

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

WRIT PETITION NO. 15643 OF 2022

Sunil Sitaram Dalvi

... Petitioner

V/s.

Municipal Corporation of Greater Mumbai ... Respondent

Mr. Manish Gala i/b. Law Square for the Petitioner

Ms. Dhruti Kapadia with R.Y. Sirsikar for the Respondent – BMC

Mr. Khandu Waman Shelke, Administrative Officer (Licence Deptt.)

***CORAM : NITIN JAMDAR &
M.M. SATHAYE, JJ.***

DATE : 06 MARCH 2024

P.C. :-

The Petitioner is working with the Respondent – Municipal Corporation of Greater Mumbai as Senior Inspector (Advertisement). The Petitioner has challenged the order dated 29 September 2014 passed by the Deputy Commissioner of Enquiries imposing punishment of stoppage of one increment; and the orders passed in the Appeal and Review.

2. The Deputy Chief Officer (Enquiries) along with other Officers issued a notice to the Petitioner who held the position of

Licencing Inspector (Advertisement)-H/West Ward, from the year 2008-2013 to remain present for enquiry. The notice accompanied a charge-sheet dated 19 August 2013. The charge against the Petitioner was that the Petitioner in spite of collecting revenue for the benefit of the Respondent – Corporation instead of depositing fee cheques in the treasury returned the fee cheques to one M/s. Fizza Publicity. Accordingly, it was alleged that the Petitioner has contravened Rule 3(1) of the Brihanmumbai Service (Conduct) Rules, 1999. According to the Respondent, the actions of the Petitioner was a substantial monetary loss to the Municipal Corporation to the tune of Rs.31,47,190/-. An Enquiry Officer was appointed. The enquiry was conducted by following the principles of natural justice where the witnesses were examined and an opportunity for cross-examination was given. The Petitioner also submitted his response.

3. The Enquiry Officer submitted report on 26 June 2014 giving findings in favour of the Petitioner. The enquiry report was placed before the Disciplinary Authority. The Disciplinary Authority disagreed with the enquiry report and after considering the response of the Petitioner both oral and written, held that the misconduct of the Petitioner was proved. The Disciplinary Authority held that the action had to be taken by the Petitioner on the hoarding as per the Rules which was not taken and therefore

monetary loss was caused to the Corporation and accordingly, the penalty of stoppage of one increment for a period of one year was imposed. The Petitioner filed an Appeal. In the Appeal the Petitioner was heard and the Appellate Authority dismissed the Appeal holding that no interference was warranted. Thereafter, a review was filed, which was rejected. Then this Petition is filed challenging the stoppage of one increment.

4. The learned Counsel for the Petitioner sought to argue various grounds as to how the charges were not proved. We have to be mindful of the scope of writ jurisdiction to enter into the factual aspects. In the enquiry the Petitioner was given full opportunity. The witnesses were examined. The Petitioner was permitted to cross-examine the witnesses and this material and the replies of the Petitioner were considered by the Disciplinary Authority. The learned Counsel for the Petitioner then submitted that when the entire findings of the Enquiry Officer are in favour of the Petitioner, the Disciplinary Authority could not have imposed the punishment. There is a specific finding recorded that it was incumbent upon the Petitioner that before 10th of every month the monthly advertisement fees had to be collected from the advertiser and deposited. Therefore, the Disciplinary Authority found upon the material before it that the cheque had to be deposited in the treasury and should not have been returned to the advertiser. The said

advertiser M/s. Fizza Publicity thereafter for three years used the hoarding without payment of any advertisement charges and yet no demand was issued. Therefore, the advertiser was not permitted to deposit the amount of Rs.37,00,000/- which caused loss to the Municipal Corporation. This is a finding recorded by the Disciplinary Authority upon considering the material on record. Thereafter, the Petitioner filed an Appeal in which all the material was considered and the same was dismissed.

5. Apart from reiterating the grounds urged in the enquiry, no fundamental error or breach of principles of natural justice has been pointed out by the Petitioner. The penalty is a minor penalty of stoppage of one increment for one year. Merely because on considering the material on record, different view can be taken is not the ground to interfere in the finding reached in the enquiry. Considering the totality of the circumstances, we find no case is made out to interfere in the writ jurisdiction.

6. The Writ Petition is accordingly rejected.

M.M. SATHAYE, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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