



THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 9298 OF 2022

Chandrashekhar s/o Sampat Deshmukh,
Age: 41 years, Occu: Nil,
R/o. Navale wadi, Tq. Akole,
Dist. Ahmednagar.

... Petitioner

VERSUS

1. The Executive Engineer & Competent Officer,
Sangamner Division,
Maharashtra State Electricity Distribution
Company Ltd., Office at: 15, Shinde Building,
Vidya Nagar, Sangamner, Tq. Sangamner,
Dist. Ahmednagar-422605.
2. The Superintending Engineer & First Appellate Officer,
Maharashtra State Electricity Distribution Company Ltd.,
Office at: New Administrative Building, Vidyut Bhavan,
Station Road, Ahmednagar-414001.
3. The Chief Engineer & Second Appellate Officer,
Maharashtra State Electricity Distribution Company Ltd.,
Office at : Vidyut Bhavan, Nashik Road-422101.
4. The Manager & Enquiry Officer (Nashik Circle),
Maharashtra State Electricity Distribution Company Ltd.,
Office at : Vidyut Bhavan, Nashik Road-422101.

... Respondents

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Mr. Shivaji T. Shelke, Advocate for Petitioner.

Mr. A. S. Bajaj, Advocate for Respondents.

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CORAM : KISHORE C. SANT, J.

RESERVED ON : 10th September, 2024.

PRONOUNCED ON : 13th November, 2024.

PER COURT :

. By way of this petition, the petitioner has approached this Court challenging the judgment and order passed by respondent No.1 and confirmed by respondent Nos.2 and 3, appellate authorities, and to set aside the punishment of removal from service by quashing the order dated 27th August, 2020 passed by respondent No.1.

2 The petitioner was working as a Senior Technician in the Maharashtra State Electricity Distribution Company Limited ("MSEDCL" for short). He was found absent from duty without permission from 1st April, 2019 till 26th August, 2019 and therefore, the action was taken after holding the enquiry. Respondent No.1 is the authority, who has passed the order for misconduct. Respondent No.2 is the appellate authority of respondent No.1 and respondent No.3 is the second appellate authority under the Rules namely the Maharashtra State Electricity Distribution Company Limited, Employees Service Rules, 2005. These rules provide for the manner of conducting enquiry for acts of misconduct and provide for punishment for such misconducts.

3 The competent authority thought it fit to hold an enquiry into the alleged charges. The Departmental Enquiry Committee after holding enquiry, held that five charges were proved out of six charges. In the enquiry, the competent authority produced relevant record in respect of the petitioner's services, including the correspondence from time to time between the petitioner and authorities. It was also shown that on earlier such occasions, considering humanitarian ground, the petitioner was allowed to join the services without taking a drastic action of removal. It is submitted before the enquiry committee that since 2016, the petitioner is found in habit of remaining absent without permission and thus, he is involved in the act of habitual misconduct. The defence of the petitioner before the committee was that he was suffering from kidney-stone and it is for that reason he could not remain present till 30th June, 2019 under medical advice. After the compulsory rest, he wanted to join the duties, however, he was not allowed to join the duties. He also refused to give statement of defence.

4 Respondent No.1 found that the petitioner has committed the following misconducts:-

- (i) Leaving headquarter without permission;
- (ii) Indiscipline;
- (iii) Disobedience;
- (iv) Breach of regulations, orders or instructions; and
- (v) Negligence.

5 The enquiry committee on the basis of evidence and the material placed before it, came to the conclusion as stated above and submitted the same to the authorities. On receipt of the enquiry committee's report, the competent authority called for explanation from the petitioner. The petitioner submitted explanation on 28th February, 2020. The competent authority considered the explanation and found the same to be not satisfactory. On that the competent authority issued show-cause-notice dated 16th July, 2020 calling for explanation as to why the petitioner be not removed from the services of the MSEDCL within 7 days. The petitioner submitted representation dated 24th July, 2020. He did not raise any objection to the enquiry report. He submitted that because of some domestic problems, he was remaining absent from the duties. Now he has recovered from all the problems. He assured that henceforth he

would not indulge into such practices and prayed that lenient view be taken and minimum punishment be imposed upon him.

