

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

WRIT PETITION NO. 4581 OF 2020

Dattatraya Digambar Hamand .. Petitioner

Versus

Maharashtra State Electricity
Distributioin Company Ltd. Through
its Managing Director and others .. Respondents

Shri Pradeep L. Shane and Shri Parag P. Shahane, Advocate for
the Petitioner.

The Respondent Nos. 1 and 2 are served.

Shri U. S. Malte, Advocate for Respondent Nos. 3 and 4.

**CORAM : S. V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.
DATE : 24TH FEBRUARY, 2021.**

FINAL ORDER :

. The petitioner assails order of dismissal/termination. According to the learned counsel for the petitioner, the petitioner is terminated from service, as such remedy of appeal under Regulation 91 of the MSEDCL Employees Service Regulation 2005 is not available to him. The learned counsel submits that, enquiry was conducted under Regulation No. 88. The said regulation itself is illegal. The reliance is placed on the judgment of the learned Single Judge of this Court in Writ Petition No. 11616 of 2018 decided on 20th February, 2018.

2. The learned counsel further submits that, principles of

natural justice are violated. When principles of natural justice are violated, availability of alternate remedy is no bar. The learned counsel relies on the judgment of the Apex Court in a case of L. K. Verma Vs. H. M. T. Ltd and others reported in *(2006) 2 SCC 269*. So also the judgment in a case of Satwati Deswal Vs. State of Haryana and others reported in *(2010) 1 SCC 126*. The learned counsel further relies on the judgment of the Division Bench of this Court in a case of S. N. Thampy Vs. Textiles Committee reported in *(2002) ILLJ84Bom*.

3. Relying on the judgment of the Apex Court in a case of *State Bank Employees' Union Vs. State Bank of India and others* reported in *(2000) III LLJ1421 (Madras)* it is submitted that, same deals with the proportionality of the punishment. Reference can be had to the judgment of the Apex Court in a case of **Dalbir Singh Vs. Director General, CRPF, New Delhi** in SLP No. 1438 of 1986 dated 10.08.1987.

4. Reliance is also placed on the judgment of the Apex Court in a case of Bishwanath Singh Vs. Bihar State Electricity Board and others reported in *2005(1) BLJR 819* to submit that, disciplinary authority has to give reasons for recording difference of opinion. The punishment is not justified.

5. Mr. Malte, the learned counsel for the respondent submits that, petitioner has been dismissed from service under Regulation 91(2)(g). The order of the disciplinary authority

refers to the same. The learned counsel submits that, the petitioner has remedy before the Appellate Authority under Regulation 92 of the Regulations of 2005. The learned counsel further submits that, the principles of natural justice were not flouted. Detailed enquiry has been conducted. Every opportunity has been given to the petitioner and thereafter enquiry report was submitted. Show cause notice was issued to the petitioner. Reply was solicited. Thereafter punishment has been imposed.

6. There cannot be dispute with the proposition that the availability of the alternate remedy is no bar to maintain the writ petition under Article 226 of the Constitution of India. Rule of alternate remedy is a rule of self restraint. In the present matter statute/regulation provides for substantive remedy of appeal. Reference can be had to the Regulation No. 92 of Regulation of 2005. The contention that the petitioner is terminated from service, the same is not punishment prescribed under Regulation No. 91 is misplaced. The order of punishment clearly states that, the petitioner is punished under Regulation No. 91(2)(g) i. e. dismissal from the service.

7. The enquiry report has been submitted. The show cause notice was issued and thereafter order of dismissal has been passed.

8. In the writ jurisdiction the Court would not go into the factual matrix, nor would sit in appeal on the decision taken by

the disciplinary authority. What was evidence before the enquiry officer would be best judged by the appellate authority, more particularly when substantive appeal is provided under the Regulations. All aspects relevant would be adhered to and about the contention of the petitioner of opportunity not being afforded would be looked into by the appellate authority.

9. In the light of that, the petitioner may file an appeal before the Appellate Authority within a period of fifteen (15) days from today. If appeal is filed within fifteen days from today, the same shall be considered within limitation by the appellate authority. Considering the time lapsed and that the petitioner has already attained the age of superannuation, the appellate authority shall decide the appeal expeditiously and preferably within a period of three (03) months from the date of filing of appeal. It is made clear that, we have not dealt with the contentions of the parties on merits. Same are kept open for agitating the same before the Appellate Authority.

10. In view of the above, the writ petition is disposed of. No costs.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]