

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

13 WRIT PETITION NO. 12905 OF 2018
WITH CA/12725/2022 IN WP/12905/2018

VIJAY KUMAR PANDHARINATH BUNDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. T. K. Sant
AGP for Respondents : Mr. P. S. Patil
Advocate for Respondent No.2 : Mr. A. B. Kadethankar

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CORAM : RAVINDRA V. GHUGE AND
ARUN R. PEDNEKER, JJ.

DATED : 26 SEPTEMBER 2022

PER COURT :-

1. On 25.04.2019, this Court had passed the following order :-

“1. Mr. Suryawanshi, learned Advocate for respondent No.2, seeks time. The learned Counsel submits that he has been directed to submit reply.

2. Respondent No.2 may submit the reply.

3. Place the petition on 6th June 2019.

4. The evidence may not be proceeded till the next date.”

2. This matter was heard for quite some time on 20.09.2022 and thereafter, was adjourned to this date.

3. The learned Registrar (Legal and Research), High Court, Bombay, has entered an affidavit-in-reply dated 23.09.2022. It is specifically set out in paragraphs 14 to 19 as under :

“14. With reference Ground No. VI of the Petition, I say and submit that, in the opinion of the Disciplinary Authority and Principal District and Sessions Judge, Jalgaon, there was sufficient material to initiate a Departmental Enquiry against the Petitioner, therefore the present Departmental Enquiry was initiated.

15. With reference Ground No. VII of the Petition, I say and submit that, the said contention is a premature conclusion made by the Petitioner, hence it cannot be accepted.

16. With reference Ground No. VIII & IX of the Petition, I say and submit that, the Departmental Enquiry was initiated against the Petitioner based on versions of witnesses in the Discreet Enquiry which led the Disciplinary Authority and Principal District and Sessions Judge to come down to the conclusion that there was sufficient material and serious allegations to proceed with the Departmental Enquiry.

17. With reference Ground No.X of the Petition, I say and submit that, a procedure is given in Rule 9(2) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, as to what action is to be taken after receipt of report of the enquiry. There is no provision to give hearing to the accused at the stage of Discreet Enquiry. The Discreet Enquiry is to be conducted for the purpose of finding prima-facie substance in the allegations made and their gravity. The Petitioner would be given sufficient opportunity to defend himself in the Departmental Enquiry.

18. With reference Ground No.XI of the Petition, I say and submit that, all the relevant documents are supplied

to the Petitioner along with the charge-sheet, imputation of misconduct, etc.

19. With reference Ground No.XII of the Petition, I say and submit that, as the allegations were serious in nature and there was sufficient material from the Discreet enquiry and versions of witnesses, the Departmental Enquiry was proceeded with. I further say and submit that, the action of the answering respondent in directing toward a Departmental Enquiry against the Petitioner is to ascertain the truth and get to the bottom of the allegations made in the complaint owing to sufficient material against the Petitioner.”

4. It is, therefore, obvious that the Discreet Enquiry that was to be conducted, was an internal issue with the establishment. Since the competent authority noticed that a Departmental Enquiry is necessary to be conducted, that the petitioner has been served with a charge-sheet which contains the imputation of charges, dated 22.10.2018 served on the petitioner on 25.10.2018.

5. It is well settled that neither does a Discreet Enquiry nor a Preliminary Enquiry could be a basis of initiating any disciplinary proceeding or awarding punishment to an employee, nor can such type of enquiry substitute a full-fledged departmental enquiry, which is the requirement of law.

6. The learned Advocate representing respondent no.2 submits that the petitioner has still not tendered his reply to the charge sheet-cum-show cause notice.

7. The learned Advocate representing the petitioner submits that the reply would be filed within a reasonable time and the petitioner prays that if the D.E. is to be conducted, the same be completed within a prescribed period. The petitioner would co-operate in the D.E. All the legal rights of the petitioner be kept open.

8. In view of the above, this petition is disposed off with the following directions :-

a. The petitioner would submit his reply to the charge sheet on or before 10.10.2022.

b. The rights of the petitioner in participating in the Departmental Enquiry, including engagement of a defence representative, as may be permissible in law, would be available to him.

c. The petitioner would cooperate in the enquiry and refrain from seeking adjournment on trivial grounds.

d. We would expect the enquiry to be concluded on or before 31.01.2023.

e. The rights of the petitioner, as crystallized in **Managing Director, ECIL, Hyderabad Vs. B. Karunakar [(1993) 4 SCC 727/AIR 1994 SC 1074]** would be available to him in the event of he being aggrieved by any decision of the employer.

f. The pending civil application also stands disposed off.

[ARUN R. PEDNEKER, J.]

[RAVINDRA V. GHUGE, J.]

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