

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2131 of 2019**

Maheshkumar Shankar Jadhav)
Age : Years, Occ.-retired)
R/o.D-2, Bhupali Park, Kathe Galli,)
Banker Chowk, Dwaraka,)
Nasik – 422 0011.)Petitioner

Versus

1. The Commissioner for Nasik,)
Municipal Corporation, Nasik.)
2. The Education Officer,)
Education Department, Nashik)Respondents

Mr. Rajesh Manohar Kolge, advocate for the petitioner.
Mr. Rohit Pramod Sakhadeo, advocate for respondent No.1.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 25th NOVEMBER, 2021.

JUDGMENT : (Per Prasanna B. Varale, J.)

1. At the outset, Mr. Kolge, learned counsel for the petitioner, orally prayed for leave to amend the petition so as to delete the name of respondent No.2 – the Education Officer, Education Department, Nashik, as he is neither the contesting party nor necessary party to the petition. Leave as prayed for, is granted. Learned counsel for the petitioner is permitted to delete the name of respondent No.2 from the array of respondents. Necessary amendment to be carried out forthwith.

2. Heard Mr.Kolge, learned counsel for the petitioner and Mr. Sakhadeo, learned counsel for respondent No.1-the Commissioner for Nasik Municipal Corporation, Nasik.

3. Rule. Rule made returnable forthwith and by consent of learned counsel appearing for the respective parties, the petition is heard finally.

The brief facts giving rise to the petition can be summarised as follows:

The petitioner entered in the services of respondent No.1- Municipal Corporation Nashik in Class IV cadre as Bigari (Mazoor) on 17th February, 1992 on compassionate ground on account of retirement of his father. The petitioner, within a year, updated himself so as to compete for promotional post of Junior Clerk. The petitioner was promoted as Junior Clerk in Class III cadre on 10th June, 1993. The petitioner served with the Corporation satisfactory and the service career of the petitioner was unblemished till a complaint was lodged against the petitioner. The complaint was received by the Corporation submitting therein that the petitioner on ungenuine birth date entered into the service of the Corporation. It was submitted before the Corporation that for basing his claim, the petitioner relied on a document i.e. school leaving certificate and this school leaving certificate itself was obtained by providing wrong information. On receipt of the complaint, the petitioner was subjected to a

notice dated 7th September, 2018. It was informed to the petitioner that the complaint against him led to a serious misconduct of the petitioner and the act of the petitioner is an act of breach of rules. It may not be out of place to state here that respondent No.1-Corporation adopted Maharashtra Civil Services Rules for effective administration and the notice dated 7th September, 2018 indicated that the act of the petitioner is in breach of Rule 3 of the Maharashtra Civil Services (Conduct) Rules 1979. The petitioner, by the said notice dated 7th September, 2018, was called upon to submit his say as to why an action of termination of services should not be initiated against him for his gross misconduct. In response to this notice, the petitioner submitted his reply to the Corporation stating that the notice so issued to the him referred to certain documents and as he had no knowledge about the said documents as he was not in possession of the same, he be granted time to submit his say by providing the copies of the documents referred to in the show cause notice. The Corporation then thought it fit to submit the petitioner to a process of departmental enquiry whereunder the petitioner would get an opportunity to submit his say/documents and any other material in his support including examination of witnesses or cross-examination of witnesses. Accordingly, notice was issued to the petitioner on 26th September, 2018, along with list of charges. The document also referred to name of witnesses and it further referred that the Inquiry Officer may exercise his discretion for examination of any other witnesses

