

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7212 of 2007

Bhaskar Kisanrao Joshi,
age : 66 years, Occ.: Nil-Pensioner,
R/o Saraswati Nagar, Parbhani

PETITIONER

VERSUS

1. The State of Maharashtra,
Through G.P. High Court,
Aurangabad Bench

2. The Secretary,
Finance Department,
Mantralaya, Mumbai

RESPONDENTS

Mr. Ajay S. Deshpande, Advocate for the petitioner
Mr. S.K. Tambe, A.G.P. for the respondents/State

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

**RESERVED ON : 25th SEPTEMBER, 2017
PRONOUNCED ON : 9th OCTOBER, 2017**

JUDGMENT (PER : SANGITRAO S. PATIL, J.):

Heard the learned counsel for the petitioner
and the learned A.G.P.

2. The petitioner was serving as an In-charge
Chief Accounts and Finance Officer with Zilla Parishad,
Nanded, from 1990-91 to 1991-92. It was noticed that
during the said period, he committed certain financial

irregularities and illegalities amounting to misconduct as explained in Rule 3(1)(i) and (ii) of the Maharashtra Civil Services (Conduct) Rules, 1979 ("Conduct Rules", for short). Therefore, it was decided to initiate disciplinary proceedings against him. Accordingly, after adopting the procedure laid down in Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 ("Disciplinary Rules", for short), enquiry was conducted against him in respect of eight charges. The Enquiry Officer held him guilty for the charge Nos. 1, 2, 3, 4, 6 and 8. The Disciplinary Authority, after considering the representation of the petitioner, held him guilty for charge Nos. 2, 4 and 8 only vide the final order dated 24.08.2005. The petitioner had retired on attaining the age of superannuation on 31.08.2000. Therefore, a minor penalty was imposed on him of deduction of 1% of his pension for a period of one year.

3. The petitioner filed Original Application No.207 of 2004 challenging the final order dated 24.08.2005, holding him guilty of the charge Nos. 2, 4 and 8 and imposing penalty on him as stated above, before the Maharashtra Administrative Tribunal, Bench at

Aurangabad ("Tribunal", for short). The said original application came to be dismissed on 16.11.2006. The petitioner filed Review Application No. 399 of 2006 against that order before the Tribunal but the same also came to be dismissed on 04.09.2007. Ultimately, the petitioner approached this Court with this writ petition challenging the final order dated 24.08.2005 as well as the orders of the Tribunal confirming the said final order.

4. The learned counsel for the petitioner submits that the petitioner has served for 37 years with unblemished record. He did not commit any irregularities, illegalities or misconduct as alleged by the respondents. The disciplinary proceedings were initiated against the petitioner for the alleged delinquencies pertaining to the year 1990-91. The petitioner was due for retirement on attaining the age of superannuation on 31.08.2000. One day prior to his retirement i.e. on 30.08.2000, he was served with the memorandum alongwith charges levelled against him for which the disciplinary proceedings were to be conducted against him under Rule 8 of the Disciplinary Rules.

According to him, this sequence of evidence shows that the superior officers of the petitioner wanted anyhow to involve the petitioner in the disciplinary proceedings with a view to harass him, see that he should not retire with clean image and also to cause delay in payment of his pension and pensionary benefits. He submits that the charges levelled against the petitioner were so baseless and insignificant that no disciplinary proceedings could have been initiated against him. According to him, the findings of the Disciplinary Authority, holding the petitioner guilty for charge Nos.2, 4 and 8, are based on no evidence. The petitioner clarified in his replies and pointed out that he did not commit any misconduct as alleged. However, the replies of the petitioner have been deliberately ignored and he has been wrongly penalised.

5. The learned counsel further submits that though the deduction of 1% from the pension of the petitioner for a period of one year would hardly amount to Rs.1000/-, the petitioner challenged the said findings and penalty since same were perverse and based on no evidence. He wanted to remove the stigma that was

attached to his career without there being any fault on his part. He submits that the Tribunal did not at all consider the contentions raised by the petitioner and without applying mind to the facts of the case dismissed the original application as well as review application. He, therefore, submits that the impugned orders may be quashed and set aside.

6. As against this, the learned A.G.P., relying on the contents of the reply filed by the Joint Director of Accounts and Treasuries, Aurangabad supports the impugned orders. According to him, the Tribunal has considered the charges levelled against the petitioner and the evidence in support of these charges and has rightly dismissed the original application as well as the review application.

