

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

WRIT PETITION NO. 8842 OF 2014

Shahaji S/o. Devidas Shinde ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

..
Shri. G. K. Naik-Thigale, Advocate for the petitioner
Smt. V. N. Patil-Jadhav, AGP for respondent/State
..

**CORAM : S. V. GANGAPURWALA
AND
A. M. DHAVAL, JJ.**

DATE : 18TH APRIL, 2019

ORAL ORDER:

1. The petitioner was appointed as a Head Constable on or about 10.10.1965. The petitioner along with one Police Head Constable - Baburao Wadkar and four Police Constables visited village Gunjarga for prohibition raid. The enquiry was initiated against the petitioner on the basis of the complaint lodged by Maruti Kumthe i.e. the person whose premises the petitioner and others had searched and the raid was conducted. Upon conclusion of the departmental enquiry, the petitioner was found guilty. The order of dismissal from the service was passed against the petitioner. The

petitioner challenged the order of dismissal by filing Reg. Civil Suit before the Civil Judge Senior Division, Latur. The Civil Court dismissed the suit. The petitioner filed an appeal before the District Court. the matters was thereafter transferred to the Maharashtra Administrative Tribunal, Aurangabad and was numbered as Transfer Application No. 11/95. the Tribunal dismissed the Original Application. Aggrieved thereby, the present petition.

2. Shri. Thigale, learned counsel for the petitioner submits that, the enquiry was not conducted in free and fair manner. The principles of natural justice were never followed. The departmental enquiry against the petitioner was on the ground that the petitioner after the raid was conducted again went to the house of Maruti Kumthe, consumed liquor and showed currency of Rs. 10/- to the wife of the Maruti and asked for company. The norms for the enquiry were never followed. The petitioner was never served with the copy of the enquiry report. The principles of natural justice were observed more in breach. The enquiry was initiated on the basis of false complaint. The documents which were of importance were not made available to the petitioner in the departmental enquiry though demand was made for the documents consistently. On the basis of faulty enquiry, the enquiry report was submitted by the enquiry

Officer. The copy of the report lodged by the Police Patil was never supplied to the petitioner during the course of departmental enquiry. The copy of the note books of the Head Constable Baburao Wadkar and the Police Constables who were present at the time of raid were not supplied to the petitioner. The petitioner was also not given proper opportunity to cross-examine the material witnesses. The wife of Maruti Kumthe was also not examined immediately in the enquiry but was examined after nine months. According to the learned counsel, as the departmental enquiry is conducted against the principles of natural justice, the enquiry stands vitiated. The learned counsel relies on the judgment of the Apex Court in a case of *State of Uttar Pradesh and others Vs. Saroj Kumar Sinha* reported in (2010) 2 SCC 772 and submits that, non-supply of foundational documents at the relevant time vitiates the enquiry. The learned counsel submits that, it is a case of no evidence. When there is no evidence against the charge levelled, the findings are required to be set aside and the judicial review would be permissible. The learned counsel relies on the judgment of the Apex Court in a case of *Kuldeep Singh v Commissioner of Police* reported in (1999) 2 SCC 10. Learned counsel submits that, the Enquiry Officer had proposed different punishment than what has been awarded by the Disciplinary Authority. The Disciplinary Authority is bound to record the reasons

for disagreeing the findings recorded by the enquiry Officer. Reliance is placed on the judgment of the Apex Court in the case of S. P. Malhotra vs Punjab National Bank reported in 2013 (7) SCC 251.

3. The learned Assistant Government Pleader submits that, the copy of the enquiry report produced by the petitioner is not authenticate. Now the old record is not available. The enquiry was conducted for the act of 1965 and the dismissal order was passed in the year 1973. Thereafter the suit was filed by the petitioner challenging the said order in the year 1977. The learned AGP submits that, the documents relied by the respondents during the enquiry were given to the petitioner. All these aspects were considered by the Tribunal.

4. In writ jurisdiction under Article 226 of the Constitution of India, this Court would not sit as an appellate authority over the decision taken by the Disciplinary Authority. This Court would be more concerned with the due adherence to the procedure being followed during the conduct of the departmental enquiry.

5. There cannot be any dispute with the proposition that principles of natural justice are required to be adhered to and the

petitioner is required to be provided with the documents and non-adherence to the same would vitiate the proceedings.

6. Some of the extracts of the cross-examination have been reproduced by the Committee. The petitioner has nowhere pleaded that the Enquiry Officer has exonerated the petitioner. The petitioner in the cross-examination has given admission and the same is reproduced in the judgment of the Tribunal, which reads thus.

The plaintiff in clear words has admitted in his cross examination that the enquiry was held in his presence that he was given chargesheet and also show-cause notice and he showed the cause, he also admitted that police patil Raosaheb Maruti Kumte and his wife Bhagirathibai Hanumant Shinde, Hanumant Sutar, Keshavrao Dhumal and PSI Shri. Girdhari and Circle Inspector Shri. Pawar were examined by the prosecution in the said enquiry and he had cross examined them. Such statement of plaintiff clearly goes to show that he was given ample opportunity to cross-examine the witness to elicit the truth. Plaintiff has also stated in his cross-examination that he cross-examined Ibrahim Jamadar, PSI Narayan and Constable Shri. Premchand in his defence and later on by his pursis he closed the defence. This will also indicate unmistakable that the plaintiff was given sufficient and reasonable opportunity to him in the enquiry held against him.

7. The Tribunal has also considered that, the petitioner in his cross-examination admitted that he did not see the report of Police Patil during the enquiry and he did not cross-examine the Police Patil regarding his report. Copy of the report was very much on record.

The petitioner failed to cross-examine the persons and the witnesses. The charges were grave. The petitioner had gone for the prohibition raid at the house of Maruti Kumte. No incriminating articles were found in the raid. The petitioner again went to the house of the Maruti under the influence of liquor and showed currency of Rs. 10/- to the wife of Maruti and asked her to give him company. Maruti locked the petitioner in the room and thereafter filed the complaint. It has also come on record that, when the Police Patil went to the house of Maruti, the clothes of the petitioner were soaked with vomit. The Police Patil had gone to rescue the petitioner. The atmosphere in the village had become tense because of the act of the petitioner. The Civil Court as well as the Tribunal have concurrently concluded that the petitioner was given fair opportunity. The petitioner had cross-examined the Police Patil, the Police Head Constable and Police Constables. This conclusion is drawn on the basis of the admission given by the petitioner on oath.

8. In view of the above, it cannot be said that, the principles of natural justice were not adhered to.

9. The petitioner had tried to produce a copy of the enquiry report which was not authentic. The Tribunal observed that the

petitioner was trying to take advantage of the statement made by the Assistant Government Pleader that the record is not available as the same is old one and taking aid of said statement, the petitioner had produced the copy of the enquiry report which is not authentic. The act of the petitioner was not befitting the Head Police Constable. The petitioner could not demonstrate the source from where he got the said copy. The same is not reliable. Moreover it was never the case of the petitioner in the pleadings that he was exonerated by the Enquiry Officer.

10. The issue of delay and laches in the present matter is not irrelevant. The Maharashtra Administrative Tribunal had dismissed the Original Application of the petitioner under Judgment and Order dt. 25.07.2006 and the petitioner has filed this Writ Petition only in the month of September 2014, after lapse of eight years. No reasonable explanation is coming forth for such delay and laches though the aspect of delay and laches is relevant. Still we have also considered the contentions of the petitioner on merits.

11. Writ Petition is accordingly dismissed. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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