

UNREPORTED**IN THE HIGH COURT OF JUDICATURE AT****BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.2001 OF 2015**

1. Digambar S/o Marotrao Gudup,
Age 56 years, Occ.Nil,
R/o Ambekar Nagar, Near
Saibaba Mandir Nanded, Dist.
Nanded-5. ... Petitioner.

Versus

1. The State of Maharashtra
through its Secretary,
Department of Water
Resources, M.S.Mantralaya,
Mumbai-32.

2. The Chief Engineers &
Chief Administrator,
Command Area Development,
Irrigation Department,
Aurangabad.

3. The Superintendent Engineer,
Jayakwadi Project Circle,
Aurangabad.

4. The Executive Engineer,
Majalgaon Canal Division No.2,
Gangakhed, Dist.Parbhani. ... Respondents.

...
Mr.R.P.Bhumkar, advocate for the petitioner.
Mr.V.M.Kagne, A.G.P. for the State.
Mrs.Kalpalata Bharaswadkar, advocate for
Respondent No.4.

...

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

Date : 01.03.2017

JUDGMENT (Per S.V.Gangapurwala, J.)

1. Heard.

2. The petitioner was working as Junior Engineer with the Respondents. From 22.1.1991, the petitioner remained absent on duty without sanctioned leave. Departmental Inquiry was initiated against the petitioner. Subsequently, the petitioner was dismissed from service from 21.8.1996. The petitioner remained absent from duty for a period from 22.1.1991 to 20.8.1996. The petitioner assailed the order of dismissing him from service before the appellate authority. The appeal was dismissed. Thereafter, the petitioner preferred Original Application before the Maharashtra Administrative Tribunal, Aurangabad, bearing O.A.No.66/2008. The Original Application filed by the petitioner is dismissed under order dated 29.8.2013. The petitioner has assailed the said judgment in the present Writ Petition.

3. Mr.Bhumkar, learned counsel for the petitioner strenuously contends that the petitioner had started suffering from anxiety and mental stress, due to which he had even subsequently lost his mental balance. Under such circumstances, the petitioner all of a sudden on 21.1.1991 started feeling uneasy, as a result of which he was constrained to proceed to Nanded for being with his family members. According to the learned counsel, no Departmental Inquiry is conducted. The petitioner was not issued any charge-sheet. After communication dated 30.5.1996, the petitioner did not receive any further communication and straightway was issued order dated 21.8.1996, dismissing the petitioner from service. The learned counsel submits that one Mr.D.P.Shirke, was Disciplinary Authority, who had imposed punishment of dismissing the petitioner from service. Said Mr.Shirke, thereafter came to be promoted as Chief Engineer. Against the order of dismissal, the petitioner preferred an appeal. The appellate authority was the same person, who acted as a Disciplinary Authority. Said Mr.Shirke, should not have

decided the appeal. He could not have been a Judge of his own cause. The learned counsel submits that the order removing the petitioner from service itself states that the period the petitioner was absent from duty should be treated as an extra-ordinary leave. This itself shows that the leave of the petitioner was sanctioned and regularised. The absence was regularised and as such the charge of misconduct did not survive. The learned counsel relies on the judgment of the Apex Court in the case of **"State of Punjab and others Vs. Bakshish Singh"** reported in **(1998) 8 Supreme Court Cases 222**. The learned counsel further submits that even otherwise the punishment of dismissal from service is disproportionate. The absence was not willful.

4. Mrs.Bharaswadkar, learned counsel for Respondents submits that number of letters were sent to the petitioner for joining the duty, however, the petitioner remained absent continuously from 22.1.1991. His absence hampered work. The petitioner neither replied any letter nor remained present. The Respondent

