

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9625 OF 2018

Mr. Mahadev Atmaram Sawant,

Age : 66 years, (DOB : 01.01.1952)

Date of Retirement : 31.01.2010.

Occ. Retired from the post of Senior

Assistant, R/at : at Kalambani, Tal. Khed,

Dist. Ratnagiri.

...Petitioner

V/s.

1. The State of Maharashtra,

Through the Secretary,

Medical Education and Drugs Department,

G.T.. Hospital, Mumbai.

2. The Director,

Medical Education & Drugs Dept.,

M.S., Mumbai

...Respondents

* * * * *

Mrs. Vaishali Jagdale, Advocate for the petitioner.

Mr. P.G. Sawant, AGP for respondent-State.

Coram : -

A.S. OKA, &

SANDEEP K. SHINDE, JJ.

Dated :-

3rd December, 2018.

JUDGMENT (PER : SANDEEP K. SHINDE, J) :

1. Heard learned Counsel for the petitioner and learned AGP for the State.

2. This petition is preferred under Articles 226 and 227 of the Constitution of India, inter-alia, challenging the judgment and order dated 9th August, 2018 passed by the Maharashtra Administrative Tribunal in O.A. No. 191 of 2017 whereby the Original Application was dismissed with costs.

3. On 1st June, 2005 the petitioner was appointed as Senior Assistant on promotion in Grant Medical College, Mumbai. From 1st June, 2005 till 27th November, 2006 petitioner worked as a Cashier at the same place. Internal audit revealed that the applicant had not maintained the cash-book and therefore the actual cash could not be reconciled with books. The Dean of the Government Medical College thus issued number of memos and called upon him to complete and update the cash-book and relevant records. Explanation was also sought about shortage of physical cash

as observed by the internal audit team. The petitioner, as it appears, did not pay any heed to the memos and therefore actual cash could not be reconciled with book and the difference of Rs.3,17,418/- remained unexplained. On 27th November, 2016 the petitioner was suspended while working at Grant Medical College. He challenged the suspension order before the Administrative Tribunal and vide order dated 8th July, 2008 he was directed to be reinstated. The petitioner was reinstated on 12th August, 2008 but was posted at Government Medical College Nagpur, as a Senior Assistant. It may be stated that the departmental enquiry was proposed against him in November, 2006 itself. He retired from the post of Senior Assistant from Nagpur on 31st January, 2010. He was served with the chargesheet on 3rd October, 2011 for misconduct and gross irregularities committed by him while working at Grant Medical college during 1st June, 2005 to 16th July, 2008. The principal charge against him was that of not maintaining the cash-book for a long period which resulted into unexplained difference of Rs.3,17,418/- in cash actually found to the extent in the cash book. Yet another charge against him was that, due to

misconduct on his part, the Government had suffered a loss of Rs.1,05,806/-. The petitioner challenged the chargesheets before the Maharashtra Administrative Tribunal vide O.A. No.199 of 2012 wherein the maintainability of the chargesheet was questioned in view of the provisions of Rule 27 of the Maharashtra Civil Services (Pension Rules), 1982. This ground he had taken as a Ground-B in O.A. No. 199 of 2017. The said O.A. was disposed of by judgment and order dated 1st October, 2013 whereby the Tribunal refused to quash the chargesheet and interfere with the departmental enquiry. Infact, the Tribunal directed the respondents to pass a final order with regard to the said departmental enquiry as expeditiously as possible and preferably within a period of four months. The respondents were, however, directed to release the terminal dues after retaining a sum of Rs.1,05,806/-.

4. That during the pendency of O.A. No. 199 of 2012, the Enquiry Officer had submitted the enquiry report to the Director on 20th March, 2013 and thereafter served the report on the petitioner in August, 2014. The Enquiry Officer

held that, two charges were proved and the petitioner was held responsible for the unexplained difference of cash of Rs.3,17,418/-. That upon issuing the show cause notice, the Disciplinary Authority imposed the punishment which was challenged by him in appeal. The Appellate authority confirmed the punishment vide order dated 15th November, 2016 which stipulates : (i)10% reduction from his pension for two years, (ii)withholding of Rs.1,05,806/- from his gratuity, and (iii)recovery of remaining amount of Rs.2,11,612/- in sixteen installments from his pension.

