

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

WRIT PETITION NO. 12160 OF 2019

Vijay P. Kesarkar
Vs.

.. Petitioner

High Court of Judicature at Bombay
& Anr.

.. Respondents

Ms. Vaishali Y. Agane for the Petitioner.

Mr. Rahul Nerlekar for the Respondents.

**CORAM : A.S. CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ**

DATE : 28TH NOVEMBER, 2023.

P.C. :

1] Heard.

2] The challenge raised in this Writ Petition is to the order passed in departmental proceedings held against the Petitioner that resulted in imposition of penalty of removal from service which was not to be a disqualification for future employment. The order passed by the Disciplinary Authority has been upheld in the Administrative Appeal preferred by the Petitioner.

3] The Petitioner while serving as clerk on the Appellate Side of the Bombay High Court was issued charge-sheet that referred to five charges. It was stated that the Petitioner remained absent from duty without any justification and without

submitting any leave application. The absence was from 26.3.1990 intermittently and thereafter from 3.6.1991 to 17.10.2005. At the conclusion of the inquiry, Inquiry Officer held all charges to be duly proved. Considering the material available on record, the Disciplinary Authority imposed penalty of removal from service which was not to be a disqualification for future employment. The Appellate Authority considered the grounds raised by the Petitioner and by passing detailed order dated 16.4.2019 has dismissed the appeal.

4] Ms. Vaishali Agane, the learned Counsel for the Petitioner urged that there was considerable delay in initiation of inquiry proceedings inasmuch as the alleged absenteeism was from 26.3.1990 which thereafter continued till 17.10.2005. However, proceedings commenced by issuance of charge-sheet only on 29.1.2014. Since there was no justifiable reason for belated initiation of inquiry proceedings, the same were vitiated on account of delay. It was also submitted that Petitioner had sought the entire leave record of the Petitioner from the date of his initial appointment. The same was not supplied to the Petitioner by merely stating that said information was not available. Thus without there being any relevant material, the charges had been held to be proved against the Petitioner. It

was thus submitted that since the entire family of the Petitioner depended upon him, it was necessary to reconsider the matter. By setting aside the impugned orders, the Petitioner ought to be reinstated in service. It was thus prayed that the reliefs sought be granted.

5] Mr. Rahul Nerlekar, learned Counsel appearing for Respondents opposed the aforesaid submissions. According to him, the inquiry against the Petitioner was held after complying with the prescribed procedure. Full opportunity was granted to the Petitioner but he could not produce either his leave applications or medical reports to indicate the alleged ill-health. There was no grievance that the inquiry was held in breach of principles of natural justice. The Appellate Authority had considered all the grounds raised and found that no ground for interference with the order of punishment of removal from service was made out. On the aspect of delay, it was submitted that for this reason Petitioner continued in employment till conclusion of the inquiry and no prejudice had been pointed out. It was thus submitted that Writ Petition was liable to be dismissed.

6] Having heard the learned Counsel for the parties and

having perused the documents on record, we do not find any case made out to interfere in writ jurisdiction. It is not the grievance of the Petitioner that while conducting inquiry he was not given due and sufficient opportunity. It is found that despite being granted such opportunity, the Petitioner failed to place on record any material to indicate that his absence from duty was justified. Neither any leave applications nor any medical reports were placed on record. The absence for the period from 3.6.1991 to 17.10.2005 is for a period of more than 14 years which definitely caused inconvenience in working of the office. The Disciplinary Authority having considered the report of the inquiry officer imposed the penalty of removal. The entire material thereafter having been considered by the Appellate Authority, we are not inclined to undertake the exercise of re-appreciation of that material afresh in exercise of writ jurisdiction.

7] As regards the supply of leave record of the Petitioner, he had been informed under the provisions of Right to Information Act, 2005 that such record was not available. This order passed by the Public Information Officer was subjected to challenge before the Appellate Authority which dismissed the said appeal. Since Petitioner had the opportunity to place on record relevant

material during the course of inquiry which, however, was not done, we do not find that failure to supply the leave record of the Petitioner after conclusion of the enquiry would make any difference in the present context. Similarly, on the aspect of delay in initiating departmental proceedings, it has been observed by the Appellate Authority that this delay has enured to the benefit of the Petitioner. No prejudice whatsoever as caused has been pointed out by the Petitioner on account of belated initiation of the inquiry proceedings. This ground also does not warrant acceptance.

8] We therefore find that after following prescribed procedure and after complying with the principles of natural justice, the order of penalty of removal from service not amounting to disqualification for future employment has been passed. We do not find any reason to interfere in exercise of writ jurisdiction. Writ Petition is dismissed with no order as to costs.

[FIRDOSH P. POONIWALLA, J.] [A.S. CHANDURKAR, J.]