

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11526 OF 2016

Sanjay Raghunath Khairnar,
Age 55 years, Occ. Nil
R/o Room No.6, Narmada Building
Zilla Parishad Quarters,
Tokar Talao Road, Nandurbar. ..Petitioner

Versus

1.The Divisional Commissioner,
Nashik Division, Nashik.

2. The Chief Executive Officer,
Zilla Parishad, Nandurbar. ..Respondents

...
Advocate for Petitioner : Shri Shelke Avishkar S.
AGP for Respondent 1 : Shri Kendre S.N.
Advocate for Respondent 2 : Shri Jain R.N.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 24, 2017
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. While issuing notice on 28.11.2016, after hearing the

petitioner and the learned AGP on behalf of the State, I had recorded their submissions as follows:-

“2. The submissions of Shri Shelke, learned Advocate for the petitioner are summarized as under:-

(a) The petitioner was appointed as an Attendant on 29.5.1986 with respondent No.2 Zilla Parishad.

(b) By order dated 18.3.1997 he was promoted as Jr. Assistant, District Services Group - III.

(c) Since he had worked in a tribal area, he was granted higher pay scale by order dated 18.3.2003 w.e.f. 1.7.2002.

(d) He was then awarded the pay scale of Rs.4000-100-6000.

(e) His pay was revised in August 2009, when he was granted the pay scale of Rs.2,400 and was drawing about Rs.8,000/- as gross salary.

(f) From 2008 he was performing the duty as a Jr. Assistant with the works Sub-Division under Panchayat Samiti, Dhadgaon.

(g) He was responsible for preparing his own pay bill along with the pay bill of the officers and employees.

(h) His entire service of about 29 years is

unblemished.

(i) Due to oversight and presuming that in a routine manner he has been granted the increment in June 2011, he prepared his pay bill for July 2011 by erroneously mentioning his Grade Pay as 4,300 instead of Rs.2,400.

(j) He acquired excess payment in the above manner upto May 2012.

(k) In June 2012, as he noticed that he was not extended the increment which would take his basic grade pay to Rs.4,300, he himself corrected the mistake and reduced his pay bill to the basic grade pay of Rs.2,400/- from June 2012 onwards. He himself brought his mistake to the notice of the higher officers.

(l) He was suspended on 9.1.2013 pending disciplinary action.

(m) He has himself deposited an amount of Rs.35,380/- with the respondent No.2 Zilla Parishad by agreeing to a one time deposit of the excess amount.

(n) He has consistently stated in the enquiry and before respondent No.2 and in the Appeal before respondent No.1 that he has committed a mistake by oversight and inadvertence and has himself brought his mistake to the notice of the superiors and has himself cured the mistake.

(o) *By the impugned orders, he has been awarded the punishment of removal from service.*

(q) *By order dated 19.8.2013, the respondent revoked his suspension and reinstated him in service.*

(r) *During the proceedings before respondents 1 and 2, he was protected and he continued in employment till the first respondent delivered the impugned order dated 14.9.2016 dismissing his appeal and upholding his removal from service.*

3. *Shri Shelke further submits that the peculiar facts of this case would clearly indicate that the petitioner who had a clean and unblemished service record of entire 29 years, had acted in inadvertence and had committed a mistake, which, he himself has corrected.*

4. *Learned AGP appearing on behalf of respondent No.1 submits that he will take instructions in the matter.”*

5. After hearing the learned Advocates for all the sides on 17.1.2017, I had observed as under:-

“1 After briefly hearing the learned Advocates for the respective sides, it transpires that after the protection granted to the Petitioner by the Authorities below, he was reinstated by order dated 17.12.2015.

2 *Considering the contention of the Petitioner that he has an unblemished service record of 29 years and that he had committed the mistake by oversight which mistake he himself has cured and has brought it to the notice of the superiors, Shri Jain, learned Advocate for Respondent No.2, shall take instructions as to whether, the Petitioner himself has cured his purported mistake and himself brought it to the notice of Respondent No.2 or as to whether, Respondent No.2 noticed the purported mischief of the Petitioner.*

3 *Stand over to 24.01.2017 in the supplementary board.*

4 *Considering the statement of the Petitioner that he is still in employment, status-quo to continue.”*

6. Learned Advocate for respondent No.2 submits on instructions that the Zilla Parishad had not discovered the act of the petitioner. He himself had corrected his salary bills from June 2012 and he has repaid the excess amount that he has obtained pursuant to the wrong bills that he prepared from July 2011 till May 2012. It was, thereafter, that the Zilla Parishad placed him under suspension on 9.1.2013 and then initiated disciplinary action against the petitioner.

7. I have considered the submissions of the learned Advocates as have been recorded earlier on 28.11.2016, 17.1.2017 and today.

8. There is no dispute that the petitioner was entitled to a pay

revision on year to year basis. He was due for an increment in June 2011, which was a routinely granted annual increment. He prepared his bill from July 2011 by erroneously including the increment which was not formally granted to him from July 2011. When he realized in June 2012 that the said increment was not granted and his basic pay would not be Rs.4,300/- per month, he himself corrected the mistake as is stated by the respondent. He returned the amount of Rs. 35,380/-. It was only after the petitioner had rectified himself that the Zilla Parishad noticed what had happened and then woke up to initiate action against the petitioner by placing him under suspension on 9.1.2013 after 7 months of the petitioner correcting himself.

9. The petitioner has put in 29 years of service and the said period of service is said to be clean and unblemished. In this backdrop, in my view, the respondent should have dealt with this case in a different manner, unlike dealing with a case of a delinquent who has contested the charges levelled upon him. The peculiar facts of this case, as recorded above, therefore, deserve to be treated differently.

10. Taking into account the over all effect of the conduct of the petitioner, his effort to correct his mistake, he having returned the entire money and the Zilla Parishad waking up after 7 months, to charge him with serious mis-conducts, convince me that a shockingly

disproportionate punishment has been awarded to the petitioner. There can be no dispute that an act of mis-appropriation cannot be pardoned and cannot be treated leniently. However, in the instant case, the mis-conduct committed by the petitioner was not by way of a desire to mis-appropriate money. The facts reveal that he acted on the belief that the annual increment has been granted to him. Based on such a mistaken belief, he had prepared his salary bills by including the annual increments, which he thought was granted to him in July 2011.

11. In the light of the above, the impugned order of the Zilla Parishad dated 26.5.2015 and the order of the appellate authority dated 14.9.2016, upholding the punishment of dismissal from service are quashed and set aside. The punishment of dismissal from service being shockingly disproportionate stands replaced by the punishment of withholding of two annual increments as per Rule 4(ii) of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964.

12. I am awarding this punishment since the petitioner has acted negligently and without awaiting the order of grant of increment, he prepared his bills presuming that the increment was granted. The said punishment shall be inflicted on the petitioner forthwith and an entry in the service book shall be accordingly made. Consequently,

the petitioner, who has already been reinstated in service shall stand reinstated with continuity and without backwages. There shall be no break in service in the light of this judgment.

13. This petition is, therefore, partly allowed and Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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akl/d