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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3499 OF 2021

Union of India and ors. .. Petitioners
vs.
Mrs. Vijaya Chawak .. Respondent

Ms. Anjali Helekar a/w Mr. A. A. Garge, for petitioners.
Mr. Rahul Walia, for respondent.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE : JUNE 29, 2022.

ORAL JUDGMENT (per Chief Justice):

1. The respondent faced disciplinary proceedings initiated by her disciplinary authority, i.e., the petitioner no. 3. By an order dated August 23, 2016, the petitioner no. 3 imposed the penalty of removal from service [with all pensionary benefits] on the respondent. The said order was carried in appeal by the respondent before the appellate authority, i.e., the Ministry of Information and Broadcasting, Government of India. The appellate authority allowed the appeal in part by an order dated April 17, 2018 upon considering the recommendation of the Union Public Service Commission (hereafter "UPSC", for short). Paragraph 5 of the appellate authority's order records the deficiencies, noted by the UPSC, from which the order of removal dated

August 23, 2016 suffered, viz.

- (i) the inquiring authority did not comply with Rule 14(18) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereafter "1965 Rules, for short);
- (ii) the respondent was not furnished the written prosecution brief submitted by the presenting officer and this amounted to violation of the directions contained in the decision of the Calcutta High Court reported in 1973(1) SLR 321 (Cal) [**Collector of Customs Vs. Mohd. Habibul**]; and
- (iii) an order of penalty of removal from service while at the same time entitling the respondent to pensionary benefits, could not have been passed.

Based on such recommendation of the UPSC, the appellate authority concluded in paragraph 6 as follows:

"6. THEREFORE, taking into consideration the above stated procedural deficiencies as well as the subsequent penalty order of the Disciplinary Authority which is also not in accordance with the CCS(CCA) Rules, it has been decided to remit the case to the Disciplinary Authority under Rule 27(2)(ii) of the CCS(CCA) Rules, 1965 with the direction to rectify the procedural deficiencies in the case and to take further action in accordance with the laid down procedures."

(emphasis ours)

2. Although the appellate authority by its order dated April 17, 2018 did not formally set aside the order of the petitioner no. 3 dated August 23, 2016, the effect of the direction contained in paragraph 6 thereof provided for the same. Once the entire matter was remitted to the disciplinary authority to rectify the procedural deficiencies in the case and to take further action in accordance with the laid down procedures, it stands to reason that the inquiry would have to be reopened and resumed from the stage of Rule 14(18) of the 1965 Rules, which requires that the inquiring authority shall generally question the charged officer on the circumstances appearing against him/her in the evidence for the purpose of enabling him/her to explain any circumstances appearing in the evidence against him/her, provided the charged officer has not examined himself/herself in defence.

3. The petitioner no. 3 did not immediately take any step for curing the deficiencies pointed out in the appellate authority's order.

4. The respondent, accordingly, instituted Original Application No. 423 of 2018 before the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short) on June 4, 2018 seeking, *inter alia*, the following relief:

"(a) This Hon'ble Tribunal will be pleased to call for the record which led to the passing of the impugned order dated 17.04.2018 (i.e. Annx.A1) and after going through its propriety,

legality and constitutional validity be pleased to order and direct the respondents to reinstate the applicant immediately with effect from 17.04.2018 with all consequential benefits of back wages, arrears of salary, pay fixation, etc with 21% interest on arrears of salary."

5. The original application was taken up for consideration by the Tribunal on March 29, 2019. Before we consider what was held by the Tribunal in its order dated March 29, 2019, we need to take notice of an order dated September 11, 2018 which was passed by the petitioner no. 3 during the pendency of the original application. The said order reads as follows:

"Reference this office order dated 23.8.2016 vide which Mrs. Vijaya Chawak was awarded Major Penalty of removal from service (with all pensionary benefits) which shall not be a disqualification from future employment under the Government. The Ministry of Information and Broadcasting vide Order dated 17.4.2018 para 5(iii) pointed out that there is no provision in the Rule 11 of CCS(CCA) Rules, 1965 for payment of full pensionary benefits in the case of award of the penalty of 'removal from service'. In compliance of Order dated 17.4.2018 of Ministry of Information and Broadcasting, the para 21 of ORDER dated 23.8.2016 is modified as given below-

'21. AND WHEREAS as per the Vigilance Manual 2013, Chapter 27, para 8, the penalty of dismissal or removal from service is mandatory in Disciplinary Inquiry involving lack of integrity or corrupt practice (as per notification dated 11 October 2000 of Department of Personnel and Training). The case against Mrs. Vijaya Chawak

falls under the category of grave misconduct involving lack of integrity. Hence, the appropriate penalty under Rule 11 of CCS(Conduct) Rules would be removal from service (without pensionary benefits) which shall not be a disqualification from future employment under the Government. Therefore, in virtue of the powers entrusted to me as the Disciplinary Authority, I impose on the charged officer, Mrs. Vijaya Chawak, the penalty of removal from service (without pensionary benefits) which shall not be a disqualification from future employment under the Government'."

