IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 325 OF 2019

Shri. Shankar S/o Laxman Kakad
vs.
The Additional Commissioner, Akola, Division Amravati and another

Office Notes, Office Memorandum of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri. S. D. Chopde, counsel for petitioner.
Shri. H. N. Prabhu, AGP for respondent No.1.

CORAM : MANISH PITALE J.

DATED : 13/02/2020

By this writ petition, the writ petitioner has challenged order dated 22/11/2016 passed by respondent No.1 Additional Commissioner, whereby appeal filed under the Maharashtra Zilla Parishads District Services (Discipline & Appeal) Rules, 1964, has been dismissed and the penalty of dismissal from service imposed upon the petitioner has been confirmed.

2. The petitioner was appointed as a Gramsevak in the Zilla Parishad, Akola in the year 1983. On 31/10/2000, a show cause notice was issued against the petitioner, wherein seven charges were levelled against him. On 01/02/2001, the petitioner was suspended from service pending the enquiry. On 25/09/2001, the suspension was revoked, specifically recording that since none of the charges levelled against the petitioner pertained to financial misappropriation, it would be appropriate that the suspension be revoked, while continuing with the enquiry.

3. Charge-sheet was issued against the petitioner wherein 09 charges were stated. Apart from addition of two charges pertaining to failing to submit record regarding poverty line survey and showing dereliction in duty by not establishing Mahila Gat, a specific charge was levelled against the petitioner to the effect that he failed to keep record of the Gram Panchayat available during inspection. It is significant that this specific charges did not find mention in the show-cause notice dated 31/10/2000 issued to the petitioner. Pursuant to the enquiry initiated against the petitioner, an enquiry report dated 16/08/2002 was submitted by the Block Development Officer, Panchayat Samiti, wherein it was recorded that all the 09 charges stood proved against the petitioner. It was further observed in this report that charge No.2 pertaining to failure on the part of the petitioner to keep record of the Gram Panchayat available during inspection was a serious charge for which a further detailed enquiry was necessary. On 29/01/2003, show cause notice was issued to the petitioner by respondent No.2 (Chief Executive Officer, Zilla Parishad) wherein it was proposed as to why penalty of withholding two increments permanently ought not to be imposed upon the petitioner.

4. It appears that thereafter, a special enquiry was conducted in respect of the aforesaid charge No.2 and a report was submitted by the Block Development Officer, purportedly being a report for recovery of certain amount that was allegedly misappropriated by the petitioner. The amount was specifically mentioned in this report. In this backdrop, an amended show cause notice dated 01/07/2005 was issued to the petitioner, wherein reference was made for the first time to the said subsequent report submitted by the Block Development Officer. Reliance was placed on the said report and the petitioner was called upon to show-cause as to why he should not be dismissed from the service under Rule 4(viii) of the aforesaid Rules. It is along with this amended show cause notice dated 01/07/2005, that copy of the subsequent report was served upon the petitioner. It is relevant to mention here that the petitioner had submitted his explanation/reply to the earlier show cause notice dated 29/01/2003 issued by the respondent No.2, but no reply was submitted to the said amended show cause notice dated 01/07/2005.

5. On 22/11/2005, the respondent No.2 issued an order dismissing the petitioner from service on the ground that the aforesaid subsequent report submitted by the Block Development Officer demonstrated that the petitioner had indulged in misappropriation of Rs.1,88,370/-. Aggrieved by the said order, the petitioner filed an appeal under the aforesaid Rules, before the respondent No.1. The said appeal remained pending for a long period of time. In the meanwhile, on 31/12/2015, the petitioner superannuated from service.

6. On 22/11/2016, the respondent No.1 dismissed the appeal, thereby confirming the order of dismissal from service on 22/11/2005 issued by the respondent No.2. The said order is made subject matter of challenge in the present writ petition.

7. On 17/01/2009, this Court issued notice to the respondents. The respondent No.2 is represented through counsel, who is not present in Court when the writ petition is called out for hearing.

