

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5631 OF 2021

Mr. Sudam Baburao Maske

....Petitioner

Versus

The Honourable Administrative Judge,
High Court Bombay, Thru Ld. Registrar
General & Ors.

....Respondents

Appearances :

Mr. Pramod G. Kathane a/w. Ms. Pooja S. Bhardwaj for Petitioner.
Mr. Rahul Nerlekar, for Respondents No.1.

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

DATE : 05 JULY 2023.

P. C.:

By this petition the Petitioner challenges order dated 2 March 2017 passed by the Appellate Authority and Administrative Judge of this Court thereby modifying the penalty of dismissal from service imposed by the Disciplinary Authority by order dated 12 October 2015 and imposing reduced penalty of compulsory retirement with two-third pension and two-third gratuity.

2. Briefly stated, facts of the case are that the Petitioner was appointed as clerk on the establishment of Metropolitan Magistrate Court, Mumbai in the year 1984. He was promoted on various posts such as Assistant Superintendent 7 May 2004, Interpreter in January 2007 and Judicial Clerk in October 2010. In the year 2013 Petitioner was posted as Judicial clerk at Metropolitan Magistrate, 30th Court, Kurla and was given charge of filing section of complaints under Section 138 of the Negotiable Instruments Act, 1881.

3. On the basis of complaints received about functioning of Metropolitan Magistrate Courts in Mumbai the then Chief Justice and Guardian Judge directed monitoring and supervision of working of staff in those courts. Accordingly, the then Deputy Registrar-Legal and Research of this court was nominated to conduct a surprise visit at Metropolitan Magistrate Court at Kurla. Accordingly, a surprise visit was conducted by him on 9th July 2014 posing to be an Advocate desirous of filing 172 Criminal Complaints. After conducting the visit, a report was submitted by the Deputy Registrar on 9 July 2014.

4. Basis the report of the Deputy Registrar, Memorandum of Charge Sheet dated 20 August 2014 was issued to Petitioner *inter alia* alleging that he demanded an amount of Rs.120/- per filing of a complaint from the Deputy Registrar who had conducted a surprise visit pretending to be an advocate. Departmental inquiry was conducted into the charges, in which the Petitioner was afforded full opportunity of defence. He participated in the inquiry and cross-examined the witnesses. The Inquiry Officer submitted a

report on 1 September 2015 holding that charges leveled against the Petitioner were proved. The report of the Inquiry Officer was supplied to the Petitioner and he submitted his written representation against the report. After considering the report of the Inquiry Officer and explanation submitted by Petitioner, Disciplinary Authority passed order dated 12 October 2015 holding the Petitioner guilty of charges leveled against him and imposed a penalty of dismissal from service.

5. Petitioner preferred an administrative appeal before the Administrative Judge against the order of the Disciplinary Authority. The Appellate Authority passed order date 2 March 2017 upholding the finding of the Disciplinary Authority with regard to the charge, but held that the penalty was disproportionate and reduced the same to that of compulsory retirement with two-third pension and gratuity. Aggrieved by the decision of the Appellate Authority, Petitioner has filed the present petition.

6. Appearing for Petitioner, Mr. Kathane the learned counsel would submit that the Appellate Authority held that the charge leveled against the Petitioner was not proved and the the Petitioner could not have been penalized in respect of charges which were not proved. That the impugned decision of the Appellate Authority has resulted in gross reduction of pension and pensionary benefits of the Petitioner. That the Petitioner has rendered unblemished services of 32 years without any stigma and therefore was entitled to be granted full pension under the provisions of Rule 100 (2) of the Maharashtra Civil Services (Pension) Rules 1981.

7. *Per contra*, Mr. Nerlekar the learned counsel appearing for High Court Administration would oppose the petition and support the order passed by the Appellate Authority. He would submit that charge leveled against Petitioner was grave and though the same is held to be proved, the Appellate Authority had taken a lenient view by converting the penalty of dismissal from service to that of compulsory retirement with two-third pension and gratuity.

8. Rival contentions of the parties now fall for our consideration.

9. It appears that several complaints were received about functioning of staff at Metropolitan Magistrate Courts in Mumbai. Accordingly, the Chief Justice and the Guardian Judge had directed the Registrar-General to conduct a special drive to supervise and monitor the working of staff by sending some officials to the MM Courts to have first hand information about working of the staff. Accordingly, Deputy Registrar (Legal and Research) of this court was deputed to visit Metropolitan Magistrate Court at Kurla. He visited the court on 9 July 2014 pretending to be an advocate desirous of filing 172 complaints under Negotiable Instruments Act. He met Petitioner, who promised him to expedite filing and issuance of process and demanded an amount of Rs.120/- per case. A visit report was submitted by the Deputy Registrar on 9 July 2014. The Memorandum of Charge Sheet dated 20 August 2014 was issued to Petitioner alleging the charge of demand of illegal gratification. Petitioner participated in the departmental inquiry and was afforded complete opportunity of defence. There is no infraction of principles of natural justice while conducting inquiry. The Inquiry Officer held the charge to be proved in his report dated 1 September 2015. The Disciplinary Authority, after serving

the report of Inquiry Officer to the Petitioner and seeking his explanation thereon, passed order dated 12 January 2015 holding Petitioner guilty of grave misconduct and imposed penalty of dismissal from service.

