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

WRIT PETITION NO. 5067 OF 2000

Gangadhar S/o Kisan Khalikar
Dead Through L.R's

1. Ujwala w/o. Gangadhar Khalikar
Age : 60 years, Occu : Housewife,

2. Yogesh Gangadhar Khalikar
Age : 38 years, Occu : Private Service,

3. Rishikesh Gangadhar Khalikar
Age : 33 years, Occu : Private Service,

4. Anjali w/o. Awadhut Algikar
Age : 35 years, Occu : Housewife,

All R/o. C/o. Vishal Sali, S.No.47,
Ganeshnagar, Wadgaon Sheri,
Mitramandal Society, Near Salunke
Hospital, Pune .. Petitioners

Versus

1. The State of Maharashtra

2. The Chief Executive Officer
Zilla Parishad, Beed

3. The Additional Divisional Commissioner,
Aurangabad Division, Aurangabad
Dist. Aurangabad .. Respondents

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Mr. Pradeep Deshmukh, Sr. Advocate h/f. Mr. H.A. Joshi,
Advocate for petitioners
Mr. S.N. Kendre, AGP for respondent – State
Mr. K.B. Jadhavar, Advocate for respondent no. 2

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CORAM : SUNIL P. DESHMUKH &
B.U. DEBADWAR, JJ.

DATE : 23-01-2020

ORAL JUDGMENT (Per : SUNIL P. DESHMUKH, J.) :

1. Indisputed fact in the petition is that petitioner has been working with respondent since 1972. While he had been working as Gramsevak at village Rui, Taluka – Georai, District – Beed from 19-07-1989 to 01-11-1990, the work of construction of *Anganwadi* at *Kajalyachi Wadi* and construction of road of village *Rui* had been sanctioned by *Panchayat Samiti*, Georai. The estimates for the construction of *Anganwadi* and the road were Rs. 27,450/- and Rs.17,540/-, respectively. Those funds were being disbursed under two different schemes under '*Jawahar Rojgar Yojana*' and '*National Rural Employment Programme*'. For expenses incurred over construction work, petitioner had been required to withdraw amount. Withdrawal for the same had been jointly made by *Sarpanch* and petitioner and even disbursements of amounts were done under the joint signatures of *Sarpanch* and *Gramsevak*. Petitioner had also maintained the account of expenses of village *panchayat*, however, since *Sarpanch* had grudge against petitioner, Junior Engineer of *Panchayat Samiti* carried out valuation of the work of road and *Anganwadi* and issued certificate valuing the work done to be to the tune of Rs.9,219/- and Rs.5,715/- showing deficit of Rs.18,231/- and Rs.11,765/- in the work. According to

petitioner, while the valuation had been done by Junior Engineer on 05-11-1989, construction had continued till March, 1990. Accounts in respect of expenses incurred till March, 1990 along with receipts had also been maintained by village *panchayat*.

2. The certificate purportedly indicating shortfall in expenses over the work had been issued by Juniour Engineer on 5th November, 1989. With reference to the same, two proceedings, departmental and criminal were initiated. Criminal prosecution had been launched against the petitioner bearing Regular Criminal Case No.64 of 1992, in which petitioner had been convicted under orders of Chief Judicial Magistrate, Beed under section 409 of Indian Penal Code and had been directed to suffer simple imprisonment for one year and to pay a fine of Rs.2000/-, in default to suffer simple imprisonment for six months.

3. In the appeal taken up by the petitioner, the Appellate Court has observed thus:

> *"10. As seen from the documents seized by Investigating Officer vide Panchanama Exh.61 on 4-12-90 the Village panchayat, Rui had opened account No.C&I/15067 in the State Bank Of India, Agril, Development Branch, Gevrai. The following amounts are shown to have been deposited in the said account.*

AMOUNTS	*DATE*
Rs.11,031/-	*10-7-1989*
Rs.16,699/-	*11-11-1989*
Rs.6,560/-	*1-1-1990*
Rs.8,073/-	*2-6-1990*
RS.9,655-	*2-7-1990*
Rs.52,018/-	*Total*

