

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

WRIT PETITION NO.4602 OF 2012

. Babasaheb s/o Thakuji Zaware
Age: 35 yrs., Occu.: Service,
R/o. Bodegaon, Tq.Shevgaon,
Dist.Ahmednagar.

VERSUS

1. The State of Maharashtra
2. The Additional Division Commissioner
Nashik, Division Nashik.
3. The Chief Executive Officer,
Zilla Parishad, Ahmednagar.

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Advocate for Petitioner : Shri D.R.Irale Patil
AGP for Respondent Nos.1 & 2 - State : Shri S.N.Morampalle
Advocate for Respondent No.3 : Shri S.T.Shelke
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CORAM : M.G.SEWLIKAR, J.

RESERVED ON : 22nd August, 2022
PRONOUNCED ON : 30th August, 2022

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally at the stage of admission.
2. Facts in brief are that the petitioner was working as a Peon in Primary Health Center (PHC), Khadakwadi, Tq.Parner,

Dist.Ahmednagar. He was appointed on compassionate ground after the death of his father on 2nd April, 1997.

3. The Chief Executive Officer, Zilla Parishad, Ahmednagar initiated enquiry against the petitioner alleging therein that (i) on 1st December, 2007, the petitioner committed theft of OPD money by opening the locker of the Pharmacist (ii) On 28th November, 2007, the petitioner abused female Health Care Worker (iii) Petitioner was absent from duty from 30th November, 2007 to 3rd December, 2007 without obtaining prior permission from the superiors. (iv) On 17th August, 2007, District Health Officer, Zilla Parishad, Ahmednagar had visited PHC. At that time when petitioner was asked about the cleanliness of the compound, petitioner behaved arrogantly and thereby committed misconduct under Rule 3 of the Maharashtra Zilla Parishad District Services (Conduct) Rules, 1967.

4. Accordingly, petitioner was served with the charge-sheet. Petitioner filed his written statement to the charges. He denied to have committed the theft as alleged. He contended that, if he had really committed theft, the Medical Officer of the PHC or the Pharmacist ought to have registered an FIR against him. How much amount was stolen is also not mentioned in the charge. He

further contended that he never abused female Health Care Workers on 28th November, 2007. He was discharging his duties to the best of his ability. He further contended that he was spraying with the Spraying Machine on oral direction of Medical Officer Dr.Bansode during the period of 30th November, 2007 to 3rd December, 2007. Therefore, he was not present at the PHC. He further contended that on 17th August, 2008, he did not behave arrogantly with the District Health Officer as he was not present at 07:00 a.m. on that day. He had gone to see his mother who was suffering from Jaundice. His wife informed him on phone that District Health Officer had visited the PHC. Therefore, he came back. He admitted that he had come to the PHC late. He denied that he had behaved arrogantly with the District Health Officer.

5. Accordingly, enquiry was conducted and petitioner was found guilty by the Enquiry Officer i.e. Assistant Commissioner. All the charges were held to be proved. The petitioner was given show cause notice. He was served with the copy of the enquiry report. Accordingly, he was heard on the point of sentence. Petitioner was dismissed from the service.

6. The Petitioner preferred appeal against the order of

dismissal from service to the Additional Divisional Commissioner, Division Nashik, Nashik (respondent No.2). Appeal was also dismissed. Against this order, petitioner has preferred this petition.

7. I have heard Shri D.R.Irale Patil, learned counsel for the petitioner, Shri S.T.Shelke, learned counsel for respondent No.3 and Shri S.N.Morampalle, learned AGP for respondent Nos.1 and 2.

8. Shri Irale Patil, learned counsel for the petitioner submitted that copy of the enquiry report was not supplied to the petitioner. This is a serious deficiency on account of which enquiry gets vitiated. He submitted that Dr.Bansode, Medical Officer in the PHC was doing private practice using medicines from the stock of the PHC. The petitioner noticed that Dr.Bansode was taking medicines from the Government stock. Dr.Bansode, therefore, hatched a conspiracy and made false allegation of theft against the petitioner. He submitted that the charge is vague as how much amount was stolen is not mentioned in the charge. He contended that petitioner never abused any female Health Care Worker. During the period from 30th November 2007 to 30th December, 2007, petitioner was engaged in spraying operation.

A certificate to that effect has also been issued. He further submitted that the petitioner never behaved arrogantly with the District Health Officer or never gave any back answers. The Enquiry Officer, Assistant Commissioner, Nashik conducted the departmental enquiry. Enquiry was completed on 18th March, 2009 and report was also submitted. Show cause notice was issued on 19th March 2010. The petitioner was not supplied with the report of enquiry as contemplated under Rule 9 of the Maharashtra Zilla Parishad District Services (Conduct) Rules. He submitted that for all these reasons, the enquiry gets vitiated. He further submitted that petitioner had unblemished service record. This is first misconduct and therefore, punishment of dismissal may be converted into compulsory retirement. For this purpose, he placed reliance on the case of *Shirish s/o. Vasudeorao Joshi Vs. The State of Maharashtra* (Writ Petition No.4531 of 2012 decided on 10th June, 2021). He also placed reliance on the cases of *Ramchandra Nama Adhav Vs. Union of India* [1995(1) Mh.L.J. 73], *Dev Singh Vs. Punjab Tourism Development Corporation Ltd. and another* [AIR 2003 Supreme Court 3712], *Punjab National bank and Others Vs. K.K.Verma* [(2010) 13 Supreme Court Cases 494], *Director (Marketing), Indian Oil Corp. Ltd., and Anr. Vs. Santosh Kumar* [2006 AIR SCW 2849] and *J.B.J.Alexander Vs. The Secretary to Government and*

Others [Writ Petition No.33542 of 2007 decided on 29th April 2010].

