

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5338 OF 2009

Ashok s/o Udaram Pathrabe,
Age-44 years,
R/o. 6/5 Vidarbha Housing Board Colony,
Opp. Sindhi-Hindi School,
Panchpaoli, Nagpur-440 017.

... PETITIONER

-versus-

1. The Maharashtra Remote Sensing Application Centre (MRSAC), Nagpur, a society duly, registered under Societies Registration Act, 1860, through its Director, having its registered office at Sir Vishweshwarayya National Institute of Technology (VNIT) Campus, South Ambazari Road, Nagpur- 400 011.
2. The Chairman,
Governing Body, MRSAC, Nagpur and
Chief Secretary, State of Maharashtra,
Mantralaya, Mumbai-440 032.
3. The Planning Department,
Government of Maharashtra,
Mantralaya Mumbai,
through its Principal Secretary,
Administrative Controller of MRSAC,
Nagpur.

...RESPONDENTS

Shri R.V.Shiralkar, Advocate for petitioner.
Shri A.R.Patil, Advocate for respondent nos. 1 to 3.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
ARGUMENTS WERE HEARD ON : 17th JUNE, 2022.
JUDGMENT IS PRONOUNCED ON : 30th JUNE, 2022

Judgment : (Per A. S. Chandurkar, J.)

The challenge raised in this writ petition is to various orders passed by

the respondent nos. 1 and 2 placing the petitioner under suspension, thereafter conducting a departmental enquiry and ultimately dismissing the petitioner from service.

2. The facts relevant for deciding the writ petition are that the petitioner was appointed as 'Accounts Officer' with the Maharashtra Remote Sensing Application Centre (MRSAC), Nagpur on 14.10.1994. During the course of service the petitioner was placed under suspension on 17.05.1999 pending enquiry in view of irregularities noted by the respondent nos. 1 and 2. On 01.06.1999 the Director of MRSAC issued a charge-sheet to the petitioner. After appointment of Enquiry Officer, an enquiry was held and on 26.03.2000, the Enquiry Officer submitted his report holding that out of the seven charges levelled against the petitioner, three had been duly proved. On 13.04.2000 the Director issued a show cause notice to the petitioner alongwith copy of the enquiry report calling upon the petitioner to show cause as to why he should not be dismissed from service. The petitioner replied to the same on 24.04.2000. After considering the reply filed by the petitioner, the Director, MRSAC issued an order on 08.05.2000 dismissing the petitioner from service. The Revision Application preferred by the petitioner before the Chairman was also dismissed.

3. The petitioner being aggrieved by the order of dismissal approached this Court by filing Writ Petition No.156 of 2003. This Court by its judgment dated 29.11.2006 upheld the findings recorded by the Enquiry Officer and after concluding

that the enquiry as conducted was fair and proper rejected the challenge raised to the report of the Enquiry Officer. However the challenge raised to the order of dismissal issued by the Director, MRSAC was accepted by holding that since the petitioner's appointing authority was the Executive Committee of MRSAC and not the Director, the order of dismissal that was issued by the Director on 08.05.2000 was set aside. The MRSAC was granted opportunity to take further steps in the matter. The claim for back wages was negated by this Court.

4. After the aforesaid judgment, the services of the petitioner were again placed under suspension by the Director after permitting him to join duties on his former post. The petitioner was then granted an opportunity to submit his explanation before the Executive Committee of MRSAC on the proposed punishment of dismissal. On 07.02.2007 the petitioner submitted his explanation and thereafter he was heard by the Executive Committee. The Executive Committee recommended dismissal of the petitioner from service. Those recommendations were placed before the Governing Body of the MRSAC. The Governing Body accepted the recommendations of the Executive Committee that the petitioner should be dismissed from service. It authorised the Director of MRSAC to communicate the necessary orders to the petitioner and hence on 12.03.2007 the Director, MRSAC informed the petitioner that he was dismissed from service with immediate effect. The petitioner then preferred an appeal before the appellate Authority on 10.04.2007. The appellate Authority did not entertain that appeal on the ground that the Governing Body was the highest Authority to consider the case

of the petitioner. It is thereafter that the petitioner has filed the present writ petition challenging his suspension, the conduct of enquiry alongwith enquiry report and the order of dismissal dated 12.03.2007.