The amount of Rs.2,273=60 ps. is shown to be balance in the said account in the month of August, 1990. Thus, the amount of Rs.49,745/- has been withdrawn from that account from time to time. The amount of Rs.27,450/- has been withdrawn from time to time during the period from 19-7-1989 to 30-1-1990 as shown in the report Exh.33. According to the prosecution, out of the amount of Rs.27,450/- the actual work found to have been done by the appellant was worth Rs.9,219/- and as such the appellant has misappropriated the amount of Rs.18,231/-. To substantiate this allegation, prosecution has mainly relied on the evidence of Narayan Audhut P.W.8 (Exh.56) and Iftekhar Ahmed Khan P.W.9 (Exh.62) who are the Junior Engineers attached to Panchayat Samiti, Gevrai and Zilla Parishad, Irrigation Department, Gevrai respectively. Audhut P.W. 8 states that he inspected the work of road at Rui, took measurements thereof and valued it at Rs.9,219. The said notes of valuation are at Exh.57. This witness does not state as to when he had inspected and measured the work of road at Rui. The entries in Exh.57 are not in his hand writing. The said entries do not bear his signatures. In the back page i.e. at Page No.4 of Exh.57 there is the endorsement of Block Development Officer, Panchayat Samiti, Gevrai dated 9-11-1989. It is, thus, clear that the entries Exh.57 were taken prior to 9-11-1989. Iftekhar Ahmedkhan P.W.9 states that he visited the work of road of Rui on 6-11-1989 and found that it was worth Rs.9,219-50 ps. As stated that the entries of Exh.57 are in his hand writing. As seen from the contents of report Exh.33 the amount of Rs.10,800/- was withdrawn during the period from 19-7-89 to 17-10-89. The learned counsel for the appellant has pointed out to the certificate Exh.59 which is in the hand writing and under the signature of Iftekhar Ahmedkhan P.W.9 wherein the cost of the road prepared was shown as Rs.10,500/-. In fact from the evidence of Audhut P.W.8 a grave doubt is created about his actual visit, measurement and valuation of the land in question since the entries at Exh.57 are not in his hand writing nor he has signed it. The evidence of Iftekhar P.W.9 also becomes doubtful since as per the entries at Exh.57 he has shown the valuation of the road as Rs.9,219-50 ps. However, in the certificate Exh.51 he himself has mentioned cost of that road at Rs.10,500/-. Considering certificate Exh.59 at the most it can be said that the amount of Rs.500/-only was balance outstanding out of the amount withdrawn from the bank till 9-11-1989, though the work was done thereafter also and therefore, measurement notes Exh.57 would not be helpful to the prosecution to show that there was any misappropriation on the part of the appellant.

10-A) The account books maintained by the appellant have been seized by the Investigating Officer vide seizure

Panchanama Exh.61 on 4-12-1990. The pass book shows that the amount of Rs.500/- has been paid to one Musa Abbas as per the cheque bearing No.0382351. The cash Book maintained by the appellant contains the entry in respect of said payment by cheque. It is, thus, clear that the construction work of the road was in progress even after its valuation made by Audhut P.W.8 and Iftekhar P.W.9 in the month of November, 1989. The entries in the pass book further show that the total amount of Rs.52,018/- has been deposited in the account of the village Panchayat for construction of road out of which the amount of Rs.49,745/- has been valued after November, 1989. It was necessary for the prosecution to have valued the work of road afresh after it was completely stopped or at least during the course of investigation so as to show positively and clinchingly what amount was withdrawn by the appellant and to what extent it was actually utilized by him. There is no evidence collected by the investigating Officer to that effect. It is only on the basis of previous report that an attempt has been made by the prosecution to establish that there is misappropriation of the funds on the part of the appellant in respect of the work of road. ***Any way from the evidence on record it cannot be said that there was any misappropriation as alleged on the part of the appellant*** *on the date when the road was valued either by Audhut P.W. 8 or Iftekhar P.W. 9.*

10-B) The learned Magistrate has not believed the evidence of Muktabai P.W.2, Vithal P.W.3 and Sampat P.W.4 recorded at Exhs.37, 39 and 40 respectively on the point of non-receipt of any amount from the appellant on account of construction of road. The learned magistrate has held that there is no evidence about falsification or accounts by the appellant. He has acquitted the appellant of the offence punishable U/Sec.468 and 420 of I.P.C. In the circumstances the account books and vouchers seized by the Investigating Officer vide Panchanama Exh.61 would fully support the defence of the appellant that he has utilised the amount withdrawn for the purpose for which it was withdrawn.

12. As seen from the contents of report Exh.33 the actual amount of Rs.16,260/- was withdrawn from the account No.9 maintained by the village Panchayat, Rui Beed district Central Co.Op. Bank Branch during the period from 6-9-1989 to 30-3-1990. Twenty Cement bags worth Rs.1,280/- are shown to have been given for the work of construction of Anganwadi. Thus, the total amount of Rs.17,540/- was not entrusted to the appellant. According to the prosecution, Gitaram Mune P.W.7 the Junior Engineer, Panchayat Samiti, Gevrai measured the work of Anganwadi on 30-1-1990 and valued at Rs.5,775/-. The *entries regarding measurement made by Mune P.W.7 are at Exh.54. It is noted at Exh.54 that the cost of 20 cement bags was Rs.1,280/- and the total cost of work was found to be Rs.5,775/-. It is noted that the total amount of Rs.5,780/- was granted for the work including the cost of 20 cement bags i.e. Rs.1,280/- and the value of the work done was found to be Rs.5,775/-. It is then noted that the amount of Rs.5/- only is outstanding balance with the village Panchayat.* ***From these valuation notes it is clear that there was no misappropriation on the part of the appellant of any amount of the date when the work of Anganwadi was valued by Mune P.W.7.***