9. Shri Shelke, learned counsel for respondent No.3 submitted that the petitioner was served with the enquiry report. The charge of theft is a serious charge. Even if it is not mentioned in the chart, in the enquiry, the Incharge Medical Officer has stated that petitioner committed theft of Rs.200/-. He stated that punishment is not disproportionate to the charge levelled against the petitioner.

10. I have given anxious consideration to the submissions made by the learned counsel for the parties.

11. Charge No.(i) is a serious charge. The enquiry report mentions that Smt.Rokade had seen the petitioner stealing OPD cash at 08:00 a.m. She had seen petitioner opening the lock of the Almirah. Petitioner had threatened her not to disclose it to anyone. The enquiry report further mentions that Dr.S.N.Doiphode, Medical Officer has stated in his statement that Smt.Rokade had told him about the theft of OPD cash on 1st December, 2007 at 08:15 a.m. This clearly shows that soon after the incident, Smt.Rokade had informed Dr.Doiphode, who was

the Incharge Medical Officer of the PHC about the theft committed by the petitioner. Thus, there is evidence to show that the petitioner had committed theft. Simply because the amount of theft is not mentioned in the charge, enquiry does not get vitiated.

12. It is pertinent to note that in the appeal memo and in the writ petition the petitioner has taken defence that Dr.Bansode, Medical Officer was seen by him using the medicines from the Government stock for his private clinic. However, in the written statement filed by the petitioner, no such allegation is found. This clearly shows that this defence is an after thought. Therefore, an after thought defence cannot be a ground for disproving the charge. Moreover, nothing has been placed on record to show that Dr.Bansode, Medical Officer was confronted with this defence of the petitioner. Therefore, it cannot be said that the Enquiry Officer or the appellate authority committed any error in rendering the finding that the petitioner was guilty.

13. So far as non-supply of copy of Enquiry Report is concerned, it is pertinent to note that the petitioner was served with the show cause notice and he has replied to the show cause notice. He did not raise this defence of non-supply of copy of the

report. He has annexed copy of the report. Therefore, it cannot be said that the petitioner was not served with the copy of the report. The submission of the petitioner that the punishment is shockingly disproportionate to the misconduct proved does not have any substance. The petitioner was found stealing OPD money from the locker of the Pharmacist. This is a serious offence for which only punishment is dismissal. It is true that FIR was not lodged against the petitioner for the theft of OPD money. However, that by itself cannot be a ground for holding that the charge was not proved. There is an eye witness i.e. Smt.Rokade to the incident. She had immediately informed Dr.Bansode, Medical Officer about the theft. It is well settled that in the departmental enquiry what has to be seen is whether there is some evidence or there is no evidence. The standard of proof is not as high and strict as is required for proving the offence in criminal trial. Proof beyond reasonable doubt is not the requirement for proving the charge in departmental enquiries. In the case at hand, there is some evidence in the form of Smt.Rokade and Dr.Doiphode. As indicated earlier, the defence of the petitioner is an after thought. Therefore, much importance cannot be attached to it.

14. The punishment is not shockingly disproportionate. In the

case of *Shirish s/o. Vasudeorao Joshi* (supra), Gram Sevak and Shirish Joshi were held guilty and Gram Sevak was awarded punishment of compulsory retirement from service. Charges against both of them were the same. But different punishment was awarded to Gram Sevak. Gram Sevak was awarded with punishment of compulsory retirement and Shirish Joshi was dismissed from service. Therefore, this Court converted the penalty of dismissal from service to compulsory retirement. The facts in that case were completely different.

15. In the case of *Dev Singh* (supra), misconduct was misplacement of file. No ulterior motive was alleged. Therefore, punishment of dismissal from service was held to be shockingly disproportionate and shocked judicial conscience. In the case of *Director (Marketing), Indian Oil Corp. Ltd.*, (supra), facts were different. In that case, appellate authority simply adopted language employed by disciplinary authority and inflicted punishment of dismissal on delinquent. This is not the case here. Both these decisions have no application because Enquiry Officer and the appellate authority had not applied their mind. This is not the position in the case at hand. Enquiry Officer has given detailed reasoning.

16. In the case of J.B.J.Alexander (supra), the case was of unauthorized absence. In the case at hand, the charge is of theft.

17. In the case of *State of U.P. and others Vs. Nand Kishore Shukla and another* [AIR 1996 Supreme Court 1561] relied on by Shri Shelke, learned counsel for respondent No.3 it is held thus :

"7. It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a Government servant based upon the proved misconduct against the Government servant. Its proportionality also cannot be gone into by the Court. The only question is : whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would be loath to interfere with that part of the order. "

18. This Court, therefore, cannot interfere in the discretion exercised by the Enquiry Officer and appellate authority. Charge of theft is proved. Therefore, punishment cannot be said to be shockingly disproportionate. Hence, petition is devoid of any substance. It is, therefore, dismissed.

19. Rule is discharged.

**(M.G.SEWLIKAR)
JUDGE**