

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2607 OF 2018

Nandkishor Pannalal Agrawal,
Age: 68 yrs Occu.
Ex-Superintending Engineer,
CIDCO [NT], Aurangabad &
R/o. Plot No. 15, Dwarkapuri,
Behind Patwardhan Hospital,
Aurangabad-431005

..Petitioner

VERSUS

1. The Managing Director,
City and Industrial Development Corporation of
Maharashtra Ltd. Nirmal Building,
2nd Floor, Niriman Point, Mumbai-400021.
2. The Chief Accounts Officer,
CIDCO, Bhawan, 5th Floor CBD, Belapur,
New Mumbai -400614
3. Manager [Personnel] CIDCO, Bhawan,
3rd Floor CBD, Belapur,
New Mumbai -400614 ..Respondents

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Advocate for the Petitioner : Mr. Irale Patil D.R.
Advocate for Respondent Nos.1 to 3 : Mr. Ajay S. Deshpande

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**CORAM : S.G. MEHARE AND
SHAILESH P. BRAHME, JJ.**

RESERVED ON : MARCH 12, 2025

PRONOUNCED ON : MARCH 19, 2025

JUDGMENT :- (PER S.G. MEHARE, J.)

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of the parties.

2. The petitioner has impugned the order of dismissal dated 03.11.2003 issued under the signature of Chief Engineer and General Manager (Tech) and order passed in appeal dated 09.01.2006 passed by the Managing Director, CIDCO of Maharashtra Limited.

3. Brief facts of the case were that the petitioner was the Superintendent Engineer (NT), CIDCO Aurangabad. On the complaint of the contractor, the petitioner was trapped in anti-corruption case. A charge sheet was filed against him and he was arraigned as an accused. In the interregnum, departmental inquiry was initiated against him. A charge sheet was served upon him calling upon him to explain the charges of demand of bribe and acceptance while discharging official duty which is fraud and dishonesty with the corporation that amounts to misconduct under sub-rule 31 and 34 of the Regulation 25 of Chapter IV of The City and Industrial Development Corporation of Maharashtra Limited Service Regulations, 1972 ('Service Regulations' for short). The petitioner faced the inquiry and held guilty. The requisite procedure was followed and by order dated 03.11.2003, he has been dismissed from services with immediate effect. He has preferred the appeal against the dismissal order on 10.11.2003. The appeal was dismissed on 09.01.2006. Against that order after twelve years, he has preferred this writ petition praying to quash and set aside both impugned orders. He was acquitted of the charges of corruption by the Special

Court. His acquittal is challenged by the respondents and the appeal is still pending.

4. The petitioner has impugned the orders under challenge mainly on three grounds that the complainant who alleged the charges of corruption was not examined, the charge sheet was not served by the competent authority and the order dated 03.11.2003 dismissing him is not passed by the competent authority as defined under The Service Regulations.

5. Learned counsel for the petitioner has vehemently argued that unless the complainant is examined, it could not be said that the charges of corruption have been established. His examination was essential for granting opportunity to the petitioner to rebut the allegations. However, instead of examining the complainant, Deputy Superintendent of Police from Anti-Corruption, who did the investigation of the crime has been examined. He has been incorrectly relied upon. He was not the aggrieved person against the petitioner. He is merely an investigation officer. The charges of demand and accepting the bribe could be established only by the complainant. The Superintendent of Police, Anti-Corruption Branch examined by the corporation/respondent did not know the reason. It is a matter of intention that could be established only by examining the complainant. He would also argue that the charge sheet could have been served upon him by the competent authority. However, the

Manager (Personnel) has served upon him the charge sheet. The Manager (Personnel) was not the person competent and authorized to serve the charge sheet upon him.

6. The next limb of his arguments were that in view of the definition of the term 'Competent Authority', the competent authority is either the Managing Director or the Officer declared by him as competent authority. The Chief Engineer and General Manager passing the order of punishment was not the competent authority. This is an apparent illegality. To bolster his arguments, he relied on the case of Bharat Petroleum Corporation Limited and Others Vs. Anil Padegaonkar, (2020) 5 SCC 474, Tejpal Singh (Dead) through Legal Representatives Vs. Union of India, (2018) 14 SCC 343 and State of U.P. and Ors Vs. Ram Naresh lal, AIR 1970 SC 1263.

