
(2013) 08 BOM CK 0232
In the Bombay High Court
Case No : Writ Petition No. 831 of 2013

Arvind

APPELLANT

Vs

The Chief Executive Officer, The Senior Accounts Officer, The
Project Director and The Block Development Officer

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Citation : (2014) 1 ALLMR 299 : (2013) 6 MhLj 740

Hon'ble Judges : Z.A. Haq, J;Anoop V. Mohta, J

Bench : Division Bench

**Advocate : R.S. Sirpurkar, for the Appellant; M.M. Sudame, Advocate for
Respondents 1 and 4, for the Respondent**

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—Rule. Rule returnable forthwith. Heard finally by consent of the parties. The petitioner has challenged order dated 20.12.2008 passed by respondent no. 2-the Senior Accounts Officer, Zilla Parishad, Chandrapur, whereby deducted an amount of Rs. 66,424/- from the retiral dues of the petitioner and also challenged order dated 4th January, 2013 passed by the Chief Executive Officer, Zilla Parishad, Chandrapur in Appeal under Rule 13(d) read with 14 (1)(a)(c) of the Maharashtra Zilla Parishad District Services (Discipline and Appeals) Rules, 1964.

2. The petitioner was in service for more than 39 years with respondent no. 1 and he was witness to the departmental inquiry conducted against Shri Dhengale, wherein he was charge-sheeted for misappropriation of cement. The inquiry report was submitted on 8.1.2007 holding Shri Dhengale guilty of the charge and in the inquiry report observation is made that others including the petitioner might be involved in the misappropriation of cement and, therefore, directed to recover the amount equally from all the three, including the petitioner.

3. Admittedly, there was no specific show cause notice issued to the petitioner or

even there after alleging misappropriation of cement along with Shri Dhengale in the year 2007. Therefore, there was no occasion for the petitioner to participate and/or face charges levelled for the first time in the inquiry report. We are not concerned with the finding against Shri Dhengale, who was given full opportunity and who participated in the proceedings. The petitioner, merely because witness to the inquiry, that itself, is not sufficient to hold guilty on presumption and assumption along with Shri Dhengale. Subsequent show cause notice dated 22.5.2007 issued after inquiry report to the petitioner for recovery of amount, in our view, itself is in breach of principles of natural justice. Because, by that time, conclusions arrived at by respondent no. 1, and the notice was only to give explanation about proportionate recovery and not on merits of the matter including the subsequent allegations and/or charges of misappropriation of cement, even by the petitioner.

4. The respondents have also filed reply. There is no supporting material or material to justify or to deny the fact of not issuing any notice and/or not granting any opportunity to the petitioner before passing the order of recovery and/or show cause notice for the same.

5. We are inclined to observe that such recovery holding petitioner also responsible for the alleged loss, is unsustainable. The finding and/or inquiry should be clear and specific. It is not the question of recovery of certain amount but it is the question of charge on a person at this stage of his retirement, which has serious consequences in the society and specifically when as averred, there was no such charges and/or allegations made him during his 39 years of service.

6. The Appellate Authority, has also without considering the above positive aspects, straightway relied upon the finding recorded by the Inquiry Officer which was basically not against the petitioner-rejected the appeal filed by the petitioner. It means the Appellate Authority not reopen and reconsider the order/inquiry report so placed by the Department. The formality of hearing of appeal, therefore, is again a clear breach of principles of natural justice, in view of the reasons so recorded in above paragraphs.

7. We are of the view that the action/order passed by the respondents is unsustainable. Therefore, it required to be quashed and set aside.

8. Resultantly, the following order:-

(i) Order dated 20.12.2008 passed by respondent no. 2 is quashed and set aside.

(ii) Respondent no. 2 is directed to release the amount, if deducted already or withheld from the retiral dues of the petitioner, preferably within four weeks.

The petition is accordingly allowed. Rule is made absolute accordingly. No costs.