



Judgment

wp969.23

1

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

WRIT PETITION No. 969 OF 2023.

Pralhad haribhau Sahare,
Aged 61 years, Occupation -
Retired, Resident of 38,
Sadguru Nagar, Arni Road,
Yavatmal.

... **PETITIONER.**

VERSUS

Chief Executive Officer,
Zilla Parishad, Yavatmal.

... **RESPONDENT.**

Mr. R.V. Shiralkar, Advocate for the Petitioner.
Mr. R.D. Bhuibar, Advocate for the Respondent.

CORAM : VINAY JOSHI AND
M.W.CHANDWANI, JJ.

DATE : AUGUST 02, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule made returnable forthwith and by
consent of the learned Counsel for the parties, the matter is taken up
for final disposal.

Rgd.

2. The petitioner was appointed as a Junior Engineer on the establishment of the respondent Zilla Parishad, Yavatmal w.e.f. 13.01.1986. The petitioner has been designated as a Sectional Engineer in the year 1991, and he stood retired on completion of his age of superannuation on 28.02.2019.

3. During service, the petitioner was served with a charge sheet on 11.03.2003 for the charge of temporary misappropriation, dereliction of duties, in exercise of powers under Rule 6[2] of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 (1964 Rules). The matter seems to have remained in the cold storage. After retirement, the petitioner made a representation on 31.01.2023, for releasing his retiral benefits. Since no action was taken on the said representation, the petitioner has filed this petition.

4. During pendency of this petition, the respondent vide communication dated 09.01.2024 has informed the petitioner that new enquiry officer and presenting officer has been appointed in the

pending enquiry. The principal ground of challenge to the departmental enquiry is inordinate and unexplained delay.

5. In response, the respondent has filed reply-affidavit explaining the delay by using the term “circumstances beyond control” and “practical difficulties”. We are unable to understand what would be the meaning of these two general terms in absence of specific difficulty faced by the department. In substance the entire affidavit is totally silent to explain the delay or any sort of justification about pendency of enquiry for long two decades. Rather, it reveals that till the retirement of the employee, the department slept over the matter and no sooner the employee has made a demand for retiral benefits, the department woke up by substituting the enquiry officer. The question is whether such action of the department would be justifiable and can it be permitted after so many years.

6. The learned Counsel for the petitioner has relied on the decision of Supreme Court in case of **Prem Nath Bali .vrs. Reg. High Court of Delhi and another** – [2015] 16 SCC 415, wherein the

Supreme Court has ruled that the departmental enquiry shall be completed within 6 months and in case of exceptional difficulties, it should be within 1 year. On the similar line, reliance is placed on the decision of Supreme Court in case of **State of A.P. .vrs. N. Radhakishan – [1988] 4 SCC 154**, and the decision of this Court in case of **Dhanraj Namdeorao Madavi .vrs. The Chief Executive Officer and others – Writ Petition No.1557/2021 decided on 04.12.2021**. There can be no dispute regarding the said proposition. Reasonably the enquiry has to be completed within one year, but, if there happens to be any justifiable explanation, it has to be tested on case to case basis.

7. It reveals that charge sheet was issued to the petitioner in the year 2003, whilst the enquiry officer was appointed for the first time in the year 2012, and then the said enquiry officer was substituted by another in the year 2024. It appears that the department chose to step in after one decade. In absence of a reasonable explanation the stale action in any case cannot be permitted to be prevailed, which would be an uncalled harassment to Rgd.

the employee. It is apparent that till the date of superannuation of the employee i.e. for near about 17 years, no action was taken and after lapse of total 20 years, still the department is struggling with making appointment of enquiry officer. In short, the action of the department needs to be totally deprecated, and thus a fit case is made out to quash the stale enquiry. In view of above, we proceed to pass the following order.

ORDER

- [i] Writ Petition is allowed.
- [ii] We hereby quash and set aside the departmental enquiry relating to charge sheet dated 11.03.2003, issued against the petitioner.
- [iii] Needless to mention that the respondent shall release retiral benefits as per eligibility and entitlement of the petitioner, as per Rules. The said exercise shall be completed within a period of three months from the date of receipt of this order.
- [iv] The Authority may take decision of payment of interest as per the prevailing Rules and Regulations.
- [v] Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

JUDGE