

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

WRIT PETITION NO. 483 OF 2011

Deepak s/o Bhaskar Shinde,
age 47 years, occ. Service,
(Ex.Section Officer Panchayat
Samittee Muktainagar)
Presently working as Office
Superintendent,
Panchayat Samiti Earandol
District Jalgaon,
R/o 42 Punai Apartment
Near Vidya Bhavan Ladies Hostel,
Deopur Dhule

...Petitioner

VERSUS

- 1] The Secretary,
Rural Development and
Water Conservation
Department,
Govt. of Maharashtra,
Mantralaya, Mumbai – 32,
- 2] The Divisional Commissioner,
Nashik Division, Nashik,
- 3] The Additional Divisional
Commissioner, Nashik Division,
Nashik,
- 4] The Chief Executive Officer,
Zilla Parishad, Jalgaon,
- 5] Dr. Ramaswami N. (I.A.S.)
The Then Chief Executive Officer,
Zilla Parishad, Jalgaon
Now working as Collector, Buldhana
District Buldhana,
- 6] The Block Development Officer,
Panchayat Samiti, Dharangaon ...Respondents

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Shri U.S.Malte, advocate for the petitioner
Smt. S.S.Raut, A.G.P. for respondent nos. 1 to 3
Shri Vijay Sharma, A.G.P. for respondent nos. 4 to 6
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CORAM : K.L.WADANE, J.

DATE OF RESERVING
THE JUDGMENT : 16.3.2017

DATE OF PRONOUNCEMENT
OF THE JUDGMENT : 17.3.2017

JUDGMENT (Per K.L.Wadane, J.)

The petitioner has challenged the order of his reversion dated 25.2.2009, passed by respondent no.4, based upon the inquiry report dated 10.11.2008 and the order passed by respondent no.3, dated 7.9.2009.

2. The brief facts of the case may be stated as follows :-

Respondent nos. 4 and 5 have initiated departmental inquiry against the petitioner though there was no complaint or adverse report against the petitioner by respondent no.6.

The petitioner was appointed as a Senior Assistant by respondent no.4 on 1.2.1992. In 2002 he was promoted as Office Superintendent. In 2007 he got second promotion as a Section Officer. On 18.12.2005 the petitioner was served with the show cause notice on the allegations of in all seven charges for signing the seven proposals to provide stitching machines, pico fall machines, ladies bicycles, tin sheets, loud speaker, tin storage box to the beneficiaries as well as to the Women under below poverty line (hereinafter referred to as, "the proposals") to be submitted to the Zilla Parishad for approval.

The main charge against the petitioner was that he has signed and recommended the proposals in the capacity of Block Development Officer.

In the inquiry, two witnesses were examined by the Department. No defence witness was examined by the petitioner. After conclusion of the inquiry, the inquiry officer has submitted the report on 10.11.2008. According to the petitioner, the inquiry officer submitted the

report without verifying the relevant documents and the finding recorded by the inquiry officer is perverse and contrary to the evidence on record. Therefore, the inquiry report is against the natural justice. According to the petitioner, the petitioner has not acted as a Block Development Officer nor he signed and recommended the proposals as a Block Development Officer, since such proposals were to be sent to the Zilla Parishad for its approval and on that day it was the last day for submission of the proposals. The concerned Block Development Officer was not present at the headquarters. Sabhapati of the Panchayat Samiti was insisting to send such proposals immediately. The petitioner contacted to the Block Development Officer on telephone and the Block Development Officer instructed him to sign such proposals on his behalf.

It is further contended that the powers to sign such administrative proposals were already delegated to the petitioner by the Block Development Officer in 2004

and even the post facto sanction was given by the Block Development Officer to send such proposals. Hence, sum and substance of the defence of the petitioner is that he has acted for and on behalf of the Block Development Officer as per the authority and delegation of powers given by the Block Development Officer in the year 2004 itself. According to the petitioner, the proposals were examined by the concerned authority. Consequently, the proposals were approved and the relevant articles were delivered to the beneficiaries and nowhere it is the case of the Department that the petitioner has misappropriated any articles and caused loss to the Government.

In view of the above, the petitioner has prayed to allow the petition.

3. I have heard Mr. U.S.Malte, learned counsel for the petitioner, Mrs. S.S.Raut, learned A.G.P. for respondent nos. 1 to 3 and Shri Vijay Sharma, learned counsel for respondent nos. 4 to 6.

