

(2020) 03 BOM CK 0002
In the Bombay High Court
Case No : Writ Petition No. 444 Of 2019

Akhil Ahmad

APPELLANT

Vs

Commissioner For Agriculture And Ors

RESPONDENT

Date of Decision : 02-03-2020

Acts Referred:

Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 — Rule 5(1)(vii)
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 03 BOM CK 0002

Hon'ble Judges : S.V. Gangapurwala, J; Shrikant D Kulkarni, J

Bench : Division Bench

Advocate : Sujeet D Joshi, Ashish B Rajkar, P.S. Patil

Final Decision : Dismissed

Judgement

Shrikant D. Kulkarni, J

1. The petitioner is assailing the order dated 18.08.2014 passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad in Original

Application No.186/2014, by invoking Article 226 of the Constitution of India.

2. Factual scenario, leading for invoking the writ jurisdiction, is as under:

(1) The petitioner was appointed as Electrician in view of order of the Assistant Director of Agriculture, Aurangabad. He was posted at Parbhani in

Group-C post. At the relevant time, the petitioner was required to attend the Court proceedings on number of occasions and as such, he was required

to leave headquarters. Though he had proceeded on leave on numerous occasions, only after due permission of his superior officer.

(2) There was one incident of fire in the Laboratory at Parbhani on 17.12.2011 because of short circuit which was a pure accident and there was no

negligence whatsoever on the part of the petitioner. Even then departmental enquiry was initiated against him by putting him under suspension. The petitioner was slapped with two charges, (i) Remaining absent without informing the office head and (ii) Making him found responsible for fire on the north-east direction of the laboratory on 17.12.2011. Departmental enquiry was concluded and the petitioner was held guilty. The disciplinary authority imposed punishment of compulsory retirement from service under the provisions of Rule 5(1)(vii) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 by order dated 20.07.2013.

(3) The petitioner had challenged the said punishment by preferring departmental appeal before the Commissioner for Agriculture, Pune. However, the petitioner was unsuccessful and the appeal came to be dismissed by order dated 07.04.2014. Being dissatisfied by the order of dismissal of appeal, the petitioner had approached the Maharashtra Administrative Tribunal, Bench at Aurangabad by filing Original Application No. 186/2014 which also met with the same fate.

(4) The petitioner has challenged the order passed by the Maharashtra Administrative Tribunal in Original application No. 186/2014 dated 18.08.2017 as well as the order dated 07.04.2014 passed by the appellate authority and sought reinstatement in service with all consequential benefits such as arrears of salary, increments etc. by taking aid of Article 226 of the Constitution of India.

3. The respondents, by way of reply affidavit, contended that both the charges levelled against the petitioner were upheld up to the Maharashtra Administrative Tribunal. The petitioner was found guilty under the Maharashtra Civil Service Conduct Rules. The respondents have followed the rules and regulations as well as proper procedure while conducting enquiry and awarded appropriate punishment by keeping in mind the charges proved against the petitioner.

4. Heard Mr. Sujeet Joshi, learned Advocate for the petitioner and Mr. P.S. Patil, learned Additional G.P. for the respondents at length. Perused the order passed by the Maharashtra Administrative Tribunal in Original Application No.186/3024 dated 18.8.2017 as well as the order passed in departmental enquiry and the findings recorded there under.

5. Mr Sujeet Joshi, learned counsel for the petitioner vehemently argued that the

charges levelled against the petitioner are mischievous and have been levelled out of grudge and malafide. Findings recorded by the enquiry officer are perverse. The order of compulsory retirement of the petitioner is unjust, improper, arbitrary and bad in law. Mr Joshi further submitted that the petitioner, under compelling circumstances, proceeded on leave to prosecute civil suits and that fact is not considered by the enquiry officer. The petitioner had proceeded on leave and his leaves were subsequently sanctioned by the competent authority and as such, charge of absence from duty for 88 days levelled against the petitioner is untenable. The petitioner had put in 28 years long service and he is 56 years old and left with remaining two years services. The punishment of compulsory retirement imposed by the disciplinary authority is very much harsh. The petitioner would be deprived of getting his full pension, if the said punishment of compulsory retirement is confirmed.

