



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

WRIT PETITION NO. 5833 OF 2010

Arun s/o Vittalrao Gadekar,
Age:36 years, Occu: Ex. Junior
Assistant (Dismissed) At present Nil,
R/o Sangale Gali, Harsul, Aurangabad
Tq & Dist. Aurangabad.

----PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
- 2.The Divisional Commissioner
Aurangabad Division,
Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Jalna.
4. The Headmaster,
Zilla Parishad, High School,
Babulgaon, Tq. Bhokardan,
Dist. Jalna.

-----RESPONDENTS

Mr. V. G. Salgare, Advocate for Petitioner
Ms. R. R. Tandale, AGP for Respondent/State

CORAM : R. M. JOSHI, J.

DATE : 20th AUGUST, 2025

JUDGMENT :-

1. This petition takes exception to the order of punishment of

dismissal from service of the petitioner dated 21.10.2003 issued by Chief Executive Officer (for Short “**CEO**”), Zilla Parishad, Jalna and the orders passed in appeal dated 01.07.2005 passed by Additional Division Commissioner, Aurangabad and State Minister of Rural Development Department in Revision dated 18.10.2006 confirming the said order.

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

Petitioner was serving with Zilla Parishad, Jalna as “Junior Assistant”. He was appointed to the said post on 05.08.1996 and worked with Zilla Parishad upto 21.10.2003. On 09.04.2002, he was issued with show-cause notice as to why action should not be taken against him for committing act of misappropriation of funds by not depositing the fees received from OPD patients to the tune of Rs. 31,736/-. There was further allegation against him that apart from the misappropriation for the period from September, 1999 to January, 2001, for the period from February, 2001 to June, 2001, the fees received from OPD patients was deposited belatedly. There was also allegation against him that he remained absent without permission. Pursuant to the said show-cause notice, charge sheet was issued against the petitioner. Inquiry was conducted into the said charges. The Inquiry Officer held the said charges to be proved. The report of the inquiry was forwarded to the petitioner and show-

cause notice was issued on 07.01.2003 calling upon him as to why he should not be punished for reduction of pay scale. This notice was not replied by the petitioner. Thereafter another notice came to be issued, seeking show-cause as to why he should not be dismissed from the service under Rule 4(7) of the Maharashtra Zilla Parishad, District Services (Discipline and Appeal) Rules, 1964 (for short “**Rules of 1964**”). This second show-cause notice is duly replied by the petitioner on 20.08.2003 and he admitted the proof of misconduct against him. It is stated by him that he is ready to deposit the amount due and payable along with the interest and sought pardon.

3. The reply of the petitioner to the show-cause notice was not accepted and the petitioner came to be dismissed from service by impugned order dated 21.10.2003 passed by CEO, Zilla Parishad, Aurangabad. Petitioner being aggrieved by the said order preferred appeal before the Additional Divisional Commissioner unsuccessfully under Rule 14 of Rules of 1964. Revision filed before the State also came to be rejected. Hence, this petition.

4. Learned counsel for petitioner submits that the issuance of show-cause notices is not permitted under the relevant rules. It is his submission that once show-cause notice is issued to the petitioner, it was not open for the Zilla Parishad to propose higher punishment. To support his submissions, he placed

reliance on the judgment of Supreme Court in case of **Indian Oil Corporation Limited and others Vs. J. Krishna Murthy in Civil Appeal No. 5447 of 1993.**

It is his submission that said issue has been duly raised in this petition and which deserves consideration. According to him, in addition to other charges, the charge of subsequent absentism is also included while imposing the punishment which is not permissible in law. The order passed by the State in revision is sought to be challenged on the ground that the order is unreasoned one.

5. None appeared for Zilla Parishad.

6. There cannot be any dispute made with regard to the fact that the petitioner was issued with show-cause notice for misappropriation of money. The allegation is in respect of two periods i.e., from September 1999 till January 2001 of Rs. 31,736 so also deposit of the amount for the period from August, 2001 to January, 2002 belatedly. There is also allegation that he is misappropriated the salary payable to the Medical Assistant. He was issued charge sheet and departmental inquiry was conducted against him.

7. The report of the Inquiry Officer indicates that witnesses were examined in order to support the said charges. It is not the case that the petitioner was not given an opportunity of being heard and to defend himself in

the inquiry. As against this, the response to the show-cause notice by the petitioner indicates that the factum of proof of charges against him is admitted.

8. Thus, it is clear that the charge of misappropriation has been duly proved against him. In respect of charge of misappropriation, if the punishment of dismissal is proposed, no fault can be found that the Zilla Parishad and CEO in proposing such punishment.

9. It is sought to be argued that once a show-cause notice is issued, it was not open for CEO to issue another show-cause notice and to change the proposed punishment to be imposed upon the petitioner. In this regard reference is made to Rule 6(10) of the Rules of 1964. Perusal of the said rule indicates that what is contemplated therein is that while issuance of show-cause notice, the report of the inquiry will all liberty must be provided to the employee. This would enable him to respond to the show-cause notices. It is pertinent to note that after issuance of the first show-cause notice, no reply was given by the petitioner and thereafter CEO probably having realize that for the act of misappropriation, appropriate punishment would be of dismissal, it was open for the CEO to issue such show-cause notice. Pertinently, the said show-cause notice has been responded by the petitioner by admitting the charges. The petitioner therefore, got opportunity of being heard on the proposed

punishment and requirement of rule is duly complied with. The charge of misappropriation is serious misconduct and if committed by Government Servant it's gravity is increased. Moreover the incident of misappropriation is not in isolation but series of acts in two different spans of time. Thus having regard to the nature of misconduct, when there is dismissal effected of an employee and has committed misappropriation, the punishment cannot be said to be shockingly disproportionate.

10. In so far as the judgment cited supra in case of Indian Oil Corporation, it is held by the Supreme Court that since the respondent was aware that the penalty of removal was proposed against and that he had liberty to make submissions against the said penalty and availed that liberty, it cannot be said that he was suffer any prejudice if the penalty that has been imposed on the respondent under Order dated 21.01.1986 is altered from dismissal of removal from service. As against this, in the instant case, the petitioner has accepted that the charges are proved against him in response to the second show-cause notice. Apart from this if the contention of the petitioner is accepted then the management would not even be in a position to correct error in the show-cause notice. What is required to be seen is as to whether the employee has got opportunity of hearing and could respond to the same before actual imposition of punishment. Once these conditions are fulfilled, employee

cannot be heard to say that prejudice is caused to him.

11. In so far as the order passed by the State in Revision is concerned, while exercising the revision jurisdiction, the State was not required to re-appreciate the evidence and record independent findings of fact as required to be done by the Appellate Authority. The State was required to see as to whether the order is passed within the jurisdiction and after giving opportunity of hearing to the petitioner. As reflected from the said order, both these conditions are complied with and hence, there is no substance in the contention of the learned counsel for the petitioner that the order passed by the State is unreasoned one.

12. Having regard to the peculiarity of the facts of the case and since no prejudice has been caused to the petitioner with issuance of the second show-cause notice, also considering the gravity of misconduct i.e., misappropriation has been proved against him, it is not fit case to cause interference in the impugned order. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

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