

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

**WRIT PETITION NO.11456 OF 2019**

Devisingh s/o. Sandusingh Rajput  
Age : 52 years, Occu : At present Nil,  
R/o. Plot No.31, Vedant Nagar,  
Station Road, Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra  
Through its Secretary,  
Department of Industries,  
Labour & Law, Mantralaya,  
Mumbai.

2. The Marathwada Development  
Corporation Ltd., through its  
Managing Director, Vikas Bhavan,  
Dr. Rajendra Prasad Road, Aurangabad.

.. Respondents

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Mr. P.S.Dighe, Advocate h/f. Mr. V.R. Dhorde, Advocate for the  
petitioner

Mrs. Vaishali N. Patil Jadhav, AGP for Respondent No.1

Mr. N.K. Kakade, Advocate for Respondent No.2

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**CORAM : MANGESH S. PATIL &  
SANDEEP V. MARNE, JJ.**

**RESERVED ON : 30-09-2022**

**PRONOUNCED ON : 06-10-2022**

**JUDGMENT ( PER SANDEEP V. MARNE, J.) :**

. The petitioner challenges order dated 25.06.2019 imposing the penalty of dismissal from service on him with effect from 21.10.2002. The petitioner also seeks payment of subsistence allowance from 21.10.2002 till the date of his retirement i.e.

30.08.2009.

2. While working as Manager (Development) in Marathwada Development Corporation Ltd., Aurangabad, the petitioner was served with memorandum of charge-sheet dated 17.05.2002 containing two charges. In Article of charge no.1, it was alleged that the petitioner prepared forged 'No Dues Certificate' (in short 'NOC') in the name of M/s. Amit Industries, which was owned by his wife Mrs. Pushpa Devisingh Rajput, who submitted the same to Marathwada Development Corporation Ltd for sale of the land in favour of M/s. Premier Industries Ltd. As a matter of fact, an amount of Rs.2,25,694/- was due from M/s. Amit Industries in the year 1998-99 when such forged NOC was issued. It was therefore alleged that the petitioner caused loss of Rs.2,25,694/- to the Corporation. In the second charge, it was alleged that he was handed over additional charge of Ellora Milk Products from 01.08.1998 and company's employee Mr. S.V. Manjurkar was to retire under voluntary retirement scheme with effect from 15.01.2002. Despite being intimated in advance, the petitioner failed to remain present in the office of the company on 15.01.2002 thereby delaying the voluntary retirement of Mr. Manjurkar as well as delay in payment of his retirement benefits.

3. In the departmental enquiry conducted against the petitioner, both the charges were held to be proved in the Enquiry Officer Report dated 23.08.2002. On receipt of report of Enquiry Officer, he submitted reply on 14.10.2002. After considering the reply, the penalty of dismissal from service was imposed on the petitioner with effect from 21.10.2002.

4. The petitioner assailed the order of dismissal dated 21.10.2002 by filing Writ Petition No.1429 of 2005 before this Court. The Writ Petition was partly allowed by order dated 31.08.2017 on the ground that the mandatory provisions of Rule 8 (20) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 of generally examining the petitioner in respect of circumstances appearing against him in evidence was not followed. The dismissal order was accordingly set aside granting liberty to the respondent - Corporation to re-conduct the enquiry from the stage of Rule 8 (20) and thereafter take a fresh decision in accordance with law. It was directed that the petitioner would claim rights depending upon the decision in the enquiry proceedings. In the meantime, the petitioner attained the age of superannuation on 30.08.2009.

5. In pursuance of the liberty granted by this Court by its

order dated 31.08.2017, the respondent - Corporation appointed an Enquiry Officer who conducted enquiry from the stage of Rule 8 (20) and submitted his report on 17.12.2018 holding that article of charge no.1 was fully proved and article of charge no.2 was partly proved. After considering the reply of the petitioner to the report of the Enquiry Officer, the respondent Corporation proceeded to pass the order dated 25.06.2019 once again imposing penalty of dismissal from service on the petitioner with effect from 21.02.2002.

6.           Appearing for the petitioner Mr. Dighe, the learned Counsel has not made any attempt to point out any further illegalities in the conduct of enquiry proceedings or even with regard to the finding of the guilt recorded in the proceedings. He has essentially confined his submissions to the aspect of proportionality of penalty contending that the penalty imposed is not proportionate to the misconduct alleged. He would submit that no loss was caused to the Corporation by the actions of the petitioner as the amount of Rs.2,20,000/- was paid to the Corporation on 25.02.2002. He would further submit that the disciplinary proceedings were triggered essentially on account of the alleged conduct of the petitioner with regard to article of charge no.2. However, while issuing a charge-sheet the respondent - Corporation unnecessarily added charge no.1

in the memorandum. In support of his contentions with regard to the proportionality of the penalty, Mr. Dighe has relied upon the following decisions:

- (i) **H.L. Gulati vs. Union of India and Others**, (2015) 12 SCC 408
- (ii) **Union of India and Others vs. P. Balasubrahmanayam** (2021) 5 SCC 662.
- (iii) **Ganesh Santa Ram Sirur Vs. State Bank of India and another**, (2005) 1 SCC 13.

