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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12302 OF 2023

Digambar s/o Ramdas Thakre,
Age-53 years, Occu-NIL,
R/oMaharshi Walmik Nagar,
Pakki Chal, Jalgaon, Tq. And Dist. Jalgaon -- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Urban Development,
Mantralay, Mumbai

2. The Jalgaon Municipal Corporation,
Jalgaon, Dist.Jalgaon
Through it's Commissioner,

3. The Commissioner,
Jalgaon Municipal Corporation,
Jalgaon, Dist.Jalgaon -- RESPONDENTS

Mr.G.V.Mohekar, Advocate for the Petitioner.
Mr.M.M.Nerlikar, AGP for Respondent No.1.
Mr.L.V.Sangit, Advocate for Respondent Nos. 2 and 3.

(CORAM : RAVINDRA V. GHUGE AND
Y.G.KHOBRADE, JJ.)

DATE : JUNE 20, 2024

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by

the consent of the parties.

2. The Petitioner has put forth prayer clause B, C, D and E, as under :-

“B. By issuing Writ of Certiorari or any other appropriate writ in the like nature, the impugned order issued by Res.No.3 dated 05.06.2017 terminating the service of the petitioner in the service of Res.No.2 may kindly be quash and set aside.

C. By issuing Writ of Certiorari or any other appropriate writ in the like nature, forwarding proposal dated 03.10.2017 by Res.No.3 towards Res.No.1 and consequently the issuance of impugned G.R. dated 03.08.2019 issued by the Res.No.1, thereby suspending the resolution no.674 passed by Res.No.2 -standing Committee dated 07.07.2017, may kindly be quash and set aside.

D. By issuing Writ of Certiorari or any other appropriate writ in the like nature the impugned order dated 13.09.2019 passed by the Res.No.3 finally confirming suspension of the resolution no.674 passed by Respondent No.2 Standing Committee dtd. 07.07.2017 as per G.R. dated 03.08.2019 issued by Res.No.1, may kindly be quash and set aside.

E. By issuing Writ of mandamus or any other appropriate writ in the like nature, the Res.No.3, may kindly be directed to re-instate the petitioner in service of Res.No.2, along with all consequential benefits i.e. continuity in service and along with entire back wages.”

3. A significant issue raised in this Petition is as regards, whether a permanent employee can be dismissed from service by the employer on the basis of issuance of a show cause notice, without conducting a departmental enquiry, by presuming that the charges are proved against the employee.

4. The Petitioner submits as under :-

[a] He has been appointed as a Peon on 13.08.1992 and was promoted to the post of a Clerk, vide order dated 13.05.1997, by the then Jalgaon Municipal Council.

[b] After he was transferred to the Election Department on 18.07.2013, where he worked till 31.08.2013, he fell seriously ill and was hospitalized. He could not attend duties from 04.09.2013 till 03.07.2014 (about 10 months).

[c] He was issued with a show cause notice dated 21.03.2014, for unauthorized absence. He replied to the show cause notice on 07.07.2014, supporting his explanation with medical certificates.

[d] After he had started working, he received a final show cause notice dated 19.12.2014, for the reason that he was unauthorizedly absent and, that, an offence was registered against him in a police

station.

[e] The criminal case was disposed off by order dated 05.02.2019, passed by the learned J.M.F.C., Jalgaon as the complainant withdrew the complaint and the offence was compounded and the parties settled the matter amongst themselves.

[f] By order dated 05.06.2017, the Jalgaon Municipal Council dismissed the service of the Petitioner.

[g] The Petitioner preferred an appeal on 20.06.2017, contending that the principles of natural justice were not followed before dismissing him.

[h] The Standing Committee, while dealing with the appeal of the Petitioner, passed a Resolution No.674 on 07.07.2017, setting aside the order of dismissal.

[i] The Commissioner of the Corporation suspended the resolution and forwarded the proposal to the Government on 03.10.2017, for setting aside the Resolution No.674.

[j] Respondent No.1 / State approved the suspension of the Resolution, on 13.06.2018.

[k] The Commissioner of the Corporation passed an order on 13.09.2019, setting aside the said Resolution, making the dismissal

effective.

[1] This Petition is filed on 14.09.2023, for challenging (a) the order dated 05.06.2017, thereby dismissing the Petitioner, (b) the order dated 03.08.2017, by which the Commissioner suspended the Resolution and forwarded the proposal to the State and (c) the order dated 13.09.2019, by which the Resolution was quashed by the Commissioner.

