IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

15 WRIT PETITION NO. 3545 OF 2022

BAPURAO SHANKARRAO SARTAPE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. V. P. Latange, Advocate for the petitioner
Mr. S. B. Jadhav, AGP for the respondent/State
Mr. P. P. Kothari a/w Adv. Nandini Chittal, Advocate for respondent Nos.3 and 4.

CORAM : R. M. JOSHI, J.
DATE : 15th APRIL, 2025

PER COURT :-

1. By consent of both sides, this petition is heard finally at the stage of admission.

2. This petition takes exception to the orders dated 27/12/2018 passed by the Minister, Rural Development Department, Mumbai in Case No. DEN-2018/C.N.123/Est.12, whereby the order passed by the Commissioner upholding the dismissal of the petitioner came to be confirmed.

3. Facts which led to the filing of writ petition can be narrated in brief as under:

(i) The petitioner joined the services of respondent No.4- Zilla Parishad, Ahmednagar on 01/08/2006 as Gram Sevak. He was posted at

Gram Panchayat Kalewadi, Tq. Karjat, Dist. Ahmednagar. The petitioner claims that he has rendered spotless services. On or around 24/12/2013 allegations came to be made against the petitioner with registration of first information report against him for misappropriation of funds. He was suspended by order dated 31/12/2013. After about 23 months of the suspension, charge-sheet was issued to him alleging misappropriation of funds. Petitioner filed reply explaining the circumstances in which the amounts were withdrawn and deposit thereof. An inquiry was initiated against the petitioner under provisions of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules. In the said proceedings petitioner participated. Inquiry Officer submitted report dated 31/01/2017 holding charges being proved against the petitioner. It was observed that it is a case of temporary misappropriation of the funds. On the basis of the said report of inquiry, show cause notice was issued to the petitioner as to why punishment of dismissal should not be implicated upon him. He responded the said show cause notice. It is thereafter by passing order dated 27/06/2017 petitioner was dismissed from the service. Against this order of dismissal he preferred Appeal bearing No. 82/2017 before the Additional Commissioner, Nashik Division, Nashik. The Appellate Authority by judgment dated 21/12/2017 dismissed the appeal. This order was challenged before the Minister in a revision unsucessfully. Hence this petition.

4. Learned counsel for the petitioner submits that the petitioner has been suspended from 31/12/2013 whereas the charge-sheet has been issued against him on 14/10/2015. He drew attention of the Court to the Government Resolution dated 27/11/1990 which according to him mandates the initiation of disciplinary proceedings within a period of six months and if the proceedings are not possible to be initiated within this period, appropriate permission was required to be obtained from the State Government. It is his submission that since no such permission has been obtained in this case, the inquiry proceeding stands initiated. Without prejudice to this submission he drew attention of the Court to the findings recorded by the Inquiry Officer which according to him do not indicate that the charge of misappropriation of funds is proved. According to him the petitioner has provided satisfactory explanation and brought on record the circumstances in which the amounts were withheld by him. It is his submission that even before any action to be initiated against the petitioner, he has deposited the amount which indicates that he had no intention to misappropriation the funds. On these amongst other contentions he seeks interference in the impugned order and ultimately setting aside order of dismissal of the petitioner from the service.

5. Learned counsel for the respondent-ZP vehemently opposed

the petition. It is his submission that admittedly the petitioner has withdrawn the amounts and retained the same without authority. He drew attention of the Court to the reply of the petitioner to the charge-sheet which according to him proves the fact that in the year 2008-2009 petitioner has withdrawn a sum of Rs.2,40,676/-. It is his submission that it is immaterial as to whether there is a permanent misappropriation or misappropriation for a temporary period. According to him in view of the reply so also considering the evidence led in the inquiry, the findings recorded by the Inquiry Officer with regard to the proof of the charges does not deserve any interference. It is his submission that the Government Resolution dated 27/11/1990 cannot be construed as a ground for setting aside the inquiry proceedings initiated against the petitioner as the same aims at not providing undue advantage to the government employees. Finally it is his submission that having regard to the nature of misconduct proved against the petitioner, the order of dismissal can not be said to be a disproportionate punishment.

