

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

82. WRIT PETITION NO. 3664 of 2018

Arvind S/o Dinkar Bhosale

...Petitioner

VERSUS

The Municipal Commissioner, Jalgaon and others

...Respondents

WITH
WRIT PETITION No. 4250 of 2018

Gopal Murlidhar Lule

...Petitioner

VERSUS

The Municipal Commissioner, Jalgaon and others

...Respondents

Mr. Avinash S. Deshmukh, Advocate for petitioner in both petitions
Mr. P.R. Patil, Advocate for respondent No.1
Mr. S.B. Pulkundwar, Adv. for respondent No.3

CORAM : S.V. GANGAPURWALA
AND
AVINASH G. GHAROTE, JJ.

DATE : 9th December, 2019

PER COURT :

1. Amongst the various contentions raised by Mr. Deshmukh, learned Counsel for the petitioners, one contention is

that the copy of the enquiry report of the departmental enquiry was never served upon the petitioners nor show cause notice was served upon the petitioners by the disciplinary authority before the order of dismissal was issued. The petitioners and other four persons were faced with the departmental enquiry on the basis of same charges. The other four persons were let off on a minor punishment of stoppage of two increments, whereas, the petitioners are dismissed from service.

2. According to Mr. Patil, learned Counsel for the respondent No.1, though there is no record to show that copy of the inquiry report was served upon the petitioners, the fact that the petitioners contend about copies of such statements and the inquiry report in assailing the order dismissing them, could not have been made unless the petitioners had an occasion to go through the inquiry report. The learned Counsel relies on the judgment of the Apex Court in the case of *Himachal Pradesh State Electricity Board Ltd. Vs. Mahesh Dahiya (2017(2) Mh.L.J. 674)* and contends that in case the Court is of the opinion that the order has to be set aside, then petitioners may not be reinstated in service.

3. According to the petitioners, they have stated that the inquiry report and the order dismissing them from service is

varbatim same on the basis of the order of dismissal.

4. We have considered the submissions. We have asked Mr. Patil, learned Advocate for respondent No.1-Municipal Corporation about any proof to show that copy of the inquiry report was served upon the petitioners. The learned Advocate fairly conceded that there is nothing to show that copy of the inquiry report was served upon the petitioners. It is also an admitted fact that prior to issuing order of dismissal from service against the petitioners, a show cause notice was also not issued by the Disciplinary Authority.

5. The Apex Court in the case of *Himachal Pradesh State Electricity Board Ltd.*, (supra), has observed that before making opinion with regard to punishment which is to be imposed upon delinquent, delinquent has to be given an opportunity to submit representation on the inquiry report which finds charges proved against delinquent. In the present case, the petitioners were never served with the inquiry report nor even served with the show cause notice of the proposed punishment prior to issuing order of dismissal from service.

6. In the light of above, the impugned orders dismissing the petitioners from service pursuant to the inquiry, cannot be sustained.

7. It is submitted that the petitioners at the time of issuance of the order of dismissal were not under suspension but were already reinstated.

8. In the light of the above, we pass following order.

O R D E R

- (I) The impugned action of dismissing the petitioners from service is quashed and set aside. The proceedings of the disciplinary authority from the stage of submission of the inquiry report including the punishment and the Appellate Order, are quashed and set aside.
- (II) The Disciplinary Authority shall give copy of the inquiry report to the petitioners. The petitioners shall be allowed 15 days' time to submit representation from the date of receipt of the inquiry report. The Disciplinary Authority shall complete the proceedings and pass appropriate orders after issuance of show cause notice to the petitioners of the proposed punishment.
- (III) As the impugned orders are quashed and set aside and the petitioners were in service at the time of dismissal order, the petitioners shall stand reinstated. The period from the date of termination till reinstatement shall depend upon

future orders passed by the Authority.

(IV) The petitioners can also agitate before the Authorities in respect of aspects including the aspect of punishment to the petitioners qua other delinquents.

(V) With these observations, the writ petitions are partly allowed. No costs.

(AVINASH G. GHAROTE)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

Madkar