

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12800 OF 2018

Abdul Saeed Abdul Razzak Shaikh

Age : 63 years, Occu : Nil,

R/o. B.No.16, Plot No.90, Kamgar Nagar,

Hazarkoli Dhule Tq. & Dist. Dhule

..Petitioner

Versus

1. The State of Maharashtra
Through Secretary
Energy Department
Mantralaya Mumbai-32.
2. Maharashtra State Electricity Distribution
Company Ltd.,
Prakash Gad, Bandra [East] Mumbai
Through Managing Director
3. Superintendent Engineer/
First Appellate Authority,
Maharashtra State Electricity Distribution
Company Ltd., Circle Office, Dhule
Plot No.8, Sahyadri Anandnagar,
Deopur Dhule Tq. & Dist. Dhule
4. Chief Engineer/
Second Appellate Authority,
Maharashtra State Electricity Distribution
Company Ltd., Vidyut Bhavan
Old Industrial Area, Ajantha Road,
Jalgaon Tq. & Dist. Jalgaon
5. The Executive Engineer
Maharashtra State Electricity Distribution
Company Ltd., Urban/Rural Division,
Sakri Road, Dhule Tq. & Dist. Dhule. ..Respondents

...

Mr. A.R. Syed, Advocate for the Petitioner.

Mr. S.B. Pulkundwar, AGP for Respondent/State.

Mr. Anil M. Gaikwad, Advocate for Respondent Nos.2 to 5.

...

**CORAM : R.G. AVACHAT &
ABASAHEB D. SHINDE, JJ.**

RESERVED ON : SEPTEMBER 09, 2025

PRONOUNCED ON : SEPTEMBER 30, 2025

JUDGMENT : (PER : ABASAHEB D. SHINDE, J.)

. Rule. Rule made returnable forthwith. With the consent of parties, taken up for final hearing at the admission stage.

2. This writ petition filed under Article 226 of Constitution of India takes an exception to the termination order dated 26.05.1995 by which the petitioner has been terminated from service while he was working as Sub-Engineer with respondent no.2/Maharashtra State Electricity Distribution Company Ltd ('MSEDCL' for short). The petitioner has also impugned the orders passed by the First Appellate Authority dated 20.07.2018 by which the termination order issued against the petitioner dated 26.05.1995 has been confirmed and has also assailed the order dated 05.10.2018 passed by the Second Appellate Authority, thereby confirming both the orders of termination and the order passed by the First Appellate Authority.

3. It is a case of the petitioner that he was appointed as Sub-Engineer by respondent no.2/MSEDCL vide order dated 12.03.1979. The petitioner further contends that while he was posted at Dhule workshop, he was entrusted with the work of cutting, welding and drilling of electric poles. He was further assigned the work of receiving and collecting the material from the Nasik Store and as and

when the said material was required, he used to send the said material as per the instructions of his superior authorities. It is further the case of the petitioner that one Mr. G.K. Garge was working as Deputy Executive Engineer and one Mr. B.S. Pagar was working as Executive Engineer. The petitioner was working under them and thus, he was under obligation to follow their instructions. It is further contended that the petitioner used to issue the material as per demand raised by way of indent. It is further contended that as per instructions of the superior authorities on some occasions, the material from the workshop was issued without indent by recording an entry in the daily progress register. It is the case of the petitioner that after receipt of indent, the rest of the formalities were being completed including issuance of gate pass. The petitioner has tried to contend that there were as many as 34 instances of like nature by which even without indent and gate pass, the material was taken out of the workshop.

4. The petitioner also further asserted that as the work of installation of electric poles was in progress at Muslim Nagar and other adjoining areas, the petitioner was directed to issue 10 poles on 15.05.1993 and 5 poles on 17.05.1993 and those 15 poles were sent outside the workshop without gate pass. However, there is an entry effected in the daily progress register.

5. The petitioner has also further asserted that the petitioner thereafter was again instructed by the higher authorities to issue 11 electric poles and accordingly, the same was sent on 07.06.1993 and the entry was accordingly taken in the progress register. The indent was not received hence, the gate pass was not prepared. The petitioner has also further contended that the petitioner was acting under the instructions of his higher authorities and whatever poles were taken outside the workshop, the same was cut into pieces and there is an entry to that effect. The petitioner has also further contended that on 08.06.1993, the said Mr. Garge and Mr. Pagar has pressurized the petitioner to give his confessional statement about issuing poles without indent or gate pass and accordingly, the same was recorded. The petitioner further asserts that the said confessional statement was given upon a false assurance. It is further case of the petitioner that thereafter on the next day, the petitioner was again directed to issue 10 more poles and the entry was taken in the daily progress register. It is further the case of the petitioner that he himself was directed to lodge an FIR in respect of theft of poles and accordingly, the petitioner has lodged an FIR on 09.06.1993.

