



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

WRIT PETITION NO.15111 OF 2023

Sanjay Baban Selar,
age 45 years, Occ. Agri,
R/o. At Post Padali Rajangaon,
Tq. Parner, District Ahmednagar. Petitioner

Versus

1. State of Maharashtra,
Through the Secretary,
Rural Development and Panchayat Raj
Department, Government of Maharashtra,
Mantralaya, Mumbai.
2. Chief Executive Officer,
Zilla Parishad, Ahmednagar,
At Post, Tq & Dist Ahmednagar
3. Block Development Officer,
near B.S.N.L. Office,
Parner, Tq. Parner, Dist. Ahmednagar.
4. Sarpanch,
Grampanchayat Padali Rajangaon,
At Post Padali Rajangaon,
Tq. Parner, Dist. Ahmednagar. Respondents.

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Mr. S.B. Rajebhosale, advocate for petitioner.
Mr. S.P. Joshi AGP for respondent no.1.
Mr. K.N.Lokhande, Advocate for respondent nos.2 and 3.
Mr. N.S. Shah, Advocate for respondent no.4.

CORAM	:	S. G. CHAPALGAONKAR, J.
Reserved on	:	June 13, 2025.
Pronounced on	:	July 15, 2025.

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. Present writ petition takes exception to the order dated 1.9.2023, passed by the Chief Executive Officer, Zilla Parishad, Ahmednagar, upholding the order dated 17.02.2023 passed by Block Development Officer, Parner thereby confirming order dated 17.10.2022 passed by Sarpanch, Grampanchayat, Padali Rajangaon thereby dismissing the petitioner from service of Village Panchayat.

3. Brief facts, giving rise to the present petition, are as under :-

The petitioner was appointed as Peon on establishment of Village Panchayat, Padali Rajangaon. On 9.1.2012 he was given appointment order w.e.f. 1.9.2005. Thereafter, he was confirmed in service.

4. On 26.11.2015, Crime No.182 of 2015 had been registered against petitioner for offenses punishable under section 354, 337, 323, 504, 506 of Indian Penal Code, alleging that on 26.11.2015 while informant, her mother-in-law and her son were at Home, petitioner/accused demanded dues of water tax. Informant

told him that her husband had gone out for some work and on his return, tax would be paid. However, petitioner threatened her to disconnect water connection. He caught hold her hands and outraged modesty. When her mother-in-law intervened, petitioner pushed her.

5. In deference to registration of FIR, investigation was completed, charge-sheet was filed and in R.C.C. No.136 of 2016. Petitioner was put to trial. On conclusion of Trial, learned J.M.F.C. Parner convicted petitioner for offences under sections 323, 352 of the Indian Penal Code and sentenced him to suffer Rigorous Imprisonment for one month, but acquitted of the offences punishable u/s 354, 337, 504, 506 of the IPC.

6. Petitioner filed Criminal Appeal no.15 of 2021 before Sessions Court. Eventually, substantive sentence was suspended vide order dated 17.3.2021 till disposal of the appeal. However, on the basis of conviction recorded by learned J.M.F.C. in R.C.C. No.136 of 2016, respondent no.4 dismissed petitioner from service. Petitioner filed appeal against dismissal before Block Development Officer, who affirmed order of respondent no.4. Aggrieved petitioner preferred revision before the Chief Executive Officer, Ahmednagar, who dismissed the revision. In backdrop of sequence of events

mentioned above, present petition is filed assailing dismissal from service and impugning orders passed by the Appellate and revisional authorities.

7. It appears that during pendency of this petition, on 30.11.2023, criminal appeal no.15 of 2021 filed by petitioner has been allowed by learned Sessions Judge, Ahmednagar thereby setting aside order of conviction and sentence passed by Learned J.M.F.C. Resultantly, petitioner has been acquitted. Immediately, on 28.03.2024 petitioner submitted his representations to Chief Executive Officer, Zilla Parishad, Block Development Officer and Grampanchayat seeking reinstatement in service, however no action is taken by them. Accordingly, petitioner amended petition and incorporated the prayer clause E-1, seeking directions against respondent no.4 for re-instatement with continuity of service and full back wages from date of dismissal of in view of the judgment and order of acquittal, particularly, in view of Rule 11 of Bombay Village Panchayats Servants (Recruitment and Conditions of Service), Rules, 1960 (for short Rules of 1960).

8. Mr. S.B. Rajebhosale, learned advocate appearing for petitioner assails order of dismissal passed by respondent no.4, firstly on the ground that same has been passed without following

principles of natural justice as petitioner was not served with show cause notice or given opportunity of putting his defence. Secondly, although, petitioner was tried for various offences in R.C.C. No.136 of 2016, ultimately, conviction was recorded only for the offences under section 352 and 323 of the IPC, which does not involve moral turpitude. Respondent No.4 wrongly assumed petitioner's conviction under section 354 of the IPC, which shows non-application of mind. Mr. Rajebhosale would further submit that looking to the scheme of section 61 (1) of Maharashtra Village Panchayats Act, 1959, and Rules of 1960 framed thereunder, dismissal from service cannot be ordered without looking to nature of allegations and his conduct leading such conviction. Lastly, he submits that petitioner has been acquitted by the Appellate Court, therefore, whole basis of petitioner's dismissal from service has been vitiated. Eventually, respondent no.4 is under obligation to re-instate the petitioner. Mr. Rajebhosale, in support of his contentions, relies upon the observations of this Court in case of **Ashok Govindrao Sardar Vs. The Chief Executive Officer, Amravati and others** reported in 2016(2) ALL MR 413 and observations of Supreme Court in case of **Sahara India (Firm) Vs. Commissioner of Income Tax Central and another** reported in (2008) 14 SCC 151.

