



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6078 OF 2010

Milind Devidasrao Ambekar
Age: 45 Years, Occ: Service,
R/o. Latur

...Petitioner

VERSUS

1. The State Of Maharashtra

2. The Divisional Commissioner,
Aurangabad Division, Aurangabad

3. The Chief Executive Officer,
Zilla Parishad, Latur
Tq & Dist. Latur

...Respondents

- Mr. A. B. Kale, Advocate for the Petitioner
- Mr. S. K. Shirse, AGP for the Respondent Nos. 1 and 2/State
- Mr. P. R. Tandale, Advocate for the Respondent No. 3

CORAM : R. M. JOSHI, J
DATE : AUGUST 08, 2025

JUDGMENT :

1. This Petition takes exception to the orders dated 10.12.2007 passed by the Chief Executive Officer, Zilla Parishad, Latur and 10.06.2009 passed by the Additional Divisional Commissioner, Aurangabad in an Appeal against order passed by CEO under Section 13 of the Maharashtra Zilla Parishad District Service (Discipline and Appeal) Act, 1964 (for short "the

Act").

2. Petitioner was appointed with Zilla Parishad, Latur on 03.07.1984 as junior clerk. In the year 1996, he was promoted to the post of senior clerk. In addition to the post of senior clerk he was holding charge as the godown keeper. On 09.09.2004, an issue was raised in the General Body of the Zilla Parishad in respect of alleged irregularities committed in the purchase of utensils. Resolution came to be passed and enquiry committee was constituted to inquire into the said allegations. On 02.08.2005 Petitioner was called upon to explain the charges. Petitioner submitted detailed explanation to the charges leveled against him denying the same. On 11.05.2007 Enquiry Officer held Petitioner guilty for three charges. A final show cause notice was issued on 25.07.2007 in respect of action on these three charges. Another notice came to be issued to him alleging three more acts of misconduct. The said misconduct was also held to be proved and hence, on the basis of both reports, final show cause notice came to be issued to him on 29.06.2007, which was replied by Petitioner. The Respondent No. 3, CEO, Zilla Parishad

passed impugned order dated 10.12.2007, whereby the Petitioner was brought to the lowest scale in the grade. He took exception to the said order by preferring an Appeal before the Divisional Commissioner under Section 13 of the Act. This Appeal came to be dismissed by the Additional Divisional Commissioner, Aurangabad by order dated 10.06.2009. As recorded earlier, these orders were sought to be challenged before the State Government by filing an Revision. The said Revision was rightly not entertained for want of jurisdiction. Hence, this Petition.

3. Learned Counsel for the Petitioner submits that the Petitioner had rendered long unblemished services from year 1984 to 2004. It is his contention that the Petitioner was senior clerk and was holding charge of godown keeper and that he was not responsible for the purchase made. It is further pointed out that he is not member of purchase committee and, therefore, was not concerned with the quality of the purchases done by the committee. It is further argue that along with Petitioner three other persons were charged of the misconduct including the members of the purchase

committee and Education Officer. It is his submission that in order to save the higher officers, Petitioner has been made scapegoat. To substantiate his contention that no charge has been proved, he drew attention of the Court to the Enquiry Report, which according to him, indicates that the Enquiry Officer has accepted the charges mere on the say of the Presenting Officer. It is his submission that unless it was established that the Petitioner was having any authority or was concerned with the purchase, payments to be made to the suppliers or the tender process, he could not have been held responsible for the same. It is his submission that three other charges leveled against him are also not sustainable for the reason that as a godown keeper he could not have been held responsible for the irregularities committed in the implementation of the scheme. It is his submission that Petitioner had no authority to take any action against the suppliers for non supply of the material in time and hence, it cannot be said that any misconduct has been committed by him. In so far as correction in the certificate is concerned, it is his contention that since there was no allegation against the Petitioner that he

misappropriated any money, even if it is accepted that there was correction, the same would not amount to a misconduct.

4. Learned Counsel for Respondent No.3/Zilla Parishad and learned AGP for Respondent Nos. 1 and 2/State supported the impugned orders. According to them, report of the Enquiry Officer clearly demonstrate that the report has been submitted after due perusal of the record produced before him. It is submitted that the Enquiry Officer has recorded findings in respect of number of charges leveled against the Petitioner. It is argued that in exercise of writ jurisdiction it would not open for this Court to interfere in the findings recorded by the Enquiry Officer. It is submitted that in the departmental enquiry the strict rules of evidence are not required to be followed and any strict proof misconduct is not contemplated as it can be proved on the preponderance of probabilities. On these amongst other submissions, they support impugned orders.