6. At the outset this Court would like to deal with the issue raised by the petitioner with regard to the applicability of Government Resolution dated 27/11/1990 and the consequence of non compliance of direction issued therein. Perusal of the said Government Resolution indicates that it was issued for the purpose of substituting the authority

which was supposed to grant permission for issuance of the charge-sheet after the lapse of six months of the suspension of the employee. Perusal of the original Government Resolution dated 25/02/1988 which is placed on record by the learned counsel for the respondents indicates that the sole intention of the issuance of the said resolution is to ensure that the charge-sheet is issued in specified time and that in case such charge-sheet is not issued, the benefit of the same need not be given to the employee who has committed misconduct involving moral turpitude. There is no dispute about the fact the provisions of the the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules are applicable to the present case, wherein no specific time limit has been prescribed for issuance of charge-sheet. In any case the non initiation of the departmental enquiry in the stipulated time as proved in Government Resolution, would have bearing only on continuation of the suspension period and not for the merit of charge-sheet/departmental enquiry. This Court finds substance in the contention of the learned counsel respondent that the purpose behind issuance of G.R. dated 25/02/1988 and 27/11/1990 to ensure that inquiry proceeding is initiated and concluded at the earliest, in respect of suspended employee.

7. In this regard it is pertinent to note that the petitioner has not raised any objection in the inquiry proceeding taking exception to the

maintainability of the proceeding on this ground. The petitioner has submitted himself to the inquiry proceeding and participated therein without resisting the same. Now, therefore it is not open for the petitioner to take exception thereto. In any case the non compliance of the said Government Resolution will not lead to setting aside of the inquiry proceeding which is conducted in accordance with rules and by following principles of natural justice. The petitioner has failed to show any prejudice being caused to him for want of such approval from the authority as provided in this resolution.

8. Coming to the merits of the case, there is charge-sheet issued against the petitioner making out specific case of misappropriation of funds. There are five charges levelled against him indicating that the work orders in respect of which the misappropriation has been done. In this regard it will be material to take note of the reply submitted by the petitioner. In his reply he is practically accepts all the allegations of withdrawal of the amount and withholding the same. He however tries to provide explanation thereto by claiming occurrence of certain events. Even if the explanation is accepted, it is a matter of the fact the amount of Rs.2,00,947/- was withdrawn in the year 2008-09, and the same was withheld by the petitioner over a period of 4 years i.e. up to at least May, 2013. It is for the first time on 21/05/2013 he deposited a sum of

Rs.60,000/- and the balance amount came to be deposited on 20/12/2013. In respect of this transaction the explanation provided by the petitioner is not justified. He vaguely states that for some reason the work could not commence and therefore he deposited the said amount. Learned counsel for the respondent has drawn attention of the Court to the audit regulations which require the cash in hand to be deposited without any delay. Though there is no specific time limit prescribed for the same, withholding of the amount more than Rs.2 lakhs approximately period of 4 years is sufficient to indicate it is a case of misappropriation of the funds, may be for a temporary period.

9. Now question arises as to whether it is open for the petitioner to take exception to the order of dismissal passed against him on the ground that there is findings recorded by the Inquiry Officer with regard to it being a financial irregularity. The petitioner is a government employee. He is expected to discharge his duties honestly. Once it is proved that he has committed misappropriation may be even for temporary period, the punishment of dismissal would be the only appropriate punishment. Having regard to these facts and considering the findings recorded by the Inquiry Officer so also the observations made by the Appellate Authority which are confirmed by the Minister, this Court does not find it judicious to cause interference therein in the

exercise of writ jurisdiction.

10. As a result of above discussion, petition stands dismissed.

(R. M. JOSHI, J.)

ssp