

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3759 OF 2022

Shri. Anant Shankar Diwadkar

...Petitioner

Age : 69 yrs, Occ : Retired, R/o. At &
Post, Kudal, District-Sindhudurg.

V/s.

1. Zilla Parishad, Ratnagiri, Through its
Chief Executive Officer At Ratnagiri,
District-Sindhudurg.

2. Zilla Parishad, Sindhudurg, Through
its Chief Executive Officer, At Oros,
District-Sindhudurg.

3. The Divisional Commissioner, Konkan
Division, Mumbai.

...RESPONDENTS

APPEARANCES :

Mr. Suresh M. Sabrad, for the Petitioner.

Mr. Ashish U. Pawaskar, for Respondent No.1.

Mr. Rohit Sakhadeo, for Respondent No.2.

Mr. P.P. Pujari, AGP for Respondent No.3.

CORAM : SANDEEP V. MARNE, J.

Dated : 4 September 2023.

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. With the consent of the parties, taken up for final disposal.

2. Petitioner, now a septuagenarian, has been litigating for the last about 28 years about his grievance of reduction of salary as a measure of penalty. In addition to few rounds of litigation before the Industrial Court, this is the third round of litigation before this Court.

3. I have heard Mr. Sabrad, the learned counsel appearing for Petitioner, Mr. Pawaskar, the learned counsel for Respondent No. 1-Zilha Parishad, Ld. AGP for State Government and Mr. Sakhdeo for Respondent No. 2.

4. In the second round, while deciding Writ Petition No. 10534/2019, this Court has recorded full facts of the case. Rather than narrating those facts again, it would be appropriate to reproduce that Order so that the reason for this third round would also be apparent. The Order reads thus :

3. It may be stated that petitioner served as Junior Assistant in Ratnagiri Zilla Parishad since 08.02.1980. Following bifurcation of the district, he was transferred to Sindhudurg Zilla Parishad on 16.03.1991 from where he retired from service on attaining the age of superannuation on 31.03.2011.

4. Disciplinary proceeding was initiated against the petitioner by issuance of a charge memo dated 09.03.1994. Disciplinary proceeding ended with an order dated 28.03.1995 passed by respondent No 1 under Rule 4(iv) of Maharashtra Zilla Parishad District Services (Discipline & Appeal) Rules, 1964 imposing penalty of reduction in the salary of the petitioner.

5. This came to be challenged by the petitioner before the Industrial Court by contending that it was a case of unfair labour practice. The Industrial Court had passed an order on 12.01.2009 in favour of the petitioner which led respondent No.1 to approach this Court by filing Writ Petition No.308 of 2010.

6. This Court by order dated 06.07.2010 while observing that it was not a case of unfair labour practice, however, for the grounds and reasons mentioned in the order dated 06.07.2010 set aside the order of the Industrial Court and remanded the matter back to the Industrial Court to re-hear the matter on all points and decide the complaint of the petitioner afresh.

7. On remand, Industrial Court passed order on 17.03.2011 setting aside the order of punishment imposed by the disciplinary authority and remanded the matter back to the disciplinary authority to afford an opportunity of personal hearing to the petitioner and thereafter to pass an appropriate order in accordance with law.

7.1 In the meanwhile, petitioner retired from service on attaining the age of superannuation on 31.03.2011.

8. When the matter was taken up on remand by respondent No.1, petitioner remained absent.

8.1. Considering the absence of the petitioner, respondent No.1 passed order dated 14.10.2013 confirming the initial order of punishment.

8.2. Thereafter, petitioner preferred appeal before the Divisional Commissioner, Konkan Division, Divisional Commissioner i.e. respondent No.3, taking a very technical view of the matter passed

order dated 13.12.2017 rejected the appeal of the petitioner and confirmed the order dated 14.10.2013.”

5. This Court, after hearing both the sides, arrived at the conclusion that the initial penalty order dated 28 March 1995 was already set aside by the Industrial Tribunal on remand and that the said order did not continue to exist. That therefore there was no question of said penalty order being confirmed while deciding the case afresh. This Court found a fundamental error being committed by Respondent No.1 in confirming the earlier penalty order dated 28 March 1995 which no longer existed. It is principally on this count that this Court set aside the fresh penalty order and remanded the matter to Respondent No.1 for passing a fresh order in accordance with law. In this regard, the findings recorded by this Court in its order dated 16 October 2019 in paras-17 and 18 are as under :

“17. That apart, the order of penalty dated 28.03.1995 was set aside by the Industrial Court on remand by this Court. When an administrative order is set aside by a higher forum the effect of such setting aside is that such order is erased from the record and ceases its existence. An order which is not in existence cannot be confirmed. This is a fundamental error committed by respondent No.1 and the appellate authority failed to consider this aspect of the matter while dismissing the appeal of the petitioner vide order dated 13.12.2017.

