

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

WRIT PETITION NO. 11313 OF 2022

Dr. Santram s/o Mitharam Rathod,
Age : 68 years, Occu. Retired,
R/o. Rathod Niwas, Adarsha Nagar,
D.P. Road, Beed, Tq. & Dist. Beed.

...Petitioner

Versus

- 1] The State of Maharashtra,
Through Principal Secretary,
Health Department,
G.T. Hospital, B Wing - 10th Floor,
Complex Building, New Mantralaya,
Mumbai.
- 2] The Secretary,
Maharashtra Public Service Commission,
Bank of India Building, Third Floor,
M.G. Road, Hutatma Chowk, Fort,
Mumbai.
- 3] The Director of Health Services,
Arogya Bhavan, 1st Floor,
St. Jorge Hospital Compound,
Near CST, Station, Mumbai.
- 4] The Deputy Director,
Health Department, Latur MIDC,
Latur Region, Dist. Latur.
- 5] The District Civil Surgeon,
District Hospital, Beed,
Tq. & Dist. Beed.

...Respondents

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Mr. V. D. Sapkal, Sr. Advocate i/b Mr. S. R. Sapkal - Advocate for the
petitioner

Mr. A. A. Jagatkar – AGP for respondent nos. 1 to 5

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**CORAM : MANGESH S. PATIL
AND
S. G. CHAPALGAONKAR, JJ.**

ARGUMENTS CONCLUDED ON : 14.06.2023
JUDGMENT PRONOUNCED ON : 05.07.2023

JUDGMENT [Per S. G. Chapalgaonkar, J.] : -

1. The petitioner approaches this Court under Article 226 of the Constitution of India challenging the order dated 17 August 2021 passed by respondent no. 2 / Additional Secretary, Public Health Department, Maharashtra as well as the order dated 04 May 2022 passed by the Maharashtra Administrative Tribunal in Original Application No. 580 of 2021.

FACTUAL MATRIX:

2. The petitioner was appointed as a Medical Officer in Public Health Department of Maharashtra on 07 June 1982. He was promoted to the post of Medical Superintendent in the month of July-2008 and he was discharging his duties as such at Beed.

3. The petitioner was arrested pursuant to registration of Crime No. 66 of 2012 with the Police Station, Beed (City) for offences punishable under Sections 302, 312, 313, 315, 316, 318, 201, 304 r/w 34 of the Indian Penal Code [in short 'IPC'] as well as for the offences

punishable under Sections 5, 6, 22 and 23 of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 [for the sake of brevity “PCPNDT Act”] and the offences punishable under Sections 3, 4 r/w Section 5 of Medical Termination of Pregnancy Act, 1971 [hereinafter referred to as ‘MTP Act’]. On 27 August 2012, the petitioner was put under suspension and on 31 August 2012, he stood retired from service on attaining the age of superannuation. On 01 October 2015, the petitioner was subjected to departmental enquiry for misconduct in terms of Rule 3 and 16 of the Maharashtra Civil Services (Conduct) Rules, 1979 r/w Rule 27(2)(b)(i) of the Maharashtra Civil Services (Pension) Rules, 1982. The gist of the charges levelled against him can be summarized as under: -

- [a] That, the petitioner while discharging his duties as Medical Superintendent (Class-I officer) at Rural Health Centre, Chinchwan, offered his professional services at private hospital as an Anesthetist and engaged himself in private practice, hence committed misconduct in terms of Rule 3 and 16 of the Maharashtra Civil Services (Conduct) Rules, 1979.
- [b] That, the petitioner while discharging his duties as Medical Superintendent (Class-I officer) at Rural Health Centre, Chinchwan, aided illegal termination of pregnancy at private hospital, which displays moral turpitude for a Government Servant and amounts to misconduct in terms of Rule 3 of the Maharashtra Civil Services (Conduct) Rules, 1979.

[c] That, the petitioner while discharging his duties as Medical Superintendent at Rural Health Centre, Chinchwan, was found to be associated in illegal termination of pregnancy along with other accused in Crime No. 66 of 2012 for offences under PCPNDT Act, MTP Act and IPC. The act of the petitioner is unbecoming of the Government Servant and misconduct in terms of Rule 3 of the Maharashtra Civil Services (Conduct) Rules, 1979.