apart from those witnesses which are already enlisted. In the course of enquiry, as per the procedural formalities, Shri B. C. Hanje, Retired Joint Director and Deputy General, Accounts Officer, was appointed as an Inquiry Officer. The Inquiry Officer was requested to complete the process of enquiry within the stipulated period of three months and to submit the report thereof. The departmental enquiry, then , proceeded. The proceeding sheet of the departmental enquiry is placed on record. A copy of the report submitted by the Inquiry Officer is also placed on record. The Inquiry Officer, on appreciation of the material as well as on appreciation of the evidence in the nature of examination of witnesses, arrived at the conclusion that charge No.1 was fully proved against the petitioner. A copy of the report was supplied to the petitioner informing the petitioner that he would be subjected to punishment. In response to the report, the petitioner filed his detailed reply denying all the charges as well as submitting that considering the length of his service with the Corporation, no major punishment or any such punishment which would cause prejudice to the petitioner depriving him of his service benefits be awarded to him. It is also submitted on behalf of the petitioner that the petitioner had not faced any criminal proceedings. The petitioner also submitted an explanation in respect of the document in question viz. school leaving certificate. The Commissioner of respondent No.1- Corporation was unable to find any favour with the petitioner and was of the opinion that in view of the report of the Inquiry Officer, charge No.1

was entirely/fully proved against the petitioner and the reply of the petitioner not being satisfactory, the petitioner is entitled for punishment in view of Rule 56 of the Municipal Corporation read with Rule 3 of the Maharashtra Civil Services (Disciplinary) Rules, 1979 and the punishment awarded to the petitioner was that of withholding the petitioner's entire pensionary benefits permanently and this punishment was awarded taking recourse to Rule 27 of the Maharashtra Civil Services (Pensionary) Rules, 1982.

Being aggrieved by the order dated 17th December, 2018, referred above and which is placed on record at Exhibit "A", page 14, the petitioner filed the present petition.

3. Mr. Kolge, learned counsel for the petitioner, submitted that the order of punishment suffers on more than one ground. The first submission of Mr. Kolge is that the Inquiry Officer failed to observe the principles of natural justice by not giving an opportunity of hearing to the petitioner. He submitted that non-grant of opportunity of hearing to the petitioner has caused serious prejudice to the petitioner. Mr. Kolge further submitted that the petitioner initially though entered in the service of Corporation at Bigari, he competed with other candidates for the post of Junior Clerk and his promotion to the post of Junior Clerk was purely on merit. The petitioner served the Corporation till 2018 and the school

leaving certificate issued to the petitioner was an act in routine course. The petitioner had never made a special request to the school authorities but as an usual practise requested for issuance of the school leaving certificate and the authorities issued school leaving certificate to the petitioner. Mr. Kolge submitted that the exercise of preparation of the documents of school record is purely an act of the school authorities and the petitioner has no role to play in the act of preparation of record. Mr. Kolge submitted that the petitioner has served the Corporation for nearly 25 years and by relying on certain judgments of the Apex Court in **State of U.P. and anr. Versus Shri Krishna Pandey AIR 1996 SCC 1656** and **The Depot Manager, Andhra Pradesh State Road Transport Corpn. and anr. 2008(5) SLLR** and decision of this Court in **Chairman/Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal, Kolhapur and anr. Versus Bhujgonda B. Patil 2003(3)Mh.L.J.**, the punishment awarded to the petitioner is shockingly disproportionate qua the alleged act of misconduct. On these submissions, learned counsel for the petitioner, prayed for quashing and setting-aside the order impugned in the petition by allowing the petition.

4. Per contra, Mr. Sakhadeo, learned counsel appearing for respondent No.1-Corporation, vehemently opposed the submissions of learned counsel for the petitioner. Mr. Sakhadeo submitted that the act of the petitioner is not simple act of breach of Rules but it is an act

misleading the Corporation by submitting ungenuine documents at the time of his inception in the Corporation itself. Mr. Sakhadeo submitted that if the actual birth date of the petitioner is considered, the petitioner could not have been entitled for appointment on the post of Bigari and the petitioner not only occupied the post of Junior Clerk unauthorisedly and by taking monetary benefits not only put the Corporation to financial losses but also deprived one rightful and legitimate candidate. Mr. Sakhadeo also submitted that there is absolutely no substance in the contentions raised by the petitioner in respect of non-observance of the principles of natural justice. Mr. Sakhadeo submitted that the departmental enquiry was proceeded by following due procedure and at every stage of enquiry, the petitioner was granted an opportunity and he cannot blame the Corporation for his own fault and failure. Mr. Sakhadeo also submitted that considering the service span of the petitioner, the punishment awarded to the petitioner is not an harsh punishment but it is proportionate punishment qua the wrong doing of the petitioner. Mr. Sakhadeo then submitted that the petitioner has approached this Court directly in challenge to the order awarding punishment to him without availing the efficacious remedy in the nature of appeal to the appellate authority. Thus, on this submissions, learned counsel for the respondent No.1 – Corporation, prayed for dismissal of the petition.