6. However, the petitioner contention is that he was not responsible for the material which was already issued. The petitioner further contended that the said Mr. B.S. Pagar lodged an false offence against the petitioner alleging that 10 poles were found near the B

and C Guest House and after inquiry, it was revealed that those poles were taken away by the petitioner and thus, the petitioner has committed an offence of theft regarding 10 poles and accordingly, on 10.06.1993, FIR came to be registered with the Mohalinagar Police Station, Dhule. It is further contended by the petitioner that ultimately on 10.06.1993, the petitioner was placed under suspension and after serving with charge sheet, the petitioner was charged for 5 charges levelled in the said charge sheet. It is further the case of the petitioner that in order to file reply to the said charge sheet, he made an application on 13.10.1993 requesting for supplying the document such as daily progress register etc. However, the same was not provided.

7. The petitioner has further contended that said Mr. Garge was himself party to the incident. Even while registering FIR, he was present, as he has seen the incidents for which the inquiry was sought to be initiated. The petitioner has also contended that said Mr. Garge was witness to the incidents and the petitioner wanted to examine him as a witness. However, Mr. Garge was himself appointed as companies representative in an inquiry initiated against the petitioner and therefore on 22.07.1994 he made an application for keeping said Mr. Garge away from the proceedings as he cannot be called as a witness to be examined during the inquiry. It is further contention of the petitioner that the petitioner has made an application on

10.10.1994 before an inquiry officer for staying the departmental inquiry till the decision in the criminal trial is rendered. The petitioner further contended that to the charges framed against the petitioner, he submitted his interim defense statement and emphasized on the ground about participation of Mr. Garge and Mr. Pagar in the departmental inquiry. The petitioner further contended that without considering these objections raised by the petitioner, the inquiry officer prepared the inquiry report without taking into consideration the defense statement submitted by the petitioner and submitted the said inquiry report to the disciplinary authority on 30.01.1995.

8. The petitioner further contended that pursuant to the said inquiry report, a show cause notice was issued to the petitioner on 17.04.1995 and the petitioner in order to reply the said show cause notice, has made an application on 20.04.1995 thereby demanding certain documents, so as to meet out the allegations in the show cause notice. The petitioner has further contended that the petitioner ultimately on 05.05.1995, submitted his explanation to the show cause notice again by raising an objection regarding participation of Mr. Garge and Mr. Pagar in the inquiry and claims that he has refuted each and every charge levelled against him.

9. The petitioner further submits that the said competent authority Mr. Pagar did not consider the explanation offered by the

petitioner to the show cause notice and ultimately by the impugned order dated 26.05.1995, the petitioner came to be terminated. It is further contention of the petitioner that the petitioner has preferred first appeal under the regulations framed by respondent no.2 namely the Maharashtra State Electricity Board Employee's Service Regulations (hereinafter referred to as 'Regulations'). However, without properly considering the grounds raised in the appeal, his first appeal came to be rejected by the First Appellate Authority by an order dated 09.01.1996. The petitioner further submits that the petitioner thereafter preferred second appeal as per the Regulations before the Second Appellate Authority thereby challenging the termination order as well as the order passed by the First Appellate Authority. It is the contention of the petitioner that ultimately on 17.03.2001, the appeal preferred by the petitioner came to be rejected by the Second Appellate Authority without considering the grounds raised in the appeal.

10. The petitioner further contends that against the orders passed by the Second Appellate Authority, the petitioner has preferred Writ Petition No.4951 of 2002 before this Court and this Court set aside the said orders and remanded the matter back to the First Appellate Authority by directing the said Appellate Authority to consider the submissions and grounds raised by the petitioner in the appeal in its proper perspective. Pursuant to the order passed by this

Court dated 12.02.2018 in Writ Petition No.4951 of 2002, the petitioner appeared before the First Appellate Authority and filed certain documents. However, the First Appellate Authority by an order dated 20.07.2018, again rejected the appeal filed by the petitioner finding that the charges have been proved against the petitioner and therefore, the punishment imposed on the petitioner thereby terminating his services did not suffer from any infirmity.

