



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

WRIT PETITION NO. 6543 OF 2022

Naresh s/o Babulal Murti,
Aged about 56 years, Occ. - Teacher,
R/o 14/26, MHADA Colony, Ramnagar,
Akola, Tq. & Dist. Akola.

.... PETITIONER

VERSUS

1) State of Maharashtra,
through the Principal Secretary,
Department of Urban Development,
Mantralaya, Mumbai – 32.

2) Municipal Commissioner,
Akola Municipal Corporation,
Akola, Tahsil and District Akola.

.... RESPONDENTS

Mr. A.S. Mardikar, Senior Counsel assisted by Mr. V.R. Deshpande,
Counsel for the petitioner,
Mr. N.S. Rao, A.G.P. for respondent No.1,
Mr. A.A. De, Counsel for respondent No.2.

CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.

DATED : 11th MARCH, 2024

ORAL JUDGMENT : (Per : Abhay J. Mantri, J.)

Heard. **Rule.** Rule is made returnable forthwith by consent
of the parties.

2. By this petition, the petitioner has challenged the order dated 21-09-2022 passed by respondent No.2-Municipal Commissioner, Akola, whereby dismissed the petitioner from the service as a Teacher and In-charge Headmaster, Marathi School No.1, Education Department, Municipal Corporation, Akola.

3. Brief facts of the case are as under :

(a) The petitioner was working as a Teacher and In-charge Headmaster in Marathi School No.1, Education Department, Municipal Corporation, Akola. He has served for more than thirty years. He was superannuated on 30-08-2023.

(b) On 27-06-2020 Crime No.94/2020 came to be registered at Ramdaspath Police Station, Akola against the petitioner for the offences punishable under Sections 420, 406, 409, 418, 467 and 120-B, 201, 506 r/w Section 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act. Pursuant to the registration of the crime, he was arrested on 28-06-2020 and was released on bail vide order dated 27-10-2021.

(c) After the arrest of the petitioner, on 01-07-2020 he was suspended and departmental enquiry was initiated against him on

31-03-2022 under the Maharashtra Municipal Corporation Act and Rules. The enquiry was conducted and the enquiry officer submitted the report dated 24-08-2022 to respondent No.2 authority for taking further action in the disciplinary proceedings. In the said report, it was observed that the petitioner was found guilty of the charges levelled against him. The said report was served on the petitioner vide communication dated 26-08-2022 and called upon him to submit his explanation thereof. On 20-09-2022 the petitioner submitted his written explanation contending that the charges levelled against him have not been proved and he may be exonerated from the enquiry. It is further contended that without giving him an opportunity of hearing respondent No.2 has passed the impugned order dated 21-09-2022 thereby dismissing him from the service.

4. The main thrust of the argument of Mr. Anil S. Mardikar, learned Senior Counsel for the petitioner is that neither the enquiry report nor calling the explanation on the said enquiry report has proposed the penalty to be imposed. Thus, he submitted that, without giving him any opportunity to be heard, the impugned order was passed. Hence, he has urged that it be set aside. In support of his contentions, he has relied upon the judgment in the case of *M/s Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut and others*,

(1984) 1 SCC 1. He has pointed out paragraphs 16 and 18 of the said judgment and submitted that the offence registered against him has no concern with the employment and same cannot be termed as misconduct as it cannot connect with the employment and no impact was caused on the employment to term the same as misconduct and, therefore, he urged for setting aside the impugned order.

5. Per contra, Mr. A.A. De, learned Counsel for respondent No.2 and Mr. N.S. Rao, learned Assistant Government Pleader for respondent No.1 have strenuously argued that a serious crime has been registered against the petitioner and pursuant to the same, he was in judicial custody for more than one year and, therefore, passing of the suspension order is proper. They further argued that after holding a due enquiry and giving a proper opportunity to the petitioner, the impugned order was passed. Therefore, the said order is just, legal, and proper and no interference is required in it. Hence, they urged for the dismissal of the petition.