6 The competent authority on considering this, passed an order imposing punishment of removal from services from MSEDCL by communication dated 27th August, 2020. The said order came to be challenged by way of appeal by the petitioner before respondent No.2. On considering the grounds in the appeal, respondent No.2 was satisfied that no case is made out to allow the appeal and confirmed the order and dismissed the appeal. The said was communicated by communication dated 21st June, 2021.

7 The petitioner being aggrieved by the decision of respondent No.2, filed second appeal before respondent No.3. Respondent No.3 also considered the case of the petitioner and confirmed the order passed by the competent authority and the first appellate authority by dismissing the appeal.

8 The petitioner, therefore, has now come to this Court mainly on the ground that the punishment inflicted upon him is disproportionate. Though other grounds are also taken, this Court finds that since the petitioner has not raised such grounds and has not

challenged the enquiry report, this Court need not go into those grounds. It is clear from representation dated 24th July, 2020 that the petitioner had only prayed that lenient view be taken. Though it is submitted by Mr. Shelke, learned counsel for the petitioner that the enquiry was not properly conducted, the defence was not properly considered etc., in view of the above position, this Court is not inclined to entertain the petition on such grounds.

9 While considering as to whether the punishment is disproportionate, this Court had requested Mr. Bajaj, learned counsel for the respondents to take instructions from the respondents as to whether any lenient view is possible. He fairly requested for some time to take instructions. However, on taking instructions he submitted that the authorities are unable to take lenient view, in view of the past conduct of the petitioner, which is also reflected in the enquiry report. This Court, therefore, only has to consider the aspect as to whether the punishment can be said to be disproportionate.

10 Mr. Shelke, learned counsel for the petitioner produced on record relevant extract of the Rules providing punishments for minor lapses and acts of misconduct. In view of the above, this Court finds

that now there is no dispute about conclusion drawn by the enquiry committee and the authorities. It is not mere case of absenteeism, but is also of disobedience, leaving the headquarter without permission etc.

11 Considering the above, Mr. Bajaj, learned counsel for the respondents firstly relied upon the judgment of the Honourable Apex Court in the case of ***L&T Komatsu Ltd. Vs. N. Udayakumar***, reported in, ***(2008) 1 Supreme Court Cases 224***. It is held in the said case that habitual absenteeism is gross violation of the discipline. The Honourable Apex Court in the said case set aside the judgments passed by the Labour Court and the High Court, wherein direction was given to reinstate an employee by sitting aside the order of termination. The second judgment is in the case of ***Nicholas Piramal India Limited Vs. Harisingh***, reported in, ***(2015) 8 Supreme Court Cases 272***. In this case, the Honourable Apex Court considered the proportionality/quantum of punishment. In the said case, considering the past record of the employee, it was held that the punishment of dismissal was proportionate punishment.

12 In view of the above judgments, it is clear that habitual

absenteeism is gross misconduct and in such case punishment of dismissal cannot be said to be a disproportionate punishment. In the present case, from the enquiry report it does appear that the petitioner was habitually remaining absent since 2016. No satisfactory material is produced even before this Court to show that the enquiry was not properly held. From representation dated 24th July, 2020, itself it is clear that the petitioner never challenged the finding of the enquiry committee seriously. On the contrary, he accepted the charges and specifically prayed for taking a lenient view.

13 In view of the above discussion, this Court finds in the present facts and circumstances, the punishment cannot be said to be disproportionate punishment. No case is made out calling for interference at the hands of this Court. There is no merit in the petition. The petition therefore, deserves to be dismissed and the same is hereby dismissed. No order as to costs.

[KISHORE C. SANT, J]