5. This Court is conscious of the fact that in exercise of jurisdiction under Article 227 of the

Constitution of India, it may not be open for this Court to cause interference in the orders impugned only for the reason that a different view than the one taken by the Enquiry Officer is possible. Moreover, unless perversity is found in the conduct of enquiry or the findings of enquiry report, it would not open for the Court to set aside the same. However, at the same time, it needs to be kept in mind that no charge can be said to have been proved unless there is evidence to that effect for its proof even on probability. Similarly, while imposing penalty/punishment, it is the responsibility of the Employer to take into consideration overall circumstances including mitigating factors. The Appellate Authority is also required to take into account these aspects before confirming the order passed by the Employer i.e., Zilla Parishad against an employee.

6. Here in this case, admittedly, Petitioner was senior clerk and was also holding charge as godown keeper. There is nothing on record to indicate that he was a part of the committee appointed to undertake the process of tender or responsible for implementation of

the scheme. Moreover, admittedly, he was not having any authority to take any action against the supplier for non supply the material in time. In the light of these facts, perusal of the charges, more particularly, proved charges against him indicate that there is allegation against him that the tender process was managed in respect of purchase of utensils. In order to prove such charge, it ought to have been proved at the first instance that he was member of the said committee or was involved in the actual process. Without proving this, it cannot be held that he was responsible for the acts done by the Committee during tender process. When there is allegation that he has managed the said tender, there ought to have been specific evidence to hold so. In this regard, report of the Enquiry dated 02.03.2007 itself clearly indicates that the Presenting Officer himself has stated that no opinion can be expressed on these charges for want of documentary evidence. If it is so, question of holding the Petitioner guilty of the said misconduct does not arise.

7. In so far as charge with regard to the non

maintenance of the record is concerned, there is no allegation against the Petitioner that the said non maintenance of the record was aimed at some unlawful gain or any loss is caused to the Employer. Apart from this, enquiry report indicates that said alleged fact of non maintenance was verified by the Presenting Officer. There is nothing on record to indicate that the Enquiry Officer has verified the aid record before drawing conclusions.

8. As far as Charge No. 9 is concerned, there was never allegation against the Petitioner that he has failed to perform his duty to ensure that the supplier complies with the order. Since no such charge was framed, Enquiry Officer committed serious error in holding that said charges to be proved.

9. There is allegation in respect of failure on the part of the Petitioner to take entry in the stock register. The report of the Enquiry Officer shows that the Presenting Officer was unable to express any opinion thereon as the stock register was not produced. Unless the stock register was perused and entries therein was verified, it was impossible that said

charge could be said to have been proved.

10. In respect of second enquiry and the report of the Enquiry Officer dated 11.05.2007 Charge No.1 with regard to irregularity in implementation of the utensil purchase is concerned, admittedly, Petitioner was not responsible for the implementation of the said scheme. In such case, he cannot be held guilty for any irregularity being committed in the implementation of the scheme.

11. Charge No. 3 therein alleges of failure on the part of the Petitioner to take penal action against the suppliers for non supply of material in time. In this case too, it is admitted position that the Petitioner was not having any authority to take any action. There is no allegation that the Petitioner has failed to bring any relevant facts to the notice of higher authorities and which has resulted into non taking of action against supplier.

12. Though there is allegation against the Petitioner of carrying out corrections in the certificate, he accepts the same and states that the

said correction was done at the instance of Chief Accountant and Finance Officer. Even if such acceptance is there, unless it is shown that the said correction is contrary to the record or done with *mala fide* intention, it cannot become misconduct.

13. The aforestated facts clearly indicate that none of the misconduct has been proved for want of any evidence. This Court finds no reason to doubt the contention of the Petitioner that he was sought to be made scapegoat as issue was raised by the Member of Zilla Parishad in the general body and that no action was intended to be taken against Higher Officers.

14. Even in case of departmental enquiry unless charges are proved by leading evidence, may be on the preponderance of probabilities, no action taken /punishment can be imposed on the employee. The report of the Enquiry Officer and the findings recorded therein, are clearly perverse for want of evidence and hence, cannot sustain. As far as Appellate Authority is concerned, Appellate Authority has miserably failed to take into consideration the said fact. Moreover, even if it was accepted for the sake of arguments that such

charges were proved, the Appellate Authority ought to have considered the nature of charge and the mitigating circumstances and proportionality of punishment. Perusal of the charges indicate that any any point of time Petitioner was charged with any misappropriation nor any mala fides were attributed to him. All that was alleged against him is some irregularities allegedly committed. In such circumstances, the punishment imposed was not sustainable and since the Appellate Authority has failed to taken into consideration this aspect, the order passed by the Appellate Authority cannot sustain.

15. As a result of above discussion, impugned orders cannot sustain. Hence, Petition stands allowed in terms of prayer clauses "B" & "C". Petitioner shall be entitled to receive all consequential benefits of setting aside of order passed by the CEO, Zilla Parishad, Latur imposing punishment against him.

16. Rule is made absolute in above terms.

(R. M. JOSHI, J.)