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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11854 OF 2017

Sudhakar Kisan Borde

PETITIONER

Age – 55 years, Occupation – Nil

R/o At – Shiregaon, Post – Khedle Parmanand

Taluka – Newasa, District - Ahmednagar

VERSUS

1. The State of Maharashtra
Through Hon'ble Minister
For Rural Development
Mantralaya, Mumbai-32

RESPONDENTS

2. The Divisional Commissioner,
Nashik Division, Nashik

3. The Zilla Parishad, Ahmednagar
District – Ahmednagar
Through its Chief Executive Officer

4. The Chief Executive Officer,
Zilla Parishad Ahmednagar
District - Ahmednagar

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Mr. Amol K. Gawali, Advocate for the petitioner

Mr. S. P. Tiwari, AGP for respondent - State

Mr. S.T. Shelke, Advocate for respondents No. 3 and 4

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 25th SEPTEMBER, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally by consent.

2. The petitioner is before this court aggrieved by orders dated 29th May, 2017 passed by Minister for State for Rural Development, dated 25th October, 2016 passed by Divisional Commissioner, Nashik and dated 28th November, 2013 passed by Chief Executive Officer, Zilla Parishad, Ahmednagar.

3. The petitioner had been working as Gram Sevak since 20th November, 1995. While he had been holding charge of Gram Panchayat Pangarmal he had been assigned additional charge of Majale Chincholi during the period 21st July, 2004 to 23rd April, 2008.

4. The petitioner had received a charge sheet through a covering letter dated 28th January, 2009 under signature of Block Development Officer, Panchayat Samiti, Ahmednagar. There were seven charges levelled against the petitioner. Charge No. 1 had been to the effect that during the period from 21st July, 2004 to 17th April, 2008, petitioner had withdrawn amounts from time to time aggregating to Rs.62,300/- and had permanently misappropriated the same. Charge No. 2 had been in respect of withdrawal of amounts from *Gramnidhi* and *Indira Avas Yojana* and disbursing the same to beneficiaries, however, no receipts in writing in respect of the same had been made available by the

petitioner. Charge No. 3 also was of similar nature that was in respect of water supply fund and *Indira Avas Yojana*. Charge No. 4 had been that the petitioner had not been residing at head quarter Majale Chincholi / Pangarmal during his tenure and had abstained from monthly and fortnightly meetings continuously. Charge No. 5 was in respect of that the petitioner had not made available office record for local fund audit to extension officer. Charge No. 6 had alleged that the petitioner had faltered collection of *grampanchayat* taxes. Charges No. 7 alleged that Mr. Sandip Palve had not been furnished with information solicited under the Right to Information Act.

5. Before petitioner submitted reply, he had requested for several documents on 6th April, 2010 as referred to on page 197 of the writ petition. However, said documents were not supplied to the petitioner. Despite aforesaid deficiencies, the petitioner purported to submit his explanation on 20th April, 2010.

6. According to learned advocate for the petitioner no proper opportunity had been afforded to the petitioner during the course of inquiry and with the deficient material inquiry had been completed and charges levelled against the petitioner had been held to be proved under the inquiry report dated 28th September,

2012.

7. Based on said inquiry report, petitioner had been issued a show cause notice by the disciplinary authority i.e. Chief Executive Officer, Zilla Parishad, Ahmednagar and in reply to the same, petitioner had explained the factual aspects in detail with material in respect of the same. He submits that necessary explanation and material in respect thereof had been given, yet under order dated 28th November, 2013, Chief Executive Officer without applying mind to the explanation had foisted the petitioner with punishment of compulsorily retirement and since amount of Rs.2,78,362/- was not being paid back, directing lodging of criminal proceedings.

8. Aggrieved by aforesaid, an appeal came to be preferred by the petitioner pursuant to Maharashtra Zilla Parishad Services (Discipline and Appeal) Rules, 1964.

9. Learned advocate for the petitioner adverts to that the petitioner succeeded partially in said appeal, whereunder serious charges levelled against the petitioner at serial No. 1 to 3 with regard to financial aspects had been directed to be re-inquired into afresh, however, simultaneously observing that charges No. 4 to 7 as levelled against the petitioner to be proved and had

accordingly remitted the matter for re-inquiry to the Chief Executive Officer, Zilla Parishad, Ahmednagar and till such time punishment imposed of compulsory retirement had been kept intact. He submits that perusal of the decision in appeal by the Divisional Commissioner, Nashik Division, would show that the Commissioner has duly considered that charges No. 1 to 3 albeit have been held to have been proved, the inquiry report has been deficient in respect of as to whether the amounts had been withdrawn with signature of *Sarpanch* along with signature of petitioner; whether the amounts withdrawn have been spent over for the purpose for which those have been withdrawn and as to whether all the concerned with the withdrawals have been proceeded against or not. The inquiry report falls short of these considerations and the matter has been remitted for inquiry afresh in respect of these three charges.

