

(2002) 03 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 2605 of 1986

Manik Pachghare

APPELLANT

Vs

Chief Executive Officer, Zilla Parishad and Others

RESPONDENT

Date of Decision : 13-03-2002

Acts Referred:

Maharashtra Zilla Parishad, District Services (Discipline and Appeal) Rules, 1964 — Rule 21(2), 7

Citation : (2002) 4 ALLMR 505 : (2002) 4 BomCR 491 : (2002) 3 LLJ 773

Hon'ble Judges : R.K. Batta, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : R.B. Pendharkar, for the Appellant; H.Z. Brmhane Advocate, for the Respondent

Judgement

R.K. Batta, J.—The petitioner was working as co-ordinator in Zilla Parishad, Amravati. He was on leave from January 3, 1983 to February 1, 1983, but was recalled on duty vide letter dated January 11, 1983. Thereafter he was deputed to bring an amount of Rs. 10,000/- from the office of the District Health Officer, Zilla Parishad, Amravati. The petitioner collected the said amount and, according to the petitioner, while he was at the bus stop the said amount of Rs. 10,000/- was stolen by miscreants. The petitioner reported the matter to the control room at the bus station. Later he reported the matter to the Administrative Officer, District Health Office, Amravati. A police complaint was lodged. Investigation carried out by it did not make any headway either in tracing the thief or recovery of the said amount of Rs. 10,000/-. A departmental enquiry was instituted against the petitioner for negligence in performing his duty with reference to the said sum of Rs. 10,000. The Enquiry Officer found the petitioner guilty of negligence and ultimately the said amount of Rs. 10,000/- was ordered to be recovered from the petitioner in 80 installments at the rate of Rs. 125/- per month. In addition, one increment of the petitioner was also withheld. The petitioner filed appeal as contemplated under the Rules, but the appeal was dismissed. The petitioner has thus approached this Court in writ jurisdiction

seeking to quash the orders. He also prayed for striking down Sub-rule (10) of Rule 6 of the Maharashtra Zilla Parishads and District Services (Discipline & Appeal) Rules, 1964 (hereinafter referred to as the said Rules).

2. The challenges are manifold which have been argued before us by the learned senior counsel for the petitioner. The basic challenges are:

- (i) The Charge has not been signed by the competent authority;
- (ii) Though petitioner asked for assistance to defend in the enquiry, assistance has been refused. Besides this the petitioner was not made aware of the right to have defence services;
- (iii) The petitioner was examined first without examining other witnesses and thereby the enquiry officer had thrown to the winds all the principles of natural justice;
- (iv) Report of Enquiry Officer was not furnished to the petitioner;
- (v) No show cause notice, as contemplated under the Rules, was given to the petitioner before imposing penalty;
- (vi) The combination of two alleged minor penalties which resulted in civil consequence has in fact resulted in major penalty;
- (vii) Finding of Enquiry Officer is perverse; and
- (viii) The Appellate Authority has not complied with Rule 21(2) (a & b) while deciding the appeal.

3. Before we proceed to deal with the submissions made by the learned Senior counsel for the petitioner, it is necessary to see the charges against the petitioner as also the context and the penalties imposed on the petitioner. Admittedly, the petitioner had collected Rs. 10,000/- from the District Health Officer, Zilla Parishad, Amravati. The entire case of the petitioner, as revealed from the reply dated September 12, 1983 (Annexure-9) to the charge, is that though he had asked for conveyance and assistance for carrying the said amount, such assistance was not given to him and while he was at the bus stand the said amount was stolen. The case of the petitioner is that the said amount was stolen from his pant pocket and at that time he was carrying two suit cases. Though the petitioner and his counsel has urged before us that it was not the part of the duty of petitioner to collect the said amount, yet since he had collected the said amount, this question is relegated in the background. The fact that no assistance was granted to him by the authorities is also of no consequence since once money was collected by the petitioner it was his bounden duty to have taken all the necessary precautions to safeguard the said amount of Rs. 10,000/- which was entrusted to him. The fact that he had kept it in his pant pocket at the crowded bus stand, by itself, shows negligence on his part because he could have kept the said amount in safe custody in the suit cases which he was carrying. Therefore, the explanation offered by the petitioner would not obviously be

acceptable so as to absolve him of his duty and responsibility with reference to the amount of Rs. 10,000/-. It is in this background that we have to analyse and examine the submissions made by the learned counsel for the petitioner.