5. The learned Advocate for the Corporation has opposed this Petition on the following grounds :-

[a] The Petition has been filed after 6 years of the termination of his service. So also, there is a delay of 4 years in challenging the final orders dated 03.08.2019 and 13.09.2019. This Petition should be dismissed for delay and laches.

[b] The learned Advocate for the Corporation has referred to the affidavit in reply, dated 23.04.2024 and submits that the Petitioner should approach the Labour Court for the cause of action of dismissal. There is a statutory remedy available.

[c] U/s 56(2)(h) of the Maharashtra Municipal Corporations Act, the Corporation only has to issue a notice of hearing to the Petitioner and

thereafter proceed to dismiss him, if the reply is not satisfactory.

[d] As the Petitioner was unauthorizedly absent for about 10 months, the order of dismissal from service should not be interfered with.

[e] In the alternative, he submits that if this Court is inclined to entertain this Petition and grant re-instatement in service, no back wages should be granted since the Petitioner has belatedly approached this Court and cannot take advantage of his own wrong by causing delay in the matter and at the same time, gain full back wages. So also, liberty be given to the Corporation to conduct a departmental enquiry against the Petitioner, which right cannot be taken away.

DELAY AND LACHES

6. We also find from the record and it is undisputed that, after the Corporation passed the final order on 13.09.2019, setting aside Resolution No.674 dated 07.07.2017, by which the Petitioner was granted re-instatement in service by the Standing Committee, the Petitioner has approached this Court on 14.09.2023, which is exactly after a period of 4 years. A Writ Petition is to be filed within a reasonable period. What should be the exact period is not laid down by way of a strait jacket formula and this depends on the facts of each case. In a given case, approaching a High Court in a Writ Petition after

one year or 18 months could also be acceptable.

7. In a case like the one before us, the Petitioner was made aware by the order dated 13.09.2019, that the Resolution reinstating him in service has been quashed and set aside. He could have immediately approached this Court within a reasonable period. Had he approached the Labour Court under the MRTU and PULP Act, 1971 under Item 1 of Schedule IV, the limitation period would have been 90 days and the delay could be condoned under Rule 61 of the Labour Court (Practice and Procedure) Rules, 1975. Under the Industrial Disputes Act, the Petitioner could have raised an industrial dispute u/s 2A, as no limitation is prescribed to raise an industrial dispute, though there are catena of judgments holding that an industrial dispute should be raised within a reasonable period.

8. Nevertheless, the delay caused by the Petitioner in approaching this Court is not so large as to appear to us to be inordinate and / or deliberate. As is held by the Hon'ble Supreme Court in **Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107]**, that no litigant benefits by

causing a delay and the delay of each day is not to be accounted for. In **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [2013(12) SCC 649]**, the Hon'ble Supreme Court has culled out certain principles for dealing with matters of long delay.

9. In the above circumstances, a view refusing to condone the delay would amount to a pedantic approach. As we do not find that the delay is too large, a pragmatic approach needs to be adopted. In addition, we find that there are no ulterior or oblique motives or laches, attributable to the conduct of the Petitioner in causing the delay.

10. In view of the above conclusions, we are entertaining this Petition.

Whether a departmental enquiry is necessary to impose the punishment prescribed u/s 56(2)(h) of the Maharashtra Municipal Corporations Act ? (hereinafter referred to as MMC Act)

11. Section 56 of the MMC Act reads as under :-

“56. Imposition of penalties on municipal officers and servants. - (1) A

competent authority may subject to the provisions of this Act impose any of the penalties specified in sub-section (2) on a municipal officer or servant if such authority is satisfied that such officer or servant is guilty of a breach of departmental rules or discipline or of carelessness, neglect of duty or other misconduct or is incompetent:

Provided that -(a) no municipal officer or servant [holding the post equivalent to or higher in rank than the post of the Assistant Commissioner] shall be dismissed by the Commissioner without the previous approval of the [Corporation]

(b) any officer or servant, whether appointed by the Corporation or any other competent, authority, except Transport Manager being a Government Officer on deputation, may be suspended by the Commissioner pending an order of the Corporation and when the officer so suspended is the Transport Manager or an officer appointed under section 45, such suspension with reasons therefor, shall, forthwith be reported by the, Commissioner to the Corporation, and such suspension shall come to an end if not confirmed by the Corporation within a period of six months from the date of such suspension:Provided that, such suspension of an officer or servant pending inquiry into the allegation against such officer or servant shall not be deemed to be a penalty.][Explanation. - For the purposes of this section and section 53, a post shall be deemed to be of a rank equivalent to another post if the minimum and maximum pay in the pay scale of both the posts are same. A post shall be deemed to be of a rank higher than another post, if the minimum pay in pay scale of former is at least equivalent to the latter, but the maximum is higher

than the latter. In respect of the pay structure, a post shall be deemed to be of a rank equivalent to, or higher than another post, if the grade pay in pay structure of the former is equivalent to or higher than the latter, respectively.]