[d] That, the petitioner while discharging his duties as Medical Superintendent at Rural Health Centre, Chinchwan, involved himself in the act of female foeticide and illegal termination of pregnancy for which he has been arrested on 28th June, 2012 and remanded to magisterial custody on 30th June 2012 for 15 days. The media reports regarding such misconduct had been widely published tarnishing image of the Government, which is the misconduct in terms of Rule 3 of the Maharashtra Civil Services (Conduct) Rules, 1979.

4. The petitioner was served with the memorandum of charges and subjected to departmental enquiry. The disciplinary authority appointed an Inquiry Officer. The statements of witnesses were recorded. The Inquiry Officer submitted his report of enquiry dated 30 January 2018 with affirmative findings of guilt against petitioner for all the charges. After receipt of the enquiry report, disciplinary authority given an opportunity to petitioner to make his representation regarding

findings recorded in the enquiry report. The disciplinary authority after considering report of Inquiry Officer and the representation made by the petitioner, passed order inflicting punishment of deduction of 25% of pension on permanent basis.

5. The petitioner approached the Maharashtra Administrative Tribunal, bench at Aurangabad, vide Original Application No. 580 of 2021 thereby assailing the order passed by the respondent no. 2 / disciplinary authority, however, the Original Application came to be rejected vide order dated 04 May 2022.

6. We have heard the learned advocate appearing for the respective parties and perused the record with their assistance.

CONTENTION OF PARTIES : -

7. Mr. V. D. Sapkal, learned Senior Advocate appearing for the petitioner would submit that in pursuance of registration of FIR the petitioner was subjected to the prosecution in Sessions Case No. 170 of 2012, which has been finally decided on 21 March 2018. The learned Sessions Court acquitted the petitioner of all the charges under the offences punishable under PCPNDT, MTP and IPC. He would submit that the departmental enquiry was based on very same material that was subjected to scrutiny before the Sessions Court. He would submit that

since the petitioner has been acquitted after full-fledged trial, he could not have been held guilty for the selfsame charges in departmental proceeding. Mr. Sapkal would further submit that the Inquiry Officer as well as Maharashtra Administrative Tribunal erroneously recorded finding that the petitioner was not allowed to undertake private practice while serving as Medical Superintendent. He would submit that the ban for private practice has been imposed on the Medical Officers vide Government Resolution issued in the month of August-2012, after date of alleged incident that took place in the month of June-2012. Therefore, the Government Resolution banning the practice cannot have retrospective application. The findings recorded by enquiry officer and endorsed by Tribunal are inconsistent with the policy of the Government as on the date of incident.

8. Shri. Sapkal, would urge that none of the charges could have been answered in the affirmative by the Inquiry Officer. He would submit that even the disciplinary authority failed to apply mind to the aforesaid facts and casually accepted report of the Inquiry Officer and inflicted the punishment. Mr. Sapkal would submit that impugned order passed by the Tribunal is also inconsistent with the facts and law.

9. Mr. A. A. Jagatkar, learned AGP would submit that the impugned order has been passed after following the due process of law.

The petitioner was served with the charge-sheet. The enquiry has been completed by following the principles of natural justice. The findings recorded by the Inquiry Officer are based on correct appreciation of the material on record. The disciplinary authority was justified in passing the impugned order since the petitioner was found to have involved in serious misconduct. Mr. Jagatkar would further urge that considering the fact that the petitioner had already superannuated lenient view has been taken and the punishment to the extent of deduction of 25% monthly pension on permanent basis, has been inflicted.

ANALYSIS : -

10. Having considered the aforesaid submissions advanced and on perusal of the record, it is evident that the petitioner was subjected to the departmental enquiry based on the imputation of charges served on him. The enquiry was conducted in accordance with the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The petitioner was given opportunity to refute charges, cross examine witnesses and record his evidence and then final order came to be passed. We do not find procedural lacuna in conduct of enquiry.

11. The enquiry is based on incident dated 02.06.2012 when the pregnancy of a lady was terminated in a private hospital where petitioner had offered his services as Anaesthesist. The documentary

evidence on record suggests that it was a case of female foeticide. After termination of pregnancy, the fetus was thrown in a river bed. The autopsy report indicates that the age of fetus was approximately 5 months. The petitioner did not dispute his presence in the hospital when the pregnancy of the lady was terminated in that hospital. Pertinently, petitioner had withdrawn his consent to work as Anaesthetist in the concerned MTP center / hospital of Dr. Shivaji Sanap. The MTP center continued to operate though the competent authority had withdrawn its permission much prior to the date of incident. In this background, the conclusion can be drawn that the pregnancy was terminated in contravention of the provisions of the MTP Act and Rules. Admittedly, petitioner did not prepare the notes of the Anaesthesia and even failed to do necessary paper work. The petitioner being a senior health officer under the State of Maharashtra, holding key post like Medical Superintendent was not expected to engage himself in the illegal termination of pregnancy that was undertaken at the private unauthorized hospital.