7. Keeping in mind the rival contentions raised before us, we propose to deal with charges levelled against the petitioner and the evidence produced in support thereof.

Charge No.2 :

The petitioner unauthorisedly spent the amount of Agency Schemes, which was deposited in the district funds for other schemes.

8. The learned counsel for the petitioner pointed out to Resolution No.9 dated 25.03.1991 and Resolution No.11 dated 27.03.1991, which have been signed by the then Administrator and Chief Executive Officer of Zilla Parishad, Nanded and the present petitioner. As per the resolution dated 25.03.1991, the revised budget of 1990-91 was proposed to be submitted to the Administrator/ Chief Executive Officer of Zilla Parishad for approval. As per Resolution No.11 dated 27.03.1991, it was proposed to take loan of Rs.59,67,000/- from the amount of deposits i.e. Rs.70,20,000/- invested with N.D.C.C. Bank by the Zilla Parishad and to spend it for construction of the building of Primary Health Centre, repairs of the roads which were damaged due to heavy rains, maintenance of roads, pay, transport allowances etc. of primary and secondary schools, grants to private primary schools, pay and allowances of the employees of General Administration and Minor Irrigation Department. The said proposal was approved by the Administrator/

Chief Executive Officer, Zilla Parishad, Nanded vide Resolution No.29 dated 30.03.1991. The learned counsel submits that these three Resolutions clearly show that whatever expenditure was made by the petitioner had been approved by the Administrator/Chief Executive Officer. Therefore, the petitioner could not have been blamed for utilisation of the said amount for the above-mentioned purposes.

9. We find substance in the contention of the learned counsel. The above-mentioned three resolutions sufficiently and clearly show that the petitioner did not utilize the deposit amounts at his own. He got approval of the Administrator/Chief Executive Officer for the purposed expenditure as mentioned above. The petitioner has specifically mentioned in his representation dated 15.09.2005 that in case the deposit amount had not been used, the funds allotted for the above-mentioned works would have got lapsed and that in the public interest it was essential to use the deposit amount. In our view, the enquiry officer has wrongly held the petitioner guilty of the said charge.

Charge No.4 :

The petitioner unauthorizedly utilised the funds of other schemes and created liability of Rs.1,05,09,455/- without approval of the Administrator/Chief Executive Officer.

10. The learned counsel for the petitioner submits that as per the above referred resolution No.11, the petitioner had sought approval of the Administrator/Chief Executive Officer for raising loan of Rs.59,67,000/- on the deposit lying with the Nanded District Central Co-Operative Bank for being spent for the purposes mentioned in the said resolution. As per Resolution No.29 dated 30.03.1991, the approval was given for raising such loan amount. The expenditure incurred by the petitioner with the approval of the Administrator/ Chief Executive Officer has got sanction at the level of the Government, as seen from the letter dated 13.09.1991 issued by the Director of Education, Maharashtra State, whereby the amount spent from the funds of Zilla Parishad i.e. Rs.2,30,29,420/- was sanctioned by the Government. He submits that from the said amount, the amounts of agency schemes have been repaid and no liability has been created against Zilla

Parishad.

11. We perused the letter dated 13.09.1991. In column No.4 of the said letter, there is specific mention that the amount of Rs.2,30,29,420/- was spent towards excess expenditure from the funds of Zilla Parishad, Nanded and the said expenditure was approved and amount to that extent was sanctioned. It was directed that from this sanctioned amount, the expenditure that was already made was to be appropriated. In our view, the letter dated 13.09.1991 makes it clear that whatever extra expenditure was incurred by the Zilla Parishad was sanctioned by the Government and no liability was created against the Zilla Parishad. We, therefore, find force in the contentions of the learned counsel for the petitioner. There was no evidence to hold the petitioner guilty for charge No.4.

Charge No.8 :

The petitioner unauthorizedly kept the amount of Rs.18,80,000/- in the District Funds which was meant for making payment of the bills of 1990-91 towards street light electricity bills and drinking water supply

bills of Village Panchayats.

