

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3787 OF 2009

Atmaram S/o Madhavrao Dhapse
[died], his L.R's

PETITIONERS

- 1A Suman wd/o Atmaram Dhapse, Aged
56 Years, Occupation Nil,
Resident of Lumbini, Near Water
Tank, Khaja Colony, Jintur Road,
Parbhani
- 1B Anil S/o Atmaram Dhapse, Aged 37
Years, Occupation Business,
Resident of as above
- 1C Sunil S/o Atmaram Dhapse, Aged
34 Years, Occupation Service,
Resident of as above
- 1D Manish S/o Atmaram Dhapse, Aged
30 Years, Occupation Service,
Resident of as above

V E R S U S

- 1 The State of Maharashtra,
Through its Energy Department,
Mantralaya, Mumbai

- 2 The Maharashtra State
Electricity Distribution Co.
Ltd., Through its Chairman,
Disciplinary Action Section,
Station Road, Bandra [E], Mumbai
400 051

Respondents

Mr. V.C. Solshe, Advocate for the Petitioners
Mr. Y.G. Gujrati, A.G.P. for Respondent No.1/State
Mr. A.M. Gaikwad, Advocate for Respondent No.2

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.**

DATE : 10th APRIL, 2018

ORAL JUDGMENT [PER : T.V. NALAWADE, J.] :

This petition is filed to challenge the order of the Appellate Authority, by which the Appeal filed against the order thereby imposing penalty by the Disciplinary Authority, is rejected by observing that as per the provisions of MSEB Employees' Service Regulation No.92 [k], when an employee retires from the services on attaining the age of superannuation or resigns or retires voluntarily / compulsory, his right to prefer an Appeal shall stand ceased and any appeal pending at the time of retirement on attaining the age of superannuation, resignation, death or voluntary/ compulsory retirement, shall stand disposed of as infructuous.

2. Both the sides are heard.

3. During arguments, the learned counsel for the respondent produced on record the correction slip No. 22, dated 3rd October, 2011, showing that though there was aforesaid Rule in the past, there is change therein. Now as per the said correction-slip No.22, a retired employee has a right to prefer an appeal within thirty days from the date of the communication of penalty and such appeal shall be disposed of as per the procedure prescribed in the said Correction-Slip at S.R.92[k][ii][a] to [d]. However, it is observed in the said Correction Slip that the effect of the said slip would come into force from the date of issuance of the said Slip i.e. 3rd October, 2011. The penalty imposed on the petitioner is forfeiture of amount of encashment of leave on average pay and half average pay standing to his credit at the time of his retirement i.e. as on 30th June, 2005, as part recovery of loss caused to the Board, since he is responsible for causing financial loss to the Board.

3. The procedure of Departmental Enquiry is required to be such that it observes principles of natural justice. Ordinarily, the employer needs to give an opportunity, right to file an administrative appeal and particularly when employer is instrumentality of the State. It appears that the respondent subsequently realized that such a right needs to be given and it cannot be curtailed. The appeal was filed by the employee, which came to be disposed of due to then existing rules, which provided for disposal of the Appeal as infructuous due to retirement of the appellant. This Court holds that the appeal ought to have been continued even after retirement of the petitioner. The petitioner has such right and there is now a provision of the Appeal in the rules prepared by the respondents. There cannot be distinction between the employees who continued in service and the employees who retired from service after filing of the Appeal. This will be in violation of Article 14 of the Constitution of India. In view of this, the following order :-

O R D E R

- A] Writ Petition is allowed.
- B] The order of dismissal of the appeal of petitioner as infructuous stands set aside.
- C] The Appeal is restored to it's original stage.
- D] Rule made absolute in above terms.

In view of disposal of the Writ Petition, Civil Application No. 7115 of 2013 stands disposed of.

(K.L. WADANE, J.)

(T.V. NALAWADE, J.)