



(1)

21-WP-1398-2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

21 WRIT PETITION NO. 13987 OF 2019

Bhanudas Baburao Wahurwagh
VERSUS
The State Of Maharashtra And Others

...

Mr. P. S. Dighe h/f Mr. Vikram R. Dhorde, Advocate for the Petitioner.
Mr. S. N. Kendre, AGP for Respondent Nos. 1 to 3-State.
Mr. Pratik P Kothari, Advocate for Respondent No.4.

CORAM : KISHORE C. SANT, J.
DATE : 24th NOVEMBER 2025

PC :-

1. Heard Mr. Dighe, the learned Advocate for the petitioner, Mr. Kendre, learned AGP for Respondent Nos.1 to 3 - State, and Mr. Kothari, the learned Advocate for Respondent No.4.

2. The petitioner, a Gram-Sevak dismissed from service, has approached this Court challenging the Judgment and Order dated 28th February 2019, passed by Respondent No.2 - the Hon'ble Minister, Village Development, Mantralaya, Mumbai in Revision No.Pra.Kra.DEN-

2018/Case No.112/Desk-12. The Petitioner had challenged the order passed by the Additional Commissioner, Nashik Division, Nashik, dismissing an appeal against the order passed by the learned Chief Executive Officer, Zilla Parishad, dismissing the petitioner.

3. It is the case that, the petitioner was found involved in some financial embezzlement while working as a Gram Sevak in village Tandulner, Taluka Rahuri, Dist. Ahmednagar. Some of the amount, though collected was not deposited immediately in the bank account. Ongoing projects were shown. On noticing such misconduct, a notice was issued by the Chief Executive Officer. As reply was not found satisfactory, it was decided to conduct an inquiry through Additional Commissioner (Inquiry), Nashik Division, Nashik.

4. After inquiry, by report dated 9th April 2015, the Enquiry Officer submitted that, the charge of embezzlement is proved to the extent of Rs.19,487/-. On that basis, a notice was again issued calling for an explanation as to why no action be taken, by communication dated 21st

January 2016. The same was replied to on 26th February 2016.

5. It is the case of the petitioner that, at the most, the charge proved is that the petitioner has not timely deposited the amount in the bank account and had paid the amount directly to the contractors for the work done for the Gram-Panchayat, which cannot be said to be embezzlement.

6. The learned Chief Executive Officer, on considering the inquiry report and explanation, found that the proper punishment would be of dismissal and passed the order dismissing the petitioner from service on 10th June 2016. The petitioner carried the order to the Divisional Commissioner, Nashik. The Divisional Commissioner Nashik, vide order dated 7th December 2017, dismissed the appeal. The petitioner thus approached the Minister, Village Development, Mantralaya Mumbai. However, there also he failed.

7. Mr. Dighe, the learned Advocate for the petitioner, vehemently argued that taking the facts as it is, and from the wording of the inquiry report as it is, it is only seen that there was delay in depositing the

amount in the bank account. He submits that, in fact, the amount was shown to have been paid to the contractors directly that itself cannot be said to be a case of embezzlement. No direct loss is shown to the gram panchayat. He submits that the statements were recorded of some of the persons showing that the amount was directly spent on the work done for the Gram-Panchayat. He submits that the valuation certificate was also produced. However, the same were not considered by the authorities. Ultimately, he submits that the punishment of dismissal would be highly disproportionate. Some minor punishment ought to have been imposed. Now, the petitioner cannot get even other benefits like pension etc. He thus submits that petition deserves to be allowed.

8. In support of his submission, the learned Advocate Mr. Dighe relied upon the judgments in the case of *H. L. Gulati Vs. Union of India*¹ and in the case of *Union of India and Ors. Vs. P. Balasubrahmanayam*².

