

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

02 WRIT PETITION NO.3015 OF 2022

**RAMESH SOPANRAO BHATANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner :Mr. S.S.Thombre
AGP for Respondents State: Mr. S. G. Karlekar

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRADE, JJ.
DATE : 26th June, 2023

ORDER:

1. On 8th June, 2023, we have passed the following order:

"1. This is one unique case wherein, as per the Petitioner, on the one hand, he was issued with a charge-sheet on 30th August, 2019 and he is superannuated on 31st August, 2019. On the other hand, merely because an FIR was filed against the Petitioner, a liability of depositing Rs.7,56,232/- was fastened on the Petitioner in the backdrop of two enquiry reports, though exonerating the Petitioner. It is, therefore, contended that without the guilt of the Petitioner having been proved, on a presupposition, the employer has directed the Petitioner to deposit Rs.7,56,232/-.

2. By the first order of this Court dated 02.03.2022, we had directed the Petitioner to

deposit an amount of Rs.3,50,000/- in this Court, which has been complied with.

3. The issue before us is that the enquiry initiated against the Petitioner by virtue of the charge sheet dated 30th August, 2019 issued one day prior to his superannuation, needs to be expeditiously completed since it is almost four years that the enquiry is pending. Moreover, no employee can be held liable for a loss caused to the employer without such loss having been proved and quantified in a departmental enquiry. If these are to be the facts in this case as contended by the Petitioner, the amount of Rs.3,50,000/- deposited in this Court may have to be returned to the Petitioner

4. The learned AGP submits that he would take detailed instructions on this count as to why the liability of Rs.7,56,232/- had been fastened upon the Petitioner.

5. At the request of the learned AGP, list this petition on 26.06.2023 **in the passing orders category."**

2. The learned AGP has drawn our attention to the affidavit-in-reply filed by Shri Sanjay Fakira Mahor, Administrative Officer in the office of the Divisional Joint Director of Agriculture, Aurangabad, dated 20.06.2023. We have perused the said affidavit with his assistance.

3. Considering the affidavit, it is obvious that the concerned authority has relied upon a Circular dated 04.01.2017 issued by the Rural Development Department with regard to irregularities or misappropriation in various projects of the Grampanchayats. Having perused the Circular, it is apparent that the same is applicable to the Sarpanch, Upsarpanch, Member of the Grampanchayat, Gramsevak/Gramvikas Officer, employees of the Grampanchayats. The Circular provides for conducting a preliminary enquiry and if, on the basis of such enquiry, any person is found to be a suspect, a criminal case is to be registered against the concerned person like, Sarpanch, Upsarpanch, Member of the Grampanchayat, Gramsevak/Gramvikas Officer, employees of the Grampanchayats. The Circular, however, further provides that if, in such preliminary enquiry, the misappropriated amount is assessed in approximation, the said amount should be recovered from the particular person, besides lodging an FIR against him.

4. We would not comment upon the first part of this Circular by which the Block Development Officer of the concerned Panchayat Samiti is permitted to conduct a preliminary enquiry and to complete the same within one month so as to draw a prima facie conclusion. We would also not comment upon the decision of the competent authority

to lodge an FIR against those who are suspected to be involved in such alleged misappropriation or irregularities. However, we find that the last portion of this Circular would not stand the test of service jurisprudence. The circular provides that after such preliminary enquiry is conducted, if the quantum of misappropriation is approximately assessed, the amount shall be recovered from those who are suspected of having committed such irregularities or misappropriation.

5. In this country, a person cannot be held guilty until the guilt is proved. Filing of an FIR against the suspect on the basis of a preliminary enquiry cannot be faulted with, since the criminal investigation machinery would take the matter to a logical end under the Code of Criminal Procedure. However, recovery of the amount suspected to have been misappropriated, without the charge being proved against an employee, is unsustainable. We, therefore, declare the said/last portion of the circular dated 04.01.2017, to be unsustainable and bad in law.

6. The Petitioner was working as a District Superintendent Agriculture Officer. He retired as Joint Director of Agriculture, Latur Division. The Circular dated 04.01.2017, would not apply to him considering his designation. Moreover, we have concluded that the said

clause of the Circular of recovering the amounts from the suspected employees, without proving the guilt, is impermissible in law. On this count, the approximated misappropriated amount of Rs.7,56,232/- cannot be recovered from the Petitioner at this stage, since the enquiry is said to be in progress for the last four years. Under the order of this Court dated 02.03.2022, the Petitioner was directed to deposit an amount of Rs.3,50,000/-. The said amount has been deposited.

7. The learned AGP submits that the enquiry is likely to be completed within a period of six months from today. The learned Advocate for the Petitioner submits that the Petitioner would prove his bonafides by tendering a bank guarantee for the amount of Rs.7,56,232/- which is allegedly a liability fastened on the Petitioner. The amount deposited in this Court may be returned to the Petitioner and regular pension may be commenced.

8. We find it appropriate to rest things as they are today before us. The amount deposited in this Court shall be invested by our registry in any nationalized bank, if not yet invested and shall remain in this Court until the enquiry is completed. The Petitioner has received his provisional pension of Rs.59,650/- plus dearness allowance, for the period September, 2019 till May, 2023 and continues to receive it.

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

- (A) The amount of Rs.3,50,000/- deposited by the Petitioner in this Court shall be invested in any nationalized bank.
- (B) The department shall complete the enquiry by 31st December, 2023. If some more time is required, the department will have to move a civil application, well in advance, in this Court for seeking extension of time, in this disposed off petition, which request shall be supported with reasons.
- (C) The Petitioner will render wholehearted cooperation in the enquiry.
- (D) If the Petitioner is exonerated in the said enquiry, he would be at liberty to seek withdrawal of the amount alongwith accrued interest, by tendering a civil application for seeking orders of this Court.
- (E) The Provident Fund accumulations, if any, and the gratuity, if withheld, shall be released within 30 days from today.
- (F) In the event, the Petitioner is held guilty and is held liable for the recovery of amount of Rs.7,56,232/- or any excess or lesser amount, the same shall be adjusted from the amount deposited by the Petitioner in this Court, taking into account the accrued interest and from the leave encashment that is said to be withheld.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)