10. The Appellate Authority has proceeded to reduce the penalty to that of compulsory retirement with two-third pension and gratuity invoking principal of proportionality of punishment.

11. The submission of the learned counsel for Petitioner that the Appellate Authority held the charge of acceptance of illegal gratification to be disproved is completely misplaced. Perusal of the charge sheet issued to Petitioner would indicate that the charge of acceptance of illegal gratification was not leveled against him and therefore there is no question of proving the same. The charge leveled against the Petitioner pertained to demand of amount of Rs.120/- per complaint from the Deputy Registrar who are pretending to be an advocate. That element of charge is proved even before the Appellate Authority. In this regard paragraph No.19 and 20 of the order of the Appellate Authority are reproduced thus-

“19. In my view, assuming that there are some minor discrepancies, the same would not impinge upon the evidence of Shri Jamadar. As indicated herein above Shri Jamadar had no personal animosity towards the Appellant and was only acting pursuant to the directions issued to him by the learned Registrar General of this Court vide order dated 25/06/2014 issued in that regard. Hence applying the test of preponderance of probabilities, the findings recorded by the Inquiry Officer as regards the charge being proved against the Appellant cannot be faulted with.

20. Now the question arises as regards proportionality of punishment. As indicated above, the demand of illegal gratification can be said to be proved against the Appellant, however, since the demand did not translate into acceptance, the misconduct alleged against the Appellant falls short of the said misconduct of acceptance of illegal gratification. However, the fact

remains that the episode in question exemplifies the Appellant's propensity to be inclined towards demanding and accepting illegal gratification for doing favours out of turn. The said conduct shows that the Appellant is lacking in integrity and devotion to duty. Such an employee is therefore unfit to be continued in service. The continuation of such an employee would be deleterious to the functioning of a judicial establishment. In my view, therefore, in the facts of the present case, the punishment of dismissal of service is required to be set aside and substituted by the punishment of compulsory retirement under Rule 5(1)(vii) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979. The Appellant would accordingly stand compulsorily retired from 12/10/2015. The pension and gratuity payable to Appellant the Appellant would be in terms of Rule 100 of the Maharashtra Civil Services (Pension) Rules 1982. The Appellant would be entitled to two-third pension and two-third gratuity payable to him as on 12.10.2015. The order passed by the Disciplinary Authority is modified to the said extent. The Appeal is accordingly disposed of subject to the modification as above."

12. Thus the Appellate Authority has arrived at a conclusion that the charges leveled against the Petitioner are proved in the instant case. Despite the Petitioner facing grave charge of demanding illegal gratification, the Appellate Authority has taken lenient view and has reduced the penalty to that of compulsory retirement with two-third pension and gratuity. The provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 mandate that penalty of either dismissal or removal from services is required to be imposed in every case where charge of acceptance of illegal gratification is proved against a government servant. In this regard proviso to Rule 5(1) of the MCSR reads thus-

5. Penalties

(1) Without prejudice to the provisions of any law [or the time being in force, the following penalties may, for good and sufficient reasons and as hereinafter, provided, be imposed on a Government servant, namely-

Minor Penalties

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi)

Major Penalties

(vii) compulsory retirement;

(viii) removal from Service which shall not be a disqualification for future employment under Government;

(ix) dismissal from Service which shall ordinarily be a disqualification for future employment under Government:

“Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (viii) or (ix) shall be imposed;

Provided further that, in any exceptional case and for special reasons recorded in writing any other penalty may be imposed.”

13. Petitioner did not face charge of ‘acceptance’ of illegal gratification, otherwise the only penalty that could be imposed on him was dismissal or removal from service. Considering the fact that the Petitioner merely demanded illegal gratification and that demand did not translate into acceptance, the Appellate Authority took a lenient view and reduced penalty to that of compulsory retirement with two-third pension and two-third gratuity. Despite being found guilty of demanding illegal gratification from a decoy witness for filing of Criminal Complaints, Petitioner is allowed to walkway with 2/3rd Pension and gratuity.

14. It is also required to be borne in mind that the Petitioner was due for retirement in March 2017 when penalty of compulsory retirement is imposed on him. The Petitioner would thus draw retirement benefits in respect of his entire service. If he was to be granted full pension and gratuity, the same would have amounted to letting him off without any effective penalty despite grave charge of demand of illegal gratification being proved. This is the reason why Appellate Authority has rightly directed payment of only two-third pension and two-third gratuity to Petitioner while imposing the penalty of compulsory retirement. The penalty so imposed does not shock our conscious and the same is proportionate to misconduct proved.

15. Resultantly, no case is made out for our interference in the order passed by the Appellate Authority. Petition filed by the Petitioner is devoid of merits and it is dismissed without any order as to costs.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.

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