4. Firstly, it has been urged by the learned counsel for the petitioner that the charge-sheet was not signed by the Competent Authority. In this respect, respondent No. 1 in para 12 of the reply has stated that the charge-sheet was signed by the Chief Executive Officer himself and only copies of the charge-sheet were signed from the original by Shri D. M. Sakhare. Actually the copy on record, which is at page 40, itself shows that the original has been approved by the Chief Executive Officer. It is in view of this the learned Advocate for respondent Zilla Parishad placed before us the original charge-sheet which is signed by the Chief Executive Officer. Ordinarily, we would not have permitted him to file this document but since in the reply itself there is a reference about it, he was permitted to produce the same. In view of this, we do not find any merit in the first contention of the learned counsel for the petitioner.

5. The next contention of the petitioner is that he had orally asked for assistance of legal practitioner which was refused by the Competent Authority. Rule 6(5) of the said rules provide that the Parishad servant may present his case with the assistance of any other Parishad servant, but shall not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or the Disciplinary Authority, having regard to the circumstances of the case, so permits. Admittedly, the person nominated by the Disciplinary Authority is not a legal practitioner and, as such, the Authority had very rightly refused the appointment of a legal practitioner. Besides this, the matter did not involve any complicated legal question and, as such, the request for appointment of a legal practitioner could not have been granted. The learned advocate for the petitioner has placed reliance on the judgments on the question that the petitioner was not informed of his right of assistance. Reliance has been placed on the decisions in Govardhanmal Madanmal Singhvi Vs. Union of India (UOI), and Inspector General of Police, Bhubaneswar v. Sukanta Kumar Nayak reported in 1993 LIC 521 (Ori). The fact that the petitioner had himself sought the legal assistance, by itself shows that the petitioner was aware that he could avail the legal assistance, though admittedly has not been informed by the Authorities. In view of the awareness of the petitioner that he could avail assistance even of a legal practitioner, we do not find any force in the second contention of the learned counsel for the petitioner. Besides, as we have already pointed out, it was not a matter which involved complicated question of fact or law. It was a simple matter for which the petitioner had offered explanation, which explanation on facts was not accepted by the Disciplinary Authority as well as the Appellate Authority.

6. Insofar as the third contention is concerned, it is urged that the petitioner was first questioned and thereafter the witnesses were examined which shows that there was no fair play and there has been negation of the principles of natural

justice. Reliance has been placed on the decision *Meenglas Tea Estate Vs. Its Workmen*, and *Associated Cement Co. Ltd. Vs. The Workmen and Another*, . The facts of both the cases are different and as such same are not applicable to the facts and circumstances of the case under consideration. In *Meenglas Tea Estate* (supra) no statements of the witnesses at all had been recorded and it is only on the basis of questioning of the petitioner and the enquiring officer using his knowledge of incident that the findings were given by the Enquiry Officer. In the domestic enquiry, rules of Evidence are strictly not applicable. It has to be seen whether the delinquent had fair opportunity to place his case. In the case under consideration, though the petitioner was examined first, the witnesses were examined thereafter and after examining of the witnesses also the petitioner was questioned. As such, the procedural irregularity in these circumstances does not affect or vitiate the enquiry. Likewise, the facts and circumstances in the ruling in *Associated Cement Co. Ltd.* (supra) are different and the same do not help the petitioner. Accordingly, we do not find any merit in the third contention of the learned counsel for the petitioner.

7. The learned Advocate for the petitioner then contended that the report of the Enquiry Officer was not furnished to the petitioner. In this respect, in para 17 of the reply, it is stated by the respondent Zilla Parishad that the copy of the report was sent to the petitioner. It is in order to substantiate this contention that the learned counsel for respondent Zilla Parishad has placed before us a letter of the petitioner himself which was presented by him on April 9, 1984 which shows that the copy of the report had been received by the petitioner and he did not accept the said finding. Ordinarily, we would not have allowed the Advocate for respondent-Zilla Parishad to produce the said document, but since there is a categorical averment in para 17 of the reply that the copy of the report was furnished to the petitioner, the said letter dated April 9, 1984 was allowed to be produced on record which clearly shows that the report was received by the petitioner. Prima facie, the petitioner has taken an incorrect stand in this behalf.

