

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9404 OF 2022

ASHVINI MAHAJAN DEVDE
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE
SECRETARY AND ANOTHER

...

Advocate for the Petitioner : Shri Venjane Tukaram M.
AGP for Respondent 1/State : Shri S.K. Tambe
Advocate for Respondent 2 : Shri Suhas P. Urgunde

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CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.

DATE :- 10th January, 2023

Per Court :-

1. The petitioner has put forth prayer clauses C, D, E,
F, G and H as under :-

- “C) *By issuing writ of certiorari of any other appropriate writ in the like nature, be pleased to quash and set aside the termination order dated 08.08.2022 passed by the Ld. Commissioner/Administrator, Municipal Corporation, Latur.*
- D) *By issuing writ of mandamus or any other appropriate writ, be pleased to direct the Ld. Commissioner/ Administrator, Municipal Corporation, Latur to reinstate the petitioner on the post of Municipal Secretary, with full back wages.*
- E) *Be pleased to direct the Ld. Commissioner/Administrator, Municipal Corporation, Latur to release all suspension allowance, salary of the*

- petitioner w.e.f. 24.05.2022.*
- F) Pending hearing and final disposal of the Writ Petition, be pleased to stay effect and operation of the termination order dated 08.08.2022 passed by the Ld. Commissioner/Administrator, Municipal Corporation, Latur.*
 - G) Pending hearing and final disposal of the Writ Petition, be pleased to direct the Ld. Commissioner, Municipal Corporation, Latur to reinstate the petitioner, with full back wages.*
 - H) Pending hearing and final disposal of the Writ Petition, be pleased to direct the Ld. Commissioner, Municipal Corporation, Latur to release all suspension allowance, salary of the petitioner w.e.f. 24.05.2022.”*

2. We have considered the submissions of the learned advocates for the respective sides.

3. The petitioner has raised the following grounds :-

(a) Though the charge sheet was issued to the petitioner along with the show cause notice, an enquiry was not properly conducted.

(b) Liberty to appoint a defence representative was not granted.

(c) Principles of natural justice were not duly followed.

(d) The petitioner was not granted an opportunity to oppose the charges levelled upon her.

(e) The copy of the enquiry report is not supplied to the

petitioner.

(f) As the petitioner was appointed by the General Body of the Municipal Corporation, the order of termination also has to be issued by the General Body of the Municipal Corporation and therefore, the order of punishment issued by the Commissioner is unsustainable in the light of the law laid down in *Prabhakar Shrirang Jagdale vs. Kalyan Dombivali Municipal Corporation and another, 2003 (4) Mh.L.J. 423*.

4. The learned advocate representing the respondent/ Municipal Corporation submits that the contentions of the petitioner are misplaced. There are no pleadings in the memo of the petition as regards the grounds that have been raised. Out of the five charges leveled upon the petitioner, one serious charge has been fully proved and another serious charge has been partly proved. Owing to the lapses committed by the petitioner, the election programme to the post of the Chairman of the Standing Committee was set aside by this Court vide the order dated 24.03.2022 delivered in Writ Petition No.2949/2021 along with Writ Petition No.2890/2021.

5. The learned advocate for the respondent/ Municipal

Corporation further submits that in such matters, the Municipal Corporation may not oppose the admission of the petition, but would surely oppose the grant of interim relief since the grant of interim relief to the employee, who has been terminated on account of the proved misconduct, amounts to granting a final relief at an interim stage.

6. After extensive hearing in this matter, the learned advocate for the petitioner contended that he would restrict his submissions to the proportionality of the punishment. He has canvassed that the report of the Enquiry Officer would clearly indicate that one charge has been proved against the petitioner and another charge is partly proved. According to the petitioner, both the charges are of minor nature. Three out of five charges are held to be not proved by the Municipal Corporation.

7. He further submits that the appointing authority of the petitioner is the Standing Committee. As such, considering the law laid down by this Court in *Prabhakar Shrirang Jagdale vs. Kalyan Dombivali Municipal Corporation and another, 2003 (4) Mh.L.J. 423*, it would be the Standing Committee, which would be empowered to impose the punishment upon the petitioner. The Municipal Corporation does not have any right to

award any punishment to the petitioner, much less impose the punishment of termination from service.

