

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.**

WRIT PETITION NO. 82 OF 2021

Abhijeet Velapure

....Petitioner

...Vs...

The Union of India and others

....Respondents.

Mr. Vinay V. Nair for the Petitioner.

Mr. D.P. Singh, Advocate for respondent No.1.

Mr. J.P. Cama, Sr.Advocate a/w Mr. R.S.Pai, Mr. Anand R. Pai, Mr. Kaushal Udeshi and Mr. Vedant Chajjed, Advocates i/by M/s. Sanjay Udesi and Co.for respondent Nos.2 and 3.

Mr. Saurabh Khirsagar, Advocate i/by Mr. Hiten S. Venegavkar for respondent No.7-CBI.

Mr. V.B. Konde Deshmukh, APP for respondent No.8-State.

CORAM: S.S. SHINDE & MANISH PITALE, JJ.

RESERVED ON: 01.04.2021.

PRONOUNCED ON: 20.04.2021.

JUDGMENT (Per : Manish Pitale, J.)

By this writ petition, the petitioner has sought diverse reliefs including challenge to order terminating his service from the Bharat Petroleum Corporation Ltd. ('BPCL'). The other reliefs pertain to alleged corruption in the functioning of the BPCL

and a direction to the Central Bureau of Investigation (CBI) i.e. respondent No.7 to investigate the allegations levelled by the petitioner. The petitioner claims that he is apprehending danger to his safety and therefore, this Court may direct the respondent No.6-Director General of Police, Maharashtra, to provide adequate Police protection to him. Apart from this, the petitioner has claimed compensation to the tune of Rs.10,00,000/- from concerned employees of BPCL, who had allegedly lobbied against him while he was working in the said organization.

2. Upon issuance of notice, the BPCL entered appearance through counsel, the respondent No.1-Union of India, the respondent No.7-CBI and the respondent No.8-State of Maharashtra also entered appearance through counsel. Since the respondent Nos.2 and 3, being senior officers of the BPCL, are the main contesting respondents in this writ petition, arguments opposing the present writ petition were principally advanced by the learned counsel appearing for the said respondent Nos.2 and 3.

3. In the writ petition, the petitioner has stated that he joined as a Graduate Engineering Trainee on 26/06/2013 with the BPCL and that after completion of probation, his appointment with the BPCL was confirmed on 01/07/2014. Thereafter, the petitioner has given details of his postings with the BPCL. According to the petitioner, when he was transferred to the Retail Division of the BPCL and posted as Maintenance Officer in depots of the BPCL at Miraj and Sangli in Maharashtra, he came across details as to the manner in which there was widespread corruption in the functioning of the BPCL. On this basis, the petitioner has made statements regarding the alleged corruption in distribution of petroleum products at the BPCL. The petitioner has then stated how he was harassed by senior officers of the BPCL by depriving him of leave that was rightfully due to him and for other such reasons. The petitioner has then stated how a departmental enquiry was initiated against him on three charges pertaining to alleged fraudulent medical bills raised by him, while claiming reimbursement for medical treatment of his father. It is brought to the notice of this Court that the enquiry initiated against him resulted in a report holding him guilty of all the three charges, leading to issuance of order dated 30/10/2020, terminating his service.

4. The petitioner stated that he was in fact playing the role of a whistle blower and that under the policy of the BPCL pertaining to protection to be afforded to such whistle blowers, he ought not to have been harassed and there was no basis for terminating his service on frivolous charges. The petitioner has also placed on record the Statutory Rules pertaining to the manner in which domestic enquiry is to be conducted in the BPCL and it is stated that there is a remedy of appeal available to an aggrieved employee who has been visited with major or minor penalty.