8. The learned counsel appearing for the petitioner submitted that the entire action undertaken by the respondent No.2 leading to the order of dismissal from service dated 22/11/2005 stood vitiated due to non compliance with the procedure contemplated under Rule 6 of the aforesaid Rules. It was submitted that from the very initiation of enquiry against the petitioner, there had been violation of mandatory procedure and that therefore, the order of dismissal from service was wholly unsustainable, which the respondent No.1 as the Appellate Authority completely fail to appreciate. It was pointed out that charge No.2 in the charge-sheet did not find mention in the show cause notice dated 31/10/2000 issued to the petitioner. The said charge No.2 was the basis for observation in the enquiry report submitted by the Block Development Officer, wherein it was recorded that a further detailed enquiry was necessary in respect of charge No.2. The learned counsel emphasized on the fact that the subsequent enquiry concerning alleged financial misappropriation was conducted behind the back of the petitioner and such a subsequent report was made the basis for issuance of order of dismissal from service. According to the learned counsel, since specific charge was not framed against the petitioner regarding financial misappropriation, which was also evident from the fact that his suspension was revoked precisely on the ground that there was no charge pertaining to financial misappropriation, Rule 6(ii) of the Rules stood clearly violated. Apart from this, it was submitted that the petitioner had continued in service till attaining the age of superannuation in the year 2015, upon revocation of his suspension and also because during pendency of appeal an interim order was passed in his favour. On this basis, it was submitted that the order passed by Appellate Authority deserved to be set aside and the appeal filed by the petitioner deserved to be allowed in terms of the prayer made therein.

9. As noted above, the learned counsel appearing for respondent No.2 did not appear to support the stand taken by the said respondent.

10. The learned AGP was heard on behalf of the respondent No.1. It was submitted by the learned AGP that the order of dismissal from service dated 22/11/2005 was not made subject matter of challenge in the present writ petition and that therefore, the petitioner could not claim relief in respect of the said order. Apart from this, attention of this Court was invited to an interim order dated 19/03/2018 passed by the Industrial Court in a pending complaint, wherein the petitioner has sought relief of release of pensionary benefits pursuant to his superannuation. By emphasizing on certain observations made in the interim order passed by the Industrial Court, it was submitted that there were certain amounts to be recovered from the petitioner and this aspect also assumed significance in the facts and circumstances of the present case.

11. Having heard the learned counsel for the rival parties and upon perusal of the material on record, it is evident that the order of dismissal from service issued against the petitioner was based upon alleged financial misappropriation to the tune of Rs.1,88,370/-. The said order was passed by relying upon findings in the subsequent report of the Block Development Officer. The record also shows that while a copy of the initial enquiry report of the Block Development Officer was served upon the petitioner, admittedly copy of the subsequent enquiry report wherein findings pertaining to financial misappropriation were rendered against the petitioner, was served only after the process of enquiry had been already completed by the Block Development Officer. In other words, while undertaking such a subsequent enquiry pertaining to serious allegation of financial misappropriation, no opportunity was granted to the petitioner to place his explanation on record and to participate in the proceedings before the Block Development Officer.

12. The initial enquiry report pertained to 09 charges, none of which related to financial misappropriation and this is evident from the order dated 25/09/2001 issued by the respondent No.2 revoking suspension of petitioner.

13. It is also significant that the charge with respect to which the Block Development Officer in his enquiry report observed that further detailed enquiry was warranted, did not find mention in the first show cause notice dated 31/10/2000 issued to the petitioner. The said charge i.e. No.2 in the charge sheet also did not indicate any alleged financial misappropriation on the part of the petitioner.

14. Yet, the aforesaid subsequent enquiry report was prepared by the Block Development Officer pursuant to purported detailed enquiry, perhaps pursuant to the observations made in the initial enquiry report. There is nothing on record to show that when serious allegations were being made against the petitioner regarding financial misappropriation, he was ever given any opportunity to explain his side. A perusal of the subsequent enquiry report also shows that certain findings have been rendered against the petitioner on the basis that he withdrew amounts from the account of the Gram Panchayat. It is not even stated that such amount allegedly withdrawn by the petitioner was not utilized for work of the Gram Panchayat and that it was misused by the petitioner. The source of such subsequent enquiry was charge No.2 in the charge sheet issued to the petitioner, which only pertained to his alleged failure to keep the record ready when called for inspection.

15. In this backdrop, it would be relevant to refer to Rule 6 of the aforesaid Rules, which pertains to the procedure for imposing major penalties. The relevant portion of the said Rule reads as under :-

> **"6. Procedure for imposing major penalties. -**
>
> (1) No order imposing on a Parishad servant any of the penalties specified in clauses (iv) to (vii) of Rule 4 shall be passed except after an inquiry held, as far as may be, in the manner hereinafter provided.
>
> (2) The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Parishad servant; and he shall be required to submit within such time as may be specified by the Disciplinary Authority, to such authority a written statement of his defence, and also to state whether he desires to be heard in person.

(3) On receipt of the written statement of defence or, if no such statement is received within the time specified under sub-rule (2), the Disciplinary Authority may itself inquire into the charges not admitted in the statement or if it considers it necessary so to do, appoint an Inquiry Officer for that purpose.