7. Mr. Dighe has also questioned retrospective effect being given to the impugned order of dismissal. He would submit that the respondent - Corporation was not justified in giving retrospective effect to the dismissal order from 21.10.2002 when the same was passed on 25.06.2019. In support of this contention, he would place reliance on the decision of this Court in **Assaram Raibhah Dhage vs. Executive Engineer, Sub Divisional, Mula**, 1988 (4) Bom. C.R. 158 and **Ashti Taluka Dudh Utpadak and Purwata Sahakari Sangh Ltd vs. Satish Padmakar Deshmukh & Ors.**, 1996 (4) ALL MR 705.

8. Lastly, Mr. Dighe has submitted that the petitioner is entitled to payment of subsistence allowance from the date of initial dismissal i.e. 21.10.2002 till he attained the age of superannuation on 30.08.2009. This submission is founded on the provisions of sub-rule 3 of Rule 4 of the Maharashtra Civil Services (Discipline &

Appeal) Rules, 1979.

9. Per contra, Mr. Kakade, the learned Counsel for respondent no.2 - Corporation supported the impugned order of dismissal. He would contend that the penalty imposed on the petitioner is proportionate to the misconduct alleged. Referring to the order dated 31.08.2017 passed in Writ Petition No.1429 of 2005, Mr. Kakade would submit that all the aspects of enquiry are already gone into by this Court in earlier round of litigation and the petitioner cannot now be permitted to raise the same again. He would submit that the impugned penalty order has been passed strictly in accordance with the liberty granted by this Court by its order dated 31.08.2017 and that therefore this Court may not interfere in the same. He prayed for dismissal of the petition.

10. Rival contentions of the parties now fall for our consideration.

11. Since Mr. Dighe has restricted his submissions to the issue of proportionality of penalty, we proceed to examine the same. The charge levelled against the petitioner involved preparation of forged NOC which was used by his wife for the purpose of sale of the

property. The NOC was not only forged, but also was issued despite the fact that an amount of Rs.2,25,694/- was due and payable by the company of petitioner's wife when the same was issued. This charge has been proved against the petitioner and the finding of guilt is not questioned before us. We find the charge levelled against the petitioner to be extremely serious. The petitioner had indulged in the gross degree of misconduct of forging a document. He did not stop here, but he prepared a forged document for the benefit of company of his wife. Knowing that an amount of Rs.2,25,694/- was due and payable by his wife's company, he prepared a forged NOC solely for the purpose of causing pecuniary benefits to his wife and consequently to himself. We, therefore, find that the penalty of dismissal from service imposed on the petitioner for this degree of misconduct is adequate and proportionate. The penalty does not shock our conscious.

12. While determining the issue of proportionality, we need not even go into the partly proved misconduct in respect of charge no.2. Charge no.1 levelled and proved against the petitioner is of serious nature warranting penalty of dismissal from service, which is not at all disproportionate. We therefore hold that the penalty imposed on the petitioner is proportionate to the gravity of

misconduct alleged and proved against him. Therefore, reliance of Mr. Dighe on the decisions of the Apex Court in **H. L. Gulati** (*supra*), **Union of India** (*supra*) and **Ganesh Santa Ram Sirur** (*supra*) are of no avail. The gravity of misconduct is required to be judged distinctly in each case and there cannot be any straitjacket formula in that regard. After considering the conduct of the petitioner, we have no hesitation in holding that he has committed misconduct of a grave nature. Forging a document is one of the highest degrees of misconduct. Therefore, contentions of Mr. Dighe on the aspect of proportionality are rejected.

13. Coming to the Second aspect of retrospectivity of the penalty, the earlier penalty of dismissal dated 21.10.2002 was set aside by this Court by order dated 31.08.2017 and the enquiry was remanded to be conducted afresh from the stage of Rule 8 (20) of the Rules of 1979. After further enquiry, Petitioner was dismissed again on 25-06-2019 with retrospective effect from 21-10-2002. However he attained age of superannuation in the meantime on 31-08-2009. In these peculiar circumstances, the issue of permissibility to pass retrospective order of dismissal needs to be decided.