5. Mr. Vinay V. Nayar, learned counsel appearing for the petitioner made submissions in tune with the facts stated and the grounds raised in the petition. He vehemently submitted that the petitioner was victimized by the respondents, particularly the senior officers of the BPCL, as the petitioner had dared to raise the issue of corruption in the functioning of the BPCL. He submitted that the petitioner was harassed on small issues after he became aware about the said corruption when he was posted at the Retail Depots as Maintenance Officer. Insofar as the initiation of departmental enquiry was concerned, the learned counsel submitted that

the alleged fake bills submitted for reimbursement were due to a person that his father had engaged for buying medicines and assisting him. It was submitted that an affidavit of that person was also on record to show that such fake bills were raised by him in order to dupe the petitioner's father and that therefore, there was no question of any fraud or theft committed by the petitioner necessitating departmental action against him. It was submitted that the material brought on record demonstrated that the findings rendered in the enquiry report were not sustainable and that therefore, the order of termination of service deserved to be set aside.

6. As regards the availability of the alternative remedy of appeal under the concerned Rules, the learned counsel for the petitioner submitted that it was not an absolute bar and that this Court in writ jurisdiction could consider the issues raised by the petitioner. It was submitted that when the petitioner had made allegations of corruption against senior officers of the BPCL, he had no faith that the Appellate Authority would give him justice. It was further submitted that in a similar case concerning dismissal from service of an employee of the BPCL, in the case of **Anil Pan-**

degaonkar v. BPCL and others, reported in **2004 (2) MP LJ 15**, the Madhya Pradesh High Court had entertained a writ petition, granting relief to the aggrieved person, thereby showing that the present writ petition could not be thrown out on the ground of jurisdiction.

7. The learned counsel for the petitioner further submitted that sufficient details were stated in the writ petition to indicate the magnitude of corruption in the functioning of the BPCL, which mandated a detailed enquiry by the CBI, so that the responsible officers and employees of the BPCL could be brought to book. According to the learned counsel for the petitioner, serious issues of corruption pertaining to BPCL raised in this petition were relevant in the context of other such public sector Corporations also and that therefore, this Court ought to entertain the present writ petition and to allow the same in the interest of justice.

8. On the other hand, Mr. J.P. Cama, learned Senior Advocate appearing for the respondent Nos.2 and 3, submitted at the outset that the present writ petition deserved to be dismissed on the ground of maintainability itself. It was vehemently submitted that

when an alternative statutory remedy of appeal was available for the petitioner, the present writ petition could not be entertained by this Court under Article 226 of the Constitution of India. It was emphasized that the writ Court could not entertain the petition and sit in appeal over factual findings rendered by the enquiry officer in the report and that the present case did not fall in the narrow compass wherein writ petitions can be entertained even in such matters. It was submitted that the petitioner had neither pleaded nor argued any procedural infirmity in the manner in which the enquiry was conducted. There was no allegation of violation of principles of natural justice or that the authority which initiated the enquiry and conducted the same did not have jurisdiction to do so. On this basis, it was submitted that the present writ petition did not deserve to be entertained. Much emphasis was placed on the judgments of the Hon'ble Supreme Court in the case of *U.P. State Bridge Corporation Ltd. v. U.P. Rajya Setu Nigam S. Karmachari Sangh*, reported in (2004) 4 SCC 268 and *State Bank of India and others v. Narendra Kumar Pandey*, reported in (2013) 2 SCC 740.

9. Insofar as the allegations of corruption in BPCL were concerned, the learned Senior Advocate invited attention of this Court to the contents of the writ petition and pointed out that the statements made in the facts and the grounds raised in the writ petition pertaining to alleged corruption were general in nature, without any specifics and none of the officers, who had allegedly indulged in corruption were named in the writ petition. It was submitted that a number of technical words were used in the writ petition to claim that when the petitioner was appointed as Maintenance Officer in the Retail Depot of the BPCL, he had allegedly unearthed large-scale corruption. It was submitted that in the absence of specific details, such vague allegations could not be entertained by this Court, particularly when the petitioner is an interested party, inasmuch as he is an aggrieved former employee, who has been removed from the service of the BPCL. It was submitted that merely because the petitioner claimed that he had no faith in the senior officers, he could not claim that there was large scale corruption in the BPCL and that therefore, an investigation was mandated at the hands of the CBI. The learned Senior Advocate appearing for the respondent Nos.2 and 3 sought dismissal of the writ petition.