5. Shri R.V.Shiralkar, learned counsel for the petitioner submitted that this Court in the earlier round of litigation had held that the Director of the MRSAC was not the petitioner's appointing authority. The Director did not have any jurisdiction to place the petitioner under suspension or thereafter on conclusion of the enquiry proceed to issue orders of dismissal. It was held by this Court that the petitioner's appointing authority was the Executive Committee since he was appointed on 14.10.1994. The Director therefore had no jurisdiction to take any action whatsoever against the petitioner. Despite the fact that this aspect was decided in the earlier round of litigation, the MRSAC committed the same error as the petitioner's services were again suspended by the Director on 02.12.2006. He submitted that the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short, the said Rules) were applicable. By referring to various Rules thereunder and especially Rule 2(a) and (c) alongwith Rules 4, 6(2), 7(2) and 8 thereof, it was submitted that the procedure contemplated therein had been violated and the disciplinary action taken against the petitioner was contrary to the aforesaid Rules. It was submitted that this Court having set aside the order of dismissal, it was necessary for the MRSAC to have conducted *de novo* disciplinary proceedings. Since the charge-sheet issued to the petitioner on 01.06.1999 was by the Director, the entire proceedings stood vitiated in view of the judgment of this

Court dated 29.11.2006. He referred to the decision in *Chairman-cum-Managing Director, Coal India Limited and others vs. Ananta Saha and others [(2011) 5 SCC 142]* in that regard. He also invited attention to the decision in *Union of India and others vs. B.V.Gopinath [(2014)1 SCC 351]* and submitted that the impugned order of dismissal was liable to be set aside. He further submitted that though the petitioner was heard by the Executive Committee of MRSAC, the order of dismissal was passed at the behest of the Governing Body of MRSAC. If the Government Body was empowered to pass the order of dismissal, that Body ought to have heard the petitioner. In that regard, the learned counsel referred to the decision in *Gullapalli Nageswara Rao and others vs. A.P.State Road Transport Corporation and another [AIR 1959 SC 308]*. It was thus submitted that the entire action initiated by the MRSAC commencing from the petitioner's suspension till the order of dismissal were *non est* and without jurisdiction.

Inviting attention to paragraph 19A of the writ petition, it was submitted that the petitioner was not gainfully employed after dismissal of his services. He was dependent on his wife for his day-to-day living. The petitioner was thus entitled to full back wages on reinstatement and in that regard he referred to the decision in *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and others, [(2013) 10 SCC 324]*. It was thus prayed that the writ petition was liable to be allowed by granting the prayers made therein.

6. Per contra, Shri A.R.Patil, learned counsel for the respondent nos. 1 and 2 supported the entire disciplinary action taken by the said respondents against the

petitioner. Inviting attention to various findings recorded by this Court in Writ Petition No. 156 of 2003, he submitted that firstly, the points decided therein could not be re-opened and secondly, the grounds that were available to the petitioner when the earlier writ petition was filed could not be now raised since failure to raise those grounds in the earlier writ petition precluded the petitioner from raising the same now. This Court had held that the enquiry conducted against the petitioner was fair and proper after giving due opportunity of hearing to him. Majority of the charges were proved and it was found that Charge No.1 was serious in nature. The order of dismissal had been set aside only on the ground that it was issued by the Director, MRSAC, who was not the petitioner's appointing authority. After the said writ petition was decided, the MRSAC proceeded to dismiss the services of the petitioner by calling upon the petitioner's explanation and placing the matter before the Executive Committee which was the petitioner's appointing authority. The recommendations of the Executive Committee were accepted by the Governing Body and it had authorised the Director, MRSAC to communicate the same to the petitioner. It therefore could not be said that the order of dismissal was issued by the Director. He referred to the various documents on record to indicate grant of opportunity to the petitioner and consideration of the matter by the Executive Committee. It was thus submitted that since the due procedure had been followed, there was no reason to interfere with the order of dismissal. The writ petition was therefore liable to be dismissed.

7. We have heard the learned counsel for the parties at length and we have given due consideration to their respective submissions. After considering the legal effect of the earlier judgment of this Court while entertaining the challenge raised to the initial order of dismissal dated 08.05.2000, we are of the view that the petitioner is not entitled for any relief in this writ petition. It is an admitted fact that after the petitioner was placed under suspension on 17.05.1999, charge-sheet dated 01.06.1999 was issued to him. This charge-sheet was issued by the Director, MRSAC. After conducting an enquiry, the Enquiry Officer submitted his report on 26.03.2000 by holding that the majority of the charges have been proved. Consequentially, the petitioner's services were dismissed in view of the order dated 08.05.2000 issued by the Director. In Writ Petition No. 156 of 2003 the order of dismissal dated 08.05.2000 was under challenge. One of the grounds raised in the said writ petition was that the departmental enquiry conducted against the petitioner was vitiated in view of the fact that the charge-sheet was issued by the Director and not by the petitioner's appointing authority. Considering that challenge, it was held by this Court that the petitioner could not seek any protection under Article 311 of the Constitution of India. The only right in such situation was that the charge-sheet ought to be issued by a superior officer. It was held in paragraph 56 of the said judgment that the Director, MRSAC was a superior officer to the petitioner and therefore the charge-sheet issued by him was legal and valid. This finding was not subjected to challenge by the petitioner. The finding recorded in paragraph 56 of the said judgment would therefore continue to bind both parties even today. This

Court thereafter considered the effect of the order of dismissal being issued by the Director. It was found that upto 14.06.1992 the Director had a power to appoint the petitioner. However, in view of Resolution dated 15.06.1992 passed by the MRSAC, that power stood abrogated and the power to punish was vested with the Executive Council/Committee or on its recommendations with the Governing Body. It was thus held that since the petitioner was appointed on 14.10.1994 his appointing authority was the Executive Committee and not the Director. It is on this ground that the order of dismissal dated 08.05.2000 came to be set aside.