(c) the Commissioner may impose any of the penalties as specified in clause (a), (b), [] (d), [(e) and (f)] of sub-section (2) on any officer appointed by the Corporation [other than the Transport Manager if he is a Government Officer on deputation]*

(d) the Municipal Chief Auditor and the Municipal Secretary may impose any of the penalties specified in clauses (a), (b), (c), (d) and (e) of sub-section (2) on any officer or servant immediately subordinate to them [* * *] subject to a right of appeal to the Standing Committee and the Standing Committee may impose any other penalty on any such officer or servant and may also impose, any penalty on any other officer or servant immediately subordinate to the Municipal Chief Auditor or the Municipal Secretary;*

(2) The penalties which may be imposed under this section are the following, namely :-

(a) censure;

(b) withholding of increments or promotion, including stoppage at an efficiency bar;

(c) reduction to a lower post or time-scale, or to a lower stage in a time-scale;

(d) fine;

(e) recovery from salary of the whole or part of any pecuniary loss

caused to the Corporation;

(f) suspension;

(g) removal from municipal service which does not disqualify from future employment;

(h) dismissal from municipal service which ordinarily disqualifies from future employment.

(3) No officer or servant shall be reduced to a lower post or removed or dismissed from service under this section unless he has been given a reasonable opportunity of showing cause against such reduction, removal or dismissal:

Provided that, this sub-section shall not apply -

(a) where a person is reduced, removed or dismissed on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the competent authority is satisfied that, for reasons to be recorded in writing by such authority, it is not reasonably practicable to give that person an opportunity of showing cause.

(4) Subject to the provisions of clause (d) of the proviso to sub-section (1), any municipal officer or servant who is reduced, removed or dismissed by any authority other than the Corporation may, within one month of the communication to him of the order of reduction, removal or dismissal, appeal to the authority immediately superior to the authority which imposed the penalty and the appellate authority may, after obtaining the remarks of the authority which imposed the penalty, either confirm the order passed or substitute for it such orders as it considers just, including an order for the imposition of some lesser

penalty, and effect shall forthwith be given to any order passed by the appellate authority which shall be conclusive :

Provided that, for the purposes of this sub-section, the Standing Committee shall be deemed to be the authority immediately superior to the Commissioner and the Corporation shall be deemed to be the authority immediately superior to the Standing Committee.

(5) With reference to officers and servants appointed under Chapter XX, the provisions of this section shall apply as if for the word "Commissioner" the words "Transport Manager" and for the words "Standing Committee" the words "Transport Committee" had been substituted.

Explanation. - (1) For the purposes of this section a competent authority is the authority which under the provisions of this Act is competent to make the appointment to the post held by the particular municipal officer or servant.

(6) The monthly salary which would ordinarily be admissible to a municipal officer or servant on the date immediately preceding the date of the order imposing a penalty shall be deemed to be his salary for the purposes of the proviso to sub-section (1).

Leave of absence, acting appointments, etc.”

12. For the purpose of deciding the issue raised in this matter, we need to refer to Section 56(2)(h) which prescribes the punishment of dismissal from municipal service, which ordinarily disqualifies a

person from future employment. Sub Section 3 mandates that a reasonable opportunity of showing cause against reduction, removal or dismissal, should be extended to the delinquent.

13. It is undisputed that the Corporation did not issue a charge sheet cum show cause notice to the Petitioner as is mandated by law. This has been discussed by the Hon'ble Supreme Court in **Union of India and Others Vs. Mohd. Ramzan Khan [1991(I) CLR 61 (SC)]** and **Managing Director, ECIL Vs. B.Karunakar [1993(4) SCC 727]**. Under the 15th amendment to the Constitution, a delinquent had a right to show cause on the charges levelled upon him. If the charges are grave and serious warranting the punishment of dismissal, a departmental enquiry has to be conducted. By the 42nd amendment to Article 311, the first right to show cause on the charges levelled upon a delinquent has been maintained. The second right as existing earlier, to show cause on the quantum of punishment, was substituted with the right to show cause on the Enquiry Officer's Report, which is commonly understood as a Second Show Cause notice, which has to be accompanied with the copy of the Enquiry Officer's Report. That has been well scripted by the Hon'ble Supreme Court in **Managing Director,**

ECIL Vs. B.Karunakar (supra), concluding that not only under Article 311, but even in private employment, an employee is entitled to a copy of the Enquiry Officer's Report in order to show cause as to why he disagrees with the findings of the Enquiry Officer.

