

(2024) 03 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition (L) No.839 Of 2024

Pradeep Dnyandev Mohare

APPELLANT

Vs

Maharashtra Electricity Regulatory Commission And Others

RESPONDENT

Date of Decision : 04-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Maharashtra Civil Services (Disciplinary And Appeals) Rules, 1979 — Rule 8, 8(4)
Maharashtra Electricity Regulatory Commission (Recruitment And Conditions Of
Service Of Employees) Regulations, 2007 — Regulation 75

Citation : (2024) 03 BOM CK 0006

Hon'ble Judges : A.S. Chandurkar, J;Jitendra Jain, J

Bench : Division Bench

Advocate : R.G. Panchal, K. Jadhav, Mihir Desai, Vishwajeet Sawant, Yogesh Patil

Final Decision : Dismissed

Judgement

Jitendra Jain, J

1. Rule. Mr.Yogesh Patil, learned Advocate waives service of notice for respondent nos.1-Maharashtra Electricity Regulatory Commission & 2-Deputy Director (Admin & Finance). By consent of the parties, the writ petition is heard finally.

2. By this petition under Article 226 of the Constitution of India, the petitioner is challenging the suspension order dated 20th December 2023 and the charge-sheet dated 28th December 2023 issued by the respondents.

3. Brief facts are as under :-

(i) On 4th August 2010, respondent no.1 appointed petitioner to the post of 'Section Officer.' On 12th October 2023, the petitioner filed a complaint with the Maharashtra State, Scheduled Castes and Tribes Commission complaining of withholding his promotion by respondent no.1.

(ii) On 20th December 2023, the petitioner was informed by respondent no.2

that he has been suspended and further the said suspension order was followed subsequently by the charge-sheet dated 28th December 2023 issued under Rule 8 of the Maharashtra Civil Services (Disciplinary and Appeals) Rules 1979 ('MCS Rules') and the Departmental Inquiry Rules.

(iii) The petitioner made representation against the aforesaid suspension but the same was not dropped. It is on this backdrop that the petitioner is before us challenging the suspension order and the charge- sheet.

3. The only contention of the petitioner is that as per Regulation 75 of the Maharashtra Electricity Regulatory Commission (Recruitment and Conditions of Service of Employees) Regulations, 2007 the appropriate authority for issuing the suspension order and the charge-sheet was "Secretary" whereas the impugned suspension order and the charge-sheet is issued by respondent no.2 Deputy Director (Administration and Finance). Since the suspension order and charge-sheet are not issued by the appropriate authority, the proceedings initiated are bad-in-law. The petitioner in support of his submission relied upon the decision of the Supreme Court in case of Union of India & Ors. Vs. B.V. Gopinath (2014) 1 SCC 351.

4. Per contra, the learned Senior Counsel for the respondents took us through the affidavit-in-reply and submitted that the decision for issuing suspension order and the charge-sheet was approved by respondent no.1-Commission and only its communication to the petitioner was made by respondent no.2. The respondents, therefore, submitted that it is incorrect to say that the appropriate authority has not sanctioned or approved the suspension order and the charge-sheet. The respondents in the alternative submitted that the suspension order and the charge-sheet not being issued by the appropriate authority can be taken at the time of hearing of the proceedings. Therefore, the respondents prayed for dismissal of the proceedings. The respondents in support of their submissions relied upon the decision in case of Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy(1995) 1 SCC 332.

5. We have heard the learned counsel for the petitioner and the learned Senior Counsel for the respondents and with their assistance have perused the documents annexed to the petition and the affidavit-in-reply.

6. The service condition of the petitioner is governed by the Maharashtra Electricity Regulatory Commission (Recruitment and Conditions of Service of Employees) Regulations, 2007. The relevant regulation with respect to conduct and the discipline reads thus :-

"74. The provisions of the Maharashtra Civil Services (Conduct) Rules, 1979 and the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, as amended from time to time and any other applicable laws, rules and regulations, as applicable to employees of the State Government, shall apply to the employees in the regular service of the Commission.

75. The appointing authority, disciplinary authority, appellate authority and reviewing authority in respect of the officers and staff of the Commission shall be as specified in Appendix- 'C'."

7. The Competent Authority for the purpose of disciplinary action and appeals as per Regulation 75 is specified in Appendix 'C' which reads as under :-

Appendix 'C'

Competent Authority for the purpose of disciplinary action and appeals

(See Regulation 75)

Description

Designated Authority

Class of employees

Appointing authority

Commission

Officers

Staff

Disciplinary Authority

Chairperson

Secretary

Secretary

Other Officers & Staff.

Appellate Authority

Commission

Officers

Staff

Smt. Malini Shankar

Mumbai

Secretary

Dated the 16th January 2007.

MAHARASHTRA ELECTRICITY

REGULATORY COMMISSION

8. The petitioner was appointed vide letter dated 4th August 2010 by respondent no.1-Commission. The Class of Employees in which the petitioner falls for the purpose of Appendix 'C' is "Other Officers & Staff" and therefore, the Designated Authority for the purpose of disciplinary action is the "Secretary" of the

Commission.

9. We have perused the decision for suspension of the petitioner taken by respondent no.1-Commission on 15th December 2023. The said document is signed by all the members of respondent no.1-Commission including Under Secretary and it bears a note stating that the proposal is approved. The suspension order is thereafter communicated to the petitioner vide letter dated 20th December 2023 by respondent no.2-Deputy Director and in the said order, it is mentioned that the same is issued "by order". Therefore, on conjoint reading of the Minutes of Meeting of respondent no.1-Commission dated 15th December 2023 and the letter communicating suspension dated 20th December 2023, the suspension order was approved by respondent no.1-Commission and the said respondent no.2 was authorised to communicate the same to the petitioner. Therefore, the petitioner is not correct in submitting that the suspension order is not issued by the appropriate authority.

10. Similarly, the Minutes of Meeting of respondent no.1 dated 15 th December 2023 approving the initiation of the disciplinary proceedings under Rule 8 of the MCS Rules is also signed by all the members of the respondent no.1-Commission including Under Secretary and as per the order and approval of the respondent no.1-Commission, the charges were communicated by respondent no.2 to the petitioner. Therefore, the said two documents clearly show that the charge-sheet has been approved by the Competent Authority but only its communication to the petitioner was done by respondent no.2 under the orders of respondent no.1-Commission. Therefore even on this count, the charge-sheet cannot be faulted with.

11. The petitioner has relied upon the decision of Supreme Court in case of B.V. Gopinath (supra). In our view, the said decision is distinguishable inasmuch as in Gopinath case, the charge memo was not approved by the appropriate authority and it is on this fact that the proceedings were held to be bad-in-law. In the instant case of the petitioner, the appointing authority respondent no.1 has approved the suspension order and the proceedings under Rule 8 of the MCS Rules as observed by us above and therefore this decision does not assist the petitioner.

12. Rule 8(4) of the MCS Rules provides that the disciplinary authority shall deliver or cause to be delivered, a copy of articles of charge to the employees. The phrase "deliver or cause to be delivered" would mean that the Competent Authority has power to delegate the communication of the charge to any authority after having taken a decision of issuing suspension order/charge-sheet.

13. In the instant case as observed by us above, the decision has been taken by respondent no.1 and on its behalf, the communication of the suspension order and the charge-sheet was made by respondent no.2 to the petitioner. Therefore, we do not see any infirmity in issuance of the suspension order and the charge-sheet.

14. In view of the above, we do not see any reason for interference in the present proceedings and therefore, the writ petition is dismissed. Rule is discharged. No order as to costs.