

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

WRIT PETITION NO.7852 OF 2012

Shri Nagorao s/o.Shriniwasrao Kulkarni,
Age: 64 years, Occu : Retired Section
Engineer Maharashtra Jeevan
Pradhikaran, R/o. Tilaknagar,
Nanded, Tq. & Dist. Nanded. **PETITIONER**

VERSUS

1. Maharashtra Jeevan Pradhikaran
Through its Member Secretary
Express Towers, 4th Floor,
Nariman Point, Mumbai-21.
2. Superintending Engineer,
Maharashtra Jeevan Pradhikaran
Circle, Nanded, Tq.& Dist.Nanded.
3. The Executive Engineer,
Maharashtra Jeevan Pradhikaran
Division, Parbhani, Tq. &
Dist. Parbhani.
4. Financial Consultant & Chief
Accounts Officer, Maharashtra
Jeevan Pradhikaran, CIDCO
Bhawan, New Bombay **RESPONDENTS**

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Mr.P.G.Godhamgaonkar, Advocate for the
petitioner
Mr.D.P.Bakshi, Advocate for respondent nos.1
and 2.
Respondent nos.3 and 4 served.

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 20.02.2018
Pronounced on : 14.03.2018

ORDER: (Per S.S.Shinde, J.):

1] This Petition is filed praying therein to quash order / letter dated 11.11.2010 and restore recommendation of Enquiry Officer and absolve petitioner of charges by quashing punishment.

2] It is the case of the petitioner that in the year 1973 the petitioner is appointed as Junior Engineer. After completion of five years on the said post, the petitioner was nominated and promoted to the higher scale of Sectional Engineer in the year 1979-80. While the petitioner was discharging his duties on his regular post at Parbhani, he was given additional charge of

the sub-division at Gangakhed. After completion of three years at Parbhani, the petitioner came to be transferred at Nanded in the year 2006. On 31.08.2008, the petitioner attained superannuation and got retired without any stigma/blot in his career. Thereafter, the petitioner submitted his pension papers to the concerned respondent authorities. However, no decision was taken by the respondents. On 07.03.2009, the petitioner lodged his grievances before the Lokayukta in respect of inaction on the part of respondents in the pension proceedings.

3] On 16.06.2009, the respondents initiated an enquiry against the petitioner. The respondents served charge sheet on the petitioner and asked / called upon him to file reply. On 30.07.2009, the petitioner filed reply. The petitioner has challenged

the said enquiry on the point of jurisdiction. According to the petitioner, after his retirement on attaining the age of superannuation, it was not permissible for the respondents to initiate an enquiry against the petitioner under the Maharashtra Civil Services [Discipline and Appeal] Rules, 1979. It is the case of the petitioner that the store keeper is the incharge of the 'measurement book' at the Station Headquarter. The petitioner was made incharge of the 'measurement book' by way of additional charge. After transfer, the petitioner was relieved from the said work as in-charge.

4] It is further the case of the petitioner that thereafter on 17.02.2010 the petitioner filed written statement in the enquiry and led the evidence. The petitioner was working as in-charge at Sub-Division

Gangakhed. The enquiry was not initiated against the Record Keeper and other Officers, but same was initiated only against the petitioner. Thereafter, on 09.04.2010 the petitioner was served with the enquiry report, and he was called upon to submit his say. Thereafter the petitioner has submitted his reply on 19.07.2010, and thereafter, on 11.11.2010, the impugned order has been passed.

5] Learned counsel appearing for the petitioner submits that the petitioner is superannuated with effect from 31st August, 2006 and due to his retirement, the Maharashtra Civil Services [Discipline & Appeal] Rules, 1979 [for short 'Rules of 1979'], cannot be made applicable qua the retired employee. It is submitted that during the course of enquiry, the petitioner was not supplied the documents by the Departments on

which Enquiry Officer relied to impute charges. On 16.11.2009, the petitioner urged before the Enquiry Officer to supply such documents. The petitioner submitted written statement before the Enquiry Officer on 17th February, 2010. The petitioner has specifically denied charge no.1 and urged that he has handed over the charge while division was operating. It is further submitted that the impugned action is contrary to law, and the impugned order is passed on *non est* facts, and there is no evidence to substantiate action. While holding additional charge and delivery of charge of posting and after effecting superannuation, the enquiry is made and action is taken, which is not sustainable in law. It is submitted that on superannuation of the petitioner, the Rules of 1979 are not applicable. The remedy of appeal is not efficacious. Learned counsel appearing for

the petitioner in support of his contentions that the disciplinary enquiry proceedings cannot be conducted / initiated after retirement, placed reliance on the judgments of the Supreme Court in the cases of *NOIDA Entrepreneurs Association Vs. NOIDA and Ors.*¹ and *B.J.Shelat Vs. State of Gujarat*² Therefore, the learned counsel prays that the Petition may be allowed.

6] On the other hand, learned counsel appearing for respondent nos.1 to 4 relying upon the affidavit in reply filed on behalf of respondent nos.1 to 4 submits that the petitioner has challenged the order dated 11.11.2010 in the present Writ Petition, which is at Exhibit-A. Upon perusal of the impugned order, some charges were leveled against the petitioner, and accordingly, the departmental enquiry was conducted against

1 AIR 2011 SC 2112

2 AIR 1978 SC 1109

the petitioner. In pursuance of the provisions of the Rules of 1979, the petitioner was punished after due enquiry. The Rules of 1979 are made applicable to the employees of the Maharashtra Jeevan Pradhikaran vide order no.2003/25/Aa-2/29, dated 21.07.2003. The petitioner ought to have filed appeal before the Appellate Authority under the Rules of 1979 against the impugned order. In stead of filing appeal before the Chief Engineer, the petitioner has directly approached before the High Court by filing the present Writ Petition. Therefore, the present Writ Petition is not maintainable in the eyes of law. Hence the Petition deserves to be dismissed.

7] We have considered the submissions of the learned counsel appearing for the petitioner, and learned counsel appearing for respondent nos.1 to 4. Learned counsel appearing for the respondents has pressed

into service the provisions of Rule 27 sub-rule [2] [a] [2] and submits that even after retirement on attaining the age of superannuation, the enquiry is permissible. We are convinced that there is an efficacious alternate remedy available to the petitioner of filing an appeal so as to take exception to the order dated 11.11.2010 passed by Member Secretary of the Maharashtra Jeevan Pradhikaran, Mumbai, under the Rules of 1979. It is stated by the respondents in the reply that the appeal lies before the Chief Engineer. In our opinion, when the remedy of an appeal is made available, the petitioner ought to have availed of remedy of filing an appeal before the Appellate Authority. We do not find any extra ordinary reasons / circumstances to entertain this Writ Petition directly under Article 226 of the Constitution of India by-passing the remedy of an appeal available to the petitioner.

8] In that view of the matter, we disposed of the Writ Petition, with liberty to file an appeal before the Appellate Authority. In case such appeal is filed by the petitioner, we direct the Appellate Authority i.e. the Chief Engineer of the Maharashtra Jeevan Pradhikaran to decide the said appeal, as expeditiously as possible, however, within 4 months from filing such appeal. We make it clear that all the contentions raised in this Petition and rejoinder-affidavit by the petitioner, and the respondents in their affidavit in reply are left open to be agitated before the Appellate Authority. We have not expressed any opinion on merits of the contentions, and it is for the Appellate Authority to decide the appeal on merits. The petitioner to extend full co-operation for early decision in the appeal.

9] With the above observations, the Writ Petition stands disposed of.

10] The parties to act upon authenticated copy of this order.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

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