

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

WRIT PETITION NO. 12499 OF 2015

**BAPU TARACHAND HARAL AND OTHERS
VERSUS
ZILLA PARISHAD AHMEDNAGAR THROUGH ITS CHIEF
EXECUTIVE OFFICER**

...

Advocate for the Petitioners : Shri P. V. Barde
Advocate for the Respondent (sole) :- Ms. Manjushri Shendge-
Narwade h/f. Mr. G. B. Chate

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 7th AUGUST, 2018.**

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ORAL ORDER :

1. After hearing the learned Advocates for the respective sides at length and after the submissions in the matter were concluded, I had recorded in my order on 25/07/2018 as under :-

"1. I have heard the learned Advocates for the petitioners and the respondent. With their assistance, I have gone through the petition paper book.

2. The undisputed factors are as follows :

(a) The then deceased petitioner had joined the respondent- Zilla Parishad as a peon in 1971.

(b) He remained absent from 04/10/1989 intermittently till 26/01/1995 and remained continuously absent from 12/10/1989 . He was continuously absent till the date of the charge-sheet which is dated 26/01/1995.

[The date 04/10/1989 should be read as 08/04/1989 and the date 26/01/1995 should be read as 04/10/1989]

(c) *The petitioner applied for permission to join duties on 09/12/1994 and was allowed to resume duties on 27/01/1995.*

(d) *The Departmental Enquiry was initiated on the basis of the charge-sheet dated 02/02/1995.*

(e) *As the petitioner was held guilty by the Enquiry Officer, a second show cause notice dated 13/04/1996 was issued to the petitioner calling upon him to submit his explanation within 21 days.*

(f) *On 28/08/2006, the petitioner was served with the order of dismissal from service by way of punishment for his absence as well as for the additional misconduct mentioned in the said order pertaining to 'reporting for duties in a drunken state' and further remaining absent.*

(g) *The Labour Court, by Part-I award dated 06/11/2014 in reference to IDA No. 21/2010, has sustained the enquiry and has concluded that the findings are fair and proper.*

(h) *By the Part -II award dated 12/05/2015, the said reference case filed by the petitioner challenging his dismissal, has been answered in the negative, on the basis of the fresh evidence recorded in the enquiry, despite the earlier enquiry having been sustained.*

(i) *The petitioner passed away on 01/10/2016.*

3. *Prima-facie, I am of the view that after the second show cause notice was served on the petitioner on 30/04/1996 and was given 21 days time to file a reply , keeping in view that he has not tendered his reply, the respondent establishment should have proceeded to issue the order of punishment in accordance with the Rules. It is understandable that such an order can be passed immediately after the*

expiry of 21 days if no reply is filed or if the reply is tendered, it could be passed within a reasonable period after considering the reply. Failing to pass an order for 10 years and 7 months cannot be countenanced.

4. The learned Advocate for the petitioners submits on instructions from the L.Rs. that if the impugned order of dismissal dated 28/12/2006 is converted into an order of discharge, they would give up the wages for the period upto his superannuation. The L.Rs. of the deceased could be entitled to the gratuity and retiral/pensionary benefits.

5. The learned Advocate for the respondent- Zilla Parishad seeks liberty to take instructions so as to make a statement on this count.

6. Stand over to 07/08/2018 for "passing orders".

2. The petitioners are the L.Rs. of the deceased employee/Bapu Tarachand Haral. Needless to state, he was reinstated in service on 27/01/1995 and was subjected to a disciplinary proceeding in view of the charge-sheet dated 02/02/1995. Naturally, after the enquiry was concluded, a second show cause notice dated 30/04/1996 was issued to the deceased- employee calling for an explanation within 21 days as to why he should not be punished for the proved misconduct.

3. There is no explanation at all from the respondent-

Zilla Parishad as to what were the circumstances that were beyond its control in not initiating action against the deceased employee for 10 years and 4 months. When he was about 2 years short of his superannuation, he was served with an order of dismissal from service on 26/12/2006 on the basis of the second show cause notice dated 30/04/1996.

4. The learned Advocate for the petitioners has relied upon the following judgments in support of his contention that the absence from duties should be proved by the employer to be wilful and deliberate and only then a major punishment can be awarded :-

1. Depot Manager, A.P.S.R.T.C. and Anr. V. V. Surender, AIR 2009 SC (SUPP) 622,

2. Jagdish Singh V. Punjab Engineering College and Ors., AIR 2009 SCW 4580,

3. Maharashtra State Road Transport Corporation Vs. Sultana Parveen & Ors., 2014(7) ALL MR 10,

4. Chhel Singh Vs. M.G.B. Gramin Bank Pali

and Ors., AIR 2015, SUPREME COURT 598,

**5. Mahinder Dutt Sharma Vs. Union of India
and others, 2014 DGLS (SC) 354,**

**6. Kashinath Laxman Gawali Datta Prasad
Versus General Manager, Hindusthan Aeronautics
Limited and others, 1991 DGLS (Bom).**

5. I have gone through the judgments cited and I find that they would not assist the petitioners for the reason that the deceased employee was unauthorizedly absent intermittently from 08/04/1989 till 04/10/1989 and thereafter, continuously absent from 12/10/1989 till 26/01/1995.

6. The learned Advocate for the Zilla Parishad strenuously submits that after the second show cause notice was served on the deceased employee on 30/04/1996, he continued to remain intermittently absent. Therefore, the Management did not take any action for 10 years and 4 months.

7. The learned Advocate for the Zilla Parishad further

adds that since the employee was intermittently remaining absent between 1995 to 2006, the principle of "No Work - No Pay" was made applicable.

8. By any stretch of imagination, I do not find this submission to be convincing for the reason that if the employee continued to remain intermittently absent after resuming duties on 27/01/1995, the Management had a strong reason to dismiss him from service for his long continued absence of 5 years and 3 months, proved in the D.E. Having reinstated him on 27/01/1995 and having failed to take any disciplinary action for 10 years and 4 months, such disciplinary action cannot be countenanced.

9. Nevertheless, in my view, the deceased employee was rightly deprived of the wages on the basis of the principle of "No Work - No Pay" during his intermittent unauthorized absence in between 1996-2006. This aspect was not subject matter of any enquiry.

10. In view of the above, I find that the ends of justice would be met by recording the statement of the L.Rs. that the back wages are being waived for the period 26/12/2006, till the superannuation of the deceased employee on 01/06/2009.

11. Considering the above, this petition is partly allowed. The impugned part II award dated 12/05/2015 is quashed and set aside and Reference (IDA) No. 21/2010 is partly answered in the affirmative by the following order :-

(i) The dismissal order of the deceased employee dated 26/12/2006 shall stand converted into an order of discharge. He shall be deprived of back wages from 26/12/2006 till 01/06/2009.

(ii) He shall be entitled to all retiral benefits including gratuity and pensionary benefits.

(iii) Since his widow is before the Court as petitioner No.1-A, these retiral/pensionary benefits and the gratuity amount shall be payable to the said widow within a period of 8 weeks from today, failing which the said

amount shall carry interest @ 6 % from the date of judgment of this Court, till its actual payment. This interest component shall then be recovered from the salary of the CEO Z.P.

(RAVINDRA V. GHUGE, J.)

shp/-