8. As stated above, the order of dismissal issued by the Director dated 08.05.2000 was under challenge in Writ Petition No. 156 of 2003. In other words, all orders/acts causing prejudice to the legal rights of the petitioner on and prior to 08.05.2000 were open for challenge in the earlier writ petition. The order of suspension dated 17.05.1999, issuance of charge-sheet dated 10.06.1999, enquiry report dated 26.03.2000 and consequential order of dismissal dated 08.05.2000 could have been subjected to challenge in the earlier writ petition. It is evident from paragraphs 39 to 47 of the judgment that the petitioner had raised a challenge to the findings recorded by the Enquiry Officer. After considering the challenge to the findings recorded against each charge, it was held that the majority of the charges were proved. It was thereafter concluded that the contention raised by the petitioner on merits of proof of charges was devoid of any substance. Again this finding has attained finality and is thus binding inter parties. It would thus not be open for the petitioner in this writ petition to raise a challenge to the initial order of suspension,

issuance of charge-sheet or for that matter the report of the Enquiry Officer. The findings recorded in Writ Petition No.156 of 2003 with regard to the aforesaid would bind the parties on principles analogous to *res-judicata*.

9. Yet another aspect of the matter which cannot be lost sight of is that on principles analogous to constructive *res-judicata*, it would not be open for the petitioner to seek to assail various orders/acts that have been passed/occurred prior to 08.05.2000 even if no specific challenge to the same was raised in the Writ Petition No.156 of 2003 where such challenge was open for being raised. The petitioner now cannot be permitted to seek to urge those grounds that were available to the petitioner when the earlier writ petition was filed but the said grounds were not specifically raised therein. In other words, it is only the events that have transpired after setting aside the order of dismissal dated 08.05.2000 that can be considered in this writ petition. With this caveat in mind the challenge as raised by the petitioner would be required to be considered.

10. The record indicates that after the judgment of this Court in Writ Petition No.156 of 2003 the petitioner was again placed under suspension on 02.12.2006. His explanation was sought by the Executive Committee and the same was submitted by the petitioner on 07.02.2007. The petitioner was accordingly heard by the Executive Committee and it thereafter recommended the petitioner's dismissal from service. These recommendations were forwarded to the Governing Body which held its meeting on 06.03.2007. The Governing Body unanimously

resolved that the petitioner was found guilty of making a false claim in respect of Leave Travel Concession (LTC) for himself and his family which amounted to serious misconduct involving moral turpitude. It also noted that the charges of dereliction of duties had been proved. The said Minutes of the Governing Body were then forwarded to the Chief Secretary/Principal Secretary of the Planning Department and on 07.03.2007 the Director was informed that the Chief Secretary had approved the aforesaid Minutes. Since the Director, MRSAC was empowered and authorised to communicate the order of dismissal to the petitioner, he did so by the communication dated 12.03.2007. We have perused the Minutes of the aforesaid meeting of the Governing Body as well as the communication accepting the recommendations. We do not find any legal ground to hold that the procedure as followed by the Executive Committee and thereafter by the Governing Body was contrary to the same. There is no merit in the contention of the petitioner that he ought to have been heard by the Governing Body since the order of dismissal was passed at its behest. The petitioner was heard by the Executive Committee- the petitioner's appointing authority and it recommended the dismissal of the petitioner from service. Hence, there was no reason for the Governing Body to again hear the petitioner while considering the recommendations of the Executive Committee. No such statutory requirement has been brought to our notice by the petitioner.

11. From the aforesaid, it is clear that the defect in issuing the earlier order of dismissal on 08.05.2000 was that it had been issued by the Director who was not the petitioner's appointing authority. Now that defect has been removed and the

petitioner's services have been terminated by the Governing Body after accepting the recommendations of the Executive Committee. Undoubtedly, the Executive Committee is the petitioner's appointing authority and it had resolved to dismiss the petitioner from service. Lacuna that was present when the earlier order of dismissal was issued now stands cured. In this factual situation, the reliance placed by the learned counsel for the petitioner on the decisions in *Chairman-cum-Managing Director, Coal India Limited, D.V.Gopinath and Gullapalli Nagesvara Rao and others* (supra) is of no avail to the case of the petitioner.

12. Once it is found that the petitioner's services have been put to an end in accordance with law, there would be no occasion to consider his prayer for grant of back wages which was sought to be supported by the decision in *Deepali Gundu Surwase* (supra).

13. Hence for aforesaid reasons, we are satisfied that the services of the petitioner have been terminated in accordance with law and by following the prescribed procedure. We do not find any merit in the writ petition and it is accordingly dismissed with no order as to costs. Rule stands discharged.

(URMILA JOSHI-PHALKE, J.)

(A. S. CHANDURKAR, J.)