12. True it is that the petitioner has been acquitted in Sessions Case No. 170 of 2012, however, acquittal in criminal case itself is not sufficient to exonerate the delinquent in a disciplinary proceeding, even if charges are based on same set of facts. The parameters of appreciation of evidence in the matters before criminal court and departmental

enquiry are not equal. The degree of proof differs.

13. Even charges framed against petitioner in criminal trial are not comparable with imputation of charge in disciplinary proceeding. In this case while recording finding against first and second charge, the Inquiry Officer has reached to the conclusion that the petitioner could not have participated in the illegal termination of pregnancy at an unauthorized Centre. The petitioner was knowing that the permission of the concerned MTP Centre at private Hospital was withdrawn by Civil Surgeon / Competent Authority. Thereafter, the petitioner had withdrawn his consent to work as Anesthetist with the MTP Centre that was given by him as per MTP Act at the time of Centre registration. In spite of that the petitioner extended his services at the unauthorized Centre.

14. Besides the age of fetus was approximately 5 months as indicated in autopsy report, the petitioner cannot be oblivious that it is a case of female foeticide. The theory advanced by petitioner that he attended emergency call for cesarean as an anesthetist is nothing but a camouflage and was rightly discarded. The petitioner conveniently avoided to prepare or put on record his operation notes. Such categorical findings of the Inquiry Officer have been rightly accepted by the disciplinary authority while inflicting punishment.

15. Petitioner contends that he was entitled to have private practice as he was not receiving non-practice allowance. We have noticed that salary slip placed on record supports such contention. It appears that the complete ban on private practice by the Medical Officers working under health department of State of Maharashtra has been introduced vide Government Resolution dated 07 August 2012 i.e. subsequent to date of incident. Reliance of Tribunal on GR dated 01 April 2010 is misplaced. Under the GR, 25% of basic pay has been prescribed as non-practice allowance, which appears to be optional. Although the finding recorded by the Tribunal on this aspect appears to be erroneous, the consistent findings recorded by the Inquiry Officer and confirmed by the Tribunal on other charges is sufficient to hold that the petitioner is guilty of misconduct i.e. indecent behavior, unbecoming of government servant, tarnishing image of Government etc. hence, the punishment inflicted by the disciplinary authority cannot be faulted with.

16. It is trite that writ court would have limited jurisdiction to examine the procedural errors leading to manifest injustice or violation of principles of natural justice. However, this court would not delve into the arena of the factual matrix. The re-appreciation of evidence would not be possible in exercise of writ jurisdiction. The Supreme Court of India in the matter of Regional Manager, UCO Bank and another Versus

Krishna Kumar Bhardwaj reported in (2022) 5 SCC 695 observed regarding parameters of jurisdiction of the High Courts under judicial review after referring to the previous judgments laying down the principles of law. The paragraph no. 17 of the said judgment reads thus:

“17. The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental / appellate authorities discharged by constitutional courts under Article 226 or Article 136 of the Constitution of India is well circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority.

17. Similarly, the Supreme Court of India in the matter of Shashi Bhushan Prasad Versus Inspector General, Central Industrial Security Force and others reported in (2019) 7 SCC 797, discussed the scope of departmental inquiry vis-a-vis criminal proceedings and observed in paragraph no. 19 as under :

“19. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a court of law whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of “preponderance of probability”.

Acquittal by the court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This is what has been considered by the High Court in the impugned judgment in detail and needs no interference by this Court.”

18. Applying the aforesaid principles of law to the facts of this case, it is crystal clear that the petitioner cannot draw advantage of his acquittal in the criminal case. The findings recorded by the Inquiry Officer are supported by independent material, apart from material relied in criminal trial. The petitioner was found to have participated in illegal termination of pregnancy at the unauthorized center leading to female foeticide. Although the offences are not established against the petitioner in criminal case, charged misconduct is well established in the departmental proceeding. Pertinently, owner of the private Hospital i.e. co accused in criminal trial has been convicted for the offences under PCPNDT Act in Sessions Case No. 170 of 2012.

CONCLUSION : -

19. In that view of the matter, we do not find substance in the writ petition. Writ Petition is dismissed.

[S. G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE