

(2001) 10 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 1494 of 1989

Dhanaraj Ramchandra Pandhare

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 79(4)

Citation : (2002) 2 ALLMR 483 : (2002) 3 BomCR 210 : (2002) 3 MhLj 566

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : S.B. Talekar, for the Appellant; V.K. Jaju, A.G.P. for respondent Nos. 1 and 2 and N.P. Patil, for the Respondent

Final Decision : Partly Allowed

Judgement

B.H. Marlapalle, J.—In this petition filed under Articles 226 and 227 of the Constitution, the petitioner has prayed for quashing and setting aside the order dated 31-10-1987 passed by the Chief Officer, Municipal Council, Murum, Tq. Omerga, Dist. Osmanabad by which he was removed from-service and he has also challenged the validity of provisions of Section 79(2) of the Maharashtra Municipalities Act i.e. The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (the Municipalities Act for short).

2. The petitioner came to be appointed as a Naka Karkoon sometimes in 1964 and it appears that subsequently, he was designated as Naka Karkoon-cum-tax collector. Pursuant to the Resolution passed by the Standing Committee of the Municipal Council and as a result of the departmental proceedings initiated against the petitioner, he was removed from service on 29-9-1980 and this order came to be challenged in an appeal before the Collector and Regional Director of Municipal Administration, Aurangabad. The said appeal was allowed by judgment dated 17-9-1982 and the petitioner was reinstated.

3. However, by order dated 12-5-1987 he was placed under suspension by the

Chief Officer of the Municipal Council, pursuant to the Resolution passed on the same day. He represented against the said suspension order before the Collector on 17-5-1987 and show cause notice was issued on 27-5-1987 levelling against him 5 charges. The petitioner submitted his explanation to the show cause notice on 24-6-1987 and without conducting a departmental enquiry, the petitioner came to be removed from service by order dated 31-10-1987 purportedly based on the resolution passed by the Standing Committee on 28-10-1987, with effect from 1-11-1987 and hence, this petition.

4. During the pendency of this petition the Collector, Osmanabad passed an order on 18-8-1988 and in view of the amended provision of Section 79(4) of the Municipalities Act, held that the Resolution No. 123 dated 20-10-1987 regarding removal of the petitioner from service was illegal and the said resolution was therefore, stayed. Consequently, on 18-11-1998 the Municipal Council has issued an order reinstating the petitioner in service and regarding the intervening period the order states that the same would be as per the outcome of this petition.

5. So far as the challenge to the constitutional validity of Section 79(4) of the Municipalities Act is concerned, the same need not be gone into in view of the fact that the Government of Maharashtra has amended the said provision by Maharashtra Act No. 18/93. The next challenge to the punishment order requires to be considered.

6. We are informed that there are no specified rules as formulated by the Municipal Council governing, discipline and appeal for its employees and the Municipal Councils have adopted the Maharashtra Civil Services Rules in that regard. If that be so, it was imperative for the Chief Officer, to institute a departmental enquiry into the charges levelled against the petitioner when his explanation to the show cause notice was not found to be satisfactory. The further action could have been on the basis of the findings submitted by the Enquiry Officer or the decision of the disciplinary authority. Instead, the Municipal Council proceeded further to issue the impugned dismissal order dated 31-10-1987 on the basis of the Resolution dated 20-10-1987. Even if the Municipal, Council after holding the enquiry decides to proceed against the petitioner by way of awarding punishment, the provisions of Section 79(4) of the Municipalities Act, as at present require that Collector's approval is sought. This was not the position when the impugned order was issued. The Municipal Council is at liberty to follow this course of action as an employer and its inherent power to punish an erring employee cannot be taken away by this Court.

7. In the result, we allow the petition partly and quash and set aside the order of dismissal dated 31-10-1987 as well as the appellate order passed on 17-1-1988 if any. The Municipal Council is at liberty to proceed afresh against the petitioner from the stage of appointment of the Enquiry Officer, if so desired and decide the further course of action based on the findings recorded by the Enquiry Officer. The period from 11-7-1987 till 18-11-1998 shall be deemed suspension period and the petitioner shall be entitled for the subsistence allowance as per rules

applicable to him for the same period. It is further clarified that petitioner's entitlement over and above the subsistence allowance or for salary of the said period shall be subject to the outcome of the departmental proceedings. In case such proceedings are not instituted within a period of 8 weeks from today, the petitioner shall be entitled for normal salary of the entire period of deemed suspension. The subsistence allowance may be released expeditiously.

8. Rule made absolute in terms of the above order. No costs.