11. The petitioner therefore carried the said order of First Appellate Authority in second appeal and Second Appellate Authority by an order dated 05.10.2018 maintained the order passed by the First Appellate Authority. The petitioner further submitted that on the basis of same allegations, the criminal trial instituted on the basis of two FIR lodged in respect of theft of poles, the learned Judicial Magistrate First Class, Dhule by an order dated 01.11.2001 in R.C.C. No.104 of 1993 has acquitted the petitioner. Not only that even in second FIR, pursuant to which R.C.C. No.208 of 1993 was instituted, the learned Judicial Magistrate First Class, Dhule by its judgment and order dated 14.09.1999 has acquitted the petitioner and thus, it is the contention of the petitioner that in the light of aforesaid facts, the entire inquiry proceeding vitiates for the reason that firstly, the petitioner was not given sufficient opportunity of hearing, the documents as prayed for have not been supplied to the petitioner, secondly since the said Mr. Garge and Mr. Pagar were the

instrumental in the alleged incidents of theft and have acted as company representatives and competent authority, therefore, the entire inquiry vitiates. Thirdly, as the petitioner has been acquitted by the competent criminal Court in respect of same allegations and evidence, impugned termination order dated 26.05.1995 issued by respondent no.2 deserves to be quashed and set aside. It has also been contended that, as the First and Second Appellate Authorities have not passed the order in accordance with law, the said orders dated 20.07.2018 and 05.10.2018 also deserves to be quashed and set aside.

12. Respondent no.2 has filed its affidavit through Executive Engineer on behalf of respondent nos.2 to 5 and has resisted the writ petition on the ground that the petitioner is involved in the incidents of theft of poles and the said incidents of theft have occurred on many occasions and the petitioner is an instrumental of the said incidents. It has also been averred in the affidavit in reply on behalf of respondent no.2 that the allegations that the documents were not supplied to the petitioner is devoid of any substance and all the documents as prayed for were duly supplied to the petitioner. It has also been stated in the affidavit in reply that, the allegations about participation of two members against whom the petitioner has raised an objection, since the petitioner has participated in the inquiry proceeding, the petitioner cannot be allowed to take the said stand. It

has also been contended that merely because the petitioner has been acquitted in criminal complaints, it does not mean that the departmental inquiry cannot be held and concluded as, in criminal trial, only four witnesses have been examined, whereas, in departmental inquiry, as many as 11 witnesses have been examined. It is further stated in the affidavit in reply that, the impugned order of termination has been rightly passed after considering the report of inquiry and duly considering the reply filed by the petitioner. So far as the allegations regarding deciding of the appeals filed by the petitioner in hasty manner and without adhering to the observations of this Court in Writ Petition No.4951 of 2002 is concerned, it has been stated in the affidavit in reply that, the First and Second Appellate Authorities have heard the petitioner and no new material was placed before the Appellate Authorities and considering the fact that the petitioner has been found guilty of misconduct, the charges have been proved during the course of inquiry, the respondent no.2 has rightly terminated the services of the petitioner as per the Service Regulations of respondent no.2 and therefore has prayed for dismissal of writ petition.

13. Learned counsel for the petitioner in support of his contention has relied on the judgment of the Hon'ble Apex Court in the case of **Ranjit Thakur Vs. Union of India**¹, as well as another judgment of the Hon'ble Apex Court in the case of **Arjun Chaubey Vs.**

1 1987 (4) SCC 611

Union of India², to contend that any person who has a personal stake in an inquiry must keep himself aloof from the inquiry. In the present case, as per the contention of the learned counsel for the petitioner, the said Mr. Garge and Mr. Pagar have participated as company representatives and the competent authority and therefore, the inquiry stands vitiated. Learned counsel for the petitioner has also relied on the judgment of the Hon'ble Apex Court in the case of **Chamoli District Co-operative Bank Limited through its Secretary/Mahaprandhak and another Vs. Raghunath Singh Rana and others**³, to contend that the inquiry vitiates on the ground that the delinquent is not supplied with the documents on which he wish to rely. Learned counsel for the petitioner has also relied on the judgment of the Hon'ble Apex Court in the case of **Pawan Kumar Agarwala Vs. General Manager-II and Appointing Auth. State Bank of India and others**⁴, to buttress his submission that sufficient opportunity should be given to meet out the charges against the delinquent even by permitting him to cross-examine the witness examined by the other side. Learned counsel for the petitioner has also further relied on the judgment of the Hon'ble Apex Court in the case of **Shashi Bhushan Prasad Vs. Inspector General Central Industrial Security Force and Ors**⁵, to submit that if the delinquent is acquitted by the competent Criminal Court in respect of same charges

2 1984 AIR (SC) 1356

3 2016 AIR (SC) 2510

4 2015 AIR (SCW) 6910

5 AIR 2019 SC 3586

as are levelled in departmental inquiry, he should be reinstated. Lastly, learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in the case of **M. Paul Anthony Vs. Bharat Gold Mines Ltd and Ors**⁶, to contend that if the delinquent on the basis of same allegations which is subject matter of departmental inquiry is acquitted by the competent Criminal Court, in that case, the delinquent should be reinstated by setting aside the termination order.

