



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5052 OF 2022

Pravin s/o Sudhakar Rao Telang,
Age : 49 years, Occu. : Junior Clerk,
R/o : Pravin Sudhakar Rao Telang,
C/o House of Ramesh B. Pawar,
Behind Krishna Mandir, SVM Colony,
Tq. Kinwat, Dist. Nanded. .. Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai.
2. The High Court of Judicature at Bombay,
Through its Registrar General,
Fort 32, Fort, Mumbai -400032.
3. The Principal District and Sessions Judge,
Nanded, Dist. Nanded. .. Respondents

Shri Abhay R. Rathod, Advocate for the Petitioner.
Shri A. S. Shinde, A.G.P. for the Respondent No. 1.
Shri N. B. Khandare, Advocate for the Respondent Nos. 2 and 3.

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

**CLOSED FOR JUDGMENT ON : 07.01.2025
JUDGMENT PRONOUNCED ON : 16.01.2025**

JUDGMENT (Per Shailesh P. Brahme, J.) :

. Rule. Rule is made returnable forthwith. With the consent of parties heard both sides finally at the admission stage.

2. This petition is filed under Article 226 of the Constitution of India challenging order dated 12.10.2020 passed by the Disciplinary Authority (Principal District Judge, Nanded) in Departmental Enquiry No. 02/2020 and order dated 14.01.2022 passed in Administrative Appeal No. A-03/2020 dismissing the appeal.

3. The petitioner met with a penalty of reduction in rank from the post of stenographer to the post of junior clerk and withholding of one annual increment with permanent effect.

4. The petitioner was appointed as a junior clerk on 29.04.2002. In due course, he was promoted to the post of stenographer lower grade on 01.12.2010. He was transferred from Nanded to Mukhed. He alleged to have committed misconduct resulting into disciplinary action against him. He was served with a charge sheet. There were three major charges leveled against him. The charge No. 1 was comprising of sub charges of misconduct, insubordination causing inconvenience to the Presiding Officer, negligence, unauthorized absentism, etc. The charge No. 2 was pertaining to leaving the headquarter and behaving indecently with the lady Judicial Officers. Last charge No. 3 was pertaining to misconduct with the lady officers, grave negligence and loss of confidence.

5. The petitioner was placed under suspension vide order dated 04.03.2020. Lateron it was revoked on 08.06.2020. An

inquiry was conducted by the learned Civil Judge Senior Division, Mukhed. The petitioner submitted application on 08.06.2020 to the Inquiry Officer for permitting him to engage a lawyer. It was rejected by a reasoned order on the same day. Thereafter disciplinary enquiry proceeded further and concluded by first impugned order imposing penalty. Being aggrieved by the penalty imposed by the disciplinary authority, administrative appeal was preferred before the Registrar General, High Court. It was dismissed by order dated 14.01.2022.

6. Learned counsel Mr. Abhay Rathod for the petitioner submits that the disciplinary action was conducted in utter disregard to the principles of natural justice. The Presiding Officer was a judicial officer, witnesses were also judicial officers. Hence it was imperative to permit him to engage a lawyer. The order passed by the inquiry officer on 12.10.2020 is perverse and patently illegal. The petitioner was under pressure and unable to defend before the inquiry officer. It is further submitted that confidential report dated 08.07.2019 was not supplied to him. No reasoned order was passed by the appellate authority. He would further submit that only interested witnesses were examined. Three judicial officers were not examined by the department. He would further submit that there was no sufficient material before the disciplinary authority. No preliminary inquiry was conducted. There is violation of mandatory provision governing disciplinary action. It is further submitted that previous conduct was considered while imposing penalty. Lastly, it is submitted that the penalty imposed is disproportionate and

unreasonable.

7. Per contra, learned counsel Mr. N. B. Khandare would rely on the affidavit in reply. He would submit that order dated 12.10.2020 was not challenged by the petitioner. The confidential report dated 08.07.2019 was taken into consideration. The petitioner was given opportunity to correct himself. Again the confidential letters dated 20.12.2019 and 03.01.2020 were received. It is submitted that after conducting the preliminary inquiry, the disciplinary action was initiated. Due procedure of law was followed by the inquiry officer and the disciplinary authority.

