

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 6364 OF 2013

Shri. Suresh Vithal Sapkale ... Petitioners

Vs

State of Maharashtra and Ors. ... Respondent

Mr. N. V. Bandiwadekar with Mr. M. G. Bagkar for the petitioner.

Ms. Sushma Bhende – AGP for respondent no. 1.

Mr. Sanjay Udeshi i/b. M/s. Sanjay Udeshi and Co. for respondent Nos. 2 to 4.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

THURSDAY, 23RD FEBRUARY, 2017

P.C. :

1 By this Writ Petition under Article 226 of the Constitution of India, the petitioner is praying that an order passed on 6th December, 2006, by the respondent No.2, imposing a penalty of removal from service, be set aside.

2 This Writ Petition is filed on 18th July, 2013. It was extensively heard by us on 22nd February, 2017. We posted it

today for passing final order.

3 The only contention raised and seriously before us by Mr. Bandiwadekar is that the petitioner was born on 5th October, 1965. He belongs to the Scheduled Tribe category. He is physically handicapped and his disability exceeds 40%. On 6th January, 1996, he has been appointed as a Court Clerk in the Industrial Court at Mumbai. On 30th August, 2004, the second respondent placed him under suspension. There was a proposal to initiate departmental enquiry, which came to be initiated by serving of a chargesheet on 27th October, 2004. A reply was filed to this chargesheet on 30th November, 2004, by the petitioner, but the explanation was not accepted. An Enquiry Officer was appointed to submit a report to the second respondent. The Enquiry Officer concluded that the charges against the petitioner are proved. The petitioner received a copy of the Enquiry Report and showed cause against it so also the proposed punishment. However, the Disciplinary Authority on 6th December, 2006, imposed the above penalty / punishment of removal from service.

4 Mr. Bandiwadekar submits that as against this order

of punishment an appeal was preferred before the first respondent as the first respondent is the appellate authority. That appeal was filed on 12th December, 2006, and the authorities were duly served. The appellate authority, according to Mr. Bandiwadekar, cannot be this Court. However, surprisingly, the appeal of the petitioner was forwarded to this Court and from the record it is clear that it is this Court which dismissed it.

5 Mr. Bandiwadekar would submit that this Court is not competent to decide the appeal as the appellate authority should be the one in terms of the Maharashtra Civil Services (Discipline and Appeal) Rules. Those Rules styled as The Maharashtra (Discipline and Appeal) Rules, 1979, prescribe that when the Government servant is of Class III, then, the appellate authority who can hear an appeal against the order of the Disciplinary Authority is the one indicated in the Rule in that behalf. Mr. Bandiwadekar places strong reliance on the power of appeal conferred by the Rules and particularly the language of Rule 18. Rule 18 reads as under :

"18. Appellate authorities.- (1) Subject to the provisions of any law for the time being in force,-

(i) *a member of Class I or Class II service (including a person who belonged to any of those classes immediately before he ceased to be in service), may appeal to Government against the orders passed by the authorities subordinate or Government imposing penalties on him;*

(ii) *a member of Class III or Class IV service (including a person who belonged to any of those classes immediately before he ceased to be in service), may appeal to the immediate superior of the Officer imposing a penalty upon him under rule 5 of these rules :*

Provided that, where the Head of Department whose immediate superior is not Government, imposes penalty upon a Government servant, the appeal shall lie in the first instance to the authority intervening between such Head of Department and Government, and thereafter, to Government.

(2) *Notwithstanding anything contained in sub-rule (1) of this rule,-*

(i) *an appeal against an order in a common proceeding held under rule 12 of these rules shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate ;*

(ii) *where the person who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate.”*

6 In the submission of Mr. Bandiwadekar the petitioner was not in judicial service. He was not a Member of the District judiciary. In that sense, the disciplinary power over him is not

that of this Court, but of the Chairman, Industrial Court. If the President / Chairman of the Industrial Court was the Disciplinary Authority, then, Mr. Bandiwadekar submits that considerable time was wasted by routing the petitioner's appeal through several forums only to decide as to who is competent to hear it. Eventually, the Department of Law and Judiciary, Government of Maharashtra opined that the appeal would lie to this Court. However, the authorities forgot that the mandate of Articles 233 to 236 of the Constitution of India would not take within its import the present petitioner and one who is an employee in Class III grade and on the administrative side. Hence, the reliance placed by these authorities on the judgment of the Hon'ble Supreme Court in the case of *R.M. Gurjar & Anr. vs. High Court, Gujarat & Ors (1992) 4 SCC 10* was completely misplaced. That can have no application.

7 On the other hand, Mr. Udeshi appearing for the High Court would submit that there is no merit in the contentions of Mr. Bandiwadekar. First, the Disciplinary Authority in this case is the President / Chairman of the Industrial Court. Against his order imposing punishment of removal from service, it is not

conceivable that an appeal would lie to the State Government. Eventually, the Industrial Court is a Court subordinate to the High Court. It is controlled by the High Court in the sense that the High Court has both administrative and supervisory authority over it. It is in such circumstances that the constitutional mandate enshrined in the above Articles would apply. That is how once the services of the petitioner were on the Establishment of the Industrial Court, the President of the Court was the Disciplinary Authority and the Court being subordinate to this Court, both on administrative and judicial side, then, the appeal was rightly entertained by this Court. There is no merit in the contentions that this Court lacks power to decide the appeal.

