

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

WRIT PETITION NO.6987 OF 2019

Tulshiram s/o. Kisan Tayade
Age : 43 years, Occu: Clerk at
Nagar Panchayat Bodwad,
R/o. Bodwad, Tq. Bodwad,
Dist. Jalgaon.

... PETITIONER

VERSUS

1. The State of Maharashtra
through Commissioner/Directorate
Municipal Administration, Government
Transport Services Building, 3rd Floor,
Sarpochkhan Road, Warali-,
Mumbai – 400030.

2. The District Collector,
Jalgaon.

3. The Chief Officer,
Nagar Panchayat, Bodwad,
Tq. Bodwad, Dist. Jalgaon.

... RESPONDENT

...

Advocate for Petitioner : Mr. S.B. Bhapkar
Advocate for Respondent/State : Mrs. D.S. Jape

...

CORAM : MANGESH S. PATIL, J.

Reserved on : 06.12.2021

Pronounced on : 05.01.2022

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned AGP waives service for respondent Nos.1 and 2. At the request of both the sides, the matter is heard finally at the stage of admission.

2. The petitioner is invoking the powers of this Court under Article

226 and 227 of the Constitution of India while taking exception to the order dated 25.10.2017 passed by the respondent No.2 Collector terminating his services with the respondent No.3 Municipal Council, Bodwad from the post of clerk, by invoking the powers under Section 79 (1) read with Section 8 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter the Act) and Rule 5(8) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979. He is also challenging the order passed by the Director of Municipal Administration dated 29.09.2018 whereby his appeal preferred under Section 79 (6) of the Act has been dismissed.

3. The petitioner was initially appointed as a clerk in Gram Panchayat, Bodwad on 29.10.2004. By virtue of a notification issued by the State Government under the Act, the Gram Panchayat was transformed as a Municipal Council. Being an employee of the erstwhile Gram Panchayat the petitioner took initiative for the rights and demands of such employees transferred from the erstwhile establishment. As a representative of association of such employees, he met the respondent No.3. Alleging that during such meeting the Chief Officer had insulted and abused him on caste lines. He lodged an FIR with the police under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on 12.07.2017.

4. Alleging that the petitioner abused, threatened and assaulted the Chief Officer during that meeting on 13.07.2017 the Chief Officer

suspended him and initiated a Disciplinary Inquiry. A show cause notice was served to him. He tendered his reply. The inquiry was conducted by the Chief Officer of Municipal Council Savada. He was found guilty of the charge and a report was submitted to the respondent No.2 Collector. He was served with the report of the inquiry and after hearing him, by the order under challenge he was held to have been guilty of the charge and was terminated by the respondent No.2 Collector. The petitioner preferred the Appeal before the Divisional Commissioner but it has been turned down.

5. The learned advocate Mr. Bhapkar primarily questioned the power and competence of the Collector to impose the punishment. He would submit that by virtue of the provisions of Section 79 of the Act, the Collector was not competent to act as a Disciplinary Authority. He would refer to the provisions of Section 78 (C) and 79 of the Act. Even the Divisional Commissioner has erred in not appreciating these provisions while refuting the argument. He would therefore submit that apart from the merits independently touching the proof or otherwise of the charges, the inquiry is defective.

6. Per contra, the learned AGP submitted that there is no error in Collector exercising a power under Section 79. The State Government has delegated such powers pursuant to the provision of Section 76(3) to the Collector by the Government Resolution dated 19.03.2016 (Exhibit R-2). As far as merits she would submit that the charge is indeed serious. The petitioner has in an aggressive manner assaulted the Chief Officer in his

chamber and there were witnesses examined during the inquiry. Principles of natural justice were followed and opportunity of being heard was extended before inflicting the punishment.

7. Since the basic issue as regards the powers of the Collector to act as a Disciplinary Authority is being raised, it is imperative that it needs a specific attention as it goes to the root of the inquiry.

8. There is no dispute about the fact that the petitioner was working as a clerk which is Class III post and the provisions of the Act and the Maharashtra Civil Services (Discipline and Appeal) Rules are applicable. There is also no dispute about the fact that it is the Municipal Council who is appointing authority under Section 76. So far as the Class IV employees are concerned, it is the Chief Officer of the Municipal Council who is the appointing authority. Section 76 reads thus:

“76. Appointment of other Officers and servants

(1) A Council may, with the sanction of the Director, create such posts of officers and servants other than those specified in sub-sections (1) and (2) of section 75 as it shall deem necessary for efficient execution of its duties under this Act.