9. Per contra, Mr. N.S.Shah, learned advocate appearing for respondent no.4 and Mr. K.N. Lokhande, learned advocate appearing for respondent nos.2 and 3 justifies impugned orders contending that conduct of petitioner was unbecoming of the Public Servant. He was convicted by the competent court on conclusion of trial and his dismissal from service is consequence of conviction under service Rules. Mr. Shah by inviting attention of this Court to Article 311 of the Constitution of India, strenuously submits that, in case of dismissal from service in deference to conviction on criminal trial, deliberation or Departmental Inquiry need not be preceded to dismissal. In such cases adherence to rule of *Audi alteram partem* does not require. In support of his contentions, he relies upon observations of Supreme Court of India in cases of **Hari Pada Khan Vs. Union of India and others reported in (1996) 1 SCC 536** and **Trikha Ram Vs. V.K. Seth and another reported in 1987 (supp) SCC 39**.

10. Having considered the submissions advanced, it is apposite to refer to relevant provisions under the Maharashtra Village Panchayats Act as well as Rules of 1960 framed thereunder, which reads thus :-

**The Maharashtra Village Panchayats Act, 1959
(specifically Section 61) -**

61.(1)] A panchayat may appoint such servants as may be necessary for the proper discharge of its duties under this Act and pay their salaries from the village fund. A Sarpanch may also, in cases of emergency, engage such temporary servants as he may deem necessary. **A panchayat may, from time to time, by written order, fine, suspend or dismiss any servant appointed by it;** but an appeal shall lie against any such order passed by the panchayat to the 6 [Block Development Officer], within one month from the date of the communication of the order to the servant. 7 [An application for revision may be made to the Chief Executive Officer against the decision of the Block Development Officer in such appeal: Provided that, no such application shall be entertained if it is not made within a period of one month from the date of such decision:

Provided further that, no such appeal or application shall be decided unless the servant of the panchayat is given an opportunity of being heard.]

[(2) Without prejudice to the power of a panchayat under sub-section (1), the State Government may 2 [make rules to regulate recruitment and] the terms and conditions of service of servants appointed under sub-section (1).]

11. Plain reading of aforesaid provision shows that the Panchayat is empowered to appoint servants for proper discharge of its duties. Panchayat is further empowered to suspend or dismiss any servant, so appointed, by written order. Any such order passed by Panchayat is subjected to the decision by the appellate authority i.e. Block Development Officer and revisional authority i.e. C.E.O. Similarly, the State Government is empowered to make the rules to

regulate recruitment and terms and conditions of the services of servants appointed under sub-section (1).

12. Pertinently, State Government has framed the Bombay Village Panchayats Servants (Recruitment and Conditions of service) Rules, 1960 in exercise of powers conferred under section 176 of the Act. Rule 3 provides for disqualification and reads thus :-

3. Disqualifications :-

No person shall be employed as a servant of the panchayat, if -

- (a) he is not of good character; or
- (b) he has been dismissed for misconduct from the service of any other panchayat or any local body or from Government service; or
- (c) **he has been convicted by a Criminal Court of any offence relating to elections or involving moral turpitude.**

Similarly, Rule 11 states as under :-

11. Panchayat not to reinstate person convicted in Criminal Court :-

The panchayat shall not reinstate any panchayat servant who has been convicted in a Criminal Court unless he is honorably acquitted in appeal or revision.

13. The harmonious reading of aforesaid provisions definitely depicts that village Panchayat is empowered to dismiss its employee, however, there is no specific provision regulating procedure to be adopted before dismissal on account of conviction is

ordered. The harmonious reading of section 61 with relevant rules, depicts that a person who has been convicted by Criminal Court of an offence involving moral turpitude is disqualified for employment of servant of the village Panchayat. Therefore, village Panchayat can certainly dispense service of employee who has incurred disqualification on conviction for an offence involving moral turpitude.