4. During the course of arguments, Mr. Malte, learned counsel submitted that the charge against the petitioner was that he acted as the Block Development Officer and in the capacity of the Block Development Officer he sent the proposals to the Zilla Parishad by his recommendation and under his signature as a Block Development Officer. By referring the relevant documents, Mr. Malte, learned counsel submitted that all the proposals were signed by the petitioner for and on behalf of the Block Development Officer in view of the authority and delegation of powers by the then Block Development Officer to the petitioner on 3.5.2004. The said delegation of powers was much prior to the alleged incident, and therefore, this document is not the creation of the petitioner, more particularly Mr. Malte, learned counsel has submitted that this document, the authority letter, delegating the powers to the petitioner dated 3.5.2004 has not been specifically denied by the department. The respondents have only stated that such document is suspicious.

5. On this background now it is necessary to consider whether there is sufficient evidence against the petitioner to hold him guilty of misconduct of usurping powers of the Block Development Officer.

6. There are seven charges against the petitioner. Sum and substance of the charge is that the petitioner has sent various proposals without scrutiny and without any authority to sign it, and therefore, the petitioner has committed serious misconduct inviting major punishment.

7. Mr. Sharma, learned counsel appearing for respondent nos. 4 to 6 has argued that there is no provision under law enabling the petitioner to sign proposals in the capacity of the Block Development Officer. He submitted that signing the proposals and sending such proposals for approval to the higher authority without any authority amounts to severe misconduct. The Department has established the misconduct on the

part of the petitioner by adducing the evidence of the two witnesses. So, Mr. Sharma, learned counsel submitted that the finding given by the inquiry officer by its report dated 10.11.2008 and the consequent order of reversion passed by respondent no.4 against the petitioner from the post of the Section Officer to the Office Superintendent passed by respondent no.4, was challenged before the respondent no.3 in appeal and the finding of the inquiry officer and the order of reversion was confirmed by respondent no.3, is proper and calls for no interference.

8. I have perused the Roznama of the departmental inquiry. On perusal of the same, it appears that on 13.6.2006 the petitioner has denied the charges. Then the matter was posted on 21.7.2008. On that day, evidence of witness PW 1 D.A.Chinchore and PW 2 R.L.Patil was recorded. Besides the oral evidence of these two witnesses, no evidence is adduced on behalf of the department. No defence evidence is adduced on

behalf of the petitioner.

9. Looking to the oral evidence of PW 1 Chinchore, it appears that in all seven charges were framed against the petitioner i.e. the petitioner has signed the proposals as Block Development Officer and before signing the proposals he has not verified whether said proposals were complete in all respect.

During the cross-examination, this witness has admitted that the proposals were approved and subsequently as per the approved proposals the articles were distributed to the beneficiaries. He further admitted that the articles were distributed as per the sanctioned proposals by the Child Welfare Department. So, from the evidence of this witness, it appears that the articles were distributed to all the beneficiaries as per the approved proposals. Subsequently, the audit was conducted and no objection was noted by the audit department.

10. So far as evidence of PW 2 Patil is concerned, it appears that this witness has deposed about the alleged illegalities and irregularities committed by the petitioner on the basis of the note given to this witness for reading, at the time of deposition. Based upon such note he had deposed, that information of the beneficiaries at Sr. Nos. 53 to 329 in column nos. 4 to 9 was not filled in and such applications were not attested, however, such proposals were signed in the capacity of the Block Development Officer. On the face of record, it appears that this witness has deposed on the basis of note given to him for perusal at the time of deposition. Nowhere it is clarified who has prepared the said note, whether the note was correct and why the papers or original proposals were not brought at the time of inquiry so as to clarify and establish the actual fact of the irregularity or non-filling of the material information. The oral evidence of these two witnesses is recorded in a very casual manner.

Further more, though the other witnesses were present at the time of inquiry, they chose not to depose. It is material to note that it is the defence of the petitioner that as per the authority letter the petitioner has signed all the proposals for and on behalf of the Block Development Officer, and if at all there was any lacuna in the proposals, then the authority who is supposed to scrutinize such proposals must have rejected such proposals. On the contrary, it appears from the record that all the proposals were sanctioned and the articles were distributed to the beneficiaries.

11. It is material to mention that the charge against the petitioner about recommending and signing the proposals in the capacity of Block Development Officer has not at all been established, because it is apparently clear from the record that the petitioner signed the proposals for and on behalf of the Block Development Officer.

12. In such circumstances, the Writ Petition is allowed in terms of prayer clauses 'C' and 'D'. The order passed by respondent no.4 dated 25.2.2009 and the order passed by respondent no.3 dated 7.9.2009 are quashed and set aside. Rule is made absolute accordingly. No costs.

(K.L.WADANE)
JUDGE

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