

(2019) 11 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition No. 6998 Of 2018

Manik Shravan Dukare

APPELLANT

Vs

Chief Executive Officer And Anr

RESPONDENT

Date of Decision : 07-11-2019

Acts Referred:

Evidence Act, 1872 — Section 137, 138
Maharashtra Zilla Parishads District Services (Discipline And Appeal) Rules, 1964 —
Rule 4, 4(i), 6(6)
Constitution Of India, 1950 — Article 226

Citation : (2019) 11 BOM CK 0036

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : A.N. Ansari, M.L. Vairagade, Mrunal Naik

Final Decision : Allowed

Judgement

1. Heard.
2. Rule. Rule made returnable forthwith. Heard with consent of learned counsel for the rival parties.
3. By this writ petition, the petitioner has challenged order dated 17/04/2017 passed by respondent No.1 imposing penalty upon the petitioner, as also order dated 16/07/2018 passed by respondent No.2, whereby appeal filed by the petitioner stood dismissed.
4. The facts leading to filing of the present writ petition are that the petitioner was appointed as an Assistant Teacher in Zilla Parishad Higher Secondary Marathi School, Amboda Panchyat Samiti, Arni, District Yavatmal as an Assistant Teacher on 29/07/1985. With passage of time, he was promoted to the post of Headmaster. On 06/10/2015 the petitioner was served with a charge-sheet, wherein six charges were levelled against him. These included the charge of being negligent in performing his duties, withdrawing amount from the amount

of e-class land of the school without prior permission, failing to deposit amount which was realized from auction of e-class land belonging to the school in the account of the school, failing to take classes, not residing in headquarters and insubordination of directions given by seniors.

5. Enquiry was conducted in pursuance of the said charge-sheet, wherein the employer i.e. the Zilla Parishad represented through the Chief Executive Officer examined as many as five witnesses, while the petitioner did not examine any witness in support of his defence. One of the allegations against the petitioner in the context of negligence in performance of the duties was that he had not properly supervised the food being served in the school and that there was some deficiency in that regard. The other charges have been already noted above. The enquiry officer took into consideration the material on record and came to the conclusion that all the charges had been proved against the petitioner.

6. On the basis of the enquiry report submitted in pursuance of the enquiry, on 17/04/2017, the impugned order was passed by respondent No.1 imposing penalty of withholding of two increments permanently, direction to recover an amount of Rs.46,100/- with 15% interest from the petitioner and treating the period of suspension from 05/05/2015 to 03/11/2015 as suspension for all purposes.

7. Aggrieved by the same, the petitioner filed appeal before respondent No.2, which was the Appellate Authority. By impugned order dated 16/07/2018, the Appellate Authority dismissed the appeal filed by the petitioner, thereby confirming the penalty imposed upon him.

8. Mr.Akhtar N. Ansari, learned counsel appearing for the petitioner, submitted that the impugned orders are unsustainable in law, because the enquiry in the present case suffered from irregularities and violation of principles of natural justice, thereby causing grave prejudice to the petitioner. It was submitted that the written explanation filed on behalf of the petitioner was never taken into consideration by the concerned authority and that the procedure adopted during the course of enquiry permitting the Presenting Officer to put questions to the witnesses after their cross-examination had been conducted on behalf of the petitioner, violating the Rules, particularly Rule 6(6) of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964. It was submitted that such procedure of permitting questions being asked after cross-examination was over, was prejudicial to the petitioner and it could not be presumed that the petitioner was a legally trained person to further seek cross-examination of such witnesses. It was submitted that the said procedure completely vitiated the enquiry and that therefore, the impugned orders were liable to be set aside.