8. Mr. Khandare, learned counsel would further submit that petitioner admitted all the charges which is evident from the inquiry report. There is overwhelming material against the petitioner. There are concurrent findings on facts. No case is made out to cause any interference in the writ jurisdiction. Though the petitioner was liable for harsher punishment, sympathetic view was taken in imposing the punishment.

9. We have considered rival submissions of the parties.

10. The learned counsel for the petitioner harped upon the order of rejection of application seeking permission to engage a lawyer and non supply of documents. It is predominantly submitted that only interested witnesses were examined and the petitioner was unable to deal with the witnesses being

subordinate officer. The previous conduct taken into account is criticized being extraneous.

11. At the outset, it is relevant to note that three charges were leveled against the petitioner. Inquiry was conducted by the Civil Judge Senior Division. In all ten witnesses were examined. There were confidential reports against the petitioner. He was found guilty of all the charges. He had admitted charge in his plea. There are concurrent findings on facts.

12. The scope of the High Court in the writ jurisdiction while examining disciplinary action is very limited. In case of violation of principles of natural justice, violation of statutory and mandatory provisions and perversity on the face of the record, indulgence can be shown. High Court cannot go into the sufficiency of the material or propriety or disputed questions of facts.

13. The inquiry report placed on record, discloses that all the charges were admitted by the petitioner. The plea of the petitioner was recorded on 17.03.2020, which is at Exhibit – R – 9. We have gone through the same. There is endorsement of the petitioner for verification of his answers. Despite that, inquiry officer, out of abundant precaution, conducted inquiry. This indicates that necessary precaution was taken to extend opportunity of hearing.

14. The witnesses were examined and opportunity was given to

the petitioner to cross examine them. It would be the prerogative of the employer to examine the witnesses. The delinquent cannot insist that three judicial officers should have been examined. There was oral as well as documentary evidence to prove the guilt and the charges leveled against him. It is not a case that without there being any material against him, the petitioner was held guilty. We do not find that there is any defect in the procedure adopted by the inquiry officer in conducting the inquiry.

15. The learned counsel for the petitioner is unable to point out as to which statutory provision was violated in conducting the inquiry. When the petitioner was acting as a stenographer in the court and associated with the judicial officers, the witnesses are bound to be judicial officers. No leverage can be extended to the petitioner on the ground that he was subordinate to the witnesses or inquiry officer.

16. The petitioner's application dated 08.06.2020 was rejected by a reasoned order passed on 12.10.2020 denying permission to engage a lawyer. We do not find any perversity in rejecting the application. It is apposite to reproduce following provision of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for the sake of brevity and convenience hereinafter referred as to the 'Rules of 1979')

**The Maharashtra Civil Services (Discipline and Appeal) Rules,
1979.**

1.
2.

8. Procedure for imposing major penalties.--(1)....

- (2)

(8)(a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits :

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing, so permits.

17. The Presenting Officer was not a law graduate. The petitioner had refused to take assistance of next friend or government servant. It was the discretion of the disciplinary authority to grant permission to engage a lawyer or not. We do not find that there is violation of principles of natural justice.

18. The petitioner tried to make capital of consideration of previous record. While imposing penalty previous conduct of the petitioner was taken into account. The previous conduct is relevant to determine nature of penalty. The previous conduct was not considered for finding the petitioner guilty for the charges leveled against him. We find no substance in the

submission of the petitioner in this regard.

19. The petitioner has placed reliance on the judgment of the learned Single Judge of the Gujrat High Court **judgment dated 09.01.2023 passed in Special Civil Application No. 12000 of 2022 in the matter of Divyesh Govindbhai Kunvariya Vs. State of Gujrat.** We have gone through paragraph No. 10 of the judgment. However, we are unable to concur with the propositions. It was a judgment rendered by the learned Single Judge considering the service rules applicable in Gujrat state. Present case is governed by Rule 8 of the Rules of 1979, which was not before the learned Single Judge of the Gujrat High Court. This judgment would be of no assistance to the petitioner.

20. The appellate authority also considered relevant aspect of matter. After hearing the petitioner, the order was confirmed by rejecting appeal. There are concurrent findings of facts. No case is made out by the petitioner. The writ petition is dismissed. Rule stands discharged.

[**SHAILESH P. BRAHME, J.]**

[**S. G. MEHARE, J.]**