

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

WRIT PETITION NO. 11949 OF 2016

Vasant Nivrutti Waghmare .. Petitioner
Age. 58 years, Occ. Retired employee,
R/o. Plot No.F3, Guru Sahani Nagar,
Tirupati Park, CIDCO N4, Aurangabad,
Dist. Aurangabad.

Versus

1. The State of Maharashtra .. Respondents
Through its Secretary,
Social Welfare Department,
Maharashtra State, Mantralaya,
Mumbai – 32.
2. Sant Rohidas Charmodyog &
Charmakar Vikas Mahamandal,
45, Veer Nariman Road,
Life Building, 5th Floor,
Mumbai – 400 001.
Through its Managing Director.

Mr.V.D. Salunke, Advocate for the petitioner.
Mr.S.G. Karlekar, AGP for respondent No.1.
Ms.S.A. Dhumal (Tambat), Advocate for respondent No.2.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.
DATED : 30.11.2017**

ORAL JUDGMENT [PER : S.V. GANGAPURWALA,J.] :-

1. Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final disposal.
2. The petitioner challenges the inquiry initiated against him and the charge-sheet dated 08.11.2016.
3. Mr. Salunke, learned advocate for the petitioner submits that on 30.04.2016, the petitioner retired from the post of Joint Manager after rendering 34 years service. After retirement of the petitioner, the petitioner submitted pension proposal to the respondent and the same is granted. Learned advocate submits that the petitioner received show cause notice allegedly dated 26.04.2016. The allegation was about non-compliance of customer's (Home Guard Department) order within one month. Therefore, gratuity and other benefits of the petitioner came to be withheld. Learned advocate submits

that at the relevant time, the petitioner was having charge of Manager only for one month. During the said period, work was going on. However, after his transfer, nobody has taken interest to make the supply and now capital is made that there is fault on the part of the petitioner to supply production within one month, which was impossible and against the norms prescribed in Government Resolution dated 12.09.2012. Learned advocate submits that without obtaining sanction from the Government, the department has directed inquiry against the petitioner. According to the learned advocate, till the retirement of the petitioner on attaining the age of superannuation, no show cause notice was served upon the petitioner. Though the show cause notice is dated 26.04.2016 same was dispatched in the month of May, 2016 to the petitioner after retirement of the petitioner. On and after retirement of the petitioner, inquiry could not have been initiated against the petitioner. Learned advocate relied on the judgment of the Apex Court in the case of Dev Prakash Tewari Vs. U.P. Cooperative

Institutional Service Board, Lucknow & Ors., reported in 2014(7) SCC 260. Another judgment of Division Bench of this Court is in the case of Prabhakar s/o. Ambadasrao Dongre Vs. The State of Maharashtra reported in AIR Bombay Reporter 2016 (5) 251. He also relies on the judgment of Division Bench of this Court in the case of Dhairyasheel A. Jadhav Vs. Maharashtra Agro Industrial Development Corp. Ltd., Mumbai reported in 2010(2) Mh.L.J.618. Learned advocate also relies on the judgment of the Apex Court in the case of Bhagirathi Jena Vs. Board of Directors, O.S.F.C. & Ors., reported in (1999)3 SCC 666.

4. Ms. Tambat, learned advocate for the respondent submits that the petitioner was on leave in the month of April, 2016. The respondent tried to serve show cause notice upon the petitioner on 26.04.2016. As he was on leave, it was not served. He got his leave extended and up to the date of retirement he never attended the office. As such the show cause notice could not be

served. Eventually it was sent by post to him. Thereafter, the Inquiry Officer is appointed and the charges are also framed against the petitioner. The charges against the petitioner are grave. Learned advocate submits that from 01.04.2016 to 30.04.2016, the petitioner was on leave and did not resume duties at the office of respondent No.2. All leave applications were sent either by post or courier. Learned Advocate submits that the petitioner sought leave up to 18.04.2016 contending that there is a marriage ceremony and thereafter leave application was given on 16.05.2016 that he required medical leave from 20.04.2016 to 23.04.2016. Learned advocate for the respondent submits that as the petitioner never attended office with intention to avoid acceptance of show cause notice, the show cause notice was subsequently sent by post. The charges leveled in the charge-sheet are subject matter of inquiry. The petitioner is not a Government employee as such Rule 27(2)(b)(i) of Pension Rules, 1982 are not at all applicable to the petitioner.

5. Learned advocate for respondent No.2 relies on the judgment of the Apex Court in the case of **U.P. State Sugar Corporation Ltd. & Anr. Vs. Kamal Swaroop Tondon (2008) 2 SCC 41 reported in 2008(2) SCC 41** to contend that the inquiry was perfectly tenable against the petitioner.

6. We have considered the submissions canvassed by the learned advocates for the respective parties. In the present writ petition, we need not travel through merits or demerits of the charges leveled against the petitioner as the inquiry is challenged basically on the ground that inquiry could not have been initiated after the petitioner has retired on attaining the age of superannuation. It is not disputed that the petitioner on attaining the age of superannuation retired on 30.04.2016. Even the respondent employer has issued retirement order to the petitioner. It is also not disputed fact that till the date of retirement of the

petitioner, no show cause notice was served upon the petitioner nor any charges were framed against the petitioner. The show cause notice seems to have been sent by registered post on 08.05.2016, which is after the retirement of the petitioner. Eventually the charges are also framed subsequently.

7. It is not a matter of debate that till the petitioner retired on the date of retirement, no inquiry was initiated against the petitioner. The Apex Court in the case of **U.P. State Sugar Corporation (supra)**, relied upon by the learned advocate for the respondent, has held that regular show cause notice and charge seeking recovery of loss caused by negligence of employee issued on the date of his retirement on superannuation and served on him after office hours is not illegal. In the present matter the show cause notice admittedly is served on or after 11.05.2016 i.e. 11 days after the retirement of the petitioner. The show cause notice is dispatched by post on 09.05.2016. The charges admittedly were not

framed till the date of retirement of the petitioner. They were framed much later after the date of retirement. The inquiry had never commenced till the date of retirement.

8. In the case of Prabhakar (supra) the Court was concerned with the provisions of Maharashtra Civil Services Rules, 1982. The Court interpreted Rule 27(2)(a) of the said Rules and held that inquiry could not have been initiated after the retirement of employee, which is not disputed.

9. We have asked learned advocates for the respective parties as to whether Maharashtra Civil Services (Pension) Rules are applicable to the parties. Learned advocates for the petitioner and the respondent submitted that the Maharashtra Civil Services (Pension) Rules are adopted by the respondent-employer.

10. As the said rules of Maharashtra Civil Services

(Pension) Rules are applicable, considering the judgment of this Court in the case of **Prabhakar (Supra)**, which is precisely on the said rule, the show cause notice issued and the charges framed after the retirement of the petitioner cannot be sustained.

11. In the light of above, rule is made absolute in terms of prayer clause (B). No costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]