

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

WRIT PETITION NO.1697 OF 2019

1. The State of Maharashtra
through Secretary, Agriculture,
Animal Husbandary, Dairy
Development and Fisheries
Department, Mantralaya,
Mumbai 32
2. The Secretary,
Rural Development and
Water Conservation Department,
Mantralaya, Mumbai 32 .. Petitioner

Versus

- Madhukar Suryabhan Ingale,
Age 74 years, Occu. Agriculture,
R/o Himalaya Vyankateshwar Colony,
Near Hotel VITS, Station Road,
Aurangabad .. Respondent

Mrs V.N. Patil – Jadhav, A.G.P. for petitioners
Mr Avinash S. Deshmukh, Advocate for respondent

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

**JUDGMENT RESERVED ON : 9.3.2020
JUDGMENT PRONOUNCED ON : 15.5.2020**

JUDGMENT (Per Shrikant D. Kulkarni)

1. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final hearing at admission stage.
2. Feeling aggrieved by the judgment and order dated 7.4.2018 passed in Original Application No.534/2014 by the Vice Chairman (J.), Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad (hereinafter referred as "Tribunal" for brevity), the petitioner/State is invoking the extra-ordinary writ jurisdiction under Article 226 of the Constitution of India.
3. The factual scenario in short is as under :

The respondent herein was serving as Superintending Agriculture Officer in the Agriculture, Animal Husbandry, Dairy Development and Fisheries Department. He was promoted as Class-I and Senior Class-I cadre on 11.9.1981 and 20.2.1991, respectively. The departmental enquiry was initiated against the respondent on 17.1.1998. The enquiry report was submitted to Disciplinary Authority on 11.11.2003. The respondent was slapped with three charges – (1) for irregularities in purchase of seeds/plants; (2) causing loss to the Government to the tune of Rs.35,37,094/-; and (3) not following financial guidelines and procedure for procurement of seeds/plants and one additional charge of misuse of powers in making transfers of Officers/staff. The Enquiry Officer arrived at conclusion that charge Nos. 1, 2 and 3 were duly proved against the respondent. Additional charge against the respondent was not proved. The disciplinary authority imposed punishment upon the respondent and directed to recover Rs.35,37,094/- in one stroke as well as withdrawal of pensionary benefits.

4. The respondent preferred an appeal before the competent authority. The competent authority was pleased to dismiss his appeal. The respondent preferred Original Application No.534/2014 against the petitioners before the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad. The learned Vice Chairman (J.) after hearing both the sides was pleased to allow the Original Application preferred by the respondent and quashed and set aside the impugned order dated 31.7.2014, imposed by the disciplinary authority. The learned Vice Chairman (J.) of the Tribunal was further pleased to extend all the consequential benefits including pension and pensionary benefits with retrospective effect from the date of his retirement to the respondent and further directed to pay all the retiral benefits within six months from the date of order.

5. Heard Mrs V.N. Patil – Jadhav, learned A.G.P. for the petitioners and Mr Avinash S. Deshmukh, learned Advocate for the respondent.

6. We have gone through the enquiry report submitted in departmental enquiry, order passed by the disciplinary authority and the impugned judgment and order dated 7.4.2018, passed by the Vice Chairman (J.), Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad.

7. It is undisputed position that during service tenure of the respondent, departmental enquiry was initiated under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The respondent was slapped with three charges and subsequently, one more additional charge. The Enquiry Officer concluded the departmental enquiry and submitted his report to the disciplinary authority on 11.11.2003. The Enquiry Officer arrived at conclusion that charge nos.1, 2 and 3 were proved, whereas additional charge was not proved against the respondent.

8. On studying the impugned judgment and order delivered in Original Application No.534/2014, it is noticed by us that the Vice Chairman (J.) of the Tribunal has gone through the enquiry report minutely and findings recorded therein coupled with the evidence recorded during the departmental enquiry initiated against the respondent. The Vice Chairman (J.) of the Tribunal, after scanning the evidence of the witnesses microscopically, arrived at conclusion that there is absolutely no evidence against the respondent so as to held him guilty under the respective charges. The learned Vice Chairman (J.) of the Tribunal observed with reasons that it is a case of “no evidence” and fit to exercise jurisdiction to interfere with the decision of the disciplinary authority and allowed all the prayers of the respondent made in Original Application No.534/2014.

9. Mrs. Patil – Jadhav, learned A.G.P. invited our attention to the enquiry report and findings recorded therein coupled with the observations made by the Tribunal in Original Application No.534/2014. She argued that there was sufficient evidence against the respondent. The charges leveled against the respondent were duly proved. There was no scope for the Tribunal to interfere with the punishment imposed by the disciplinary authority, which was confirmed by the appellate authority. According to learned A.G.P., the Tribunal has exceeded its jurisdiction by re-appreciating the evidence. The respondent was responsible for causing loss to the tune of Rs.35,37,094/- to the Government because of irregularities in purchase of seeds/plants. The documentary evidence was supporting the oral evidence recorded during departmental enquiry. She submitted that the impugned judgment and order passed by the Tribunal is against the settled principles of law and needs to be quashed and set aside by allowing the Writ Petition.