8 Mr. Udeshi places reliance on not only *R.M. Gurjar & Anr.* (supra) but a later judgment of the Hon'ble Supreme Court in the case of *State of Maharashtra vs. Labour Law Practitioners' Association & Others (1998) 2 SCC 688*.

9 After hearing both sides and perusing with their assistance the impugned order and the petition paper-book, we see no merit in the contentions of Mr. Bandiwadekar. True it is

that the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, apply in this case. The Disciplinary Authority is the Chairman / President of the Industrial Court. A meaningful and purposive interpretation of Rule 18 of the 1979 Rules, as reproduced above, would enable us to conclude that the words "Immediately superior of the Officer imposing a penalty" appearing in Rule 18(1)(iii) would and can only mean the immediate superior of the officer imposing the penalty. In the present case, the President / Chairman of the Industrial Court has imposed the major penalty on the petitioner of removal from service. His superior, therefore, cannot be construed as any officer of the Government. While it is true that the employee like the petitioner and working in the Establishment of the Industrial Court on the administrative side is not performing judicial functions, however, he is on the Establishment of a Court of law. It is that Court which is subordinate to this Court. Once it is subordinate to this Court, then, the mandate of the three constitutional Articles as enshrined in them so also enunciated in *Labour Law Practitioners' Association* (supra) would bind us.

10 In that case, the argument before the High Court was

that the State of Maharashtra could have appointed the officers and Judges of the Labour Courts. Though these Judges perform a judicial function, they cannot be said to be a Court subordinate to this Court enabling this Court to exercise its powers of control over it. Negating that contention, the Hon'ble Supreme Court proceeded to hold thus :

"20. The constitutional scheme under Chapter V of Part VI dealing with the High Courts and Chapter VI of Part VI dealing with the subordinate courts shows a clear anxiety on the part of the framers of the Constitution to preserve and promote independence of the judiciary from the executive. Thus Article 233 which deals with appointment of District Judges requires that such appointments shall be made by the governor of the State in consultation with the High Court. Article 233(2) has been interpreted as prescribing that "a person in the service of the Union or the State" can refer only to a person in the judicial service of the Union or the State. Article 234 which deals with recruitment of persons other than District Judges to the judicial service requires that their appointments can be made only in accordance with the Rules framed by the governor of the State after consultation with the State Public Service Commission and with the High Court. Article 235 provides that the control over district courts and courts subordinate thereto shall be vested in the High Court; and Article 236 defines the expression "District Judge" extensively as covering judges of a City Civil court etc. as earlier set out, and the expression "judicial service" as meaning a service consisting exclusively of persons intended to fill the posts of the district Judge and other civil judicial posts inferior to the post of District Judge. Therefore, bearing in mind the principle of separation of powers and independence of the judiciary, judicial service contemplates a service exclusively of judicial posts in

which there will be a hierarchy headed by a District Judge. The High Court has rightly come to the conclusion that the persons presiding over Industrial and Labour Courts would constitute a judicial service so defined. Therefore, the recruitment of Labour Court judges is required to be made in accordance with Article 234 of the Constitution."

11 Once the Hon'ble Supreme Court holds and in clearest terms that the Labour Court Judges and Judges of the Industrial Court can be held to be belonging to Judicial service, the hierarchy contemplated in the case of Labour Court Judges is such Judges of the Labour Court and Industrial Court are part and parcel of the lower judiciary with the Industrial Court Judges holding a superior position of District Judges. The Labour Courts have been held as subject to the power of superintendence under Article 227 of the Constitution of India. That power is both judicial and administrative. It is not merely to supervise the working of these Tribunals and Courts on the judicial side but equally on its administrative side which enables this Court, together with the above three constitutional Articles, to decide the appeal against the order and passed in the instant case. If the order of penalty which is major in this case is imposed by the President / Chairman who is a Member of the District judiciary and, therefore, a District Judge, if we allow an appeal to be

preferred against it to the State Government, that would not only negate the constitutional mandate, but would defeat the very independence of the judiciary. It would run counter to the judgment of the Hon'ble Supreme Court.

