

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

WRIT PETITION NO. 7972 OF 2022

Maroti s/o Ramlu Ullewad
Age : 58 years, Occu. : Pensioner,
R/o. Gokul Nagar, Dharmabad,
Tq. Dharmabad, Dist. Nanded. .. Petitioner

Versus

1. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
2. The Chief Officer,
Municipal Council, Dharmabad
Tq. Dharmabad, Dist. Nanded .. Respondents

Mr. Avishkar S. Shelke, Advocate for the Petitioner.
Mr. K. B. Jadhavar, AGP for Respondent No. 1.
Mr. Swapnil S. Patunkar, Advocate a/w Smt. Saie Joshi, Advocate for
Respondent No. 2.

**WITH
WRIT PETITION NO. 7971 OF 2022**

Ramesh s/o Vitthalrao Ghat
Age : 51 years, Occu. : Service as Vasuli Karkoon,
Municipal Council, Dharmabad,
Tq. Dharmabad, District nanded.
R/o. Saraswati Nagar, Dharmabad,
Tq. Dharmabad, Dist. Nanded. .. Petitioner

Versus

1. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
2. The Chief Officer,
Municipal Council, Dharmabad
Tq. Dharmabad, Dist. Nanded .. Respondents

Mr. Avishkar S. Shelke, Advocate for the Petitioner.

Mr. K. B. Jadhavar, AGP for Respondent No. 1.

Mr. Swapnil S. Patunkar, Advocate a/w Smt. Saie Joshi, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 31st July, 2023.

Date on which order pronounced : 06th October, 2023.

ORDER :-

. Heard. Taken up for final disposal by consent of the parties. Since both the petitions are filed by the persons who are aggrieved by the similar action on the similar grounds and against the same respondents, both the petitions are taken up together.

2. The petitioner in Writ Petition No. 7971/2022 was working with respondent No. 2 – Municipal Council as recovery clerk. He was assigned the duty of tax collection of Block No. 3 in the Municipal Council. The petitioner in Writ Petition No. 7972/2022 was also working as recovery clerk in the Municipal Council – respondent No. 2 and was assigned the duty of collection of tax of Block No. 2 of the Municipal Council – respondent No. 2.

3. The authorities of respondent No. 2 found that there are certain irregularities committed by the petitioners as they interpolated/fabricated the record in respect of the properties situated

in the Municipal Council limits. Therefore, the Chief Executive Officer issued notice on 08.06.2020. An enquiry started. The report was called. In the report it was found that the petitioners are involved in creating fabricated record in respect of some properties. By applying whitener in some cases the area of the property was shown to be more than the original area. After receiving that report notice came to be issued on 15.06.2020 calling for explanation about the said irregularities. The petitioners answered the notices and denied the charges stating that the entries were taken by some other employees. They have not applied whitener on the entries. It is further case that, in any case they are not responsible for any of the interpolation etc.

4. After issuing notice and calling for explanation the Chief Executive Officer thought it fit to suspend the petitioners and therefore, separate orders came to be passed on 06.07.2020 suspending the petitioners by proposing departmental enquiry. The petitioners filed appeals before the President of Municipal Council against the order of suspension, however, the same was not favourably considered. An enquiry was held. The petitioners were found to be guilty of misconduct by the committee of Assistant Town Planner, Accountant and Senior Clerk. It is held that, both the petitioners have indulged into malpractices of taking suspicious entries. If the entries were not

made by them it was their duty to point it out to the Chief Officer. Based on this, the Chief Executive Officer proposed punishment of stopping of three increments and taking undertaking that in future they will not act in such manner. As per law it was directed to place the note before the General Body Meeting by order dated 09.12.2020.

5. The proposal by Chief Officer was placed before the General Body Meeting dated 07.01.2021. In the General Body Meeting of the Municipal Council the resolution came to be passed by majority. The proposal of the Chief Officer was accepted. The petitioner in Writ Petition No. 7971/2022 filed an appeal bearing Appeal No. 25/2021 before the Divisional Commissioner, Aurangabad, Division Aurangabad. The appeal filed by the petitioner in Writ Petition No. 7972/2022 came to be registered as Appeal No. 26/2021. The Divisional Commissioner after hearing the parties and considering the material rejected the appeal by order dated 31.03.2022. The petitioners are thus before this Court.

6. Learned advocate Mr. Shelke for the petitioners vehemently argued that, both these petitioners have not committed any misconduct. An enquiry was not properly held. An enquiry ought to have been held by the Chief Executive Officer. Finding of some suspicious enquiry is not sufficient for taking any action. No conclusion

can be drawn that it is the petitioners who have taken wrong entries and fabricated the record. The entries were taken prior to 2018 i.e. prior to promotion of the petitioner in Writ Petition No. 7972/2022 to the post of recovery clerk. No specific allegations were made against the petitioners. They were wrongly suspended. The committee was not properly formed. The order is passed only by accepting the report and without applying its mind and without giving proper hearing. The General Body resolution also came to be passed without following principles of natural justice. The Commissioner failed to appreciate that there was not a proper enquiry as per Rules 8 and 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short "MCS Rules"). The main ground is that no proper reasons are assigned by the Commissioner. The evidence is not properly appreciated. No principles of natural justice are followed. The resolution passed by the General Body is against the law as the General Body resolution is passed merely by accepting the opinion/submissions of the Chief Officer. The General Body ought to have given hearing to the petitioners. Thus, he submits that the impugned order suffers from illegality.

7. Learned advocate for the petitioners relied upon the following judgments.

(i) Ram Sahodar Rajwade Vs. Director General, Central Industrial Security Force and others reported in 2023 (1) Mh.L.J. 44.