No.3 issued the charge-sheet to the petitioner under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 for unauthorised absence. The petitioner submitted his say vide his letter dated 4.4.1996. The petitioner was present before Respondent No.3 on 18.5.1996 and accepted the unauthorised absence and could not give satisfactory reason. The charge-sheet was issued to the petitioner through Executive Engineer vide Memorandum dated 22.2.1996 with special messenger and the petitioner gave acknowledgment on 23.2.1996. The petitioner submitted his say. Even he was given opportunity to remain present. The petitioner remained present in the office of the Superintending Engineer. The Inquiry was completed in presence of witnesses as mentioned in the charge-sheet. The petitioner did not produce any documentary evidence justifying his unauthorised absence from duty. The petitioner was unauthorisedly absent for almost five years. Even show cause notice along with Inquiry Report was issued to the petitioner. He was given 15 days time to reply. The petitioner did not reply

and thereafter the decision was taken by the Disciplinary Authority. The appeal filed by the petitioner with the Respondent No.2 was after delay of 8 years. The delay was not at all explained. As such the appeal was dismissed as barred by limitation. The Tribunal has considered all the relevant aspects. The learned counsel submits that the period of unauthorised absence was granted as extra-ordinary leave under Rule 63(vi) vide order dated 29.4.2006. For a period of 22.1.1991 to 20.8.1996 it was specified that this period can not be considered for any purpose including the pensionary benefits. The learned counsel relies on the judgment of the Apex Court in the case of **"Maan Singh Vs. Union of India and others"** reported in **AIR 2003 Supreme Court 1800**, **"Om Prakash Vs. State of Punjab and others"** reported in **AIR 2012 Supreme Court (Supp) 413** and another Judgment of the Apex Court in the case of **"State of Punjab Vs. Dr.P.L.Singla"** decided on 31.7.2008.

5. We have considered the submissions canvassed by the learned counsel for respective

parties. We have also gone through the judgment delivered by the Tribunal.

6. It is not disputed by the petitioner that he continuously remained absent from 22.1.1991. He never reported for duty nor had filed any application seeking leave. The petitioner was absent for more than five years unauthorisedly.

7. The contention of the petitioner that the Departmental Inquiry was not conducted is ex-facie erroneous and false. The record shows that petitioner was given notice of the inquiry being initiated against him. He was served with the charge-sheet. He also remained present before the Inquiry Officer. He could not substantiate his long absence of five years before the Disciplinary Authority and thereafter the decision is taken, dismissing him from service. The petitioner at the relevant time was working as a Junior Engineer. The conduct of the petitioner was callous and irresponsible. Not once in five years, the petitioner ever tendered any application for leave. Only after receiving

the notice, the petitioner gave application that he is ready to join service. During the interregnum many times the petitioner was issued notices by the Respondents but the petitioner did not respond. The Tribunal has considered these aspects. Even if the contention of the petitioner is accepted that the Appellate Authority ought not to have heard the appeal as eight years back when the decision was given dismissing the petitioner from service, the Appellate Authority was the Disciplinary Authority, still, the Tribunal has considered the whole record and the factual matrix. There does not appear to be a case of miscarriage of justice. The petitioner was given every opportunity in the disciplinary proceedings. The petitioner came with false plea that he was not aware of the Departmental Inquiry, whereas the record shows that the petitioner was in receipt of the charge-sheet. He had also filed his say. He also appeared before the Inquiry Officer. Even final show cause notice was issued to the petitioner. Such a long absence from duty amounts to misconduct. The judgment of the Apex

Court in the case of **"State of Punjab and others Vs. Bakshish Singh"** referred to supra has been considered by the Apex Court in a subsequent judgment delivered by three Judges bench of the Apex Court in a case of **"Maan Singh Vs. Union of India and others"** referred to supra. In the said case before the Apex Court the employee was dismissed and the period from the date of his absence till passing of the order of dismissal was directed to be treated as leave without pay. It was observed that reading the order of the dismissal as a whole, it can not be said to have condoned the absence by regularising the absence from duty subsequent to termination of employment. The Apex Court held the order of dismissal to be legal and valid. Similar view is taken by the Apex Court in the case of **"Om Prakash Vs. State of Punjab and others"** referred to supra. The Apex Court observed that subsequent regularisation of period of leave only for purpose of maintaining correct record does not wipe out charge and the order of dismissal is not liable to be set aside. In the present case also the absence of the petitioner from 22.1.1991

till 20.8.1996 was directed to be considered as extraordinary leave. The same was along with order of dismissal. It can not be said that the act of absence was condoned.

8. The order of dismissal is not disproportionate, considering long unauthorised absence of the petitioner from duty. The Tribunal has not committed any error in dismissing the Original Application.

9. In light of the above, the Writ Petition is dismissed. However, there shall be no order as to costs.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)

