necessary.

15. In the present case, no such procedure is adopted. Inquiry officer is directly appointed by the Government. The inquiry is being conducted of a period when admittedly the petitioner was on deputation with the Agricultural Procedure Market Committee. Rule 106 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 also lays down that the Secretary shall be the Chief Executive Officer of the Market committee and he shall be under the disciplinary control of the Chairman.

16. Considering the afore said conspectus of the matter and further that the inquiry has commenced against the petitioner after his retirement, the same is not concluded even for a period of 11 years, it would not be appropriate for the respondent to proceed with the inquiry. The charges of enquiry have become stale. The notice was issued to the petitioner in respect of enquiry at Aurangabad. One of the inquiry officer had issued notice of examining witness at

Aurangabad. The petitioner is resident of the place. Considering all these aspects the Court can exercise jurisdiction.

17. In the light of above, Rule is made absolute in terms of prayer clauses (B) and (C). Pursuant thereto the petitioner be given necessary consequential benefits. No costs.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)

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