

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7074 OF 2019

Vijay Balkrushna Zatale,
Aged about 59 years, Occu. - Retired,
R/o. Telecom Colony,
Akoli Road, Amravati,
Tq. & Dist. Amravati.

.... **PETITIONER**

// VERSUS //

The Zilla Parishad, Amravati,
Through its Chief Executive Officer,
Amravati District, Amravati.

.... **RESPONDENT**

Shri S. M. Vaishnav, counsel for the petitioner.
Shri S. D. Chopde, counsel for the respondent.

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 23rd October, 2020

ORAL JUDGMENT : (Per : SUNIL B. SHUKRE, J.)

1. Heard. **Rule.** Rule made returnable forthwith.
2. Heard finally by consent of the learned counsel appearing for the parties.

3. The petitioner was appointed as an engineer on 11.05.1983 with Maharashtra Jivan Pradhikaran. On the request made by the petitioner for being sent on deputation to Zilla Parishad Amravati, services of the petitioner were deputed to Z. P. Amravati i.e. respondent, as per order dated 25.07.2001. Such deputation was subject to certain terms and conditions annexed to the deputation order.

4. The petitioner, while on deputation to Z. P. Amravati, stood retired on superannuation on 01.10.2018. There were some complaints against the petitioner while he was in service with the respondent – Z. P. Amravati. Preliminary enquiry was held and it was found in the enquiry that serious irregularities were committed by the petitioner. This enquiry report was submitted on 22.01.2019, which was about three and half months after the retirement of the petitioner. Considering the nature of the alleged irregularities committed by the petitioner, the Chief Executive Officer of Z. P. Amravati, relying upon rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short M.C.S. Rules, 1982) and rule 11 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 (for short Z. P. Rules, 1964), decided to initiate departmental proceedings against the petitioner. Accordingly, by the order passed on 17.09.2019, the Chief

Executive Officer of Z. P. Amravati directed the petitioner to submit his written statement of defence. This order was communicated to the petitioner some time in September, 2019 and it was accompanied by a brief statement of the charges leveled against the petitioner alongwith detailed articles of charges and other necessary documents. The brief statement of the charges showed that the departmental proceedings were initiated against the petitioner not under the Z. P. Rules, 1964 but, under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short M.C.S. Rules, 1979).

5. According to the learned counsel for the petitioner, if the petitioner was to be treated as an employee of Zilla Parishad, for the sake of argument, though the petitioner having been already retired from the service of the Zilla Parishad was no longer an employee of the Z. P. Amravati, at the most the departmental enquiry could have been initiated under the provisions of Z. P. Rules, 1964 and not under the provisions of M.C.S. Rules, 1979.

6. Alternately, learned counsel for the petitioner submits that the Disciplinary Authority in case of the petitioner, who was a deputationist to Z. P. Amravati, was the Maharashtra Jivan Pradhikaran, the Authority which appointed the petitioner, and therefore, in terms of

condition No.15 of the deputation order dated 25.07.2001, the entire authority to hold departmental proceedings against the petitioner was with the Maharashtra Jivan Pradhikaran and not with the respondent.

7. As regards, the initiation of departmental enquiry under M.C.S. Rules, 1979, learned counsel for the respondent submits that it may be a mistake on the part of the respondent and it can always be corrected. He submits that considering the seriousness of the misconduct of the petitioner, the mistake so committed in the charge-sheet should not be viewed as vitiating the whole departmental proceedings started against the petitioner.

8. The learned counsel for the respondent further submits that now it is well settled law and there are several judgments of the Hon'ble Supreme Court that even after retirement, the departmental enquiry can be held against a retired employee, and such employee can also be dismissed from service, if the charges proved against him justify the same. He also points out from rule 27 of the M.C.S. Rules, 1979, that there is a power which can be exercised for initiation of departmental proceedings against an employee after his retirement and the only condition is that there should be a prior sanction of the appointing authority for starting such departmental enquiry. He

submits that as per rule 11 of the Z. P Rules, 1964, the Chief Executive Officer of Z.P. Amravati does have the power to initiate departmental enquiry against the petitioner for the misconduct committed by him during the course of his service under Z. P. Amravati.

9. At this stage, we do not think it necessary to consider the scope and extent of rule 27 of M.C.S. Rules, 1979 and also rule 11 of Z. P. Rules, 1964 as regards such issues as power and propriety to start departmental enquiry against a retired employee, and who could be a disciplinary authority for a deputationist like the petitioner. The reason is that we have noticed a fundamental error in the departmental enquiry initiated against the petitioner which error goes to the root of the whole issue involved in this petition, and this error, in our opinion, should decide the fate of this petition for the present.

