

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

WRIT PETITION NO.5497 OF 2016

Ashok s/o Laxmanrao Dukare **... Petitioner**
Age 50 years, Occu: Service,
R/o Panchayat Samiti Quarters,
Vaijapur, Tq. Vaijapur
Dist.Aurangabad.

VERSUS

1. The Divisional Commissioner,
Aurangabad Division,
Aurangabad.
2. The Chief Executive Officer, **... Respondents**
Zilla Parishad, Aurangabad

Mr. A S. Shelke, Advocate for the petitioner,
Smt. S.S.Raut, AGP for Respondent No.1 State,
Mr. Dilip Bankpar Patil, Advocate for respondent No.2.

CORAM : K. L. WADANE, J.

RESERVED ON : 14th March, 2017

PRONOUNCED ON : 15th March, 2017

JUDGMENT:

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith. With
consent of parties, the petition is taken up for final
disposal.
3. On 15.02.2010, respondent No.2 initiated
departmental enquiry against the petitioner on three
charges i.e. absenteeism, insubordination and giving

threat of committing suicide. The petitioner submitted his written say. Enquiry officer found that the charges of absenteeism and insubordination are partly proved, whereas the charge of giving threat of suicide is said to be proved. Consequently, respondent No.2 issued show cause notice, to which the petitioner replied. Respondent No.2 passed an order of compulsory retirement on 29.11.2011. The petitioner preferred an appeal before the Respondent No.1 against the said order. Respondent No.1 disposed of the appeal directing respondent No.2 to reconsider the case for alternative punishment. Thereafter, on 06.04.2013, after hearing, the parties, respondent No.2 passed an order of reduction in pay scale to lowest time scale of the pay. Being aggrieved by the same, the petitioner filed Writ Petition No. 3833 of 2013. This Court, after hearing both the parties, granted liberty to the petitioner to challenge the order dated 06.04.2013 by way of appeal before the Competent authority. Respondent No.1, after hearing the petitioner and perusing the papers, dismissed the said appeal on 02.09.2015. Hence, this writ petition.

4. Respondent No2 filed affidavit in reply and ha stated about the procedure being followed by the

respondents while deciding the departmental enquiry proceedings as well as appeals filed by the petitioner. In addition to that, respondent No.2 has specifically contended that even after completing the first departmental enquiry, conduct of the petitioner was not improved and therefore, another show cause notice was required to be issued to the petitioner. By way of rejoinder, the petitioner has contended that show cause notice was issued to the petitioner after thought.

5. I have heard Mr. A. S. Shelke, learned counsel for the petitioner, Smt. S.S.Raut, learned AGP for Respondent No.1 State and Mr. Dilip Bankpar Patil, learned counsel for respondent No.2.

6. During the course of argument, Mr. Shelke, the learned counsel for the petitioner has stated that while deciding the appeal filed by the petitioner, respondent No.1 has not followed the provisions of Section 21 (2) of the Maharashtra zilla Parishad, District Services (Discipline and Appeal) Rules, 1964, particularly sub section (2) (a) and (c), thereof. The learned counsel has argued that respondent No.1 has not applied its mind while deciding the appeal. Only the facts stated in the enquiry report are reproduced

and that respondent No.1 has dismissed the appeal without assigning any reason or re-appreciation of evidence.

7. As against this, Mr. Dilip Bankar Patil, the learned counsel for respondent No.2 has argued that respondent No.1, while dealing with the appeal, has gone through the entire proceeding and considered the material available on record, evidence recorded in the enquiry report and has rightly dismissed the appeal and hence respondent No.1 has strictly complied with the provisions of Section 21 (2) of the Maharashtra Zilla Parishad, District Services (Discipline and Appeal) Rules, 1964.

8. On perusal of the enquiry report, it appears that charge of absenteeism and non submission of explanation appears to have been partly proved, so also the second charge of insubordination is partly proved. The third charge about giving threat of committing suicide is said to be proved. On perusal of the impugned order, it appears that respondent no.1 has heard the petitioner as well as respondent authority and gone through the written submissions, record and proceedings and has arrived at the conclusion that the

petitioner was remaining absent without explanation, he was not following orders of the superiors and he was giving threats to the higher authorities of committing suicide and for these misconducts, departmental enquiry was initiated. Therefore, respondent No.1 has observed that respondent No.2 has followed the proper procedure and has awarded punishment of reduction in time pay scale.

9. It is material to note that in the earlier round of litigation, after conclusion of the departmental enquiry, respondent no.2 has passed an order of compulsory retirement of the petitioner. Respondent No.1, in appeal, on the ground of disability of the petitioner and on sympathy has remanded the matter for reconsideration, to the extent of punishment. Accordingly, after remand, respondent no.2 has issued show cause notice to the petitioner. The petitioner replied the said show cause notice. After hearing the petitioner, respondent No.2 has imposed punishment of reduction of time pay scale. Again, this order was challenged before respondent No.1 and while deciding the appeal, respondent No.1 has scrutinized oral as well as documentary evidence on record and has dismissed the appeal. The reasons may be

in short but respondent No.1 has recorded the reasons in its judgment and arrived at conclusion that it was not necessary to interfere with the order passed by the respondent No.2. In such circumstance, respondent No.1 has rightly passed the impugned order.

10. In this behalf, it is useful to refer to the observations of the Apex Court in the case of **Damoh Panna Sagar Rural Regional Bank Vs. Munna Lal Jain, reported in 2005 (104) FLR 291**, wherein, it is observed that:

"14. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury's* case (*supra*) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

15. To put differently unless the punishment imposed by the Disciplinary Authority or the

Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.

11. I do not feel that punishment inflicted upon the petitioner is shockingly disproportionate. Therefore, the observations of the Apex Court is applicable to the facts of the present case.

12. In view of the above discussion, there is no substance in the writ petition and therefore it is dismissed. Rule is discharged. No costs.

(K. L. WADANE, J.)

JPC