12. The learned counsel for the petitioner pointed out to the Government Resolution dated 10.10.1990, whereunder the funds of agency schemes were required to be kept in district funds instead of keeping them in individual account. It was specifically mentioned that the various accounts opened in respect of various schemes of Zilla Parishad should be immediately closed and the funds thereof should be kept in district funds. He submits that the petitioner has followed this Government Resolution and did not commit any misconduct. We find substance in this contention also. If the Government Resolution dated 10.10.1990 is considered, there is hardly any scope for alleging any misconduct on the part of the petitioner if he deposits the funds received in respect of agency schemes in the district funds.

13. The final order dated 24.08.2005 is rather cryptic and non-speaking. After reproducing charge Nos.1 to 8, the disciplinary authority has concluded in a single paragraph that charge Nos.1, 2, 3, 4, 5 and 8 were held to have been proved by the Enquiry Officer.

After scrutinizing the enquiry report, out of total charges, charge Nos. 2, 4 and 8 only are found to have been proved against the petitioner. There is absolutely no discussion of the evidence that was on record in respect of charge Nos. 2, 4 and 8. There is no reference of any resolution of Zilla Parishad or Government Resolutions, which were specifically mentioned by the petitioner in his reply to the show cause notice, whereunder, he had utilised the funds of agency schemes for other permissible purposes and deposited the amount of agency schemes in the district funds. The representation of the petitioner has been totally ignored by the Disciplinary Authority without assigning any reason.

14. The Tribunal in the order dated 16.11.2006 has simply reproduced in vernacular charge Nos. 2, 4 and 8 and the opinion expressed by the Enquiry Officer in respect of the charges without actually referring to the resolutions passed by the Zilla Parishad as well as Government Resolutions on the subject, in order to see whether the Enquiry officer rightly held the petitioner guilty. The Tribunal simply recorded that there was

evidence before Enquiry Officer to come to the conclusion that charge Nos. 2, 4, and 8 were proved. The Tribunal further held that the judicial review powers of the Tribunal are very limited. The Tribunal cannot re-appreciate and substitute the evidence before it. The Tribunal observed that it cannot interfere in the order of punishment passed against the Government employee by the competent authority. On the basis of these observations, the Tribunal did not interfere with the findings of the Enquiry Officer and dismissed the original application.

15. In our view, this is a fit case wherein the Tribunal ought to have exercised the jurisdiction vested in it. As stated above, there was no evidence to support the allegations made against the petitioner. Tribunal has been in error in not considering the representation/reply of the petitioner filed before Enquiry Officer as well as Disciplinary Authority and not taking into account the contentions raised by the petitioner in his original application. The Tribunal has perfunctorily dealt with the matter and has dismissed the same. The Tribunal ought to have approached the original application objectively, an approach which

could have been appreciated. Reproduction of charges and the findings of the Enquiry Officer without actually considering whether the said findings are really supported with any evidence, would not be said to be an effective adjudication by the Tribunal in this case. Such a listless course is difficult to be approved, and may not serve the very purpose of providing remedy to the Government Servants to approach the Tribunal against the disciplinary actions taken against them. The impugned order of the Tribunal is as such, rendered improper and untenable.

16. Since the period of more than 12 years has elapsed after passing of the final order and the period of 17 years has elapsed after retirement of the petitioner, we are not inclined to remand the matter to the Tribunal. We have, therefore, considered the charges levelled against the petitioner and the evidence in support thereof. We did not find any evidence which would establish guilt of the petitioner for charge Nos.2, 4 and 8. The writ petition is liable to be allowed. The impugned final order dated 24.08.2005, passed by the Disciplinary Authority, the order dated 16.11.2006 passed by the Tribunal in Original

Application No.207 of 2004 and order dated 04.09.2007 passed by the Tribunal in Misc. Application No.399 of 2006 are liable to be quashed and set aside. Hence, the following order:-

O R D E R

- (i) The writ petition is allowed.
- (ii) The final order dated 24.08.2005, passed by the Disciplinary Authority, the order dated 16.11.2006 passed by the Tribunal in Original Application No.207 of 2004 and order dated 04.09.2007 passed by the Tribunal in Misc. Application No.399 of 2006 are quashed and set aside.
- (iii) The amount of penalty, if any, recovered from the petitioner, shall be refunded to him.
- (iv) Rule is made absolute accordingly.
- (v) No costs.

[**SANGITRAO S. PATIL**]
JUDGE

[**SUNIL P. DESHMUKH**]
JUDGE