14. On the other hand, learned counsel appearing on behalf of respondent nos.2 to 5, has placed reliance on the judgment of the Hon'ble Apex Court in the case of **The Indian Oil Corporation and Ors Vs. Ajit Kumar Singh and Anr**⁷, to contend that this Court while interfering with the matter pertaining to the departmental inquiry should be slow and this Court cannot convert itself into the Court of appeal. Learned counsel for respondent nos.2 to 5 further relied on the judgment of the Hon'ble Apex Court in the case of **Union of India and Others Vs. Subrata Nath**⁸, to contend that this Court under Article 226 of the Constitution of India should refrain from interfering with the findings of fact recorded in departmental inquiry subject to certain exceptions. Lastly, learned counsel for respondent nos.2 to 5 relies upon the judgment of the Hon'ble Apex Court in the case of **The State of Rajasthan and Ors Vs. Bhupendra Singh in Civil Appeal Nos.8546-8549 of 2024 decided on 08.08.2024** to contend that

6 AIR 1999 SC 1416

7 2023 LiveLaw (SC) 478

8 2022 LiveLaw (SC) 998

normally, under Article 226 of the Constitution of India, this Court may not interfere with the findings recorded by the inquiry officer and the punishment imposed on the basis of same.

15. We have given our thoughtful consideration to the submissions advanced on behalf of the learned counsel for the petitioner and learned counsel for the respondent nos.2 to 5 and with their able assistance have also gone through the contents of writ petition and an affidavit in reply. As far as the first ground of challenge that the petitioner has not committed any misconduct is concerned, admittedly, there has been a theft of electric poles, that too while the petitioner was in-charge of the said electric poles and though the petitioner has tried to contend that those poles were often taken away without indent and the gate pass, cannot be believed and, therefore, the contention of learned counsel for the petitioner that no such incidents have ever occurred cannot be believed and accepted. The further contention of the learned counsel for the petitioner that even the petitioner has also filed one FIR on 09.06.1993 regarding theft of poles and that itself makes it clear that the petitioner has no concern with the alleged theft is also unacceptable as, lodging of FIR by himself will be of no avail to the petitioner for the reason that the petitioner has himself accepted his mistake and has given a confessional statement on 08.06.1993 itself. Though now the petitioner is trying to resile from it by contending that the said

confessional statement was recorded under false assurance, it is however pertinent to note that whether said confessional statement was obtained by false assurance or otherwise cannot be gone into at this stage and the fact that the petitioner has given a confessional statement about his mistake/misconduct and then lodging the FIR afterthought on 09.06.1993, cannot be ruled out. The further contention of learned counsel for the petitioner that said two officers namely Mr. Garge and Mr. Pagar have accompanied him for lodging the FIR also do not inspire confidence as admittedly, second FIR has been lodged on 10.06.1993 by said Mr. Pagar about theft of electric poles and therefore, the respondents have decided to initiate departmental inquiry against the petitioner.

16. The contention of the learned counsel for the petitioner that said two persons namely Mr. Garge and Mr. Pagar have acted as company representatives and competent authority to which the petitioner has objected in the departmental inquiry and on that count of their participation, the departmental inquiry vitiates is also devoid of any substance, as the petitioner has continued to participate in the said inquiry proceeding and allowed the same to be completed and it is only when the petitioner found that the result is likely to be adverse to the petitioner, therefore, the petitioner has come out with the said stand that the participation of these two persons in inquiry proceeding is objectionable. Even otherwise the petitioner has not

been able to demonstrate as to why these two persons would falsely implicate the petitioner.

17. It is pertinent to note that if at all the petitioner was vigilant enough to see that the inquiry cannot be proceeded in the presence of these two persons, the petitioner could have been well advised to challenge the said inquiry itself by approaching the competent forum. However, as observed above, the petitioner has continued to participate in the inquiry proceeding and allowed it to be completed thus, this contention of the petitioner cannot be accepted. It is settled position of law that a person who participates in the proceedings and allow the same to be completed cannot challenge the composition or otherwise of the said proceedings.

18. The third ground raised by the petitioner about non-supply of documents because of which the inquiry proceeding stands vitiated is also devoid of any substance for the reason that, the petitioner has not been able to point out as to what prejudice has been caused to the petitioner by non-supplying of the documents, as demanded by the petitioner and in what manner the inquiry stands vitiated and, therefore, in absence of any prejudice shown to have been caused by the petitioner, we are not inclined to consider the said submission.