14. The Apex Court had somewhat similar situation before it

in **State Bank of Patiala v. Ram Niwas Bansal**, (2014) 12 SCC 106. The Respondent therein was removed from service on 23-04-1985. On 22-03-1998 the High Court set aside the penalty of removal but remanded the enquiry. After holding further enquiry the Appellant therein passed fresh order of removal on 22-11-2001 but retrospectively with effect from 23-04-1985. In the meantime, the Respondent therein stood retired on attaining the age of superannuation on 22-02-1992. The Apex Court dealt with the aspect of permissibility of retrospective order of removal and held as under:

*‘31. In the case at hand, in the earlier round the punishment was set aside and direction for reinstatement was passed. Thus, on the face of the said order it is absolutely inexplicable and unacceptable that the Bank in 2001 can pass an order with effect from 23-4-1985 which would amount to annulment of the judgment [Ram Niwas Bansal v. State Bank of Patiala, (1998) 4 SLR 711 : (1998) 119 PLR 768] of the earlier Full Bench. As has been held by the High Court in the impugned judgment [Ram Niwas Bansal v. State Bank of Patiala, (2002) 2 SLR 375 (P&H)] that when on the date of non-furnishing of the enquiry report the delinquent officer was admittedly not under suspension, but was in service and, therefore, he would continue in service till he is dismissed from service in accordance with law or superannuated in conformity with the Regulations. How far the said direction is justified or not or how that should be construed, we shall deal with while addressing the other points **but as far as the order of removal being made retrospectively operational, there can be no trace of doubt that it cannot be made retrospective.***

*41. In the case at hand, the disciplinary proceeding was initiated against the delinquent officer while he was in service. The first order of dismissal was passed on 23-4-1985. The said order of punishment was set aside by the High Court and the officer concerned was directed to be reinstated for the limited purpose i.e. supply of enquiry report and to proceed in the disciplinary proceeding from that stage. The said order was not interfered with by this Court. The Bank continued the proceeding. Needless to emphasise, the said continuance was in pursuance of the order of the Court. Under these circumstances, it has to be accepted that the concept of deemed continuance in service of the officer would have full play and, therefore, an order of removal could have been passed after finalisation of the departmental proceeding on 22-11-2001. **We have already held that the said order would not have been made retrospectively***

*operative, but that will not invalidate the order of dismissal but it would only have prospective effect as has been held in R. Jeevaratnam [R. Jeevaratnam v. State of Madras, AIR 1966 SC 951] .*

*45. The next issue pertains to how the period from the date of order of first removal i.e. 23-4-1985 till 25-2-1992 would be treated and to what benefits the officer concerned would be entitled to. The order of removal from service, as we have already opined, would come into effect from the date of passing of the order i.e. 22-11-2001 as it has to be prospectively operative and, therefore, as a natural corollary he remained in service from 23-4-1985 till he attained the age of superannuation i.e. 25-2-1992 or till the end of February 1992, being the last day of the month.'*

*(emphasis supplied)*

15. Thus the penalty of dismissal from service imposed on the Petitioner on 25-06-2019 will have prospective effect. The same would not operate from 21.10.2002. The Petitioner's contention in this regard is upheld.

16. We now turn to the last issue of Petitioner's entitlement to receive subsistence allowance from the date of initial dismissal to the date of attaining age of superannuation. For determining this issue, we need to refer to the provisions of Rule 4 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Sub Rule 4 of Rule 4 deals with a situation where the order of dismissal is set aside by court and enquiry is remanded. It reads thus:

*'(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of, or by, a decision of a court of law, and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegation on which the*

*penalty of dismissal, removal or compulsory retirement was originally imposed, **the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.***

(emphasis added)

17. Thus, under the provisions of sub-rule 4 of Rule 4, upon dismissal order being set aside by a Court and the disciplinary authority deciding to hold further enquiry, the employee is deemed to have been placed under suspension from the date of original order of dismissal and continues to remain under suspension till further orders. Therefore, after the dismissal order dated 21.10.2002 was set aside by this Court by its order dated 31.08.2017, the petitioner went under deemed suspension with effect from 21.10.2002 by operation of sub-rule 4 of Rule 4. He attained the age of superannuation on 30.08.2009. Thus, he remained under deemed suspension from 21.10.2002 to 31.08.2009. Therefore, the petitioner is required to be paid subsistence allowance from 21.10.2002 to 31.08.2009. Petitioner's claim in this regard also succeeds.

18. Accordingly, we proceed to pass the following order.

#### ORDER

- (i) The penalty of dismissal from service imposed on the petitioner is upheld.

- (ii) However, the penalty of dismissal from service shall be given effect from 25-06-2019.
- (iii) Petitioner shall be entitled to subsistence allowance as per rules during the period from 21.10.2002 to 30.08.2009. Respondent-Corporation shall pay the same to the Petitioner within a period of four months from today.
- (iv) The Writ Petition is partly allowed in the above terms. Rule partly made absolute. No costs.

( SANDEEP V. MARNE, J. )

( MANGESH S. PATIL, J. )