

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3145 OF 2016

Anil Baburao Mahajan

Age : 57 years, residing at 116,
Yashwant Nagar, Opp. Nutan Ajanta
Housing Society, District-Jalgaon

...Petitioner

V/s.

1. The Chief Engineer,
Kalyan Board, Kalyan and
Second Appellate Authority,
M.S.E.B. Kalyan, Tal-Kalyan,
Dist-Thane.

2. The Executive Engineer,
M.S.E.B., Goregaon Division,
Goregaon, Dist-Raigad.

3. The Competent Authority &
Executive Engineer, M.S.E.B.
Goregaon Division, Goregaon,
Tal-Mangaon, Dist-Raigad.

4. State of Maharashtra
through its Secretary,
Industries, Energy and Labour
Department, having its Office
at Hutatma Rajguru Chowk,
Madam Cama Road,
Mantralaya, Mumbai-400 032.

....Respondents

* * * * *

Mr. Sunil Dighe, Advocate for the petitioner.

Ms. Anjali R.S. Baxi, Advocate for respondents no.1 to 3.

Mr. P.G. Sawant, AGP for respondent no.4.

Coram : A.S. Oka, &

Sandeep K. Shinde, JJ.

Monday, 3rd December, 2018.

ORAL JUDGMENT (PER : A.S. OKA, J) :

1. Heard the learned Counsel for the petitioner.
2. Rule. The learned Counsel for first to third respondents waives service. Fourth respondent is a formal party.
3. Considering the limited controversy involved in the petition, the same is forthwith taken up for final hearing. Against the order of the Disciplinary Authority, the petitioner preferred an Appeal which was dismissed. A Second Appeal/Revision Application was filed by the petitioner in which the order of Disciplinary Authority was confirmed by the Second Appellate Authority. Writ Petition No. 7518 of 2007 was filed by the petitioner in this Court. This Court found that the second Appellate Authority did not give any opportunity of hearing to the petitioner. Therefore, by setting aside the order of the second Appellate Authority, the Second appeal preferred by the petitioner

was remanded to the Appellate Authority. Pursuant to the said order, it appears that hearing was fixed before the Second Appellate Authority on 20th January, 2014. The proceedings recorded by the Appellate Authority show that, the petitioner relied upon detailed written submissions dated 20th January, 2014. Thus, it appears that on the very date of hearing, the petitioner filed his written submissions.

4. The second Appellate Authority passed an order dated 21st February, 2014 by which the Second Appeal was dismissed.

5. After hearing the learned Counsel appearing for the parties, we find that the Second Appeal preferred by the petitioner has been dismissed by a very cryptic order. No reasons have been recorded therein.

6. We are aware of the fact that the Appellate Authority was not required to write an elaborate judgment like a regular Appellate Court. If the second Appellate Authority was of the view that no interference is called for

with the order passed by the Disciplinary Authority as well as the First Appellate Authority, after considering the findings recorded by both the authorities, the second Appellate Authority could have recorded its general agreement with the said findings. However, the impugned order does not indicate that even the findings of the Disciplinary Authority and the First Appellate Authority were considered by the second Appellate Authority. We may note here that, on 11th March, 2014 the petitioner applied to the second Appellate Authority. The petitioner pointed out that there is a serious doubt whether the impugned order was passed on 21st February, 2014. Therefore, the petitioner sought reconsideration which prayer was rejected by the second Appellate Authority by the communication dated 15th April, 2014.

7. As observed earlier, the second Appellate Authority has not done its duty while passing order dated 21st February, 2014. The petitioner superannuated from the service. The entitlement of the petitioner to receive all retirement dues depended on the fate of the Appeal and

therefore, the second Appellate Authority was expected to carefully go through the orders of the disciplinary authority as well as the First Appellate Authority and to consider written submissions dated 20th January, 2014 and thereafter, to decide the appeal by recording brief reasons.

8. The learned Counsel appearing for the petitioner points out that a sum of Rs.10,000/- was deposited by the petitioner which shows that there was never an intention on his part to defraud. This aspect will have to be considered by the second Appellate Authority after remand.

9. Accordingly, we pass the following order :

(i) The orders dated 21st February, 2014 and 15th April, 2014 are hereby quashed and set aside. We direct the second Appellate Authority to re-hear the second Appeal preferred by the petitioner and to decide the same in the light of the observations made in this judgment and order;

(ii) The Appeal shall be decided afresh within a period of three months from the date on which an authenticated copy of this order is produced by the petitioner in the office of the second Appellate Authority;

(iii) All contentions of the parties on merits are kept open;

(iv) Rule is made absolute in the aforesaid terms. No order as to costs;

(v) All concerned to act on authenticated copy of this order.

(SANDEEP K. SHINDE, J)

(A.S. OKA, J)