10. The learned counsel appearing for the other respondents supported the contentions raised on behalf of the respondent Nos.2 and 3.

11. We have heard the learned counsel for the rival parties and perused the material on record. There are two aspects that arise in the present writ petition. Firstly, the grievance raised by the petitioner pertaining to termination of his service and secondly, the allegations of corruption in the BPCL, seeking investigation from the CBI.

12. Insofar as the first issue is concerned, the objection pertaining to the maintainability of the present writ petition needs to be dealt with. The learned Senior Advocate appearing for the respondent Nos.2 and 3 has contended that this Court could have entertained the writ petition only if the petitioner had come with a case that there were glaring procedural infirmities in the manner in which the enquiry was conducted or that there was violation of principles of natural justice. He further submitted that if the charge-sheet itself had been issued by an Authority, which has no

jurisdiction to do so, the writ petition could certainly have been entertained. In the absence of such grounds raised by the petitioner, the present writ petition cannot be entertained, in the face of availability of an alternative remedy of statutory appeal against the order of termination of service.

13. Since the petitioner has placed much emphasis on the judgment of the High Court of Madhya Pradesh in the case of ***Anil Pandegaonkar v. BPCL*** (*supra*), we propose to deal with the same. A perusal of the said judgment would show that the High Court did entertain the writ petition filed by an aggrieved employee of the BPCL, who had been dismissed from service. But, a perusal of the facts of the said case and the ground on which the writ petition was ultimately allowed, would show that the High Court found that the Authority which issued the charge-sheet to the aggrieved employee was not competent to issue such a charge-sheet. It was found that the initiation of proceedings against the aggrieved employee was itself contrary to the provisions of the relevant Rules and therefore, the order of dismissal deserved interference. The said facts clearly show that the High Court entertained the writ petition on the basis that the initiation of the enquiry and

consequent issuance of charge-sheet, as also the order of dismissal from service, were all without jurisdiction. This shows that the aforesaid case before the High Court of Madhya Pradesh did fall into the narrow compass in which a writ Court can entertain a petition despite availability of a statutory remedy of appeal in service matters. There was clearly a fundamental procedural infirmity in the said proceedings, due to which the High Court entertained the writ petition of the aggrieved employee.

14. In the present case, there is nothing brought to the notice of this Court by the petitioner to show that there was any procedural infirmity in the manner in which the enquiry was initiated, charge-sheet was issued to the petitioner and order of termination of service was passed, consequent to the petitioner being found guilty of the three charges levelled against him. There is nothing to show that the proceedings were either hit by any procedural infirmity, jurisdictional error or violation of principles of natural justice. In such a situation, when admittedly there is an alternative remedy of appeal available to the petitioner, the present writ petition cannot to be entertained, to examine the challenge to the order of termination of service.

15. The learned Senior Advocate appearing for the respondent Nos.2 and 3 is justified in relying upon the judgments of the Hon'ble Supreme Court in the cases of *U.P. State Bridge Corporation Ltd. v. U.P. Rajya Setu Nigam S. Karmachari Sangh* and *State Bank of India and others v. Narendra Kumar Pandey* (*supra*). In fact, in the case of *State Bank of India and others v. Narendra Kumar Pandegaonkar* (*supra*), the Hon'ble Supreme Court held as follows:

“25. The High Court, in our view, under Article 226 of the Constitution of India was not justified in interfering with the order of dismissal passed by the appointing authority after a full-fledged inquiry, especially when the Service Rules provide for an alternative remedy of appeal. It is a well-acceptable principle of law that the High Court while exercising powers under Article 226 of the Constitution does not act as an appellate authority. Of course, its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of the principles of natural justice. In SBI v. Ramesh Dinkar Punde⁵, this Court held that the High Court cannot reappreciate the evidence acting as a court of Appeal. We have, on facts, found that no procedural irregularity has been committed either by the Bank, presenting officer or the Inquiring Authority. Disciplinary proceedings were conducted strictly in accordance with the Service Rules.”

