



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

5 WRIT PETITION NO. 6440 OF 2022

The Agricultural Produce Market CommitteePetitioner

VERSUS

The Honble Cabinet Minister Marketing
& othersRespondents

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Mr. P. D. Suryawanshi, Advocate for the Petitioner.
Mr. S. B. Jadhav, AGP for the State.
Mr. S. K. Chavan, Advocate for Respondent No. 6.

CORAM : R. M. JOSHI, J.

DATE : 21st APRIL, 2025.

PER COURT :

1. This petition takes exception to the order dated 16.02.2022 passed by the Minister in Appeal no.33/2021 filed under Section 52(b) of Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 against dismissal of Respondent No. 6 from service.

2. The facts which led to filing of this petition need to be narrated in brief as under :-

Respondent No. 6 is an employee of Agricultural Produce Marketing Committee. On 18.08.2020 a show cause notice was

issued to him to explain as to why he gave threats of suicide and also abused the board of directors. Respondent No. 6 responded to the said show cause notice. Petitioner, however, was not satisfied with the said reply and as such charge-sheet was issued against Respondent No. 6 on 21.09.2020. An Advocate came to be appointed as an Enquiry Officer. He initiated the said proceeding of enquiry on 07.11.2020. Respondent No. 6 appeared before the Enquiry Officer and moved an application for appointment of an Advocate to defend him in the enquiry. This application came to be rejected by the Enquiry Officer. On 11.11.2020, four witnesses were examined in support of the charges. Respondent No. 6 sought time to cross examine these witnesses. Accordingly, hearing of the enquiry was postponed to 21.11.2020. On that day, again an application was submitted for adjournment on behalf of Respondent No. 6. This application was rejected. Enquiry Officer proceeded to pass order of no cross against him. The next date of enquiry was scheduled on 24.11.2020. Since Respondent No. 6 failed to adduce evidence, enquiry proceeding was closed. The Enquiry Officer submitted report holding Respondent No. 6 guilty of the charges levelled against him. He was issued show cause notice dated 04.03.2021 as to why action of dismissal of his services should not be taken. Respondent No. 6

replied to the said show cause notice on 08.03.2021. After obtaining approval of Respondent No. 2, Petitioner issued order of dismissal dated 27.05.2021. Being aggrieved by the said order, Respondent No. 6 filed appeal bearing No. 33/2021 before the Minister under Section 52(b) of the Act and rules framed thereunder. The Minister allowed the appeal and set aside the order of dismissal passed against Respondent No.6. Hence, this petition.

3. Learned counsel for Petitioner submits that if the Minister was of the view that Respondent No. 6 was not given fair opportunity to defend himself in the enquiry, the only option available with the Minister was to relegate the enquiry back to the authority to the stage at which opportunity of hearing is denied. It is his submission that the order passed by the Minister of setting aside order of dismissal of Respondent No. 6 is unjust and hence not sustainable.

4. Learned counsel for contesting Respondent No. 6 supported the impugned order.

5. Perusal of record indicates that Respondent No. 6 had appeared before the Enquiry Officer and submitted application for appointment of an Advocate to represent him. Four witnesses were examined on 11.11.2020. At the instance of Respondent No. 6, time was granted for their cross-examination. However, on the next date of hearing i.e. on 21.11.2021, Respondent No. 6 failed to cross-examine those witnesses and again sought adjournment. Thus, this is not a case wherein Respondent No. 6 has not caused appearance and has not attempted to refute the charges levelled against him. Since admittedly the enquiry has been concluded within couple of days on 24.11.2020, it can be said that fair opportunity of defence has been denied to Respondent No. 6. The Minister in the impugned order has also observed non-compliance of principles of natural justice and said finding deserves to be confirmed.

6. The Minister, however, was not justified in setting aside the order of dismissal itself. In view of settled position of law, the only course available for the Minister was to relegate the matter back to the concerned authority for giving an opportunity of hearing to Respondent No. 6 in the departmental enquiry. Hence, the order passed by the Minister cannot sustain. The same is hereby set aside.

7. As a result of above discussion, Petitioner is directed to re-open the enquiry proceeding from the stage at which examination of four witnesses was done. It would be open for Respondent No. 6 to cross examine those witnesses by himself or through legally permissible defence representative. Learned counsel for Respondent No. 6, on instructions makes a statement that Respondent No. 6 would cause appearance before the Enquiry Officer on all the dates of hearing. In order to ensure that the enquiry proceeding is not delayed by Petitioner, it is open for the Enquiry Officer to proceed with the enquiry in accordance with law even if Respondent No. 6 fails to appear before the Enquiry Officer. It would be open for the Petitioner to pass appropriate order in accordance with law on the report submitted by the Enquiry Officer on conclusion of enquiry. The enquiry be concluded within a period of two months.

8. In view of above discussion, order of dismissal of Petitioner from service is set aside. In case Respondent No. 6 is not paid subsistence allowance upto the date of conclusion of previous enquiry, the same will be paid to Respondent No. 6, forthwith. This

Court is informed that Respondent No. 6 is reinstated in service and hence no further directions are required to be issued at this stage.

9. Petition stands disposed of in above terms.

(R. M. JOSHI)
Judge

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