10. The alleged misconduct on the part of the petitioner was during the time when the petitioner rendered his service as Sectional Engineer to Z. P. Amravati. The preliminary enquiry held in this regard, *prima facie*, found that serious irregularities were committed by the petitioner in his capacity as Sectional Engineer, Z. P. Amravati in respect of various works relating to water scarcity at Chandur Bazar during the year 2017-2018. The respondent, while initiating

departmental proceedings against the petitioner, it appears, invoked her power under rule 11 of Z. P. Rules, 1964 read with rule 27 of M.C.S. Rules 1979, although, such invocation of these provisions of law is not specifically reflected in the order dated 17.09.2019. Nevertheless, this is sufficient to broadly indicate that the departmental enquiry initiated against the petitioner is on the assumption that the petitioner is an erstwhile employee of Z. P. Amravati. The brief statement of charge issued to the petitioner, however, shows that petitioner has been treated as a government servant and so the charges have been made that by his various misdeeds, the petitioner violated rule 3 of M.C.S. Rules, 1979. The order dated 17.09.2019, which directed initiation of departmental enquiry against the petitioner also indicates that the enquiry would only be in terms of M.C.S. Rules, 1979 and not Z. P. Rules, 1964.

11. Now, if the departmental enquiry initiated against the petitioner is on the assumption that the petitioner is an employee of Zilla Parishad, as a logical corollary to it, Z. P. Rules, 1964, which govern the conduct of disciplinary proceedings against Z. P. employees, would at once come into play and the disciplinary authority would have to proceed with the departmental enquiry against such an employee only in terms of Z. P. Rules, 1964. There is no rule in Z. P. Rules, 1964 which

lays down that in addition to provisions contained in these Rules, the provisions of M.C.S. Rules, 1979, which govern the conduct of departmental proceedings against a government servant would be applicable to the departmental enquiry held under these Z. P. Rules, 1964. It then follows that no departmental proceedings could have been founded upon and no charge-sheet could have been issued to the petitioner on the allegation that he violated rule 3 of the M.C.S. Rules, 1979. Rule 3 of the M.C.S. Rules, 1979 describes duties of government servant regarding maintaining of integrity, devotion to duty, so on and so forth. In the present case, however, the petitioner has been considered to be an employee of Zilla Parishad but has been proceeded against departmentally, under the Rules, the M.C.S. Rules, 1979, not applicable to him. To an employee like the petitioner, the rules applicable were the Z. P. Rules, 1964, and not the M.C.S. Rules, 1979. This becomes even more clear if one considers the provisions contained in rule 2, Clause (i) of Z. P. Rules, 1964 which defines "Parishad servant" as follows :-

" "Parishad servant" means a person who is a member of a District Service and includes any such person on foreign service or whose services are temporarily placed at the disposal of any Government or local or other authority and also any person in the service of a Government in India or an authority subordinate thereto or a local or other authority whose services are

temporarily placed at the disposal of a Zilla Parishad for a District Service.”

12. There are further provisions in the Z. P. Rules, 1964 which support our above referred conclusion. Sub-rule 2 of rule 11 lays down that when the Chief Executive Officer, in the light of the findings in the disciplinary proceedings, is of the opinion that any of the penalties specified in Clauses (i), (ii) and (viii) of rule 4 of the Z. P. Rules, 1964 should be imposed on him, he may, after consultation with the appointing authority, pass such orders in the case as he deems it necessary.

13. The above referred discussion would clearly show that if any departmental proceedings were to be initiated against the petitioner, they ought to have been initiated under the provisions of Z. P. Rules, 1964 and not under the provisions of M.C.S. Rules, 1979. The continuation of the departmental proceedings against the petitioner, initiated under the M.C.S. Rules, 1979, therefore, cannot be sustained in the eye of law.

14. As regards, the questions as to whether the departmental enquiry could be initiated after the retirement and who could be disciplinary authority of the petitioner, we do not think it necessary to

deal with them as now we have found that the departmental proceedings in against the petitioner in the present form are fundamentally flawed, not amenable to any correction.

15. Accordingly, the writ petition is partly allowed in terms of prayer clause (i).

16. As regards, the terminal benefits payable to the petitioner, we leave it to the respondent to take an appropriate decision in that regard, as expeditiously as possible, and in any case within four weeks from the date of this order.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE J.)