19. It is pertinent to note that, it is not the case of the petitioner that he was not served with the enquiry report. According

to us, when respondent nos.2 to 5 in their affidavit in reply have categorically stated that whatever documents have been requested by the petitioner, all those have been supplied to the petitioner and the petitioner has not countered the said contentions by filing rejoinder in that regard. The next ground on which the petitioner has placed more emphasis is that, since on the basis of same allegations the criminal trial was conducted bearing R.C.C. No.104 of 1993 and R.C.C. No.208 of 1993, wherein the learned Judicial Magistrate First Class in both said criminal trials have acquitted the petitioner by their judgment and order dated 01.11.2001 and 14.09.1999 and therefore, since the petitioner has been acquitted in the criminal trials in respect of same allegations, such an incident of alleged theft has never happened and therefore, the impugned termination order and the subsequent orders passed in first appeal and second appeal deserves to be quashed and set aside.

20. As far as the said ground is concerned, admittedly, in departmental inquiry as many as 11 witnesses were examined and all have deposed against the petitioner. Whereas, in criminal trial, only four witnesses were examined. It is settled position of law that in so far as the proceedings of criminal trial are concerned, in criminal trial offence is required to be proved beyond reasonable doubt. Whereas, in departmental proceedings, the charges are required to be proved on preponderance of probability and therefore, the said contention of

the petitioner that merely because the petitioner has been acquitted by the competent criminal Court in respect of same incidents therefore the impugned termination order deserves to be quashed and set aside, is devoid of any substance.

21. As far as the judgments relied upon by the petitioner are concerned, with due respect, those are on the fact and circumstances of the particular case and are not applicable in the present case. We are of the considered view that merely because the petitioner has been acquitted in criminal trial, that fact would not result in exonerating him from the charges levelled against the petitioner in departmental proceedings, as in so far as the departmental proceedings are concerned, it is ultimately the expectation of the employer that his employee shall act with a sense of responsibility and every employer expects his employee to act with utmost honesty and integrity. Ultimately, the relationship between the employer and employee involves a degree of trust and if the employee is charged and is arraigned in any criminal case, the employer may feel loss of confidence and faith in such employee and would test the employee from the angle as to whether he is fit to continue his relationship with him or not. Moreover, the scope of criminal proceeding and the departmental inquiry as stated above are distinct, being different in the mode of enquiry, scope of enquiry, standard of proof and vary from purpose of conduct of such proceedings. The purpose of criminal

prosecution is to inflict proper punishment as an offender, whereas the purpose of departmental proceedings of the public servant is to maintain integrity, honesty and truthful conduct in performance of the public duty. In the present case, charges levelled against the petitioner are of theft which is a serious charge and said aspect cannot be lost sight of.

22. Last but not the least, the contention of the learned counsel for the petitioner that, the First and the Second Appellate Authority have not decided the appeals preferred by the petitioner challenging the impugned termination order in accordance with the law and in the teeth of observation of this Court in Writ Petition No.4951 of 2002 is concerned, we have gone through the orders passed by the First and the Second Appellate Authority and we find that the petitioner has not presented any amended appeal by adding any new ground nor had filed any fresh appeal setting out the grounds of appeal and thus whatever grounds were raised by the petitioner in first appeal, those appears to have been duly considered by the First Appellate Authority and had rejected the first appeal filed by the petitioner. Similarly, we have also perused the order passed by the Second Appellate Authority who has confirmed the termination order and the order passed by the First Appellate Authority and after perusing the entire record, the authorities have come to a conclusion that no case whatsoever has been made out by the petitioner to

interfere with the impugned termination order as well as the order passed by the First Appellate Authority and thus have dismissed the second appeal filed by the petitioner.

23. In writ jurisdiction under Article 226 of the Constitution of India, this Court will not undertake re-appreciation of evidence in departmental inquiry proceedings, we therefore are of the view that while exercising the jurisdiction under Article 226 of the Constitution of India, which is discretionary in nature will not interfere with the concurrent findings of fact recorded in departmental inquiry as well as the first appeal and the second appeal as, we do not find any infirmity or perversity nor any violation of principles of natural justice, so also this Court cannot re-appreciate the evidence though the learned counsel for the petitioner has tried to take this Court into factual matrix, we are not inclined to go into the factual matrix in view of what we have already held herein-above, we therefore are not inclined to interfere with the impugned orders. The writ petition sans merit and the same is liable to be dismissed.

24. Hence, the writ petition stands dismissed.

25. No order as to costs.

26. Rule is discharged.

(ABASAHEB D. SHINDE, J.)

(R.G. AVACHAT, J.)