(4) The Parishad servant shall, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records, as he may specify :

Provided that, such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Disciplinary Authority, or as the case may be, the Inquiry Officer, such records are not relevant for the purpose or it is against the public interest to allow the Parishad servant access thereto."

16. A perusal of the above quoted portion of Rule 6 of the said Rules would show that the Disciplinary Authority is required to frame definite charges on the basis of allegations on which enquiry is proposed to be held and such charges together with the statement of allegations are supposed to be served upon the delinquent employee, who would be then in a position to raise his defence. The employee is also required to be granted permission to inspect the record if necessary, in order to support his defense. In the present case, a perusal of the charge sheet demonstrates that there was no indication of any charge pertaining to financial misappropriation against the petitioner.

17. As noted above, the order revoking suspension of the petitioner by order dated 25/09/2001 specifically recorded that the suspension was being revoked precisely for the reason that none of the charges pertained to financial misappropriation. Yet, the basis of the order of dismissal from service issued against the petitioner was alleged financial misappropriation of Rs.1,88,370/-. Thus, the order imposing major penalty was issued against the petitioner on the basis of a charge which was not framed against the petitioner. This clearly violated the mandatory requirement of Rule 6(2) of the said Rules.

18. Apart from this, the manner in which the respondent No.2 proceeded in the matter shows that principles of natural justice were thrown to the winds. The subsequent enquiry report admittedly was prepared behind the back of the petitioner and there is nothing on record to show that an opportunity was granted to the petitioner to meet the serious charge of financial misappropriation, which ultimately became the basis for the order of dismissal from service. The manner in which the Block Development Officer prepared subsequent enquiry report pertaining to purported financial misappropriation by the petitioner shows blatant violation of Rule 6 (3) and (4) of the aforesaid Rules. The entire procedure leading up to the issuance of order of dismissal from service on 22/11/2005, stood vitiated due to flagrant violation of the Rule 6 of the aforesaid Rules.

19. These aspects were highlighted on behalf of the petitioner before respondent No.1 as the Appellate Authority. The impugned order passed by the Appellate Authority does not show that these aspects were at all appreciated in the correct perspective while dismissing the appeal filed by the petitioner. It is relevant that the petitioner continued in service without any break since revocation of his suspension on 25/09/2001 and in fact he superannuated on 31/12/2015. It was after the petitioner superannuated from service that the impugned order dated 22/11/2016 was passed by the respondent No.1 (Appellate Authority).

20. This Court finds that the respondent No.1 (Appellate Authority) completely failed to appreciate the contentions raised on behalf of the petitioner in the context of the aforesaid Rules and the mandatory requirement of adherence to the principles of natural justice. The entire procedure from the stage of issuance of charge sheet against the petitioner stood vitiated, because while show cause notice dated 31/10/2000 mentioned only 07 charges, the charge sheet contained 09 charges. Apart from addition of two charges, charge No.2, which ultimately became the basis of the order of the dismissal from service, was never mentioned in the initial show cause notice dated 31/10/2000 issued to the petitioner. The subsequent procedure adopted by the respondent No.2 violated the mandatory requirement of the Rules. Therefore, this Court finds that the impugned order passed by the respondent No.1 is rendered wholly unsustainable.

21. As regards the objection raised on behalf of respondent No.1 that the order of dismissal from service dated 22/11/2005 has not been made subject matter of challenge in the present writ petition, suffice it to say that the said order was subject matter of challenge in the appeal filed before respondent No.1 Appellate Authority and once this Court comes to the conclusion that the impugned order passed by the Appellate Authority is unsustainable, the appeal deserves to be allowed, wherein specific prayer for setting aside of order of dismissal from service has been made. Therefore, only because the order dated 22/11/2005, is not made subject matter of challenge in the present writ petition, it cannot be said that effective relief cannot be granted to the petitioner.

22. In view of the above, it is found that the impugned order dated 22/11/2016 passed by the respondent No.1 Appellate Authority is unsustainable. Accordingly, the writ petition is allowed and the impugned order is quashed and set aside. Consequently, the appeal filed by the petitioner before the respondent No.1 is allowed in terms of the prayer made therein, thereby meaning that the order dated 22/11/2005 imposing penalty of dismissal from service also stands set aside. Insofar as consequential reliefs are concerned, the respondent No.2 shall take necessary steps in the matter. Liberty is reserved for the petitioner to make an appropriate representation before the respondent No.2 in that regard. The representation may be decided by the respondent No.2 in accordance with law.

JUDGE

KOLHE/P.A.