16. In the present case, when specific query was put to the learned counsel appearing for the petitioner as to whether a statu-

tory appeal under the relevant Rules was available to the petitioner, the learned counsel answered in the affirmative. But, he merely stated that since the petitioner did not have faith that the Appellate Authority would do justice to him, in view of allegations of corruption made by him against the officers of the BPCL, he had directly approached this Court invoking writ jurisdiction. We are unable to persuade ourselves to accept the aforesaid submission made on behalf of the petitioner. As stated in the above quoted portion of the judgment of the Hon'ble Supreme Court, this Court while exercising powers under Article 226 of the Constitution of India cannot act as an appellate authority. It would not be desirable in writ jurisdiction to enter into the factual findings rendered upon an appreciation of evidence and material on record by the enquiry officer, particularly when a statutory remedy of appeal is admittedly available to the petitioner to air his grievances.

17. Therefore, we hold that the writ petition seeking to challenge the order of termination of service of the petitioner is not maintainable before this Court and accordingly, the prayers made in that context in the present writ petition cannot be granted.

18. Insofar as the second issue of the alleged corruption in the BPCL is concerned, a perusal of the writ petition would show that according to the petitioner, he became aware about such alleged large-scale corruption when he was posted as Maintenance Officer at Retail Depot of the BPCL. In the writ petition certain statements have been made as to the manner in which the petroleum products are transported and distributed. In that context, it is stated that there is large scale pilferage and corruption, which needs to be remedied. But, the statements made in the writ petition lack specifics and generalized statements have been made to claim that number of officers of the BPCL are involved in the alleged corruption. It is on the basis of such statements that the petitioner has specifically sought a direction to the respondent Nos.4 to 7 to take custody of documents allegedly of evidentiary value pertaining to the past three years at depots of the BPCL. The petitioner has then prayed for a direction to the CBI to conduct investigation in the matter.

19. We are of the opinion, that the directions sought by the petitioner are farfetched and the petitioner has failed to place on

record any substratum for seeking such reliefs. A direction for investigation to be conducted by the CBI can be pursuant to information placed before competent authority under the criminal justice system whereby cognizable offences are *prima facie* disclosed. In the absence of any such exercise, the petitioner is not justified in rushing to file the present writ petition, styled as a criminal writ petition, against the senior officers of the BPCL to seek directions for initiation of investigation by the CBI. The petitioner would always be at liberty to take appropriate steps in accordance with law, if there is information available with him which discloses cognizable offences having been committed requiring investigation.

20. Insofar as prayer for grant of Police protection is concerned, the petitioner could certainly take appropriate steps in accordance with law, but, in the facts and circumstances of the present case, we are unable to appreciate the contentions raised on behalf of the petitioner in that regard.

21. In view of the above, we are of the opinion that there is no merit in the present writ petition. Accordingly, it is dismissed.

22. Needless to say, the petitioner would be at liberty to air his grievance pertaining to termination of his service by filing an appropriate appeal in terms of the Statutory Rules, despite dismissal of the present writ petition. If such an appeal is filed by the petitioner, it shall be considered and disposed of in accordance with law. Similarly, the petitioner may be at liberty to approach competent authority, as permissible in law, under the provisions of the Code of Criminal Procedure, if he has material and information which discloses commission of cognizable offences in the functioning of the BPCL or any of its officers. He would also be at liberty to make an appropriate representation before the respondent No.1 i.e. Union of India through the Ministry of Petroleum and Natural Gas, New Delhi, to place on record any material that he deems appropriate to show how the functioning of the BPCL needs to improve. We refrain ourselves from expressing any opinion about availability of such remedy or contentions raised by the petitioner in this petition about alleged corruption.

23. The writ petition is dismissed with the aforesaid observations. The observations made hereinabove are prima facie in na-

ture and confined to the adjudication of present Writ Petition and the same shall not be construed as an impediment to avail of an alternate remedy as is available in law or to entertain such proceedings if initiated in future by the petitioner on merits. initiated

(MANISH PITALE, J.)

(S.S.SHINDE, J.)