9. It was submitted that even on the material on record, the charges levelled against the petitioner could not be said to be proved and that vital documents were completely ignored by the respondents while imposing penalty upon the petitioner. It was further submitted that the penalty imposed upon the petitioner

was shockingly disproportionate, because direction of recovery was passed against him despite the fact that the material on record nowhere indicated that any amounts were misappropriated by the petitioner and in fact there was no such specific charge framed against him. On this basis, it was submitted that the impugned orders deserved to be quashed and set aside. The learned counsel appearing for the petitioner relied upon the judgments of the Hon'ble Supreme Court in the case of B.C.Chaturvedi v. Union of India and others, reported in (1995) 6 SCC 749 and U.P. State Road Transport Corporation & Ors. v. Mahesh Kumar Mishra 7 Ors., reported in (2000) 3 SCC 450.

10. On the other hand, Mr. M.L.Vairagade, learned counsel appearing for the respondent No.1, submitted that the scope of interference in cases like the present one in writ jurisdiction was extremely limited and that this Court could not sit in appeal over the findings rendered during the course of the enquiry. It was further submitted that the lacunae sought to be projected on behalf of the petitioner in the manner in which the enquiry was conducted were not supported by the material on record and that in any case the petitioner failed to demonstrate any prejudice caused to him. It was submitted that the findings rendered during the course of enquiry could not be interfered with, only because it was claimed on behalf of the petitioner that the same were erroneous. It was further submitted that since financial misdemeanor was involved in the present case, the penalty imposed on the petitioner was proportionate and no interference was warranted. The learned counsel for the respondent No.1 relied upon judgment of the Hon'ble Supreme Court in the case of Registrar General, High Court of Patna v. Pandey Gajendra Prasad and others, reported in (2012) 6 SCC 357.

11. Mrs. Mrunal Naik, learned Assistant Government Pleader appeared on behalf of respondent No.2.

12. Having heard the learned counsel for the rival parties, it is first necessary to examine the scope of interference in writ jurisdiction, in cases involving challenge to findings rendered during the course of the enquiry against a delinquent employee. It is settled law that the scope of interference in such cases is limited as the Writ Court is not expected to sit in appeal over the findings rendered in the enquiry and that the scope of judicial review is to that extent limited. The Hon'ble Supreme Court in the case of Registrar General, High Court of Patna v. Pandey Gajendra Prasad and others (supra) has taken note of the said position of law and held as follows :-

"18. It is trite that the scope of judicial review, under Article 226 of the Constitution, of an order of punishment passed in departmental proceedings, is extremely limited. While exercising such jurisdiction, interference with the decision of the departmental authorities is permitted, if such authority has held the proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by consideration extraneous to the evidence on the

merits of the case, or if the conclusion reached by the authority, on the face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. (See: Shashikant S. Patil).

19. Explaining the scope of jurisdiction under Article 226 of the Constitution, in State of A.P. v. S. Sree Rama Rao, this Court made the following observations: (AIR pp. 1726-27, para 7)

"7.....The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the Rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

20. Elaborating on the scope of judicial review of an assessment of the conduct of a judicial officer by a Committee, approved by the Full Court, in Syed T.A. Naqshbandi v. State of Jammu & Kashmir this Court noted as follows: (SCC p. 600, para 7)

"7....As has often been reiterated by this Court, judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions of administration of justice with which we are concerned in this case, by going into the correctness as such of ACRs or the assessment made by the Committee and approval accorded by the Full Court of the High Court."

13. Applying the aforesaid position of law to the facts of the present case, it would be necessary to examine the contentions raised on behalf of the rival parties. In the present case, it is claimed on behalf of the petitioner that Rule 6(6) of the aforesaid Rule stood violated, because the enquiry officer permitted the Presenting Officer to ask questions even after the cross-examination of the witnesses was over. In order to appreciate the aforesaid contention raised on behalf of the petitioner, reference to the said Rule is necessary.

"6. Procedure for imposing major penalties.-

(1)

(2)

(3)

(4)

(5)

(6) The Inquiring Authority shall, in the course of the inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Parishad servant shall be entitled to cross-examine witnesses examined in support of the charges and to give evidence in person. The person presenting the case in support of charges shall be entitled to cross-examine the Parishad servant and the witnesses examined in his defence. If the Inquiring Authority, declines to examine any witness on the ground that his evidence is not relevant or material, it shall record its reasons therefor in writing."