18. Consequently and in the light of the above, both the orders dated 14.10.2013 and 13.12.2017 are hereby set aside and quashed.

Matter is once again remanded back to Respondent No.1 for passing a fresh order in accordance with law after giving an opportunity of personal hearing to the petitioner within a period of 3 months from the date of appearance of the petitioner before the disciplinary authority. Let the petitioner appear before the disciplinary authority within a period of two weeks from today.”

6. Consequent to the second remand ordered by this Court on 16 October 2019, Petitioner submitted representation dated 30 October 2019 dealing with charges levelled against him. Petitioner was called for hearing on 23 December 2019 and he was apparently heard in person. The first Respondent thereafter proceeded to pass order dated 29 January 2020 as under :

आदेश :-

श्री. अनंत शंकर दिवाडकर, तत्कालिन कनिष्ठ सहाय्यक, प्रा. आ. के. जैतापूर, जि. रत्नागिरी यांना महाराष्ट्र जिल्हा परिषदा जिल्हा सेवा (शिस्त व अपिल) नियम १९६४ चे भाग तीन नियम ४(४) नुसार कनिष्ठ सहाय्यक या पदाच्या वेतनाच्या मुळ वेतनावर आणणेची शिक्षा संदर्भ क्रमांक २ चे आदेशान्वये करण्यात आली होती. सदर आदेशाविरुद्ध श्री. दिवाडकर यांनी मे. औद्योगिक न्यायालय कोल्हापूर येथे दावा दाखल केला होता. सदरच्या दाव्याचा निकाल संदर्भ क्र. ३ अन्वये व सुधारीत निर्णय क्रमांक ४ अन्वये लागला असून सदरचा निर्णय हा जिल्हा परिषदेच्या विरुद्ध लागल्यामुळे सदर निर्णयाविरुद्ध म. उच्च न्यायालय, मुंबई येथे अपिल दाखल केले असता मे. उच्च न्यायालय यांनी सदरचा निकाल फेर तपासणीसाठी मे. औद्योगिक न्यायालय, कोल्हापूर यांचेकडे परत पाठविला. सदर दाव्याबाबत मे. औद्योगिक न्यायालय कोल्हापूर यांनी संदर्भ क्र. ५ अन्वये दाव्याचा निर्णय देताना अर्जदार यांना वैयक्तीक सुनावणीसाठी समक्ष बोलवून त्यांचे म्हणणे ऐकून घेवून निर्णय देणेचे निर्देश दिले. त्यानुसार दिवाडकर, सेवा निवृत्त कनिष्ठ सहाय्यक यांना संदर्भ क्रमांक ६ व ८ मधील पत्रान्वये समक्ष म्हणणे मांडणेसाठी बोलविणेत आले होते. परंतु श्री. दिवाडकर हे म्हणणे मांडणेसाठी उपस्थित राहिले नाहीत, त्यामुळे उपरोक्त क्रमांक २ चे आदेशान्वये महाराष्ट्र जिल्हा परिषदा जिल्हा सेवा (शिस्त व अपिल) नियम १९६४ चे भाग तीन नियम ४(४) नुसार कनिष्ठ सहाय्यक या पदाच्या सध्याच्या वेतनाच्या मुळ वेतनावर आणणेची केलेली शिक्षा संदर्भ क्र. ९ चे आदेशान्वये कायम करणेत येत असले बाबत अंतिम निर्णय देणेत आला होता.

तथापि संदर्भिय क्र. १० अन्वये श्री. दिवाडकर यांनी मे. मुंबई उच्च न्यायालय येथे दावा दाखल केला होता. सदर दाव्याचा निकाल देताना अर्जदार यांना वैयक्तीक सुनावणीसाठी समक्ष बोलवून त्यांचे म्हणणे ऐकून घेवून निर्णय देणेचे निर्देश दिले आहेत. त्यानुसार दिवाडकर,

सेवा निवृत्त कनिष्ठ सहाय्यक यांना सूर्य क्रमांक १२ चे पत्रान्वये सुनावणीसाठी समक्ष बोलविणेत आले होते. त्या अनुषंगाने श्री. दिवाडकर हे दिनांक २३.१२.२०१९ रोजी म्हणणे मांडणेसाठी जिल्हा परिषद रत्नागिरी येथे उपस्थित होते. श्री. दिवाडकर यांनी दिलेल्या खुलाशाबाबत कोणतेही कागदपत्र पुरावादाखल सादर केलेली नाहीत. सबब सदरचा खुलासा / म्हणणे, प्रशासनाची दिशाभूल करणारा तसेच संयुक्तीक नसल्यामुळे आमाम्य करणेत येत असून उपरोक्त क्रमांक ९ अन्वये दिनांक २८.३.१९९५ रोजीचा, कायम करणेत आलेला आदेश, या आदेशान्वये महाराष्ट्र जिल्हा परिषदा जिल्हा सेवा (शिस्त व अपिल) नियम १९६४ चे भाग तीन नियम ४(४) नुसार कनिष्ठ सहाय्यक या पदाच्या सध्याच्या वेतनाच्या मुळ वेतनावर आणणेची केलेली शिक्षा कायम करणेत येत आहे.