13. The amounts of Rs.4,500/- and Rs.7,260/- are shown to have been withdrawn on 30-1-1990 and 30-3-1990 respectively. It will have to be seen as to whether there was progress even after 30-1-1990 or not. If it is found that the said work was in progress even after 30-1-1990, then the notes of valuation Exh.54 which relate to the valuation of the previous work cannot be attached any importance. The Investigating Officer has seized the pass book and cheque books in respect of the work of Anganwadi vide Panchanama Exh.61. The ledger book maintained by the appellant also has been seized by the Investigating Officer. There are number of vouchers and bills seized by Investigating Officer. As seen from the entry in the cash book dated 12-2-90 the amount of Rs.300/- has been paid vide cheque No.382568 to Babasaheb Roman P.W.5 for payment of sand. From the entry dated 4-4-90 in the cash book it would be seen that the amount of Rs.855/- was paid to one Nandkumar Jadhav vide Cheque No.382881 for bringing rubble. The said Nandkumar has signed on the counter foil of the cheque in token of receipt of the work of Anganwadi was in progress even after 30-1-1990. Therefore, in order to establish that there was any misappropriation of funds, it was necessary for the prosecution to bring evidence to show that the measurement of the work of Anganwadi was taken even after 30-1-1990 when the said work was totally stopped and that it was valued less than the amount which was withdrawn for its completion. The prosecution has totally failed to adduce such evidence.

17. As stated earlier, the prosecution has not valued the work of road and Anganwadi on the last dates on which it was being looked after by the appellant. Such last valuation only would have shown that there was any misappropriation on the part of the appellant or not. The report Exh.33 lodged by Maruti P.W.1, thus, is premature one. ***The Investigating Officer also has not taken pains to get the valuation of the road and Anganwadi made afresh through the authorised valuer of the***

> ***Panchayat Samiti**. The Investigating Officer did not consider the account books, vouchers and bills seized from the possession of the appellant. The Investigation appears to be rather perfunctory and casual. The learned Magistrate has disbelieved the case of the prosecution that the appellant prepared false accounts and cheated the Panchayat Samiti. Therefore, he should have given due weightage to the account books, bills and vouchers produced by the prosecution vide panchanama Exh.61 at least to hold that the defence of the appellant was probable. **There is absolutely no clinching evidence to show that the appellant misappropriated the amount of Rs.18,231/- and Rs.11,765/- out of the amount allotted for the construction of road and Anganwadi respectively**. The findings of the are contradictory and not reconcilable. I am not inclined to endorse the finding of the learned Magistrate holding the appellant guilty for the offence U/sec.409 of I.P.C. The learned Magistrate has not appreciated the facts of the case and the evidence on record correctly and properly. The prosecution has failed to establish that the appellant misappropriated amount of Rs.29,996/- as alleged. Hence, I answer point No.1 in the negative.*
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> *18. The prosecution has failed to produce positive and dependable evidence to show that the appellant misappropriated the amount of Rs.29,996/-. The prosecution of the appellant for the offence punishable U/Sec.409 of I.P.C. is rather premature and not well founded. The appellant is liable to be acquitted. In the circumstances the impugned judgment and order of conviction of the appellant is not sustainable. Hence, I answer point No.2 in the negative."*

Having regard to aforesaid observations in paragraphs no.10, 10A, 10B, 12, 13, 17 and 18, the Appellate Court had acquitted the petitioner.

4. Learned counsel for respondent has produced a photo copy of the enquiry report. The Enquiry Report is solely based on the certificate of Junior Engineer. It appears from the report that, neither any other evidence was adduced by department or any

witness had been examined nor proper opportunity had been made available to the petitioner to have advice and guidance to support his case. Lot of aspects go unexplained in the enquiry report. The decision of criminal appellate court discusses evidence threadbare finding alleged misappropriation has not been proved at all. Besides finding on alleged negligence also is cursory without reference to charge on its basis. On the face of aforesaid decision by the criminal appellate court, the observations and the findings recorded by the Enquiry Officer are rendered cursory.

5. The order of disciplinary authority besides referring to certain events about the enquiry report and the petitioner being heard, also depicts that it purports to consider that, the petitioner has misappropriated the amount and has been negligent and had not followed the orders, there is no reason whatsoever, as to how and why the petitioner alone can be held responsible for the allegations made in respect of the misappropriation and as to how he was negligent and which of the orders of the higher authorities had not been complied with. Even otherwise, the order passed by the disciplinary authority, impugned in the present matter, also depicts a similar cursory approach and entirely bases its decision on the report of the enquiry officer.

6. The situation, thus, emerges that the departmental proceedings were carried out haphazardly, without reference to factual aspects as have been observed by the Criminal Appellate Court and why the Criminal Appellate Court has acquitted the petitioner with reference to the same facts, which formed basis for disciplinary proceedings. The departmental proceedings as well as the orders therein have been rendered untenable and deserve to be set aside, in the facts and circumstances.

7. Having regard to aforesaid, impunged order dated 11-8-1992 passed by Chief Executive Officer, Zilla Parishad, Beed is quahsed and set aside. The petition is allowed in terms of prayer clause 'B'.

8. In the circumstances, all the necessary, ancillary, consequential and incidental benefits, as would be available would follow.

9. The writ petition is disposed of.

[**B.U. DEBADWAR**]
JUDGE

[**SUNIL P. DESHMUKH**]
JUDGE

arp/Gajanan