12 Even in the case of *R.M. Gurjar* (supra), the argument was that the two appellants Gurjar and Jadhav were working as Junior Clerks in Civil Court under the administrative control of the District Judge, Bharuch, Guajrat. Disciplinary proceedings were initiated against them on the charge that they falsely identified three persons before a Judicial Magistrate. They admitted to the charge and pleaded for mercy. The District Judge passed an order imposing a penalty withholding their future promotions with permanent effect. The High Court, in exercise of its powers under Rule 23 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971, enhanced that penalty and imposed a penalty of removal from service. That was enhanced after giving due opportunity both to Gurjar and Jadhav. Against this order of the High Court, on the administrative side, a writ petition was preferred and the High Court through a learned single Judge, held that the source of power to impose the punishment / penalty

lay in the constitutional control of the High Court under Article 235. However, there was a Division Bench judgment to the contrary and that is why a Reference was made to a larger Bench, particularly on the point noted in paragraphs 2 and 3 of the Supreme Court judgment. Thereafter, the Full Bench judgment was pronounced. Aggrieved by that, the appeal was filed in the Supreme Court. In paragraph 6 of its judgment in *R.M. Gurjar* (supra), the Hon'ble Supreme Court held as under :

"6. *The District Judge, being the Head of Office and the appointing authority of the appellants, was the disciplinary authority under Rule 7(3) of the Rules. The District Judge imposed the punishment of stoppage of promotion on permanent basis. Reading Rules 18(1) and 18(2) of the Rules together it is obvious that an order imposing the penalty of stoppage of promotion is appealable and the appeal lies before an officer immediately superior to the officer who made the order. In this case the order having been made by the District Judge, the appeal would lie to an officer/authority immediately superior to the District Judge. The District Judge is under the administrative control of the High Court. The nature and extent of control which vests in the High Court under Article 235 of the constitution of India has been authoritatively determined by this Court in State of W. B. v. Nirpendra Nath Bagchi [(1966) 1 SCR 772:AIR 1966 SC 447]. Therefore, undisputably, the High Court is the immediately superior authority to the District Judge and the appeal against the order of the District Judge in this case would lie to the High Court. Rule 23 of the Rules empowers the appellate authority to exercise the power of review. It is, thus, clear on the plain reading of the Rules that the High Court being the appellate authority had the power to review the order of the District Judge. Admittedly,*

the High Court passed the order enhancing the punishment in exercise of its powers under Rule 23 of the Rules. Therefore, we hold that the High Court was within its jurisdiction on the administrative side to enhance the punishment of the appellants in exercise of its powers under Rule 23 of the Rules."

13 After having perused these binding judgments and the principles therein, we have no hesitation in agreeing with Mr. Udeshi that the appeal was rightly made over to this Court and was decided on its administrative side. Once this Court was competent to deal with and decide the petitioner's appeal, then, the argument of lack of jurisdiction, power and authority in this Court must be rejected.

14 A faint attempt was made by Mr. Bandiwadekar to convince us that the petitioner being disabled, on merits also, the view taken is arbitrary and violates the mandate of equality enshrined in Articles 14 and 16 of the Constitution of India. In this regard, this Court found that the charges and which were held to be proved against the petitioner, were indeed serious. The petitioner was assigned duties as a judicial clerk. He had to keep a record of the cases and write down the roznama on the case files regularly and as per the daily board. The investigation

revealed that he kept 639 cases pending and unattended without taking any action. He neglected to write the roznama in about 700 to 800 cases when he was working as a judicial clerk in the Court of a Presiding Officer. He was found unsuitable in performing duties for various courts and was in the habit of keeping his work pending. This was a dereliction of duty and gross and utter negligence. That amounted to misconduct and that is why the chargesheet was drawn, duly served and the Inquiry was held. At the conclusion of all this, the punishment / penalty was imposed. Merely because the petitioner is disabled, it is not that he cannot be proceeded against for misconduct and committed by him during the course of service which misconduct falls squarely within the parameters of the definition of the said word as appearing in the Rules and otherwise. That he was a disabled person was taken note of and this Court as also the Disciplinary Authority found that, when examined by the Medical Board, he was declared fit for duties. The medical reasons did not prevent him from discharging duties properly. The dereliction, lapse and negligence is not attributable to his medical condition at all. Therefore, Mr. Bandiwadekar's attempt that the petitioner is a paraplegic or disabled person does not impress us. He has

been proceeded against and rightly for serious misconduct. The penalty or punishment imposed is consistent therewith. We do not see any prejudice caused nor we find any allegation of bias of *mala fide* being levelled. In the absence of all these materials, the concurrent orders do not call for any interference in our, extra ordinary, equitable and discretionary jurisdiction under Article 226 of the Constitution of India.

15 As a result of the above discussion, the writ petition fails and it is dismissed. There will be no order as to costs.

16 The final argument that the penalty imposed is removal from service and not dismissal. Dismissal operates as a bar for future employment while removal does not. Therefore, the penalty of removal will not disable the petitioner from claiming his terminal benefits. We do not see any request of this nature being made and appearing from the record of this case. If the Rules applicable to the petitioner and particularly in relation to his pay and emoluments or pension permit him to draw any terminal benefits even when such a penalty or punishment is imposed, then, he is at liberty to make an appropriate request in

writing. If such a representation or request in writing is received, let the competent authority deal with it and pass necessary orders in accordance with law as expeditiously as possible and within a period of six weeks on receipt of such request.

B.P. COLABAWALLA, J.

S.C. DHARMADHIKARI, J.