7. He would also submit that since the charges were not established properly, the authorities serving the charge sheet upon him as well as passing the order of imposing the penalty were not competent authorities, the entire inquiry is vitiated. The petitioner has already attained the age of superannuation. Therefore, all the service benefits be granted to him deeming him to be reinstated.

8. Learned counsel for the petitioner also vehemently argued that there shall be no delegation of power by the delegate. Therefore also, passing the dismissal order is illegal. He prayed to allow the writ petition.

9. Learned counsel Mr. Deshpande for the contesting respondents opposed the contention of the petitioner. He would submit that the authorities, who have served upon the charge sheet and the order of dismissal were competent and authorized. The petitioner did not prefer the appeal in time. There is delay and laches on the part of the petitioner in not approaching the Court immediately. He waited till the Special Court concluded the trial of corruption against him. On this sole ground, the petition is liable to be dismissed. He would submit that the observations in para 10 of the case of Bharat Petroleum (supra) relied upon by the petitioner supports the case of the respondents. He countered the arguments of the learned counsel for the petitioner contending that both authorities issuing charge sheet as well as passing the dismissal order were appointed by the Managing Director. He would submit that the order dismissing the petitioner dated 03.11.2003 is the communication by the Chief Engineer and General Manager. It was in fact an order of the Joint Managing Director of CIDCO Ltd. Clause 5 sub-clause (b) of the Service Regulations has been incorrectly considered while passing the orders. He supports both impugned judgments and orders and prayed to dismiss the petition.

10. To answer the question, whether authorities issuing the charge sheet or passing the order of termination were competent authorities, Clause No.5(b) of Service Regulations is to be considered.

Clause 5(b) defines the term 'Competent Authority' means the officer declared as such by Managing Director by a general or special order. The Managing Director may declare different officers as competent authorities for different purposes under these Service Regulations. Learned counsel for the petitioner is right that the competent authority is either the Managing Director or an officer declared appointed by a general or special order. The Managing Director can declare different officers as competent authorities for different purposes. For the purpose of inquiry and passing the appropriate order after inquiry, the Managing Director had declared the competent authority. As far as the service of the charge sheet is concerned, it appears that it was served upon the petitioner by Manager (Personnel). The initiation of the inquiry is the process to be done by the official concerned. The said officer should be officially concern only to serve the copy of charge sheet. In view of the definition of the competent authority, we are not agreeable with learned counsel Mr. Irale that the person who served him a copy of charge sheet should be a 'Competent Authority' as defined under Clause 5(b) mentioned above. The record reveal that after the charge sheet was served, the Chief Administrator (NT) was appointed as an inquiring officer. The petitioner has faced the inquiry before him. After complying with the requisite formalities, he placed his report to the Chief Administrator (NT) for appropriate orders. So, it could be

said that the inquiry was conducted by the person declared as competent authority. However, the order dismissing the petitioner reveals that the Managing Director of CIDCO has appointed the Joint Managing Director of CIDCO as competent authority under sub-clause (b) of Clause 5 of the Service Regulations. The order of termination does not bear his signature. The signatory of the order of the dismissal observed was that the Managing Director of CIDCO has appointed the Joint Managing Director of CIDCO Ltd as competent authority as provided under Clause 5 sub-clause (b) of the CIDCO Service Regulations Act delegating the Chief Engineer and General Manager (Tech) of CIDCO as competent authority in this matter. The contents of the order of dismissal itself shows that the Managing Director did not appoint Chief Engineer and General Manager as the competent authority under Clause 5 sub-clause (b) of the Service Regulations. Reading the definition of competent authority, one could understand, unless the Managing Director declares a person for a specific purpose as competent authority, no one other than such person declared is a competent authority. Reading the contents of the order, delegating the powers to the Chief Engineer and General Manager (Tech) by Joint Managing Director, it is delegation of the power by delegate. The principle that a delegate cannot delegate power is called "*delegatus non potest delegare*". This Latin maxim means that delegate cannot further delegate. However, there are

some cases where sub-delegation is allowed. For example, statute was granted him to allow it or it may be implied or permitted in exigency or necessity. In some cases, delegate has authority to sub delegate all the powers to another person or agency. This is based on the principle that the delegate should have the flexibility to distribute the workload. In other words, it could be said that the powers can only be delegated to another authority if the statute expressly or clearly permits him. Legislative powers cannot be sub delegated.