6. Per contra, Mr P. S. Patil, learned Additional Government Pleader for the respondents argued that the enquiry officer has followed due procedure while conducting departmental enquiry. Full opportunity was given to the petitioner to defend the charges levelled against him. On a full-fledged departmental enquiry, the petitioner was found guilty under both the charges on the basis of evidence. The disciplinary authority has imposed punishment having regard to the nature of charges levelled and proved against the petitioner. The said imposition of punishment is upheld by the appellate authority. The Maharashtra Administrative Tribunal has also upheld the findings recorded by the enquiry officer and the disciplinary authority.

7. Mr P. S. Patil, learned AGP invited our attention that the scope of interference in service matters, more particularly, in relation to disciplinary proceeding, is very much limited. Learned AGP submitted that the High Court, in exercise of powers under Article 226 of the Constitution of India, cannot venture into re-appreciation of evidence or interfere with conclusion in enquiry proceeding, if the same is conducted in accordance with law; the court cannot go into the adequacy/reliability of the evidence or interfere, if there be some legal evidence on which findings can be based or correct the error of fact however grave it may be or go into the proportionality of punishment unless it shocks conscience of the Court. Mr Patil has placed his

reliance in the case of Union of India Vs. P. Gunasekaran, reported in (2015) (2) SCC 610 in support of his arguments. According to Mr. Patil,

learned A.G.P., this is not a fit case to interfere with the punishment imposed by the disciplinary proceeding and the petition needs to be dismissed.

8. By way of reply, Mr Sujeet Joshi, learned Advocate for the petitioner has also invited our attention to the decision in the case of Krushnkant B.

Parmar Vs. Union of India in Civil Appeal No.2106/2012, wherein the Honâ??ble Supreme Court has held that absence from duty without any

application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to

which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such

case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant. By taking aid of the

aforesaid decision of the Honâ??ble Supreme Court, Mr. Joshi submitted that interference is called for in this case in view of harsh punishment

imposed upon the petitioner.

9. Scope of interference in service matters/disciplinary proceedings, by invoking Article 226/227 of the Constitution of India, is limited. The legal

proposition has been made clear by the Honâ??ble Supreme Court of India. Paras 12 and 13 of the decision of the Honâ??ble Supreme Court in the

case of Union of India Vs. P. Gunasekaran (supra), reads thus:

â??The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence.

The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (d) there is violation the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.â??

10. Having regard to the above legal position made clear by the Honâ??ble Supreme Court, the High Court may interfere where the departmental

authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory

rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations

extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion

on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental

authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be

based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a

writ under Article 226 of the Constitution.

11. On going through the findings recorded by the enquiry officer, it is noticed by us that the first charge against the petitioner was of unauthorized

absence from duty for 88 days. The enquiry officer has recorded the finding in the affirmative on the basis of oral as well as documentary evidence. It

is also evident from the record that superior officers have issued memos to the

petitioner regarding unauthorized absence from duty. The petitioner had accepted his mistake and assured to the officer that he would not repeat the same in future. Unfortunately he has repeated his act of unauthorized absence from duty and subsequently sending leave applications. Findings recorded by the enquiry officer cannot be faulted with in view of the oral as well as documentary evidence collected during departmental enquiry.

12. Now coming to the second charge, the petitioner was found responsible for fire broke out in north-east direction of the laboratory on 17.12.2011 at

Parbhani. On perusing the enquiry papers, it is found that the petitioner was carrying out the work of testing earthing on 17.12.2011 at about 12.00 to

12.20 noon. Sparking took place in the supply of electricity at the laboratory and cable caught fire and as a result of this, the the white papers were

burnt. Persons who were present there gathered on the spot and extinguished the fire and avoided further damage and casualty. The petitioner seems

to have not taken proper care for earthing work and as a result, of it, fire broke out. The petitioner replaced the cable at his own and that too without

taking prior permission of the superior officer in order to save himself.

13. The enquiry officer has discussed about the serious incident of fire which broke out in the laboratory on 17.12.2011 in the noon because of the

negligence of the petitioner. It was a serious charge against the petitioner and the same has been proved. The petitioner has also admitted the incident

of fire but contended that it was a case of pure accident. Had it been such a case of pure accident, why he replaced the burnt cable immediately and

that too without permission of the superior officer and why he did not wait for inspection at the hands of the superior technical persons in order to

arrive at proper conclusion. If the circumstances and evidence on record are appraised, the finding recorded by the enquiry officer against serious

charge of fire incident in the laboratory at Parbhani cannot be faulted.