8. The learned advocate representing the Municipal Corporation has vehemently refuted the contentions of the petitioner. It is submitted that out of five charges leveled upon the petitioner, two charges have been proved. The first charge with regard to serving the agenda and all papers connected with the meeting, after delay of 08 days and when only three days remained for the meeting on 10.05.2022, is a serious charge. So also, the petitioner has admitted this charge and has termed it as being a minor misconduct. According to the Municipal Corporation, this is a serious misconduct since there was an uproar amongst the elected office bearers, who received the agenda paper book when the meeting was three days away.

9. The learned advocate then submits that the third charge, which is partly proved against the petitioner, pertains to the lapse and deficiency in the presentation of the election process to the post of the Chairperson of the Standing Committee. This charge is equally serious. Even this is admitted by the petitioner. Moreover, this led to the filing of the writ petitions in the High Court bearing Nos.2949/2021 and

2890/2021 and the election programme was set aside by this Court vide order dated 24.03.2022.

10. He further submits that the petitioner is a law graduate and she cannot be said to be unaware of the effects of the misconducts committed by her.

11. As the hearing in this matter progressed, the learned advocate for the petitioner tendered an affidavit on behalf of the petitioner contending that even if two charges are held to be proved against her, the punishment of termination from service leading to civil death, is shockingly disproportionate. She would agree for suffering the punishment of stoppage of one increment permanently for the first charge and stoppage of one increment for a period of two years with regard to the third charge that has been partly proved.

12. In view of the above, we have considered the short report of the Enquiry Officer dated 30.06.2022. Considering the first charge, which is held to be proved against the petitioner and which is also an admitted position by her, coupled with charge no.3, which is held to be partly proved, we find that the order of termination from service is shockingly disproportionate. There is no contention by the Municipal Corporation that the past service

record of the petitioner is highly blemished. In the absence of any such contention, it has to be accepted that the past service record is clean and unblemished.

13. It is well settled law that merely because the punishment may appear to be disproportionate, would not be a ground for the Court to cause an interference. If the quantum of punishment shocks conscience of the Court, it can be termed as being shockingly disproportionate. In such circumstances, the Court can cause an interference. (See *Damoh Panna Sagar Rural Regional Bank vs. Munna Lal Jain, 2005 (104) FLR 291, Kumaon Mandal Vikas Nigam Ltd.. vs. Girja Shankar Pant and others, 2001 (I) CLR 12 : (2001) 1 SCC 182 : AIR 2001 SC 24* and *Colour Chem Limited and others vs. A.L. Alaspurkar and others, (Supreme Court) 1998 (I) CLR 638*).

14. No doubt, the first charge of supplying the agenda paper book to the elected office bearers, belatedly and when the meeting was to be held after three days, is a serious charge. However, in our view, it would not amount to being such a serious charge so as to deserve the punishment of termination from service. So also, the third charge, which is partly proved, coupled with the first charge, would not make the misconduct of

the petitioner so serious that she would deserve the punishment of termination of service.

15. We have not gone into the other aspects of the matter since this petition is being considered on the issue of punishment being shockingly disproportionate and the petitioner having conceded as regards the first charge. We are of the view that the punishment of stoppage of one increment permanently to the extent of the first charge, would be commensurate punishment. In our view, the punishment of stoppage of one increment temporarily without cumulative effect with regard to the third charge, which is held to be partly proved, would be commensurate punishment.

16. As such, this Writ Petition is partly allowed as under:-

(a) The impugned order dated 08.08.2022 terminating the services of the petitioner is quashed and set aside.

(b) The petitioner is granted reinstatement with continuity and back wages.

(c) The petitioner would suffer the punishment of stoppage of one increment permanently and stoppage of one more increment temporarily for a period of one year without

cumulative effect. This punishment would have its effect from the date of the order of termination since the order of termination stands replaced by this order.

(d) After calculating the effect of stoppage of increment vide this punishment order, the back wages would be calculated and would be paid to the petitioner, within a period of three months from today.

(e) The period of suspension shall be treated as such and would merge in the order of punishment.

(f) The petitioner would not be entitled for salary more than the suspension allowance that was payable to her from the date of her suspension till the order of termination.

kps (SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)