5. On hearing Mr. Kolge and Mr. Sakhadeo, learned counsel appearing for the respective parties at length as well as on going through the material placed on record, we find that though the submission advanced by learned counsel for the petitioner insofar as failure to observe the principles of natural justice holds no merit, another submission of learned counsel for the petitioner that the punishment awarded to the petitioner is shockingly disproportionate holds merit. We would assign our reasons accordingly.

(i) Insofar as the first submission in respect of failure to observe the principles of natural justice is concerned, on going through the material, it is revealed that the departmental enquiry was initiated and the enquiry proceeded as per the provisions of the Act and Rules. We are unable to find any lacuna or fault in the process of departmental enquiry. All the procedural requirements and safeguards were properly followed in the departmental enquiry. Now, coming to the principles of natural justice, perusal of the report of the enquiry placed on record, revealed that on 17th October, 2018, the Inquiry Officer issued the first notice to the petitioner (charged employee) informing the date, time and place of the departmental enquiry. The petitioner attended the Inquiry Officer on the date and time and at the place fixed. It is submitted that the petitioner denied the charges leveled against him and further it is specifically

recorded by the Inquiry Officer that the petitioner submitted that he is not willing to seek any assistance as his representative in defense or willing to submit witnesses in his support. The petitioner also admits that he had received all the necessary documents. Accordingly, the Inquiry Officer recorded the preliminary submission of the petitioner (charged employee). The Inquiry Officer recorded the statement of the other witnesses viz. witnesses Nos. 1 and 2 and an opportunity was granted to the petitioner to cross-examine these witnesses, but, the petitioner submitted that he is not desirous of cross-examining those witnesses. On 30th October, 2018, again enquiry proceeded. The Inquiry Officer submitted that he has prepared a final draft notice and is concluding the enquiry. A copy of the draft notice was handed over to the petitioner. The petitioner sought some time to submit his defense statement. Accordingly, the time was granted and the enquiry was posted after two days i.e. on 1st November, 2018. On that day, the petitioner submitted his defense statement. On 3rd November, 2018, the Inquiry Officer submitted his final inquiry report. Considering the above referred sequence of events, it is more than clear that the petitioner was granted sufficient opportunity of hearing. It may not be out of place to state that in support of the ground of failure to observe the principles of natural justice, the learned counsel for the petitioner placed reliance on an application submitted by the petitioner which is placed on record at Exhibit "H", page 35. Perusal of these document shows that this was an application submitted by the petitioner

to the Inquiry Officer on 31st October, 2018, wherein the petitioner made an request to the Inquiry Officer for permission to be represented through his representative and cross-examine the witnesses. At the cost of repetition, we state that perusal of the departmental enquiry proceedings shows that on 29th October, 2018, the petitioner was before the Inquiry Officer and when he was specifically granted an opportunity, he only submitted that he is denying the charges and in specific terms express is unwillingness for defense representative or cross-examination of the witnesses. Again inquiry was proceeded on 30th October, 2018. Even on this date, the petitioner raised no objection or made any request for defense representative and the request only comes on record on 31st October, 2018. Thus, we are unable to find any reason to accept the submission of learned counsel for the petitioner in respect of failure to observe the principles of natural justice.