7. The main grouse of Petitioner, as canvassed by Mr. Sabrad, is that the Respondent No. 1 has once again 'confirmed' the non-existent order dated 28 March 1995 in breach of Order passed by this Court on 16 October 2019.

8. On the other hand. Mr. Pawaskar would support the Order passed by Respondent No. 1 stating that since the finding of guilt is not disturbed, the Disciplinary Authority has decided to confirm the earlier penalty order.

9. Perusal of the Order dated 29 January 2020 would indicate that Respondent No.1 has recorded a single line finding that the explanation offered by Petitioner was misleading and improper. By recording this finding, the Respondent No.1 once again proceeded to confirm the penalty order dated 28 March 1995. Thus, despite being admonished by this Court in the second round of litigation by order dated 16 October 2019 passed in Writ Petition No. 10534/2019, Respondent No.1 has again shown the audacity to have recourse to the similar action of confirming the

order dated 28 March 1995, which had ceased to exist. It appears that Respondent No.1 has either not bothered to consider the findings recorded by this Court in para-17 of order dated 16 October 2019 or has deliberately attempted to overreach the said finding by once again confirming non-existent order dated 28 March 1995. Such conduct on the part of Respondent No.1 does not commend this Court.

10. Apart from the error in confirming a non-existent order, I find that Respondent No.1 has not bothered to deal with defences set by Petitioner in respect of each article of charge. It appears that on 30 October 2019, Petitioner has submitted detailed explanation with regard to each article of charge and has dealt with the findings recorded by the Enquiry Officer about each charge. The impugned order dated 29 January 2020 would show that Respondent No.1 has not even bothered to read the said explanation and has proceeded to reject the same by recording a general finding that the explanation is misleading and improper. The order of Respondent No.1, apart from being an attempt to overreach Order of this Court, also suffers from the vice of non-application of mind.

11. Petitioner did prefer an Appeal before the Divisional Commissioner, who has proceeded to reject the same by order dated 31 December 2021. Perusal of the order of the Appellate Authority doesn't again make a very happy reading. No findings are recorded by the Appellate Authority except about quantum of penalty. It

appears that, rather than recording his own findings, the Appellate Authority has merely made a reference to the findings recorded by Respondent No.1 to the effect that Petitioner's explanation is misleading and improper. The solitary finding recorded by the Appellate Authority is that the penalty imposed upon the Petitioner is not severe. Except recording that finding, the Appellate Authority has not dealt with the points raised by Petitioner in his appeal. Thus the order passed by the Appellate Authority equally suffers from the vice of non-application of mind.

12. I have therefore no hesitation in holding that the orders passed by the Disciplinary Authority-Respondent No.1 on 29 January 2020 and by the Appellate Authority on 31 December 2021 are unsustainable and are liable to be set aside.

13. The next issue is the course of action to be adopted as a consequence of setting aside the orders passed by the disciplinary and appellate authorities. The disciplinary proceedings have been repeatedly remanded on several occasions in the past as is apparent from the chronological events narrated by this Court in order dated 16 October 2019. Petitioner has already retired from service on 31 March 2011 and by now, period of 12 long years has elapsed since his retirement. The misconduct for which disciplinary enquiry is initiated pertains to the year 1990. Thus it is now 33 long years since the Petitioner is alleged of indulging in misconduct. The perusal of the charges leveled against the Petitioner do not indicate

that they are of serious nature. The very fact that penalty of reduction of wages was imposed on Petitioner, would again indicate that misconduct alleged against the Petitioner is not of grave nature. Therefore, it would not be prudent to once again remand the matter to the Disciplinary or Appellate Authority for passing of a fresh order. Time has come to give a full stop to the entire proceedings. Petitioner is at an advanced age of 70 years. Sufferings undergone by him on account of pendency of disciplinary proceedings for the last about 30 long years resulting in receipt of reduced amount of salary and pension and also expenditure incurred by him in litigating various rounds before different courts has already acted as a penalty for him, even if it is to be assumed that he did commit the misconduct alleged against him.

14. Writ Petition accordingly succeeds. Orders dated 29 January 2020 and 31 December 2021 are set aside. Petitioner be paid consequential arrears of salary, pension and other pensionary benefits within a period of three months.

15. Writ Petition is accordingly **allowed**. Rule is made absolute.

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SANDEEP V. MARNE, J.