

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11679 OF 2018

Jayant S/o. Sarvottamrao Kharwadkar
Age : 52 years, Occupation : Service as
Assistant Town Planner,
Municipal Corporation, Aurangabad,
Residing at 66, Tilak Nagar,
Aurangabad, Taluka & Dist. Aurangabad Petitioner

Versus

- 1] The State of Maharashtra
Through the Principal Secretary
Urban Development Department,
Maharashtra State,
Mantralaya, Mumbai.
- 2] The Commissioner,
Municipal Corporation, Aurangabad.
- 3] The Municipal Corporation,
Aurangabad, through its Commissioner. Respondents

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Shri. Suresh P. Pandav, Advocate for the Petitioner.
Shri. A. B. Chate, AGP for Respondents-State.
Shri. Sambhaji S. Tope, Advocate for Respondent Nos. 2 and 3

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATED : 22ND MARCH, 2019.

ORAL JUDGMENT [PER S. V. GANGAPURWALA, J.]

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

2. The petitioner at present is serving as Assistant Town Planner. On or about 12.11.2008, show-cause notice was issued to the petitioner with regard to lapses attributed to the petitioner. Petitioner submitted his explanation to the show-cause notice. On 01.01.2009, memorandum of charges came to be issued to the petitioner and Mr B. B. Maske, City Engineer, was also appointed as Enquiry Officer and Mr M. B. Kazi, Dy. Engineer of Town Planning Department was appointed as Presenting Officer. On 06.01.2009, the petitioner submitted reply to the charges. No further steps were taken by the Enquiry Officer upto 28.10.2011 and he retired. On 29.10.2011, another Enquiry Officer was appointed namely Mr.Sikandar Ali to inquire into the charges. From 29.10.2011 to 14.09.2018, no further steps were taken by the Enquiry Officer. Thereafter third Enquiry Officer was appointed.

3. The petitioner has challenged the proceedings initiated against him on two counts namely; (i) delay and (ii) on merits.

4. Shri. Pandav, learned counsel for the petitioner submits that, since 10 years the enquiry is pending against the petitioner. Within five days of the service of the charge-sheet, the petitioner had

filed his reply. The inquiry has not proceeded further. The enquiry cannot continue for unlimited period. The learned counsel relies on the judgments of the Apex Court in Prem Nath Bali Versus Registrar, High Court of Delhi & Anr. in Civil Appeal No. 958 of 2010 dt. 16th December, 2015 and in S. S. Rathore Vs. State of Madhya Pradesh reported in 1989 SCR Supl. (1) 43.

5. The learned counsel further on merits also contends that, the charges against the petitioner are of negligence. The petitioner had, under the sanction of the superior authorities, taken steps. The superior authorities are not prosecuted. No departmental enquiry is initiated against them and the petitioner is made scapegoat. The superior officers certainly would not sign the documents without going through the contents. It is incorrect to say that the petitioner had obtained the signatures by giving wrong information. The witnesses named for the departmental enquiry have also retired.

6. Shri. Tope, learned counsel for respondents No. 2 and 3, on instructions, submits that the inquiry would be concluded within a period of one month. The learned counsel submits that, delay in itself cannot be a ground to set aside the departmental enquiry. The petitioner is guilty of negligence. The charges have been framed

against the petitioner. The departmental enquiry is required to be taken to its logical end. The learned advocate relied on the judgment of the learned Single Judge of the Gujarat High Court in a case of **EA Singh Versus State of Gujarat** in Special Civil Application No. 7157 of 2002, dtd. 5th December, 2014 and another judgment of the learned Single Judge of the Gujarat High Court in **Manishkumar Arjanbhai Patel Versus Saurashtra Gramin Bank & 2** in Special Civil Application No. 10226 of 1999, dt. 18.10.2016.

7. The departmental enquiry was initiated against the petitioner by issuance of charge-sheet on 01.01.2009. The petitioner immediately within five days filed his reply to the charges. For 10 years thereafter, the departmental enquiry has not proceeded further. It is at a standstill till the date of filing of the petition before this Court. The petitioner is not responsible for the delay in conduct of the departmental enquiry. Three Enquiry Officers have changed. None of the Enquiry Officer has proceeded further. It is accepted by the learned counsel for respondents No. 2 and 3 that, the witnesses shown along with the Annexure 3 to the charge-sheet have also retired and are no more in service. The charges against the petitioners are not pertaining to misappropriation or fraud but they are hovering around acts of negligence. 10 years is too long period

for not taking any steps in the departmental proceedings. It is not the case that some steps have been taken by the respondents in conduct of the departmental proceedings and because of certain circumstances which were beyond their control, the departmental enquiry could not been concluded. After receiving the reply to the charge-sheet from the petitioner, the proceedings are stagnant and have not moved to the other stage. The delay is solely on account of respondents. The petitioner is not responsible even remotely for the delay. The charges are also not grave with regard to misappropriation, fraud or otherwise. The Apex Court in a case of Premnath Bali (supra), has observed in para 33 thus:

33) Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.

8. Similar view has been maintained by the Apex Court in a case of S. S. Rathore (supra).

9. Considering the aforesaid viz. long delay in proceeding with the departmental enquiry, the petitioner is not responsible for delay and so also considering the charges, we are inclined to exercise our writ jurisdiction under Article 226 of the Constitution of India and set aside the departmental enquiry. The departmental enquiry initiated against the petitioner pursuant to the charge-sheet dt.01.01.2009 is quashed and set aside.

10. Rule is accordingly made absolute in the above terms. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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