14. It is the contention of the Corporation that even if the Petitioner is a permanent employee, he can be dismissed by levelling charges, without conducting an enquiry. This Court (Coram : Ravindra V. Ghuge and S.J.Mehare, JJ.) has delivered an order on 31.08.2021 in **WP No.1310/2020 filed by Rameshwar Benising Gulhot @ Thakur Vs. The State of Maharashtra and Others**, concluding therein that a permanent employee cannot be dismissed from service on charges of mis-conduct, without conducting a departmental enquiry. A similar view is taken by this Court (Coram : Ravindra V. Ghuge and S.J.Mehare, JJ.) in **Jagatrao Vs. The State of Maharashtra and Others [MANU/MH/4322/2021]**.

15. The learned Full Bench of this Court [Coram : Mohit S. Shah, CJ, Abhay S. Oka (as His Lordship then was) and Smt. R.S.Dalvi, JJ.), have held in **Ambarish Rangshahi Patnigere and Others Vs. State of**

Maharashtra and Others [2012(1) ALL MR 497 (F.B.), that a suspension of an employee u/s 56(1)(b) and 56(2)(f) r/w Sections 45, 53(2) and 53(3), could not be continued beyond 6 months without a ratification of the Corporation, even if the suspension is pending a departmental enquiry. Section 56, which prescribes imposition of penalties on Municipal Officers and servants, was referred to and it was held in paragraph No.13 as under :-

“Thus, even in case of officers, who are appointed in exercise of powers under sub-section (2) or sub-section (3) of section 53 of the said Act of 1949, the Commissioner has powers to suspend an officer or servant pending an order of the Corporation. Clause (b) of sub-section (1) of section 56 mandates that if an officer appointed under section 45 is to be suspended, the Commissioner must record reasons. The Commissioner is under an obligation to report the suspension to the Corporation and if the suspension is not confirmed by the Corporation within a period of six months from the date of such suspension, the same automatically comes to an end. Thus, if the order of suspension passed under Clause (b) of sub-section (1) of section 56 of the said Act of 1949 is not confirmed by the Corporation within a period of six months from the date of the suspension, the said order automatically stands revoked. The proviso makes it very clear that when the order of suspension is passed under Clause (b) pending an enquiry into the allegations against the officer or servant, the same shall not be deemed to be a penalty. Thus, the proviso itself makes it clear that power to

suspend under Clause (b) can be exercised by the Commissioner pending a disciplinary enquiry. Sub-section (2) of section 56 of the said Act of 1949 provides for various categories of penalties, which can be imposed on the officer or servant after holding an enquiry. Under Clause (f) of sub-section (2), one of the penalties is of suspension. Clause (b) of sub-section (1) of section 56 read with the proviso makes it very clear that the power of suspension under the said Clause can be exercised by the Commissioner pending a disciplinary enquiry and the suspension made under the said provision will not be by way of penalty. Only an order of suspension under Clause (f) of subsection (2) of section 56 is by way of penalty.”

16. Further, the learned Full Bench has recorded in paragraph No.18 as under :-

“18. Emergent situations arise requiring immediate suspension of an officer or servant of the Municipal Corporation. The meeting of the General Body of the Municipal Corporation may not be held frequently. To meet such exigencies, a power has been conferred on the Commissioner to issue the order of suspension pending an order of the Corporation which requires ratification by the Corporation within a period of six months from the date of the suspension. It is true that some of the observations made in paragraph No. 11 of the Division Bench in the case of Sudhir R. Bhatankar (supra) may indicate that the powers under Clause (b) of sub-section (1) of section 56 of the said Act of 1949 cannot be exercised by the Commissioner pending a disciplinary enquiry. In our view, the said observations are contrary to

the plain language of Clause (b). We reiterate that the powers under Clause (b) of sub-section (1) of section 56 of the said Act of 1949 can be exercised by the Commissioner pending a disciplinary enquiry or when a disciplinary enquiry is proposed to be held against a Municipal Officer or servant. If power of suspension is exercised by the Commissioner under Clause (b) of sub-section (1) of section 56 of the said Act of 1949 pending a disciplinary inquiry or in contemplation of the disciplinary inquiry, the order of the suspension shall stand revoked if it is not ratified by the General Body within a period of six months.”

