

(2011) 03 BOM CK 0161

In the Bombay High Court

Case No : Writ Petition No. 2194 of 2010

Bhagwan Sawant

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Citation : (2011) 4 ALLMR 300

Hon'ble Judges : A.V. Nirgude, J

Bench : Single Bench

**Advocate : B.S. Kudale, for the Appellant; N.H. Borade, AGP for Respondent
Nos. 1 and 2, N.L. Jadhav, for the Respondent**

Judgement

A.V. Nirgude, J.—Rule. Rule made returnable forthwith. With the consent of the learned Counsels for the parties, the present Writ Petition is taken up for final hearing at the stage of admission.

2. This Writ Petition is filed against the successive judgment and order dated 17th November, 2008, passed by the Disciplinary Authority/Appointing Authority and the Appellate Authority, under the provisions of Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1965(for short the ?Rules).

Facts leading to this litigation in short can be stated as under:

3. The Petitioner was working as peon in one of the Primary Health Centre of Zilla Parishad Beed. The Petitioner remained absent, without permission from his duty, since 30th October, 2001. The In-charge of Primary Health Centre sent letters to the Petitioner and directed him to resume duty, but in vain. On 09th January, 2001, he suo-moto appeared before In-charge of the Primary Health Centre, but he was directed to report at the headquarters of Zilla Parishad. Accordingly, on 31st January, 2002, the Chief Executive Officer of the Zilla Parishad allowed the Petitioner to resume duty, but soon thereafter, on 17th July, 2002 he was placed under suspension and was again allowed to resume duty in December, 2002.

Thereafter, in September, 2003, the Chief Executive Officer directed Departmental Inquiry against the Petitioner. Departmental Inquiry began in November, 2003 and was concluded by a report dated 28th July, 2004, which was submitted to the Chief Executive Officer, who was the Disciplinary Authority under the provisions of ?Rules ?. In the report, the Inquiry Officer gave clear finding that the charge against the Petitioner was proved. He also recorded his finding that the Petitioner was in the habit of remaining absent unauthorizedly. He, however, suggested that the Petitioner should be punished in a such manner that in future he would not remain absent unauthorizedly from the duty.

After receipt of the report, Disciplinary Authority/Chief Executive Officer issued final show cause notice to the Petitioner. The Petitioner did not reply to the same and so Disciplinary Authority/Chief Executive Officer passed an order and awarded compulsory retirement, as punishment to the Petitioner. In this order, the Disciplinary Authority did not mention as to why he had awarded punishment of such nature, when Special Inquiry Officer had clearly impliedly indicated that punishment could be less than compulsory retirement, dismissal etc. The Petitioner, then challenged this order dated 28th July, 2004, passed by the Disciplinary Authority, before Additional Commissioner, Aurangabad. The Appeal was pending for four years. On 17th November, 2008, the learned Additional Commissioner dismissed the same.

4. On perusal of the judgment and order, passed by the Appellate Authority, it is noticed that, the learned Additional Commissioner did not discuss as to why he could not reduce the punishment awarded. At one place, he specifically stated that he had ample power to reduce the punishment awarded to the delinquent, and obviously in a case of this nature, the Appellant at least would try to seek reduction in the rigor of punishment awarded to him. This was obviously a case, where at least such prayer could have been made. Even the Special Inquiry Officer impliedly indicated that the Appellant could be awarded punishment that would be most probably less than compulsory retirement or dismissal when he said that the Petitioner could be made to refrain from remaining absent from the duty in future. I am aware that these observations of the Special Inquiry Officer are not biding on the Disciplinary Authority and the appellate authority. Yet the observations would obviously prompt one to think and decide as whether the Petitioner should be awarded punishment which would not cost him his job or whether his case is worse enough that his compulsory retirement is the least possible punishment.

5. As said above, the Disciplinary Authority awarded the punishment without giving any reason, so it was all the more necessary for the Appellate Authority to provide reason as to why he had agreed with Disciplinary Authority.

6. I think both authorities mentioned above have committed grave error in appreciating the case while awarding punishment. I am, therefore, inclined to remand the case back to the Disciplinary Authority, who would record his reasons for awarding the punishment. The Rule is made absolute in terms of following

order.

ORDER

(I) The impugned judgment and order dated 17.11.2008, passed by the learned Additional Divisional Commissioner, in Appeal No. DB-Cell-79/2006 stand set aside.

(II) The case is remanded back to the Disciplinary Authority/Chief Executive Officer, who would pass a fresh order as indicated above.

(III) In case the order goes against the Petitioner, he would have fresh opportunity to file an appeal against such order.