9. Mr. Kothari, the learned Advocate for the Respondent No.4,

1 (2015) 12 SCC 408

2 (2021) 5 SCC 662

submits that there is nothing on record to show that the inquiry was not properly conducted or no opportunity was given. The statements showing that the amount was, in fact, spent directly were recorded on 20th February 2016 of one Junior Engineer, Zilla Parishad and one Annasaheb Barde. However, the said statements were not recorded during the course of inquiry. Though ample opportunity was given to the petitioner. The report was submitted on 21st January 2016, he submits that procedure is duly followed, the departmental enquiry was conducted in a fair manner. He submits that since the serious charge of embezzlement is proved, there is no question of showing any leniency. He submits that even on proportionality, no case is made out by the petitioner and prays for dismissal of the writ petition.

10. In support of his submissions, he relied upon the judgments in the case of *Union of India Vs. K. G. Soni*³ and in the case of *Union of India Vs. Indraj*⁴.

3 MANU/SC/8413/2006

4 MANU/SC/1537/2025

11. This Court has heard the parties. This Court also perused the inquiry report. The wording does appear that there was delay in depositing the amount. However, ultimate conclusion drawn is that embezzlement to the extent of Rs.19,487/- is proved. This cannot be said to be only delay in depositing the amount. The charges show that the amount collected towards taxes from time to time was not deposited in the bank. There are no receipts of such amounts showing that amounts were directly paid to contractors etc. On the receipts, there are no signatures of the persons who received the amounts. In some cases, there are receipts; however, no record is maintained of those receipts. No signatures of Sarpanch are appearing in the record etc.

12. This Court finds that it clearly shows that the amount itself is embezzled. No serious infraction of rules is shown while conducting the inquiry. The statement, as rightly pointed out by learned Advocate Mr. Kothari, are the statements recorded after the inquiry was conducted. Those statements are not on record in the inquiry, nor were they recorded during the course of inquiry. Such statements can hardly be

believed when there is no opportunity provided to the other side to cross-examine such person. Those statements therefore cannot be considered by this Court.

13. In the judgment in the case of *Union of India Vs. Indraj* (supra), the embezzlement was to the extent of Rs.1,900/- in one case and Rs.3,366/- in other case. The Hon'ble Apex Court held that the factum of embezzlement is proved. In the said case also, there were no entries found in the books of account. The amount was later on deposited, like in the present case. However, the Hon'ble Apex Court held that since it was the matter of serious misconduct, no punishment of dismissal could have been interfered with by the High Court. In that case, the dismissal was interfered with by the High Court and the punishment was substituted with a lower punishment.

14. In the case of *H. L. Gulati* (supra), a charge against delinquent was only of negligence in discharge of his duties. Because of the said negligence, unauthorized payment was made towards 36 fraudulent

claims and amount of Rs.42.24 lakh was disbursed. In that case, the Hon'ble Apex Court held that it was the case of only negligence, and therefore, punishment of dismissal would be disproportionate.

15. In the case of *P. Balasubrahmanayam* (supra), the Hon'ble Apex Court did not interfere with the finding of disciplinary authority. It was a case only of negligence on the part of delinquent in performing his duties. In that view, the punishment was only interfere with.

16. In the argument, learned Advocate Mr. Dighe also pointed out that in similar circumstances, in the same Zilla Parishad, the punishment imposed was only of reduction in time-scale. He relied upon the order dated 27th September 2019. In that case, only punishment inflicted was reduction of grade. This Court hardly finds any reason to consider the same. Merely because in some other case a lessor punishment is given is no reason to interfere with the present matter.

17. This Court finds that in the present case, there is a serious charge of embezzlement that is prayed and proved. No material is pointed out

to show that the inquiry was not properly conducted or there is violation of any principle of natural justice. This Court does not find any reason even to interfere with the punishment. The punishment cannot be said to be shockingly disproportionate.

18. For all these reasons, this Court finds it difficult to persuade itself to accept the submissions of the learned Advocate for the petitioner. The petition, therefore, dismissed. No order as to costs.

[KISHORE C. SANT, J.]

D.A.Ethape