11. Reading the impugned order, the Joint Managing Director of CIDCO was appointed as competent authority for passing an appropriate order after submitting the inquiry report by the inquiring officer. The Service Regulations are silent about delegation of the power by the delegate. Nor the learned counsel for the CIDCO pointed out that the service regulations provide for sub delegation. Therefore, we are satisfied that the order dismissing the petitioner under the signatures of Chief Engineer and General Manager (Tech) is illegal and on that count, the said order deserves to be vitiated.

12. So far as the ground of non-examination of the complainant is concerned, it is a matter of examination of the record. The petitioner has raised these grounds in the appeal. There were two fact findings. Considering the scope of Article 226 of the Constitution of India, this Court cannot re-appreciate the evidence. In view of the above observations, the effect of non-examination of the complainant

is consequential. Hence, we express the opinion that it is immaterial to comment on that ground at this juncture.

13. The next question that arises for consideration is, could this petition be entertained for the above defects after such a long period of twelve years.

14. In the case of Bharat Petroleum (supra), the Hon'ble Supreme Court relying on the definition of competent authority under Rule 3(h) of 1976 Rules applicable to the parties to the proceeding held that DGM was competent to issue charge sheet. Besides, employee neither in his reply to charges nor in departmental appeal raised any issue pertaining to competency of DGM to issue charge sheet but raised it for first time in writ petition. Para 11 of the said case has been relied upon by the learned counsel for contesting respondents and contended that since the petitioner has been dismissed on the ground of delay and laches, the said issue cannot be dealt with and on this sole ground, the petition deserves to be dismissed. However, in the last two lines of the said paragraph, the Hon'ble Supreme Court observed that nonetheless, since a fundamental issue of jurisdiction has been raised, we shall proceed to examine the issue. The expressions were clear that the issue of jurisdiction of the competent authority was the issue of jurisdiction that should be examined though the petition has been filed belatedly.

We do not find substance in the argument of the learned counsel for the contesting respondents.

15. In Tejpal Singh (supra), on the basis of the facts of the case and considering the relevant rules, it was held that the order of removal was passed by the officer who was lower in rank than the General Manager is not permissible. Since the appellant was passed away, the Hon'ble Supreme Court observed not to remit the matter back.

16. Delay and laches is one of the ground to refuse the relief. To examine the diligence of the petitioner, some facts needs to be examined. The petitioner was suspended on 24.04.2001. The inquiry was completed and report was submitted to the authority on 15.04.2002. The dismissal order was dated 03.11.2003. The appeal was preferred on 10.11.2003 and concluded on 09.01.2006. Thereafter, since 2006 to 2018, the petitioner did not impugned the order of Appellate Authority. After the judgment of Special Judge (P.C. Act) dated 27.01.2016, the petitioner approached this Court in 2018. It seems that the petitioner was waiting for the judgment of the Sessions Court. After the said judgment, the petitioner waited for about two years. The conduct of the petitioner reveals that he was not diligent. The arguments of the learned counsel for the petitioner reveal that the petitioner was expecting to take the benefit of the judgment of acquittal. The law is very clear on the point of the effect

of judgment of the Criminal Court acquitting the accused. Otherwise also, he was charged with serious offence of demanding and accepting bribe. The overall conduct of the petitioner was not satisfactory and he was not seen diligent. We uphold the arguments of the learned counsel for the contesting respondents that the petition deserves to be dismissed on delay and latches. Hence, we proceed to pass the following order :

ORDER

- (i) Writ Petition stands dismissed.
- (ii) No order as to costs.
- (iii) Rule stands discharged.

(SHAILESH P. BRAHME, J.)

(S.G. MEHARE, J.)