14. Now turning back to facts of the present case, it can be observed that, although petitioner was charge-sheeted for offenses punishable under sections 354, 337, 323, 504 and 506 of the Indian Penal Code, ultimately, he was convicted only for offenses punishable under section 352 and 323 and sentenced for imprisonment of one month. The impugned dismissal order assumes that petitioner has been convicted for offences under sections 323 and 354 of the IPC. Even resolution of Panchayat dated 11.10.2022 erroneously assumes and records that petitioner has been convicted for such offence. Unfortunately, Chief Executive Officer, Zilla Parishad, Ahmednagar as well as Block Development Officer in their communications dated 29.4.2022 and 12.5.2022 instructed respondent no.4 Panchayat to initiate action against petitioner under section 61 of the Village Panchayats Act assuming

that petitioner has been convicted for offence punishable under section 354 and 323 of the IPC. It is, therefore, eminent that action of petitioner's dismissal from service was on misconception of fact that he has been convicted for offence under section 354. Pertinently, petitioner was not heard or served show cause notice before passing impugned order of dismissal from service. It is trite that while considering penalty to be imposed against convicted employee, Disciplinary Authority will have to take into account conduct of the delinquent employee, gravity offence committed by him and its impact i.e. likely to have at the administration. Hence, it was incumbent upon respondent No. 4 to ascertain if conviction of petitioner is for offences involving moral turpitude that brings disqualification against him under Rule 3 of 1960 Rules from continuing his employment with Panchayat.

15. The term "Moral Turpitude" is defined in Black's Law Dictionary as under :-

"Conduct that is contrary to justice, honesty, or morality. In the area of legal ethics, offenses involving moral turpitude such as fraud or breach of trust. Also termed moral depravity."

Moral turpitude means, in general, shameful wickedness-so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people."

16. The Allahabad High court in case of **Baleshwar Singh vs District Magistrate and Collector reported in AIR 1959 All 71** elaborated term 'Moral Turpitude' thus :-

"The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

17. In present case, conviction of the petitioner was for offenses under section 323 and 352 of IPC, which can not be termed offenses involving moral turpitude. Further, from contents of the FIR, one can observe that while petitioner was discharging his duty of recovery of panchayat taxes, on allegations by family members of the defaulter, offence had been registered. So, in such cases, unless village Panchayat forms opinion as to nature of allegations and effect on administration, action like dismissal from service, having serious impact on petitioner-employee could not have been taken only on basis of conviction by Court.

18. In present case, if respondent No. 4 could have provided opportunity to petitioner to put up his stand before passing dismissal order, definitely he would have brought to the notice of respondent no.4 nature of offence for which he has been convicted. Pertinently, Rule (3) of 1960 rules provides disqualification of employee as a servant of Panchayat, only when, he is convicted by the Criminal Court for offenses relating to elections or involving moral turpitude. Therefore, respondent no.4 could have dismissed petitioner/employee only on recording satisfaction that he incurred disqualification in deference to conviction for the offences involving moral turpitude. In the present case, conviction of petitioner under section 352 or 323 can not be encompassed within prescribed disqualification under Rule 3. The impugned order is a non-speaking order. It only records that petitioner has been convicted by court. Patently it depicts non-application of mind and arbitrary exercise of powers vested with Panchayat. There is no deliberation as the conduct of petitioner leading to conviction. Therefore, this Court holds that action taken by respondents under section 61 is not in conformity with constitutional mandate under Article 14 and 21.

19. Although, Mr Shah, learned advocate appearing for respondent no.4 heavily relied upon decisions of the Supreme Court

in case of Hari Pada Khan And Trikha Ram (supra), both the cases are distinguishable on facts from present case.

20. In case of Hari Pada Khan, relying upon provisions of standing orders, the applicability of principles of natural justice was dispensed with hence Supreme Court observed that non-observance of principles of natural justice was not fatal.

21. In case of Trikha Ram referring to Article 311 (2) Second proviso it is held that civil servant convicted for criminal offence, not entitled for hearing by disciplinary authority in Departmental Inquiry before imposing punishment of dismissal. Even, such observations are in the facts of that case, which are clearly distinguishable from the present case. Pertinently in case of **Shankar Dass vs Union of India and Another reported in (1985) 2 SCC 358** Supreme court while dealing with Article 311 (2) of constitution of India observed in para no 7 thus :-

7. It is to be lamented that despite these observations of the learned Magistrate the Government chose to dismiss the appellant in a huff without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. Clause (a) of the second proviso to Article 311 (2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no-

parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since Cl. (a) of the second proviso to Art. 311 (2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical.

22. Pertinently, in the present case, conviction and sentence imposed against the petitioner has been set aside by the appellate authority during pendency of this petition. However, even without looking to aforesaid subsequent events, this Court holds that only on the basis of conviction and sentence imposed in the criminal case against petitioner for offences which do not involve moral turpitude, petitioner could not have been dismissed from service that too under misconception that he has been convicted for the offence under section 354. It would not be out of place to mention here that although, employer can dispense services of employee convicted by Court, employer will have to apply mind to the circumstances leading to conviction, particularly when conviction is not for grave offence. Even in such case, employee needs to be given an opportunity to put up his stand against proposed action based on conviction. The punishment should be after evolution of conduct

and impact on administration. None of the above aspects considered before passing impugned order.

23. In result writ petition succeeds and allowed in terms of prayer clauses “**A**” to “**E**”. Rule is made absolute in above terms. Writ Petition stands **disposed off**.

(S. G. CHAPALGAONKAR)
JUDGE

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aaa- (f)