(ii) Manik Abas Jadhav Vs. Mira Bhayandar Municipal Corporation and others reported in 2019 (2) Mh.L.J. 693.

8. Learned advocate for respondent No. 2 submits that, the enquiry committee had clearly given the report that the record in respect of the property was found to be interpolated. From the report, it is seen that, the petitioners did not co-operate with the enquiry. An enquiry was held by following proper procedure. An enquiry was initiated by the Chief Executive Officer and pursuant to the order the enquiry was conducted. Notices were issued on 15.06.2020 calling for explanation. It was clearly stated as to which of the entries were found to be interpolated/fabricated wherein suspension was expressed. It was also a case of dereliction of duty as it was the duty of the petitioners to point out the said interpolation to the superior officer. Non pointing out of this interpolation shows that it is the petitioners who are responsible for the said act. The explanation was also called, however, there was no satisfactory explanation given and it is only thereafter the action was taken. In the case of petitioner in Writ Petition No. 7971/2022 total 22 entries were found to be suspicious whereas, in the case of petitioner in Writ Petition No. 7972/2022 total five (05)

entries were found to be suspicious. Leaned advocate supported the enquiry and the material found in the enquiry.

9. Learned advocate for respondent No. 2 submits that, the authorities have rightly passed the orders by considering the appeals. He submits that there is proper compliance of Section 79 (6) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act (for short “Municipal Councils Act”). He relied upon the following judgments.

(i) Punjab State Electricity Board Now Punjab State Power Corporation Ltd. Vs. Raj Kumar Goel in Civil Appeal No. 8366/2014.

(ii) State of Maharashtra, through its Secretary & ors. Vs. Ramrao Yadaorao Nandurkar reported in 2015 (2) Mh.L.J. 189.

10. Learned A.G.P supported the order.

11. In the case of Ram Sahodar Rajwade (supra), the Division Bench of this Court held that, the enquiry was not conducted in accordance with statutory mandate of clause (b) sub rule (18) of Rule 36 of the Central Industrial Security Force Rules 2001 (for short “CISF Rules”). It is held that the disciplinary proceeding must be conducted in accordance with governing rules by according reasonable opportunity

of being heard in respect of charges. In the said case, the punishment imposed was a major punishment. It was also a case under the CISF Rules wherein, the procedure is given for conducting an enquiry and for imposing major penalty.

12. In the case of **Manik Abas Jadhav** (supra), the Division Bench of this Court considered Rule 10 of the MCS Rules wherein, the punishment of withholding one increment without cumulative effect was imposed. It was held that, the allegations in the show cause notice were totally vague and the notice was without stating the reasons. Because of this it was held that, delinquent could not effectively submit reply and the same taken to be violation of principles of natural justice and of Rule 10 of the MCS Rules.

13. In the case of **Punjab State Electricity Board** (supra), the Hon'ble Apex Court held that stoppage of increment is not major penalty unless it is with cumulative effect. Mere stoppage of increment without cumulative effect is held to be minor punishment.

14. In the case of **State of Maharashtra, through its Secretary & ors.** (supra), this Court has specifically considered Rule 10 (1) (a) of the MCS Rules. It is clearly held that stoppage of increment was minor penalty under Rule 5 (i) (v). The said action was taken by calling for

explanation as to why the said punishment should not be imposed upon him. In that case also stoppage of increment was without cumulative effect. The Maharashtra Administrative Tribunal in the said case had held that conducting of an enquiry as required for major penalty in such case was necessary. The said order was set aside specifically holding that mere stoppage of increment cannot be said to be major penalty and would be minor penalty.

15. In the present case, it is found that on noticing the interpolation in the property registers and property record, enquiry committee was formed of three persons i.e. Assistant Town Planner, Accountant of the Municipal Council and one Senior Clerk. A categorical finding is recorded that the entries taken in the property register were suspicious in five (05) cases so far as petitioner in Writ Petition No. 7972/2022 is concerned and in 22 cases in respect of petitioner in Writ Petition No. 7971/2022. Therefore, the Chief Officer in view of provisions of the Municipal Councils Act has prepared proposal and placed it before the General Body Meeting. The power to suspend such officer or servant is given to the Chief Officer of the Municipal Council. Sub section 6 provides that, in case where the action is taken by the authority stating as to which authority the appeal would lie. In this case, the action was taken by the Municipal Council by passing resolution in General Body

Meeting and therefore, the appeal should lie before the Director in view of Government Resolution dated 22.07.1976. The Additional Collector is designated as Regional Director, Municipal Administration and thus, the appeal was filed before the said authority. In this case, the Additional Commissioner has considered all the aspects. The appellate authority also came to conclusion that it is the petitioners who are responsible for the suspicious entries by considering the specific cases of interpolation and has also recorded such cases. He recorded that the principles of natural justice were followed. The procedure was rightly observed. The punishment is also held to be proportionate to the act alleged.

16. This Court finds that the enquiry was conducted by appointing a committee under the orders of the Chief Officer. On receipt of the report of the enquiry committee, the Chief Officer had rightly placed his recommendations before the General Body Meeting. The General Body Meeting by discussing the proposal of the Chief Officer had passed an order. This Court does not find that there is violation of principles of natural justice or there is non observance of the provisions. Thus, there is no substance in the submission of the petitioners that there is violation of principles of natural justice or that no proper enquiry was held. This Court finds substance in submissions

of learned advocate for respondent No. 2 that the enquiry was properly conducted and the action was properly taken. No provision is shown that General Body needs to give hearing to a delinquent. It is sufficient to act upon the recommendation of the Chief Executive Officer. Thus, no fault is pointed out by the petitioners either in conduct of enquiry or in any of the procedure following thereafter.

17. The petitions are devoid of merit and the same are dismissed.

(KISHORE C. SANT, J.)

P.S.B.