IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5675 OF 2015

Shivaji Ramchandra Mhetre,
Age 62 Yrs, Occ. Auditor [Miraj],
Sangli Miraj and Kupwad Municipal
Corporation, Sangli ....Petitioner

V/S

1] Sangli Miraj Kupwad Municipal
Corporation, Tal. Miraj, Dist. Sangli,
Through Municipal Commissioner

2] The State of Maharashtra,
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai ....Respondents

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WITH
INTERIM APPLICATION NO.20478 OF 2022
IN
WRIT PETITION NO.5675 OF 2015

Shivaji Ramchandra Mhetre ....Applicant

IN THE MATTER BETWEEN :

Shivaji Ramchandra Mhetre ....Petitioner
V/S
Sangli Miraj Kupwad Municipal
Corporation & Anr. ....Respondents

...

Mr.Pramod G. Kathane a/w Mr.Samyak Bhatkar, Mr.Ruzbe Dupatewalla, Mr. Manoj Sawardekar and Mr. A.A. Kori for Petitioner/ Applicant.

Mr. Shivaji A. Misal for Respondent No.2.

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CORAM: DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.

DATE : JULY 20, 2023.

PER DHIRAJ SINGH THAKUR, J. (ORAL) :

1. Although a number of grounds have been taken in the writ petition for challenging the disciplinary proceedings initiated and pending against the petitioner, learned counsel for the petitioner states that he would only press the ground of delay in concluding the said proceedings for purposes of seeking relief.

2. It is stated that a Departmental Enquiry was initiated against the Petitioner and a charge-sheet came to be served upon the Petitioner on 6 July 2011 with regard to an alleged misconduct which took place on 2 June 2007. The allegation against the petitioner is one of dereliction of the duty inasmuch as despite the directions issued by the Commissioner for withdrawal of the deposit from Vasantdada Shetkari Sahakari Bank and for deposit of the same in a nationalised bank, the directions issued were not complied with. The allegation

further is that the Reserve Bank of India cancelled the banking licence of the said bank which thus caused a loss to the Corporation.

3. It is stated that from the date of service of the charge-sheet upon the Petitioner, no substantial proceedings have taken place till date and that the fate of the Petitioner remains uncertain resulting in non-payment of his retireral dues including gratuity, pension etc. As a necessary consequence of the aforementioned challenge, a mandamus is also sought in the present Petition directing the Respondents to finalise the pension case of the Petitioner alongwith payment of the retiral dues.

4. With a view to support and buttress the case of the Petitioner that the disciplinary proceedings cannot be permitted to go on *ad-infinitum* specially on account of unexplained delay, learned Counsel for the Petitioner placed reliance upon the judgment of the Apex Court in ***State of Andhra Pradesh vs. N. Radhakishan***[1]. It would be beneficial to reproduce what has been held by the Apex Court in paragraphs 19 and 20 which read as under:

1 (1998) 4 SCC 154

"19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty, prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.

20. In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and without particularising the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it

> choose to appoint any enquiry officer even assuming that action was validly being initiated under the 1991 Rules. There is no explanation whatsoever for delay in concluding the enquiry proceedings all these years. ... ..."

5. With a view to get some clarity on the issue as to what was the reason for delay in the finalization of the disciplinary proceedings, we directed the Respondents to file an affidavit by virtue of order dated 13 July 2023 to apprise us of the exact position as to why proceedings were not concluded till date. In this regard an affidavit has now been filed which is placed before us.

6. According to the affidavit, it transpires that one Mr. Vijay Shetty was appointed as an Enquiry Officer on 29 May 2013. Enquiry proceedings were started on 30 September 2013 and the same were adjourned to 21 October 2013. Thereafter, the affidavit reflects that the matter was adjourned yet again to 19 June 2014, 21 June 2014 and to 25 June 2014. As to what was the reason for granting adjournments and whether the said adjournments were at all attributable to the conduct of the Petitioner have not specifically been reflected in this particular paragraph. However, the affidavit further goes on to state that the Chief Auditor who was the Reporting Officer in the disciplinary proceedings addressed a communication to the

Commissioner of the Municipal Corporation with a request to appoint a Reporting Officer one Mr. Arjun Jadhav was Deputy Accountant in the said proceeding which request came to be rejected. The affidavit further states that there has not been any progress in the said disciplinary proceedings thereafter, primarily on account of the transfer of the Chief Auditor from Sangli Corporation to Shivaji University, Kolhapur. The affidavit further reads that the deponent had taken over the charge of Additional Administrative Officer in September 2015 and retained this charge till December 2018. It is stated that from 2018 to December 2022, one Mr. Anil Chavan took the charge of Additional Administrative Officer. The deponent further states that again from December 2022, he took over the charge of Additional Administrative Officer and that the factum of the pendency of the disciplinary proceedings and the status thereof were not brought to the notice of the Petitioner.

7. On a reading of the affidavit so filed it thus transpires that the Petitioner has not at all been responsible for the delay which is squarely attributable to the Respondent-Corporation and its officers. More than 12 years have since elapsed from the date of the initiation of proceedings which is still at a very nascent stage.

8. Considering the ratio of the judgment of the Apex Court in the case of ***Radhakishan*** (supra), it would be impermissible now for the Respondents to continue with the disciplinary proceedings against the Petitioner.

9. We, therefore, allow the present Petition and quash the disciplinary proceedings. The Petitioner would be paid his retiral benefits and his pension would be fixed according to his entitlement. The Petitioner would also be entitled to interest, if any, to be paid as per the statutory provisions governing his service conditions. All requisite acts be done and payment be made positively within a period of four months.

10. The Writ Petition and Interim Application are disposed of.

SANDEEP V. MARNE, J. **DHIRAJ SINGH THAKUR, J.**