(ii) Now coming to the second submission of learned counsel for the petitioner regarding grant of shockingly disproportionate punishment is concerned, on perusal of the record, we find merit in the submission of learned counsel for the petitioner. The petitioner entered into the services of the respondent – Corporation as Bigari i.e. labourer for doing labour work on 17th February, 1992 and that too, the appointment was a compassionate appointment. Needless to state that the object of compassionate appointment is to provide solace to the family of an

employee on account of their retirement or ill health or upon death on an earning member of the family. Thus, the petitioner was appointed on compassionate ground and the entry into the services of the Corporation as breadwinner for the family. Though the petitioner entered into the services of the Corporation as Bigari or Labourer, within a year, he upgraded himself so as to contest the claim for the promotional post of Junior Clerk and was successfully promoted as Junior Clerk and as such, entered in Class III services breaking the barrier of Class IV services. The petitioner, thereafter, was in the services of the Corporation till 2018. On receipt of complaint, departmental enquiry was initiated against the petitioner. Considering the documents placed on record and considering the submissions of learned counsel appearing for respondent No.1- Corporation, the petitioner ought to have retired in the year – 2014 as per his presumed real birth date. However, by taking benefit of ungenuine document, the petitioner continued in the service of the Corporation for further 4 years i.e. the petitioner served the Corporation till 2018. Thus, there cannot be a dispute on the factual position that the petitioner worked for the Corporation up to the year 2014. Even assuming his real birth date, the petitioner occupied the post unauthorisedly for four more years than what he could have occupied till the year 2014. Perusal of the documents further show that before receipt of the complaint, the Corporation had no reason to raise any grievance about the service of the petitioner and it can be said that till receipt of the complaint, the

petitioner's service with the Corporation was unblemished. Considering all these aspects, we are of the opinion that the punishment awarded to the petitioner is harsh and shockingly disproportionate and we are of the opinion that the learned counsel for the petitioner has made out a case for lenient view. Depriving the petitioner of his service benefits and withholding his pension permanently after putting nearly 25 years in the service of the Corporation would certainly be harsh act in the backdrop of the entry of the petitioner in the service as Bigari and, then, upgrading himself to compete the post of Junior Clerk and getting successful in the promotion of Junior Clerk. As we are of the opinion that the punishment awarded to the petitioner is disproportionate, we deem it appropriate to cause indulgence in the punishment.

6. Though, learned counsel for respondent No.1- Corporation submitted that the petitioner can avail the alternate remedy of appeal, considering the fact that now the petitioner is an retired employee of the Corporation and on considering, the entire material again, relegating the petitioner to appellate forum would be only putting the petitioner to certain additional proceedings and the petitioner will have to spend lengthy period so as to await for a decision of the appellate authority and, in case, the appellate authority, is unable to find any fault in the decision of the Corporation, the petitioner would have again no option but to approach the higher forum or this Court as the case may be. Thus, we

are not inclined to accept the submission of learned counsel for respondent No.1 so as to relegate the petitioner to appellate authority/forum.

7. We have perused Rule 5 of the Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979 viz. Penalties – where minor penalties and major penalties are prescribed.

8. Considering the above referred facts as well as above referred Rule, we are of the opinion that permitting the respondent – Corporation to recover the monetary benefits obtained by the petitioner in the nature of salary of four years i.e. for the 30.09.2014 to 30.09.2018 would be a proportionate penalty. Accordingly, we pass the following order :

ORDER

1. The petitioner is directed to pay four years' salary and pay allowances (i.e. for the period 30.09.2014 to 30.09.2018) within a period of four months in two instalments.
2. We further make it clear that as soon as the petitioner deposits the entire amount as directed by us within a stipulated period, the respondent Corporation shall take appropriate steps so as to release the pensionary benefits to the petitioner considering the date of retirement of the petitioner as 30th September, 2014 as early

as possible and not later than 10 weeks from the date of depositing the said amount by the petitioner. The fact that the petitioner has been paid his provident fund amount is not disputed.

3. Needless to state that the petitioner may raise his claim for other service benefit like gratuity etc.

9. We further make it clear that the view taken by us and awarding proportionate punishment referred to above is in the peculiar facts of the case, to which, reference is already made hereinabove and the order of this Court shall not be treated as precedent.

10. Rule is made absolute in above terms. The writ petition stands disposed of.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)

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