6. We have appreciated the submissions of the learned counsel for the respective parties.

7. It is pertinent to note that on 06-03-2024 this Court passed the following order :

“Mr. Mardikar learned Senior Counsel has invited our attention to the notice issued to the petitioner on August 26, 2022, enclosing the enquiry report. According to him, neither the inquiry report proposes punishment nor subsequent to the explanation tendered by the petitioner to the notice issued by the respondent Municipal Commissioner, Akola Municipal Corporation. As such, according to him, the aforesaid conduct on the part of the respondent violates the right of hearing to the petitioner.

2. In the aforesaid backdrop, when confronted by the counsel for the respondent-Municipal Commissioner, he seeks time till Monday to make a statement about whether the respondent intends to withdraw the order impugned and take fresh proceedings from the stage of issuance of notice to the petitioner along with enquiry report.

3. Stand over to 11th March 2024.”

8. By the aforesaid order, this Court has given an opportunity to respondent No.2 whether it intends to withdraw the order impugned and initiate the proceedings afresh from the stage of issuance of notice to the petitioner along with the enquiry report. However, the learned Counsel for the respondent did not reply to the query.

9. We have gone through the communication dated 26-08-2022 along with the enquiry report dated 24-08-2022. On perusal of the said letter and report, it seems that respondent No.2 vide letter/communication dated 26-08-2022 has sent the copy of the enquiry report to the petitioner and asked him to submit his statement on the said report within a period of fifteen days. It is pertinent to note that by the said letter, respondent No.2, did not inform the petitioner about the

proposed penalties to be imposed pursuant to the enquiry report. Likewise, in the report, the Enquiry Officer has observed that the charges levelled against the petitioner have been proved during the enquiry and, therefore, he found that the petitioner has committed misconduct under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and liable for disciplinary action. It is to be noted that, in the said report also the Enquiry Officer has not proposed penalties to be imposed on the petitioner. Thus, it appears that respondent No.2 vide impugned communication dated 26-08-2022 or the Enquiry Officer in the enquiry report have not proposed penalties to be imposed on the petitioner pursuant to the enquiry report.

10. *Secondly*, the petitioner by filing statement-cum-explanation on 20-09-2022 to respondent No.2 urged that he may be given the opportunity of hearing in person or he may be permitted to defend himself through his defence assistant Shri Vasant Nirtane before passing the order. However, on perusal of the impugned order, it does not reflect that respondent No.2 prior to the passing of the impugned order had been given an opportunity of hearing to the petitioner, but after considering the enquiry report and submission of the petitioner on the enquiry report passed the impugned order thereby dismissing the petitioner from service with effect from 21-09-2022 i.e. before the date of his superannuation.

11. Having regard to the aforesaid discussion, it reveals that respondent No.2 vide communication dated 26-08-2022 did not propose penalties to be imposed on the petitioner while asking him to submit his statement on the said report. Likewise, it emerges that no opportunity of hearing was given to the petitioner prior to passing the impugned order. Thus, it seems that respondent No.2 violates the principle of natural justice. It is to be noted that the opportunity of being heard on the principle of *audi alteram partem* has to be given to the party on whom the penalty has to be imposed. However, non-observance of the said principle would mean failure to observe the principle of natural justice. *Furthermore*, it emerges that the major penalty has been imposed on the petitioner, as such, in our view it would be incumbent on the respondents to be heard by the petitioner prior to punishing severely, as by an impugned order his substantial rights have been infringed.

12. In the aforesaid background, we deem it appropriate to set aside the impugned order by directing the respondents to take fresh proceedings from the stage of issuance of the notice to the petitioner proposing the penalties to be imposed on him along with the enquiry report. Hence, we pass the following order.

- (a) The impugned order dated 21-09-2022 passed by respondent No.2 dismissing the petitioner is hereby quashed and set aside.
- (b) Respondent No.2 is hereby directed to issue fresh communication proposing the penalties to be imposed on the petitioner in pursuance of the enquiry report and give him an opportunity of hearing in person on the said proposed penalties to be imposed and pass the order according to law.
- (c) Respondent No.2 is directed to pass the order within a period of four weeks from the production of a copy of this judgment and communicate the same to the petitioner.

13. Rule is made absolute in the aforesaid terms.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

adgokar