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

WRIT PETITION NO. 432 OF 2014

**THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
JAGDISH DWARKANATH MITHTHE**

Addl.Govt.Pleader for Petitioners : Mrs.A.V.Gondhalekar
Advocate for Respondents :Mr.A.S.Deshpande.**

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

DATE : 23/08/2017

PER COURT :-

The present respondents had filed Original Application before the Tribunal, assailing the order passed by the present petitioner, terminating the respondent from service. The Maharashtra Administrative Tribunal allowed the Original Application, directed reinstatement with continuity and back wages. Aggrieved thereby, the present Petitioner.

2] Mrs.A.V.Gondhalekar, the learned Additional Government Pleader submits that while passing the order of termination, pursuant to the Departmental Enquiry, even past conduct was taken into consideration. The respondent was absent from duty from 7/9/2002 till 5/11/2003. Leave for the said period was not sanctioned at any point

of time, nor the department was intimated. After holding the Departmental Enquiry, the punishment of dismissal from service has been imposed upon the respondent. The Tribunal could not have sat as an appellate authority over the findings arrived at in the Departmental Enquiry and the punishment imposed for such a long absentism, was appropriate.

3] Mr.Deshpande, the learned counsel for the respondent submits that the respondent had met with an accident and has suffered multiple injuries. He was an indoor patient with the Government Hospital from 7/9/2002 upto 5/11/2003, as such could not attend the duty. The moment the Doctor certified the respondent to be fit, the respondent joined service. For past absentism, the respondent was already punished and the said chapter was closed. The Departmental Enquiry was never concluded. The respondent had never admitted that the absentism was without any reason. The explanation was given. The Inquiry Officer did not conclude the inquiry, did not give any opportunity to the respondent to lead evidence, nor considered the explanation. In light of that, the order passed by the Tribunal does not suffer from any error.

4] We have considered the judgment passed by the Tribunal and the submissions.

5] It is a fact that Departmental Enquiry was initiated against respondent on charges of absentism for a period from 7/9/2002 to 5/11/2003. The respondent did admit that he was absent from duty during the said period. However, he gave an explanation that he had met with an accident, suffered multiple injuries and was admitted in the Government Hospital for the said period. On the ground that the respondent admitted that he was absent from duty, no further inquiry was proceeded. The respondent was not given any opportunity to lead evidence nor his explanation was considered while imposing the punishment. Certainly the respondent who was a permanent employee, could not have been terminated from service without concluding the Departmental Enquiry.

6] However, it would be the right of the present petitioner, to conclude the Enquiry and take a fresh decision. That right cannot be curtailed. In light of that, we modify the order of the Tribunal to the extent that the petitioner shall be entitled to proceed further with an Enquiry, by giving opportunity to the present respondent and conclude the Departmental Enquiry in accordance with law and thereafter take fresh decision accordingly. The Tribunal has already passed an order directing reinstatement of the present respondent alongwith continuity of service and back wages. The said order shall

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be abided by the petitioner. Petition is disposed of accordingly. No costs.

(MANGESH S. PATIL,J.) (S.V.GANGAPURWALA,J.)

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