(2) Subject to the provisions of sub-section (3), the qualifications, pay, allowances and other conditions of service and the method of recruitment of any such officers and servants, excluding the posts equivalent to Class IV posts in the State Government, shall be determined by general or special order made by the Director in this behalf. In case of posts equivalent to Class IV posts in the services of the State Government, the qualifications, pay, allowances and other conditions of service and method of recruitment shall be determined by bye-laws made by the Council in this behalf.

(3) Subject to any general or special orders, which may, from time to time, be made by the State Government in this behalf,

appointments to the posts created under sub-section (1), shall be made by the Chief Officer from the list of the candidates selected by such selection authority or such other body, as the State Government may, by general or special order, specify.

(4) No Council shall employ any person, who has not completed fifteenth year, to serve as a member of its sanitary staff.”

Section 78 (C) then lays down the provision in respect of initiation of disciplinary action and reads thus :

“78C. Disciplinary action

(1) Every Municipal Officer and servant shall be bound to discharge his official duties and the official work assigned or pertaining to him most diligently and as expeditiously as feasible :

Provided that, normally no file shall remain pending with any Municipal Officer or servant in any Department or office under the Corporation for more than seven working days :

Provided further that, immediate and urgent files shall be disposed of by any Municipal Officer or servant as per the urgency of the matter, as expeditiously as possible, and preferably the immediate file in one day or the next day morning and the urgent file in four days :

Provided also that, in respect of the files not required to be referred to any other Department within the Council and not required to be submitted to any Statutory Committee, the concerned Department of the Council shall take the decision and necessary action in the matter within forty-five days and in respect of the files required to be referred to any other Department but not to any Statutory Committee, decision and necessary action shall be taken within three months.

(2) Any willful or intentional delay or negligence in discharge of the official duties or in carrying out the official work assigned or pertaining to such Municipal Officer and servant shall amount to dereliction of official duties and shall make such Municipal Officer or servant liable for appropriate disciplinary action under the relevant disciplinary rules applicable to such employees.

(3) The concerned competent authority, on noticing or on being brought to its notice any such dereliction of duties on the part of any Municipal Officer or servant, after satisfying itself about such dereliction on the part of such Municipal

Officer or servant shall, take appropriate disciplinary action against such defaulting Municipal Officer or servant under the relevant disciplinary rules including taking entry relating to such dereliction of duty in the Annual Confidential Report of such Municipal Officer or servant.”

Section 79 then provides for the punishment of officers and servants of a Municipal Council and reads thus :

“79. Punishment of officers and servants

(1) Without prejudice to the provisions of any law for the time being in force and subject to the provisions of Section 75 A and the rules made thereunder the following penalties may, for good reasons, be imposed upon any officer or servant of the Council :—

- (i) Censure ;*
- (ii) Withholding of increments or promotion including stoppage at an efficiency bar ;*
- (iii) Reduction to a lower post on a fixed pay or a time-scale or to a lower stage in time-scale ;*
- (iv) Recovery from his pay of the whole or part of any pecuniary loss caused to the Council by negligence or breach of orders ;*
- (v) Fine ;*
- (vi) Suspension ;*
- (vii) Removal from the service, which does not disqualify from future employment ;*
- (viii) Dismissal from the service, which ordinarily disqualifies from future employment.*

(2) Any of the penalties mentioned in sub-section (1) may be imposed on an officer or servant of the Council by the authority competent to make the appointment of the officer or servant :

Provided that, any officer or servant appointed by the Council may be suspended by the Chief Officer pending an order of the Council and every such suspension with the reasons therefor shall forthwith be reported by the Chief Officer to the Council ;

³[and such suspension shall continue till the completion of the enquiry :

Provided further that, if such enquiry is not completed within a period of six months, the Collector shall after examining the reasons for the delay in completion of the enquiry either revoke the order of suspension or may extend it for a period of six months :

Provided also that, if such enquiry is not completed within

the total period of one year, the Chief Officer concerned shall immediately seek further extension of suspension period from the Regional Director who may, either revoke the suspension order or after recording the reasons in writing may, grant further extension of not more than three months at a time so, however that, the total period of the suspension shall not go beyond eighteen months. On the event of the enquiry not being completed within the total period of eighteen months, the power to grant any further extension shall lie with the State Government. The suspension of an officer or servant pending an enquiry against such officer or servant shall not be deemed to be a penalty:

Provided also that] the Chief Officer may, for good and sufficient reasons impose on any officer or servant of the Council, any minor penalty or penalties specified in clauses (i), (ii), (iv), (v) and (vi) of sub-section (1) :

Provided also that,—

(i) if the post held by a municipal servant is equivalent to Class IV post under the State Government, the penalties specified in clauses (iii), (vii) and (viii) may be imposed on such servant by the Standing Committee and, if the Council so decides, by the President;

(ii) if the post held by an officer or servant is above the rank of a Class IV post under the State Government, such penalties may be imposed on such officer or servant by the Council or by the Standing Committee, if the Council so decides].