14. A bare perusal of the aforesaid provision would show that although it is specifically provided that the delinquent employee shall be entitled to cross-examine witnesses in support of the charges and the Presenting Officer supporting the charges shall be entitled to cross-examine the delinquent employee and the witnesses that may be examined in defence, there does not appear to be any specific provision for further examination of the witnesses by the Presenting Officer after cross-examination is over on behalf of the delinquent employee. But, if the principles enshrined in the provisions of the Evidence Act are to be perused, it would be evident that there is indeed a provision of re-examination of the witness after which the adverse party may further cross-examine upon the matter. These provisions are contained in sections 137 and 138 of the Evidence Act. Thus, if a witness was re-examined, an opportunity to cross-examine on behalf of the delinquent employee could have been granted by the enquiry officer to ensure complete fairness in the process of the enquiry. But, it would be difficult to suggest that reading of Rule 6(6) of the aforesaid Rules, completely prohibits the process of re-examination of witnesses examined in support of the charges levelled against the delinquent employee. If such re-examination is permitted by the enquiry officer, opportunity to cross-examine needs to be certainly granted to the delinquent employee.

15. The question that arises for consideration is as to whether in the present case, it could be said that the entire enquiry stood vitiated, because the enquiry officer did not grant an opportunity to the petitioner to cross-examine the witnesses examined in support of the charges. In the present case, there does not appear to be any material on record to show that the petitioner ever demanded such an opportunity. Yet, as noted above, it would be incumbent upon the enquiry officer to provide such an opportunity to ensure fairness in the procedure of the enquiry. But, this Court is of the opinion that merely because the Presenting Officer was permitted to put certain questions to the witnesses after cross-examination on behalf of the petitioner was over, it cannot be said that the entire enquiry stood vitiated. This is because the petitioner would still

have to cross the next hurdle of demonstrating prejudice that he suffered due to such alleged irregularity in the process of enquiry.

16. This Court perused the evidence of the five witnesses who were examined in support of the charges levelled against the petitioner and it was found that even if such opportunity was not granted to the petitioner, no serious prejudice was suffered by him. In any case, even if the said questions put to the witnesses by the Presenting Officer after their cross-examination was over, were to be ignored, it would not seriously make any difference to the findings rendered by the enquiry officer.

17. Therefore, allegations made regarding serious procedural irregularities leading to alleged prejudice caused to the petitioner, cannot be accepted in the facts and circumstances of the present case.

18. In this situation, it needs to be examined whether the manner in which the enquiry officer arrived at findings against the petitioner was sustainable. The approach adopted by the enquiry officer needs to be examined to verify as to whether the enquiry officer took into consideration irrelevant material or that relevant material was ignored while rendering findings against the petitioner.

19. In order to examine the aforesaid aspect, it would be necessary to refer to the charges levelled against the petitioner.

The main charges levelled against the petitioner were negligence in performance of duty and insubordination, in the context of supervision of quality of food made available in the school and the manner in which amounts pertaining to auction of e-class land of the school were utilized and dealt with.

20. Since the charge involving amounts pertaining to auction of e-class land concerned alleged financial irregularity and hence a serious charge, the same is taken up for consideration first. The enquiry officer has rendered findings against the petitioner to the effect that amounts of Rs.10,000/-, on various dates totaling to Rs.30,000/- were withdrawn from the fund of e-class land by the petitioner, without prior permission and further that the amounts received from auction of e-class land were not deposited in the account of the school and they were directly made over to the sarpanch for development of agricultural land of the school.