5. Aggrieved by the order dated 15th November, 2006 passed by the Appellate Authority, the petitioner has preferred O.A. No. 191 of 2017 before the Maharashtra Administrative Tribunal.

6. The Tribunal by reasoned order dated 9th August, 2018 dismissed the application of the petitioner and confirmed the punishment imposed by the Disciplinary Authority. It is against the order of the Administrative Tribunal, this petition is preferred.

7. The learned Counsel appearing for the petitioner has submitted that since the departmental enquiry was commenced against the petitioner after his retirement, the enquiry was not maintainable in view of the provisions of Rule 27 of the Maharashtra Civil Services (Pension Rules). It is next submitted that, in terms of Rule 27(2)(b)(ii), the departmental enquiry could not have been instituted in respect of allegations, relating to period four years prior to his retirement.

8. Thus, the principal contention of the petitioner is that, the petitioner retired on 31st January, 2010 while the chargesheet was served on him on 3rd October, 2011 in respect of the irregularities allegedly committed by him during the period 1st June, 2005 to 27th November, 2006 and therefore on this ground, initiation of departmental enquiry was not permissible in terms of provisions of Rule 27 of the Maharashtra Civil Services (Pension Rules).

9. The Tribunal while dealing with this contention has recorded a finding that the alleged irregularities relate to the period 2006 to 2008. A finding has been recorded that

the departmental enquiry was proposed against the petitioner when the petitioner was suspended in November, 2006 and thus there was no impediment to continue the departmental enquiry against him post retirement.

10. It is not in dispute that, the petitioner while working as a Cashier at the Grant Medical College at Mumbai during the period 1st June, 2005 to 16th July, 2008 had committed gross irregularities while discharging the duties by not maintaining the cash-book and as such the audit team could not reconcile the difference of Rs.3,17,418/-. In view of this fact, the petitioner was served with the chargesheet after his retirement for the irregularities committed by him within four years before his retirement and therefore the petitioner's contention that institution of the proceedings were not maintainable in view of Rule 27(2b)(2) of the Maharashtra Civil Services (Pension) Rules needs to be rejected and rejected accordingly.

11. Insofar as maintainability of the departmental enquiry in view of Rule 27(2a) is concerned, it may be stated that enquiry was proposed against the petitioner way back in

November, 2006. That even otherwise, after serving the chargesheet, the petitioner had challenged and sought quashment of the chargesheet by filing O.A. No. 199 of 2012. In the said Original Application, similar contention was raised by the petitioner. However, the Tribunal vide judgment and order dated 1st October, 2013 refused to quash and set aside the chargesheet lodged against the petitioner. The said judgment and order dated 1st October, 2013 has not been challenged by the petitioner and as such attained finality. Infact, the Tribunal vide the said judgment and order directed the Disciplinary Authority to conclude the proceedings within a time bound period. In view of this fact, the petitioners could not have challenged the order impugned herein on the very ground which was once challenged and rejected by the Tribunal. It may be stated that, the petitioner had not specifically disclosed this fact either in petition nor disclosed it in the course of the arguments.

12. We have gone through the order passed in Original Application No. 199 of 2012 and the order impugned in this petition. We do not see any infirmity, irregularity or illegality

committed in holding and concluding departmental enquiry. In fact, proceedings show there were serious lapses on the part of the petitioner while working as a Cashier in the Grant Medical College at Mumbai. The finding recorded by the Tribunal that the petitioner was solely responsible for the deliberate delay for concluding the enquiry cannot be faulted with. There is also a finding against the petitioner that he was not co-operating with the enquiry which is consistent with the material on record.

13. Thus, no interference is called for. The petition is dismissed with no order as to costs.

(SANDEEP K. SHINDE, J)

(A.S. OKA, J)