10. Learned advocate contends that despite explanation to show cause notice to the disciplinary authority, the disciplinary authority went on to impose punishment of compulsory retirement without application of mind to the material placed on record.

11. He submits so is the case in respect of charges No. 4 to 7

levelled against the petitioner, in the appellate order. He submits that perusal of the appellate order would show that there is no application of mind at all to these aspects involved in the matter, which would have bearing. He submits that the Hon'ble Minister as well, in revision therefrom preferred by the petitioner, has narrated events and submissions on behalf of the petitioner and has cursorily considered that on going through material observations as contained in the appellate order of Divisional Commissioner, appears to be proper and are not required to be meddled with and, as such, the revision has been dismissed.

12. Learned advocate submits that the petitioner is suffering under non consideration of relevant aspects and material on record at all stages right from show cause notice issued, before disciplinary authority and at appellate as well as revisional stages. He submits that the orders are invalid for non application of mind to the explanation tendered and the material on record.

13. According to learned advocate for the petitioner, punishment in respect of those charges is beyond prescription of rules, since compulsory retirement is a major punishment and charges No. 4 to 7 are in effect minor in nature, punishment prescribed will have to be set aside.

14. On the other hand, Mr. Shelke, learned advocate appearing on behalf of respondents No. 3 and 4 submits that in the inquiry held as per procedure, it has emerged that the petitioner has been guilty of all the charges levelled against him. He submits that at the stage of inquiry before concerned officer, besides response to the charges levelled, no material had been placed nor any evidence in support of the so called explanation had even been adduced. He submits that having regard to available material on record inquiry officer has rendered his findings which are proper and were found to be correct by the disciplinary authority. He submits that procedure of issuing show cause notice calling upon explanation of the petitioner had been duly followed, however, explanation tendered by the petitioner was found to be deficient to overturn findings recorded in inquiry, the disciplinary authority had passed order compulsorily retiring the petitioner.

15. Learned advocate further goes on to submit that the appellate authority as well has considered that the petitioner is guilty of charges levelled against him at serial No. 4 to 7 and the findings of the appellate authority have been maintained by the revisional authority as well. In the face of such situation, wherein charges No. 4 to 7 are being concurrently maintained, those are

not amenable to be meddled with in writ petition.

16. Although aforesaid submissions are advanced on behalf of respondents No. 3 and 4, learned advocate for the petitioner adverts to the explanation given by the petitioner to the show cause notice issued by the disciplinary authority as annexed to the writ petition at page 216. Learned advocate purports to point out that along with explanation to the show cause notice, material defending petitioner's case in respect of charges No. 4 and 7 had been duly submitted. He further submits that while material in defence could not be procured in respect of charges at serial No. 5 and 6 before explanation to show cause notice had been given, the same, indeed had been available while appeal had been filed.

17. These particular aspects involved do not appear to be in serious dispute. The order passed by the disciplinary authority does not show that explanation tendered in respect of charges No. 4 and 7 along with material had been taken into account. So is the case in appeal. The appellate decision is deficient to reflect application of mind to the explanation in respect of charges No. 4 to 7 and the material produced in respect of the same on behalf of the petitioner.

18. Perusal of the decision in revision shows that beyond narration of the submissions on behalf of the parties and reproduction of observations of the appellate authority, it does not appear that the explanation tendered on behalf of the petitioner and the material in respect of the same has been taken into account or for that matter fallen for consideration in revision.

19. In the circumstances, while the matter is remanded by the appellate authority for reconsideration in respect of charges No. 1 to 3 it appears to be expedient that along with the same, authority while inquiring into afresh, also considers explanation in respect of charges No. 4 to 7 along with charges No. 1 to 3 and the material in support thereof.

20. It also emerges that the appellate authority has observed that the decision about disciplinary action may have to be taken commensurate with the findings about guilt alleged.

21. In the circumstances, impugned orders of disciplinary authority, appellate authority as well as revisional authority in the process lose an efficacy as referred to above entailing setting aside. The punishment, to be re-decided on, commensurate with

the findings. The inquiry be completed within a period of three months from the date of receipt of writ of this order. Rule is made absolute partially as aforesaid. Appellate authority has remitted the matter to Chief Executive Officer, who is disciplinary authority, who shall conduct inquiry afresh as per rules.

22. Having regard to aforesaid, writ petition partly succeeds. Orders passed by appellate authority confirmed by revisional authority are maintained to the extent that inquiry shall be held afresh with modification that all the charges No. 1 to 7 levelled against the petitioner, considering explanation of the petitioner and considering material in respect of the same. It is open for the parties to lead evidence in respect of their cases. All the points are kept open.

[SUNIL P. DESHMUKH, J.]