21. As regards the withdrawal of amounts of Rs.10,000/- on three occasions by the petitioner, the learned counsel for the petitioner has invited attention of this Court to resolution dated 10/03/2012 passed by the School Committee permitting such withdrawal of Rs.10,000/- from the account pertaining to auction of e-class land. A perusal of the three dates on which the petitioner withdrew such amounts shows that such amounts were withdrawn on 11/01/2012 and thereafter on two dates i.e. 13/02/2014 and 29/03/2014. The aforesaid resolution dated 10/03/2012 could be relatable to the withdrawal of amount of Rs.10,000/- on 11/01/2012. It appears that there was emergent need of the said

fund and therefore, it was withdrawn and post facto the School Committee passed resolution on 10/03/2012 approving such withdrawal. As regards the withdrawal of amount on 13/02/2014, there was also post facto resolution of the School Committee dated 24/06/2014 approving such withdrawal. As regards the third occasion on which amount of Rs.10,000/- was withdrawn i.e. Rs.29,314/-, it is claimed by the learned counsel for the petitioner that similar post facto resolution was also passed by the School Committee on 07/08/2014.

22. These documents, particularly the post facto resolutions passed by the Committee do not find mention in the report of the enquiry officer at all. The charge against the petitioner was that he had withdrawn these amounts without prior permission, but the thrust of the said charge appears to be that the entire action of such withdrawals was completely unilateral on the part of the petitioner as the headmaster of the school and that it had no approval from the School Committee. Yet, the aforesaid documents show that at least post facto approval of the School Committee was on record. The material on record appears to indicate that such amounts were withdrawn and utilized for the works of the school and that such actions were approved later by the School Committee. Although, it would be correct to say that there was absence of prior approval, but resolutions passed by the School Committee after such withdrawal approving such actions of the headmaster indeed had a bearing on the extent to which the charge could be said to have been proved against him. The fact that the enquiry officer arrived at findings against the petitioner on the said charge, without adverting to the resolutions of the School Committee, would show that the same were not completely in consonance with the requirement of fair play.

23. As regards the question as to whether the petitioner was guilty of the charge of unauthorizedly handing over amounts realized from auction of e-class land of the school to the sarpanch for development of agricultural land of the school, instead of depositing it in the account of the school and taking entries in the passbook, it is again necessary to peruse the manner in which the enquiry officer arrived at findings against the petitioner and the material that was available on record. The witnesses who have appeared in support of the charges levelled against the petitioner have stated that under the relevant Rules, it was incumbent upon the petitioner to have deposited such amounts in the account of the school and entries were to be taken in the passbook. Admittedly, this procedure was not followed by the petitioner. But, the learned counsel appearing for the petitioner has invited attention of this Court to a resolution passed by the School Committee, specifically authorizing the action of the petitioner in handing over the said amounts directly to the sarpanch instead of depositing them in the account of the school and taking entry in the passbook. This resolution demonstrates that the action undertaken by the petitioner was based on direction given by the School Committee, by way of the aforesaid resolution. The report of the enquiry officer does not refer to the said resolution at all. It clearly demonstrates that the enquiry officer erred in appreciating the material on record and ignored relevant material while giving adverse findings against the

petitioner. Therefore, the findings rendered by the enquiry officer in this regard stand vitiated.

24. The aforesaid material brought to the notice of this Court also shows that the charges levelled against the petitioner regarding negligence in performance of the duty and insubordination could also not stand proved, because the relevant material in the form of resolutions of the School Committee were completely ignored by the enquiry officer. Another relevant aspect of the present case is that subsequently the Panchayat Samiti also passed resolutions approving the manner in which the funds were withdrawn and utilized by the petitioner as headmaster. These aspects were not properly taken into consideration by the enquiry officer while rendering findings against the petitioner, which ultimately led to imposition of penalty against him.

25. This leaves the charges of failing to take classes and residing outside the headquarters. The material on record with respect to these charges appears to have been referred to by the enquiry officer while rendering findings against the petitioner, but the cross-examination of an important witness on behalf of the employer shows that there is absence of cogent material to bring home such charges levelled against the petitioner. In any case, the said charges were minor as compared to the aforesaid charges pertaining to financial irregularity and the lack of supervision in ensuring quality of food served in the school.