14. In the present case, the disciplinary authority and the appellate authority seem to have arrived at conclusion on the basis of oral and documentary

evidence that the petitioner had failed to maintain devotion to duty and his behaviour was in a manner unbecoming of government servant. The

disciplinary authority, the first appellate authority and the Maharashtra Administrative Tribunal have scrutinized the evidence recorded in the

departmental enquiry initiated against the petitioner and arrived at conclusion

holding the petitioner guilty for both the charges. The disciplinary authority and the appellate authority as well seem to have followed the due procedure, rules and regulation of MCS (D&A) Rules. Principles of natural justice were also followed. Reasonable opportunity was given to the petitioner to put-forth his defence. The findings recorded by the enquiry officer were found proper and correct on the basis of evidence collected during the departmental enquiry.

15. The second charge proved against the petitioner holding him responsible for the fire on the north-east corner of the laboratory on 17.12.2011 is

serious. The incident of fire seems to have taken place because of negligence of the petitioner and that is why the disciplinary and appellate authority

have imposed punishment of compulsory retirement upon the petitioner. The disciplinary authority and the appellate authority as well seem to have

considered the longstanding service of the petitioner and imposed punishment of compulsory retirement. It seems to be in tune with serious incident of

fire broke out in the laboratory because of negligence of the petitioner. The disciplinary authority and the appellate authority as well seem to have not

imposed harsh punishment of dismissal of the petitioner from service taking into consideration his longstanding service and as such, the punishment of

compulsory retirement imposed upon the petitioner cannot be said to be unjust, improper, arbitrary and bad in law.

16. Being a public servant it was very much necessary for the petitioner to maintain discipline in performing the duty with due responsibility sincerity

and serve the public office with honesty. He should adhere to discipline for not only achieving personal excellence but for collective good of public

interest.

17. The disciplinary authority, on scanning the enquiry report and having accepted it, after discussing the available and admissible evidence on the

charges and the Maharashtra Administrative Tribunal, having endorsed the view of the disciplinary authority, it is not proper to re-appreciate the

evidence in exercise of writ jurisdiction under Articles 226/227 of the Constitution of India, when the findings are not found perverse.

18. Much was argued by Mr Sujeet Joshi, learned advocate for the petitioner about disproportionate punishment imposed upon the petitioner having

regard to the nature of charges. We are unable to accept the argument advanced

by Mr Joshi, learned Advocate for the petitioner. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment in a case like present one where the misconduct of the petitioner was not only restricted to his unauthorized absence from duty for 88 days in different phases but there is one more serious charge of incident of fire broke out in the laboratory at Parbani on 17.12.2011 due to negligence of the petitioner.

19. Presently, we shall proceed to scrutinize whether it is a case of disproportionate punishment by applying doctrine of proportionality. Doctrine of proportionality in the context of imposition of punishment in service law gets attracted when the court on the analysis of material brought on record comes to the conclusion that the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court.

Wednesbury's principle of reasonableness is replaced by the doctrine of proportionality. Considering both the charges cumulatively, it cannot be said to be disproportionate punishment considering the nature of serious charge proved against the petitioner relating to the incident of fire broke out in the laboratory because of negligence of the petitioner.

20. The punishment of compulsory retirement imposed upon the petitioner cannot be said to be disproportionate to the charge proved against the petitioner that fire broke out in the laboratory because of his negligence. It amounts to serious misconduct on the part of the petitioner and as such, the doctrine of proportionality does not attract in view of the ratio laid down by the Honâ??ble Apex Court in the case of Chennai Metropolitan Water

Supply and Sewerage Board Vs. T T Murali Babu, reported in (2014) 4 SCC 108

21. Having regard to the legal position made clear by the Supreme Court in case of Union of India Vs.P. Gunasekaran (Supra), no case is made out by the petitioner to interfere with the findings recorded by disciplinary authority and the punishment imposed upon the petitioner looking to the magnitude of serious charge. We are unable to accept the argument advanced by Mr Sujeet Joshi, learned counsel for the petitioner to interfere with

the punishment of compulsory retirement imposed upon the petitioner by applying doctrine of proportionality.

22. Having regard to the above reason and discussion, we arrive at conclusion that there is no scope for interference in this petition. The petition needs to be dismissed.

23. Writ petition stands dismissed. No costs.