

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

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WRIT PETITION NO. 502 OF 2012

PETITIONER :-

Sau. Vijaya W/o. Vishveshwar Wandhre,
Aged about 48 years, R/o. Padmawati
Nagar, Somalwada, Nagpur.

...VERSUS...

RESPONDENTS :-

- 1) Maharashtra Secondary & Higher Secondary Education Board, a Statutory body duly constituted under The Maharashtra Secondary & Higher Secondary Education Board Act, 1965, Through its Chairman, having its Office at Shivajinagar, Bhamburda, Pune-04.
- 2) Maharashtra State Secondary and Higher Secondary Board Nagpur Division, Nagpur through its Secretary.

Mr. P. V. Ghare, Advocate h/f Mr. A.M.Ghare,
Advocate for the petitioner.
Mr. Anand Parchure, Advocate for the respondents.

**CORAM : SUNIL B.SHUKRE &
ANIL S.KILOR, JJ.**

DATE : 09.08.2021.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

1. Heard.

2. The petitioner, a junior clerk with respondent No.1, was compulsorily retired, after due conduct of departmental enquiry against her. The order of compulsory retirement was passed on 28.01.2011 and this order is under challenge in this petition.

3. The facts of the case show that there were in all three charges levelled against the petitioner in the departmental enquiry.

The first charge related to, the petitioner continuously and habitually coming late to the Office, consistently avoiding to perform her office work or perform it within time, consistently

roaming around the spaces in the Office for no reason and not doing her work with any devotion whatsoever. For her such misconduct, it is alleged that several opportunities were given to her to improve her conduct and these opportunities were in the nature of issuance of as many as 55 memos to her. But, the conduct of the petitioner did not improve.

The second charge related to the dishonest conduct of the petitioner in signing the muster roll during the period from 20.05.2009 to 25.05.2009, when admittedly, the petitioner was on sanctioned earned leave. It is alleged that the muster roll has been signed by the petitioner with the dishonest intention of using this very period for availing of further earned leave.

The third charge related to, the petitioner's sitting over 246 ready cheques, which were to be distributed amongst the Centre and Sub Centre heads, which contained the amounts payable to these officials for the work rendered by them. During the course of the enquiry, the above referred three charges were held to be proved and after giving due opportunity of hearing, a

punishment of compulsory retirement was imposed upon the petitioner vide impugned order dated 28.01.2011.

4. It is the contention of the learned counsel for the petitioner that the punishment so imposed is grossly disproportionate and it shocks the conscience of any reasonable mind and therefore, by relying upon the case of *S.R.Tiwari Vs. Union of India* reported in *2013 ALL SCR 2368*, the learned counsel for the petitioner, submits that it be converted into a more lenient punishment or punishment for minor misconduct.

5. Shri. Anand Parchure, learned counsel appearing for the respondents, opposing the submissions submits that the punishment so imposed upon the petitioner is proportionate to the degree of misconduct proved against her and that it is the most lenient of the punishments available for a major misconduct, which has been committed by the petitioner in the present case.

6. In this case, the petitioner has not disputed her misconduct on account of repeatedly, continuously and habitually

coming late to the Office, and not performing her duty well within the time. She has also admitted that she has received 55 memos. The second charge of misconduct against the petitioner has also been proved and the petitioner has admitted that on some days during the period from 20.05.2009 till 25.05.2009 the petitioner had attended the Office. But, we must say it here that when, it was an admitted fact that the petitioner had been granted sanctioned leave for the said period, there was no reason for the petitioner to have come to the Office without first making an application for cancellation of leave granted to her, which was not done by her. Even the third charge relating to the petitioner's sitting over 246 ready cheques has been proved and no reasonable explanation for the delay occurred in their distribution amongst the Centre and Sub-Centre heads has been given by the petitioner. Similarly, the petitioner has not given any explanation as regards the first charge as to why she repeatedly reported late to the Office. These proved charges, by taking over all view of the matter, would show that they constitute acts of major misconduct on the part of the petitioner.

7. It would be seen now that this case is one of major misconduct, proved against the petitioner and therefore, major penalty would be attracted. It can be further seen that among the three major penalties, namely, (1) dismissal (2) termination simplicitor and (3) compulsory retirement, the most lenient of them all has been imposed upon the petitioner. If this is so, we do not think that the punishment given to the petitioner could be considered to be grossly disproportionate to the misconduct proved against her. Such punishment could also not be considered to be shocking to the conscience of the Court.

8. In the case of *S.R.Tiwari Vs. Union of India (supra)* the charges that were proved, were found to be administrative in nature rather than constituting any misconduct of a serious nature. This is the reason why, the punishment of compulsory retirement given to the petitioner in that case, was found to be grossly disproportionate to the nature of misconduct proved against the petitioner.

9. Therefore, we do not think, that on facts, the case of *S.R.Tiwari Vs. Union of India (supra)* would render any assistance to the petitioner .

10. In *S.R.Tiwari Vs. Union of India (supra)* the Hon'ble Supreme Court laid down a principal for examining the proportionality of the punishment awarded to the delinquent employee with the misconduct proved against him. In para 19 it is held that while examining the issue of proportionality, the Court has to consider the circumstances, under which the misconduct was committed. It further held that it is possible that there were some circumstances, which may have compelled the delinquent employee to act in a certain manner though he may not have intended to do so. It further held that it is only in very rare cases that the court may, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the Competent Authority. The relevant portion of the observations made in paragraph 19 is reproduced thus :-

“While examining the issue of proportionality, court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the Competent Authority”.

11. In the present case, as found by us earlier, no explanation whatsoever has been given by the petitioner regarding her continuously and repeatedly reporting late to the Office and not performing her duty diligently. No circumstances, whatsoever have been brought on record by the petitioner indicating the state of mind in which, these acts of misconduct were committed by her. On the contrary, there are some deliberate acts committed by her by remaining present in the Office without seeking cancellation of the earned leave, already sanctioned, during the period from 20.05.2009 to 25.05.2009. These facts and circumstances together, in our considered view, would show that the punishment of compulsory retirement awarded to the

petitioner, bears appropriate proportion to the nature of misconduct proved against her.

12. In the result, we find that there is no substance in the petition. The petition stands dismissed. However, we grant liberty to the petitioner, to approach the employer with a request for grant of retiral benefits, if any and payable to her under the existing Rules, by making an appropriate representation within a period of two weeks from the date of the order and if it is so made, a decision in accordance with law shall be taken thereon within a period of three months from the date of making of the representation.

Rule is discharged. No costs.

(ANIL S. KILOR,J)

(SUNIL B. SHUKRE,J)