17. As such, it is an anathema to dismiss a permanent employee by alleging commission of misconducts, without conducting a departmental enquiry. It has been held in Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre [AIR 1999 SC 983] and Radhey Shyam Gupta Vs.U.P.State Agro Industries Corporation Ltd., and another [(1999)2 SCC 21], that even a probationer cannot be disengaged without a departmental enquiry, if charges are levelled upon him by the Employer. This Court has permitted suspension to be continued if a departmental enquiry is proposed or has commenced.

18. Hence, conducting a departmental enquiry is not alien to Section 56 of the MMC Act. So also, it is trite law that a permanent

employee cannot be dismissed from service after the employer has levelled allegations of mis-conduct. In the event, the unauthorized absence of an employee is so long that the presumption of abandonment of service, is a foregone conclusion or could be the only plausible conclusion, the Employer could take a different view. Such is not the case before us. As the Petitioner was absent, a notice was issued to him after about 6 months to which, he has tendered his reply along with the medical reports of a private hospital, which were verified by the Additional District Civil Surgeon.

19. It is further undisputed that neither a specific charge sheet was issued to the Petitioner, intimating him as regards the alleged acts of misdemeanor amounting to mis-conducts under the service rules, nor was any enquiry conducted after he replied to a show cause notice. He tendered his explanation in writing to the show cause notice and the order of dismissal was passed.

20. The Petitioner has approached the Standing committee as is prescribed under the MMC Act. The Standing Committee passed the Resolution bearing No.674, dated 07.07.2017, concluding that the

Petitioner's order of dismissal cannot be sustained. As the Commissioner suspended the said resolution, a proposal was forwarded to Respondent No.1, for confirmation. After the confirmation was received, the Deputy Commissioner of the Corporation, passed a short order concluding that the said Resolution was quashed (अतिमतः विखंडित).

21. The above act of the Commissioner has been assailed by the Petitioner on the ground that the Petitioner could not have interfered with Resolution No.674 of the Standing Committee, in the absence of a departmental enquiry. Dismissing an employee amounts to civil death and, therefore, the order of dismissal cannot be passed casually or lightly. If a departmental enquiry has been conducted, a commensurate punishment for purported unauthorized absenteeism could have been awarded to the Petitioner, if the Petitioner had failed in explaining the reasons of his absence. In these circumstances, we have no hesitation in concluding that the Commissioner could not have interfered with, with Resolution No.674, when he ought to have noticed that an extreme punishment of dismissal from service was awarded to the Petitioner without conducting a departmental enquiry.

22. In view of the above, this **Writ Petition is partly allowed** in terms of prayer clauses B, C and D.

BACK WAGES

23. The learned Advocate for the Petitioner has vehemently demanded full back wages. However, considering the delay caused by the Petitioner in approaching this Court, it is submitted on instructions that the Petitioner would be agreeable to receive 50% back wages from the date of his dismissal till the date of his re-instatement. The learned Advocate for the Corporation has vehemently contended that not only for the period of delay, but, the Petitioner does not deserve back wages for any duration by applying the principle of “No Work – No wages”.

24. We are partly in agreement with the contentions of the learned Advocate for the Corporation that the Petitioner cannot be granted back wages for the period of delay, lest, it would amount to letting the petitioner take advantage of his own wrong. We partly disagree with the contentions of the Corporation since the principle of “No Work – No wages” would not apply in a case when an employee has made himself available for work and the employer has refused to

offer him any work. The period from the dismissal of the present Petitioner, was thus, involuntary unemployment. Since he is not at fault and as the action of the Corporation in dismissing his service without an enquiry, is legally defective and unsustainable, there is no reason why this Court should not grant full back wages to the Petitioner, excluding the period of delay. His purported unauthorized absence will be subject to conducting an enquiry, which liberty is available with the Corporation, as a right.

25. In view of the above, the Petitioner is granted re-instatement with continuity in service from the date of his dismissal, which is 05.06.2017. He would be entitled for back wages from the said date, 05.06.2017 till the order of the Corporation, dated 13.09.2019 and from the date of the filing of this Petition, which is 14.09.2023, till the Petitioner is re-instated in service, pursuant to this Judgment. We disentitle the Petitioner for back wages for the period 13.09.2019 till 13.09.2023, on account of delay.

26. Before parting with this judgment, we deem it appropriate to record that as the termination order of the Petitioner is being set

aside on account of no enquiry having been conducted, we cannot fetter the rights of the employer in initiating an enquiry as is prescribed in Law. We would, therefore, leave it to the Corporation to initiate such enquiry by issuance of a proper charge-sheet, as is permissible in law, provided such action is initiated within three months from today.

27. Rule is made partly absolute in the above terms.

(Y.G.KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)