

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10534 OF 2019

Anant Shankar Diwadkar ... Petitioner
Vs.
Zilla Parishad, Ratnagiri through
its Chief Executive Officer and others ... Respondents

Mr. N. V. Walawalkar, Senior Advocate a/w. Mr. Suresh M. Sabrad for
Petitioner.
Mr. Ashish V. Pawaskar for Respondent Nos.1 and 2.
Mr. P. V. Nelson Rajan, AGP for Respondent No.3-State.

CORAM : UJJAL BHUYAN, J.
DATE : OCTOBER 16, 2019

P.C. :

Heard Mr. Walawalkar, learned Senior Counsel assisted by Mr. Sabrad, learned counsel for the petitioner, Mr. Pawaskar, learned counsel for respondent Nos.1 and 2 and Mr. Rajan, learned AGP for respondent No.3-State.

2. By filing this Petition under Articles 226 / 227 of the Constitution of India, petitioner seeks quashing of order dated 13.12.2017 passed by respondent No.3 i.e. Divisional Commissioner, Konkan Division in Appeal No.72 of 2017 as well as the order dated 14.10.2013 passed by respondent No.1 i.e. Chief Executive Officer, Ratnagiri Zilla Parishad.

3. It may be stated that petitioner served as Junior Assistant in Ratnagiri Zilla Parishad since 08.02.1980. Following bifurcation of the district, he was transferred to Sindhudurg Zilla Parishad on 16.03.1991 from where he retired from service on attaining the age of superannuation on 31.03.2011.

4. Disciplinary proceeding was initiated against the petitioner by issuance of a charge memo dated 09.03.1994. Disciplinary proceeding

ended with an order dated 28.03.1995 passed by respondent No.1 under Rule 4(iv) of Maharashtra Zilla Parishad District Services (Discipline & Appeal) Rules, 1964 imposing penalty of reduction in the salary of the petitioner.

5. This came to be challenged by the petitioner before the Industrial Court by contending that it was a case of unfair labour practice. The Industrial Court had passed an order on 12.01.2009 in favour of the petitioner which led respondent No.1 to approach this Court by filing Writ Petition No.308 of 2010.

6. This Court by order dated 06.07.2010 while observing that it was not a case of unfair labour practice; however, for the grounds and reasons mentioned in the order dated 06.07.2010 set aside the order of the Industrial Court and remanded the matter back to the Industrial Court to re-hear the matter on all points and decide the complaint of the petitioner afresh.

7. On remand, Industrial Court passed order on 17.03.2011 setting aside the order of punishment imposed by the disciplinary authority and remanded the matter back to the disciplinary authority to afford an opportunity of personal hearing to the petitioner and thereafter to pass an appropriate order in accordance with law.

7.1 In the meanwhile, petitioner retired from service on attaining the age of superannuation on 31.03.2011.

8. When the matter was taken up on remand by respondent No.1, petitioner remained absent.

8.1. Considering the absence of the petitioner, respondent No.1 passed order dated 14.10.2013 confirming the initial order of punishment.

8.2. Thereafter, petitioner preferred appeal before the Divisional Commissioner, Konkan Division. Divisional Commissioner i.e., respondent No.3, taking a very technical view of the matter passed order dated 13.12.2017 rejected the appeal of the petitioner and confirmed the order dated 14.10.2013.

9. Aggrieved, present Writ Petition has been filed.

10. Learned counsel for the petitioner submits that when the High Court had set aside the order of penalty neither respondent No.1 nor respondent No.3 could have affirmed the same. What was required was passing of a fresh order in accordance with law. Even if the petitioner was absent which has been attributed to wrong advice, respondent Nos.1 and 3 were required to decide the matter afresh, which has not been done in the present case. He further submits that absence of the petitioner was unintentional as he had acted on wrong advice which was given considering the fact that he had retired from service.

10.1. Learned counsel for the petitioner has also brought to the notice of the Court that post retirement, petitioner was permitted to cross the efficiency bar vide order dated 29.10.2013; therefore, it would be a fit case for remanding the matter back to respondent No.1 for passing a fresh order in accordance with law.

11. Learned counsel for respondent Nos.1 and 2 submits that he may be given an opportunity to file affidavit.

12. Learned AGP submits that State is a formal party and would have no role to play in the dispute *per se*.

13. From the order sheet, it is seen that notice in this case was issued as far back as on 25.04.2018. Though contesting respondent Nos.1 and 2 have been served and are represented, no affidavit has been filed till date. Petitioner is a retired employee. Matter is continuing since

09.03.1994 when petitioner was served with the show-cause notice. A quarter of a century has gone by since then. Therefore, an early closure of the dispute would serve the cause of justice. In such circumstances, Court is not inclined to grant further time to respondent Nos.1 and 2 to file affidavit.

14. Submissions made by learned counsel for the parties have been considered.

15. Industrial Court in the earlier round of litigation had clearly set aside the order of the disciplinary authority imposing penalty. Disciplinary authority was directed to afford an opportunity of personal hearing to the petitioner before recording findings and passing fresh order in accordance with law.

16. From the order dated 14.10.2013, no findings or reasons of respondent No.1 are discernible. Even in the absence of the petitioner, respondent No.1 was required to record reasons and to pass a fresh order in accordance with the relevant provisions of the Maharashtra Zilla Parishad District Services (Discipline & Appeal) Rules, 1964; but this was not done.

17. That apart, the order of penalty dated 28.03.1995 was set aside by the Industrial Court on remand by this Court. When an administrative order is set aside by a higher forum the effect of such setting aside is that such order is erased from the record and ceases its existence. An order which is not in existence cannot be confirmed. This is a fundamental error committed by respondent No.1 and the appellate authority failed to consider this aspect of the matter while dismissing the appeal of the petitioner vide order dated 13.12.2017.

18. Consequently and in the light of the above, both the orders dated 14.10.2013 and 13.12.2017 are hereby set aside and quashed. Matter is

once again remanded back to respondent No.1 for passing a fresh order in accordance with law after giving an opportunity of personal hearing to the petitioner within a period of 3 months from the date of appearance of the petitioner before the disciplinary authority. Let the petitioner appear before the disciplinary authority within a period of two weeks from today.

19. With above directions, Writ Petition is disposed of.

(UJJAL BHUYAN, J.)

Minal Parab