6. The Tribunal noted that the order dated September 11, 2018, once again imposing the penalty of removal from service but without pensionary benefits, passed against the respondent was not under challenge. However, for the reasons assigned in the order dated March 29, 2019, the Tribunal directed as follows:

"16. In view of the aforesaid facts and law, we are of the considered opinion that the OA deserves to be partly allowed with the following directions: -

(i) The applicant is entitled to be reinstated in service w.e.f. 17.04.2018, but that would not automatically entitle the applicant for back wages, fixation of pay and arrears etc. and other service benefits and her reinstatement is solely for the procedure (sic, purpose) for completing the disciplinary proceedings in accordance with the relevant rules and instructions on the subject and also keeping in view the findings and observations of the Appellate Authority in its order dated 17.04.2018.

(ii) With regard to fixation of pay, back wages and arrears etc. the same shall be considered in accordance with the provisions of FR-54.

(iii) The respondents are directed to pass appropriate necessary orders/orders in respect of the aforesaid within a period of six weeks from the date of receipt of a certified copy of this order.

17. We have not gone into the merits of the aforesaid order dated 11.09.2018 keeping in view the fact that the same is neither challenged in the present OA nor any prayer against the same has been made in the present OA. Accordingly, the applicant shall be at liberty to challenge the same, if so advised in accordance with law."

7. It is this order of the Tribunal dated March 29, 2019 that the respondents before the Tribunal as petitioners have questioned in this writ petition dated January 20, 2020. The prayer made in this writ petition is for setting aside of the order dated March 29, 2019.

8. Ms. Helekar, learned advocate appearing for the petitioners, has taken serious exception to the impugned order by submitting that the order dated September 11, 2018 having been passed by the petitioner no.3 and the same having not been challenged before the Tribunal in duly constituted proceedings, the Tribunal erred in law in directing her reinstatement even for the limited purpose of completing the disciplinary proceedings in accordance with the directions of the appellate authority. According to her, the order dated September 11, 2018 brought about a

termination of the disciplinary proceedings and without such order being set aside, the direction for continuance/resumption of the disciplinary proceedings is absolutely illegal and without jurisdiction as well.

9. *Per contra*, Mr. Walia, learned advocate appearing for the respondent, submits that the order dated September 11, 2018 is a nullity in the eye of law. According to him, the appellate authority having remitted the matter back to the disciplinary authority for curing the deficiencies, the resultant effect of such order was the wiping out of existence of the initial order dated August 23, 2016. It was therefore not open for the petitioner no.3 to modify a non-existing order. It is also contended by Mr. Walia that Rule 14(18) of 1965 Rules was required to be complied with as well as the written prosecution brief was required to be furnished to the respondent in terms of the appellate authority's order and without taking recourse to such steps, simply modifying the final paragraph of such non-existent order by the petitioner no.3 was absolutely illegal and arbitrary. In such circumstances, and particularly having regard to the fact that the order dated September 11, 2018 was passed by the petitioner no.3 when the matter was *sub judice* before the Tribunal and without obtaining the leave of the Tribunal, the respondent was under no legal requirement to independently challenge such order which was *void ab initio*.

10. We find sufficient force in the submission of Mr. Walia.

Rule 14(18) of 1965 Rules is *pari materia* provisions in sub-rule (2) of Rule 20 of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979 as well as clause (b) of sub-rule (18) of Rule 36 of the Central Industrial Security Force Rules, 2001. Co-ordinate Benches of this Court in its decisions reported in (i) 2011 (2) Mh.L.J. 983 [**Vijay s/o Shamrao Bhale Vs. Godavari Garments Ltd., Aurangabad**] and (ii) 2021 (5) ABR 470 [**The State of Maharashtra Vs. Wasudeo Madhukarrao Pande**] and the unreported decision dated 27th June 2022 in Writ Petition No. 14464 of 2018 [**Ram Sahodar Rajwade vs. Union of India**] have held the provisions to be mandatory subject, of course, to the fact that the charged officer has not examined himself/herself in defence. Once the UPSC, upon consideration of the inquiry proceedings, formed an opinion and commented that the provisions contained in Rule 14(18) of the 1965 Rules had not been complied with by inquiring authority, it has to be inferred that the respondent had not examined herself in defence and that there was a failure on the part of the inquiring authority to question her on the circumstances as appearing in the evidence against her. There has, thus, been denial of reasonable opportunity to the respondent in compliance with the statutory mandate as well as principles of natural justice to put up effective defence. This defect, which goes to the root of the matter, was required to be cured by the petitioner no.3 by remitting the matter back to the inquiring