8. The next contention of the learned counsel for the petitioner is that no show cause notice was given to the petitioner before imposition of penalty in accordance with Rule 7 of the Rules. In this connection, we may point out that in the order imposing penalty which is at Annexure-12 it has been clearly stated that show cause notice was given. Accordingly, the learned Advocate for the respondent Zilla Parishad has placed before us the notice in respect of the same. The production of this notice was objected to by the learned senior counsel for the petitioner on the ground that when there are no pleadings to this effect, the document in question cannot be allowed to be produced. However, the document at Annexure-12, upon which the petitioner himself relies, itself speaks of the show cause notice having been given. In view of this, we do not find any merit in the objection raised by the learned senior counsel for the petitioner that the said document should not be looked into or allowed to be produced. In view of this, we do not find any merit in the submission made by the learned senior counsel for the petitioner that no show cause notice was given to the petitioner. We do

not find any breach of Rule 7 of the said Rules.

9. The learned senior counsel for the petitioner then argued before us that combination of two penalties - mainly recovery of Rs. 10,000/- from the salary of the petitioner which in fact amounts to reduction in scale as also withholding of an increment for one year taken together amount to major penalty. In fact, we do not find any merit in the submission of the learned senior counsel for the petitioner that by ordering recovery there has been reduction in scale of the petitioner. The Disciplinary Authority had on facts found that the sum of Rs. 10,000/- had been entrusted to the petitioner who was negligent in handling the same and it is as a result of the same that the responsibility for the said amount of Rs. 10,000/- belonging to the Government had been fixed on the petitioner. In the facts and circumstances, it cannot be said that the said order would result even in civil consequences. Insofar as withholding of one increment for one year is concerned, the same is minor penalty. The rulings upon which reliance has been placed by the learned senior counsel for the petitioner are not attracted to the facts and circumstances of the case under consideration. The said rulings are *Kulwant Singh Gill v. State of Punjab* (1990) 2 Cur LR 686 (SC) and *R.S. Yadav v. Indian Institute of Technology* 1993 III LLJ (Supp) 206. Both these rulings deal with the question of stoppage of two increments with cumulative effect which has been held to be major penalty. However, in the case under consideration, the penalty which has been imposed is only withholding of one increment simpliciter for one year which is obviously minor penalty. In this view of the matter, we do not find any merit in the contention of the learned senior counsel that combination of two minor penalties has in fact resulted in major penalty. There is no merit in the challenge in relation to striking down Rule 6(10) of the Rules in question which is not attracted in the case as it is covered by Rule 7 in question governed.

10. In the light of what we have already discussed, we do not find that the findings of the Enquiry Officer or that of the Appellate Authority are perverse by any standard. The findings are based upon record on account of negligence of the petitioner while dealing with the case belonging to the Government.

11. Insofar as the objection relating to the Appellate Authority having not complied with the rules is concerned, the Appellate Authority is not required to give elaborate findings in the matter. The material question was such that prima facie on the case put forth by the petitioner himself it was a clear case of negligence on his part while taking the cash belonging to the Government. Therefore, no elaborate reasoning is required to be given by the Appellate Authority. Even in this objection, we do not find any merit.

12. On the basis of the findings of facts recorded by the Enquiry Officer who had ordered recovery of the amount of Rs. 10,000/- which had been entrusted to the petitioner and on account of whose negligence the said amount was lost; in the circumstances, for the said negligence, penalty of withholding of one increment for one year neither can be said to be unjustified nor excessive in any manner. In

the light of the above, we do not find any merit in this writ petition which is liable to be rejected.

13. It has been brought to our notice by the learned senior counsel for the petitioner that even in spite of stay order dated December 26, 1986 against recovery of the said amount 10,000/- and withholding of one increment for one year, the Department has deducted the said amount of Rs. 10,000/- from the Death-cum-Retirement Gratuity. This action of the Department is prima facie contemptuous in nature, for which we are of the opinion that show Cause Notice for contempt of Court be issued to the then Chief Executive Officer, Zilla Parishad, Amravati and the then District Health Officer, Zilla Parishad, Amravati. The learned Advocate for the respondent Zilla Parishad to intimate the names of the said Officers within a period of four weeks, upon which Notices shall be issued to them returnable in four weeks there from. Except for contempt action which remains to be taken, the writ petition is rejected. Rule is accordingly discharged.