26. Thus, it appears that the petitioner could, at the most, be held guilty of having failed to properly supervise the quality of food being served in the school and in failing to respond the communications sent to him in that regard. Insofar as the alleged financial irregularities are concerned, it appears that when the petitioner withdrew amounts of Rs.10,000/- on three occasions, there was absence with prior permission or resolution of the School Committee, although such actions were approved by post facto resolutions passed by the School Committee. To that extent, it can be said that the petitioner was guilty of negligence in performance of his duties and that he should insisted upon prior permission from the School Committee before proceeding to undertake the said actions. Even if that be so, the nature of penalty imposed against the petitioner appears to be wholly disproportionate.

27. In this regard and the extent to which Writ Court could interfere with the nature of penalty imposed upon an employee, the Hon'ble Supreme Court has held in the case of B.C.Chaturvedi v. Union of India and others (supra) as follows:-

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own

conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

28. The said position of law has been reiterated in the case of U.P. State Road Transport Corporation & U Ors. v. Mahesh Kumar Mishra & Ors. (supra). After referring to the above quoted judgment, the Hon'ble Supreme Court has held in the said case is as follows:

"8. This will show that not only this Court but also the High Court can interfere with the punishment inflicted upon the delinquent employee if, that penalty, shocks the conscience of the Court. The law, therefore, is not, as contended by the learned counsel for the appellants, that the High Court can, in no circumstance, interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings.

9. Another Three-Judge Bench of this Court in Colour-Chem Ltd. v. A.L. Alaspurkar and Others, [1998] 3 SCC 192, has also laid down the same proposition and held that if the punishment imposed is shockingly disproportionate to the charges held proved against the employee, it will be open to the Court to interfere."

29. Applying the said position of law, it becomes clear that this Court can interfere with the quantum of punishment imposed upon the petitioner in the present case. Since it has been found that the petitioner can, at worst, be held guilty of negligence insofar as undertaking actions of withdrawal of amounts without prior permission or resolution of the School, the penalty imposed upon him appears to be wholly disproportionate and it needs to be interfered with and modified. The matter could have been sent back to the respondent No.1 for consideration of imposition of lesser punishment, but in order to shorten the litigation, as advised by the Hon'ble Supreme Court in the above quoted judgment in the case of B.C. Chaturvedi v. Union of India and others (supra), this Court is of the opinion that the question of grant of lesser punishment can be considered in this writ petition itself.

30. A perusal of Rule 4 of the aforesaid Rules shows that various penalties are prescribed when an employee, like the petitioner herein, is found guilty of certain charges. This Court has already discussed as to why the findings rendered by the enquiry officer in the present case regarding serious charges having been proved against the petitioner cannot be sustained. For the same reasons, this Court is of the opinion that the penalty imposed by the respondent No.1 in the present case needs to be interfered with. The respondent No.1 imposed penalties of withdrawal of increments permanently, recovery of amount of Rs.46,100/- with 15% interest and treating the period of suspension as suspension for all

purposes. This Court has found that the petitioner cannot be said to have misappropriated any amounts in the present case. It was not even the charge against the petitioner that he had withdrawn amounts and either misutilized them or pocketed them himself. The material on record clearly indicates that although the amounts were utilized for the purpose for which they ought to have been utilized, but there was some minor negligence on the part of the petitioner while withdrawing the amounts without prior permission of the School Committee. It is significant that post facto resolutions were passed by the School Committee approving such action of the petitioner, who was the headmaster and that the amounts were utilized for the purpose for which they were intended to be utilized. The resolutions passed by the Panchayat Samiti also demonstrate that there was no question of any financial misappropriation on the part of the petitioner.

31. Therefore, the penalty of recovery of amount and withholding of increments, as also treating the period of suspension as suspension for all purposes is found to be shockingly disproportionate.

32. In this situation, this Court is of the opinion that the writ petition deserves to be partly allowed. Accordingly, the impugned orders passed by the respondent Nos.1 and 2 are quashed and set aside and the penalty is modified to the one provided in Rule 4(i) of the said Rules i.e. 'censure' to be imposed upon the petitioner.

33. The writ petition is allowed in the above terms and accordingly it is directed that the increments of the petitioner that were withheld shall be released forthwith and there would no question of recovery of any amounts from him.

34. Rule is made absolute in the above terms. No costs.