authority. Also, prior to passing the final order on the proceedings, the petitioner no.3 was required to furnish the written prosecution brief of the presenting officer to the respondent. Admittedly, the petitioner no.3 did absolutely nothing to cure the first two deficiencies pointed out by the UPSC, and as required by the appellate authority. Having not so cured the first two deficiencies, it appears that the petitioner no.3 proceeded to cure only the third deficiency by imposing upon the respondent the penalty of removal from service, this time without pensionary benefits. Curing of the third deficiency not having been preceded by curing of the first two deficiencies, it is the petitioner no.3 which can be seen to have violated the order of the appellate authority and a case of insubordination does appear on the face of the records. Also, Mr. Walia is right that a non-existent order could never have been modified by the petitioner no.3. Resultantly, the respondent on the one hand has been deprived of the benefits of the order of the appellate authority and on the other has been punished with the order of removal from service contrary to law as well as the order of the appellate authority. Such palpably erroneous reading of the legal provisions as well as the order of the appellate authority by the petitioner no.3 cannot be countenanced and, therefore, we do not see any reason, in view of the special facts and circumstances of this case, to accept the submission of Ms. Helekar that the order dated September 11, 2018 was required to be

challenged in an independent proceeding by the respondent. Although in a different context, the Supreme Court in its decision reported in 1993 Supp (4) SCC 595 [**S. Nagaraj v. State of Karnataka**] has reaffirmed the position in law that justice is a virtue which transcends all barriers and neither the rules of procedure nor technicalities of law can stand in its way. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. We read the decision as laying down that while the law would bend before justice in appropriate cases, the Courts may not pass any order that is prejudicial to anyone. It has, thus, to be remembered by all and sundry that the courts of law exist for rendering justice to those who stand deprived because of arbitrary and highhanded actions of public authorities; and to deny justice, based on technicalities, would defeat the very purpose for which the law courts exist.

11. In such view of the matter, we feel reluctant to accept the contention of Ms. Helekar. A formal challenge to the order dated 11th September 2018 would only prolong the litigation without in any manner affecting the order of the appellate authority which has attained finality. Also, having regard to the fact that the order of the Tribunal dated March 23, 2019 has not been challenged by the respondent, we uphold such order and to bring a logical end to the disciplinary proceedings initiated against the respondent, who is due to attain the age of superannuation on 31st

October of this year, further direct as follows:

- (i) The disciplinary authority of the respondent, i.e., the petitioner no.3 shall by issuing an appropriate order, within 7 (seven) days from date of receipt of a copy of this order, re-appoint the officer who acted as the inquiring authority earlier to resume and complete the inquiry from the stage of Rule 14(18) of the 1965 Rules;
- (ii) If the officer who acted as the inquiring authority earlier is presently not available for resuming the inquiry, the petitioner no.3 shall appoint any other officer in his place within the same period;
- (iii) Whoever the inquiring officer is, he shall resume the inquiry from the stage of Rule 14(18) of the 1965 Rules and take the inquiry to its logical conclusion in terms of the other provisions succeeding Rule 14(18);
- (iv) The inquiry report shall be submitted by the inquiring authority to the disciplinary authority within a month of resumption of inquiry;
- (v) It is made clear that the respondent shall co-operate with the inquiring authority, and shall not seek unnecessary adjournment;
- (vi) If at all the inquiry report is adverse to the interest of the respondent, the petitioner no.3 shall grant her a fortnight's time to respond to the inquiry report;
- (vii) Once the representation of the respondent to the

inquiry report is received within a fortnight, the disciplinary authority shall have a further fortnight's time to pass a final order and thereby terminate the proceedings;

(viii) Needless to observe that the petitioner no.3 shall independently exercise his mind and shall not be influenced by the order dated September 11, 2018;

(ix) The inquiry is expedited having regard to the fast approaching date of superannuation of the respondent;

(x) It is made clear that the contentions on merits of the charge against the respondent are not examined and all points are left open for the respondent to urge before the inquiring authority as well as the disciplinary authority;

(xi) It is also made clear that if the petitioner no. 3 does not re-appoint any officer as the inquiring authority for resuming the inquiry within the period indicated above, it shall be deemed that the disciplinary authority is not keen to proceed with the disciplinary proceedings and in such case, the disciplinary proceedings shall stand dropped. Similar course shall follow, if either the inquiring authority does not submit the inquiry report or the disciplinary authority does not pass the final order within the time stipulated above. However, if any prayer for adjournment is made by the respondent and such

prayer is granted, the period of adjournment shall be excluded from the time-frame fixed hereby.

12. With these directions, the writ petition stands disposed of. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)