

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 931/2018

AGRICULTURE PRODUCE MARKET COMMITTEE, SAOLI, CHANDRAPUR
VS
THE HONBLE MINISTER FOR COOPERATION, MARKETING AND TEXTILE
INDUSTRIES, MUMBAI AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.S. Ghate, Advocate for the petitioner
Smt. H.N. Jaipurkar, AGP for the respondent nos. 1 and 2
Mr. R.S. Kalkar, Advocate for respondent no. 3

CORAM : A. S. KILOR, J.

DATED : 21/06/2023

Heard.

2. On an oral request of the learned Counsel for the petitioner, leave to amend is granted. The amendment be carried out forthwith.

3. The present writ petition arises out of order passed by the Hon'ble Minister dated 29.09.2017 setting aside the order passed by the Divisional Joint Registrar, Co-operative Societies, Nagpur dated 10.10.2016 dismissing the appeal and confirming the order dated 02.06.2012 terminating the respondent no. 3 from the service of the petitioner - Agriculture Produce Market Committee, Chandrapur (APMC).

4. Mr. Ghate, the learned Counsel for the petitioner has pointed out that on the allegations of misappropriation the FIR was filed. The trial was conducted and in the same the respondent no. 3 was acquitted.

5. However, in a Departmental Enquiry conducted against the respondent no. 3 for the various charges, which were seven in numbers, he was found guilty. Accordingly, he was terminated from the service vide order dated 02.06.2012.

6. Feeling aggrieved by the same, the respondent no. 3 preferred an appeal before the Divisional Joint Registrar, Co-operative Societies, Nagpur vide Appeal No. 27/2012, which came to be dismissed vide order dated 10.10.2016. Then, it was carried in an appeal before the Hon'ble Minister. The Hon'ble Minister allowed the appeal and set aside the order dated 10.10.2016 passed by the Divisional Joint Registrar as well as the order of termination dated 02.06.2012.

7. It is submitted that the only reason given by the Hon'ble Minister while setting aside the order of termination was that the respondent no. 3 has paid the amount recoverable from him and he was acquitted for the offence of misappropriation. It is, therefore, submitted that the order of the Hon'ble Minister is illegal and unsustainable in the eyes of law.

8. On the other hand, the learned Counsel for the respondent no. 3 submits that the petitioner has suffered two punishments one by way of suspension and another by way of termination. He, therefore, submits that the Hon'ble Minister has rightly set aside the order of termination.

9. From the record, it is evident that the Departmental Enquiry was conducted against the respondent no. 3 on seven charges and in the report of the Enquiry Committee the charges were held to be proved against the respondent no. 3 and accordingly, the action of termination was taken by the petitioner.

10. Nothing has been pointed out that the charges on which the Departmental Enquiry was conducted were also the part of the criminal trial on which the trial was conducted and after the trial the respondent no. 3 was found not guilty. Thus, if the Departmental Enquiry was on some other charges than the allegations on which the trial was conducted, the acquittal is not sufficient to hold the termination is bad.

11. Further more, the only fact that the respondent no. 3 has deposited the amount of misappropriation is not sufficient for setting aside the order of termination once the charges are proved against the respondent no. 3 in the Departmental Enquiry. It is apparent on the face of the order of the Hon'ble Minister that the above facts have not

been considered by the Hon'ble Minister while passing the impugned order.

12. In the circumstances, I am of the opinion that the matter needs to be remanded back to the Hon'ble Minister for fresh consideration. Accordingly, I pass the following order:

(I) The writ petition is partly allowed.

(II) The order dated 29.09.2017 passed by the Hon'ble Minister – respondent no. 1 is hereby quashed and set aside.

(III) The appeal is remanded back to the Hon'ble Minister for deciding the same afresh after hearing both the parties.

13. Accordingly, the writ petition is disposed of with no order as to costs.

JUDGE