10. Mr. Avinash S. Deshmukh, learned Counsel for the respondent, while combating the argument, invited our attention to the detailed reasons recorded by the Vice Chairman (J.) of the Tribunal. He pointed out that it is a case of “no evidence” and that is why the Tribunal has interfered with the decision of disciplinary authority, which is permissible in law. He submitted that the impugned decision is based upon well settled principles of law and evidence in departmental enquiry initiated against the respondent. It is not a fit case to interfere by invoking writ jurisdiction under Article 226 of the Constitution of India and set aside the decision of the Tribunal.

11. Before going into legal arena on which learned Counsel for both the sides have focused, it is necessary to have a look on the scope of judicial review in the cases of departmental enquiry while exercising writ jurisdiction under Article 226 of the Constitution of India.

12. Scope of interference in service matters/disciplinary proceedings, by invoking Article 226/227 of the Constitution of India, is limited. The legal proposition has been made clear by the Honourable Supreme Court of India. Paras 12 and 13 of the decision of the Honourable Supreme Court in the case of **Union of India Vs. P. Gunasekaran** reported in **(2015) 2 SCC 619** read thus :

“12. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court can only see whether :

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (i) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(j) the finding of fact is based on no evidence.

- **13.** Under Article 226/227 of the Constitution of India, the High Court shall not -

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based;

(vi) correct the error of fact however it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience”

13. Judicial review, it is trite, is not directed against the decision, but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the delinquent receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision, but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

14. In case of **State of Bihar and others Vs. Phulpari Kumari**, reported in **(2020) 2 SCC 130**, the Honourable Supreme Court has again held that that scope of judicial review in departmental enquiry matters is very limited. The interference with the orders passed pursuant to a departmental enquiry can only be in case of “no evidence”. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge.

15. Having regard to the legal position, referred in the above stock of citations, the legal position is very much clear. The scope of interference in service matters/disciplinary proceedings is very limited under Articles 226 and 227 of the Constitution of India as held in case of **Union of India Vs. P. Gunasekaran** (supra). In the case on hand, on studying the impugned decision of the Tribunal, the Vice Chairman (J.) of the Tribunal has considered the enquiry report and findings recorded therein and the evidence recorded during the departmental enquiry initiated against the respondent. In paragraph 14 of the impugned judgment and order, the Tribunal has framed following four important points :

(i) Whether the order dated 31.7.2014 issued by respondent No.2 is *void ab initio* illegal inasmuch as respondent No.2 is neither appointing authority nor disciplinary authority of the applicant ?

(ii) Whether it is a case of ‘no evidence’ against the applicant or;

(iii) Whether the appreciation of evidence made by the Enquiry Officer is totally perverse to the facts and evidence on record ? And

(iv) Whether the applicant was responsible for causing any financial loss to the Government as claimed ?

16. By giving reasons with relevant part of evidence of the respective witnesses, the learned Vice Chairman (J.) of the Tribunal arrived at conclusion that it is a case of “no evidence”. It is observed by the Tribunal that enquiry Officer had arrived at a wrong conclusion that the respondent was responsible for purchase of seeds and plants and thereby causing financial loss to the Government. Paragraphs no.22 to 35 of the impugned judgment and order of the Tribunal dealt with all the aspects with relevant part of evidence as well as documentary evidence and candidly recorded findings against points no.1 to 4, referred above, in the negative. It is observed by the learned Vice Chairman (J.) of the Tribunal that it is a case of “no evidence” against the respondent and the findings recorded against the respondent in the departmental enquiry are absolutely perverse and as such, the Tribunal constrained to interfere with the decision of disciplinary authority and set aside the punishment imposed upon the respondent. The Tribunal is legally empowered to interfere with the decision of disciplinary authority if there is no evidence or the findings recorded in the enquiry report are perverse. On studying the impugned judgment and order delivered by the Vice Chairman (J.) of the Tribunal, we do not find any perversity in the judgment and order passed by the Tribunal. The Tribunal has considered all the aspects. We do not find any error of law while allowing the prayers of the respondent. The petitioner/State has failed to make out any case to interfere with the decision of the Tribunal. We are not in agreement with the submissions of learned A.G.P. Mrs Patil – Jadhav for the petitioners. There is no merit in the petition. As such, the petition needs to be dismissed.

17. The Writ Petition stands dismissed. No order as to costs. Rule discharged.

(SHRIKANT D. KULKARNI, J.)

(S.V. GANGAPURWALA, J.)

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