(3) No officer or servant shall be reduced to a lower post or removed or dismissed from service under this section unless he has been given a reasonable opportunity of showing cause against such reduction, removal or dismissal:

Provided that, this sub-section shall not apply—

(a) where a person is reduced, removed or dismissed on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the competent authority is satisfied that, for reasons to be recorded in writing by such authority, it is not reasonably practicable to give that person an opportunity of showing cause.

(4) In case of any officer or servant holding any post permanently above the rank of a Class IV post of the State Government, no order of removal or dismissal shall be passed without the prior approval of the Collector.

(5) In every case referred to the Collector under the last preceding sub-section the Collector shall not refuse to give his approval unless he is satisfied that—

(i) the finding at the inquiry is perverse ; or

(ii) *the penalty of removal or dismissal, as the case may be, is too severe.*

Where the Collector informs the Council, or the Standing Committee that the finding at the inquiry is perverse, no further proceeding shall be taken against the officer or servant concerned in respect of the same matter.

(6) *An appeal against any order imposing any penalty mentioned in subsection (1) may be made to the authority superior to the authority imposing the penalty as shown below :—*

<i>Authority imposing the penalty</i>	<i>Superior authority to which appeal may be made</i>
(i) <i>Chief Officer</i>	<i>Standing Committee.</i>
(ii) <i>Standing Committee</i>	<i>Council.</i>
(iii) <i>Council</i>	<i>Director.</i>

(7) *No such appeal may be entertained if not preferred within one month from the date of receipt of the order appealed against by the officer or servant concerned.”*

9. A careful reading of these provisions clearly indicates that it is the authority which is competent to make the appointment of the officer or servant which can impose such punishment. It nowhere lays down any power with the Collector either under Section 76 to make appointment or to initiate any inquiry and impose punishment under Section 78 (C) and 79. For that matter even list of the authorities imposing the penalty mentioned in sub Section 6 of Section 79 does not include Collector either as an authority imposing the penalty or an authority to which an appeal would lie. It is thus quite apparent that going by the plain reading of these provisions, a Collector of a District is not authorized either to initiate any Disciplinary Inquiry or to impose penalty against an officer or a servant of a Municipal

Council under the Act.

10. In view of the above state of affairs, it becomes imperative now to refer to and understand the Government Resolution dated 19.03.2016 which is referred to in the affidavit-in-reply and also being relied upon by the Divisional Commissioner in the order under challenge. A copy of the Government Resolution in vernacular is placed on record along with the affidavit-in-reply filed by the respondent Nos.1 and 2 (Exhibit R-2).

11. The preface indicates that the powers of writing confidential reports and its review of the Group-A and Group-B category officers/employees working in the scheduled areas were to be delegated to the Collectors.

12. It then reads that the Collector and Divisional Commissioners are delegated with the powers to implement, supervise and control various schemes of the Governments and they have to issue necessary directions for such implementations. However it was found that those were not being followed by the officers and employees of their respective jurisdictions. With a view to give teeth to the powers of the Collectors to initiate Disciplinary Inquiries against the erring officials/employees, in respect of dereliction of such directions issued by the Collector, the decision was being taken by the Government to constitute Collectors as the departmental heads. As can be appreciated from the further contents of the resolution, these powers were not delegated to the Collector as blanket powers muchless under the provisions of any statute including the Act. It nowhere prescribes

as to under which provisions the State has resolved to delegate these powers to the Collectors. It only mentions that to the extent of implementation of such Government schemes which are to be implemented through the Collectors that these are being delegated the powers of a departmental head to initiate disciplinary actions against the officers of group-A if they are found to have been responsible and derelict his directions issued pursuant to implementation of the Government schemes.

13. Though the Divisional Commissioner in the order under challenge has observed that these powers have been delegated by the State Government to the Collectors under this Government Resolution pursuant to the provisions of Section 74(2), the Government Resolution does not refer to it. Therefore it cannot be said that the State Government had intended to confer upon the Collectors the power to initiate a disciplinary inquiry under Section 78 (C) and to impose punishment under Section 79 on a Class-III employee of a Municipal Council. Statement in the affidavit-in-reply referring to this Government Resolution to justify the action under challenge is not sustainable in law and so is the observation and conclusion of the Divisional Commissioner in the order under challenge.

14. In the light of such eventuality, upshot of the above discussion clearly demonstrates that the respondent No.2 Collector had no power and jurisdiction to act as a disciplinary authority and inflict the punishment. On this count alone, the Writ Petition deserves to be allowed.

15. However, it needs to be clarified that it would always be open

for the Municipal Council and the Chief Officer to initiate the inquiry *de novo*.

16. The Writ Petition is allowed. The Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

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