

(2021) 10 BOM CK 0060
In the Bombay High Court
Case No : Writ Petition No. 1493 Of 2020

Sachin S/O Vijaykumar Kharate

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 13-10-2021

Acts Referred:

Maharashtra Zilla Parishads District Services (Discipline And Appeal) Rules, 1964 — Rule 13, 21

Citation : (2021) 10 BOM CK 0060

Hon'ble Judges : Mangesh S. Patil, J

Bench : Single Bench

Advocate : S. R. Patil, Y.G. Gujrathi, M.S. Sonwane

Final Decision : Dismissed

Judgement

Mangesh S. Patil, J

1. Heard. Rule. The Rule is made returnable forthwith. Learned A.G.P. waives service for the respondent Nos. 1 & 2. The learned advocate Mr. Sonwane waives service for the respondent No. 3. At the request of the parties the matter is heard finally at the stage of admission.

2. The petitioner is aggrieved by the order of his dismissal from the employment of the respondent No. 3 Zilla Parishad pursuant to a Disiplinary Proceeding under the provisions of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964 (hereinafter 'the Rules'), having been found guilty of two charges, firstly, of persistent absenteeism and, secondly, for forging signature of the Medical Officer of the Primary Health Centre where he was working as a Junior Assistant (Clerical grade) and on his own salary certificate, to enable him to stand as a surety for one Dnyaneshwar Vairale. His statutory appeal under the Rules and even the Revision has been dismissed by the judgments and orders impugned in this Writ Petition.

3. The learned advocate Mr. Patil for the petitioner submitted that the

Disciplinary Enquiry was not conducted fairly. Principles of natural justice were not followed. Plausible explanation was given by the petitioner for his absenteeism. He was suffering from jaundice and had to be hospitalized and therefore he could not submit any leave application. His mother had informed the Medical Officer such a cause for his absence and since such absence was not willful as has been laid down in the case of *Krushnakant B. Parmar Vs. Union of India* and *Anr.* 2012 AIR SCW 1633, he could not have been held guilty for Charge No. 1.

4. Mr. Patil would further submit that even the second charge was not duly proved. Even on preponderance of probabilities there was no acceptable evidence on the record to prove it. The Disciplinary Authority has grossly erred in imposing the punishment. Even the punishment of dismissal is grossly disproportionate to the charge and applying the principle of proportionality, the punishment is harsh and deprives the petitioner of his livelihood. He would therefore submit that the impugned order of upholding the dismissal be quashed and set aside. His termination may be set aside and in the alternative the punishment be reduced.

5. The learned advocate for the respondent No. 3-Zilla Parishad would support the action. He would submit that a proper opportunity of being heard was extended to the petitioner. He had participated in the departmental enquiry. There was sufficient evidence to prove both the charges. In fact the petitioner has admitted his absence but failed to substantiate his defence which he had put forth. As regards the second= charge, it is more serious. He has forged the signatures of the Medical Officer who was examined as a witness. The forged documents were brought to his notice. The surety bond and salary statement which were forged one were sent by the concerned Corporation for his verification and it is thereafter that he having realized that there was a forgery. Therefore, there was sufficient evidence to prove the charges on preponderance of probability. He would submit that strict proof was not necessary and the evidence was sufficient to reach the conclusion. The learned advocate would, lastly, submit that considering the gravity of the charges and particularly the Charge No. 2, the punishment of dismissal is not disproportionate.

6. I have considered the rival submissions and perused the record. The enquiry report (Exh. 'F') clearly demonstrates as to how even the petitioner was duly issued with the first notice. He was served with the statement of imputations and thereafter the charges. The witnesses in the form of petitioner's colleague in the Primary Health Centre, where he was in the employment, were examined regarding his absence. Even the Medical Officer was examined under whom he was working. There is also a reference as to how the Medical Officer by his communication dated 20. 05.2016 had informed the Deputy Chief Executive Officer of the Zilla Parishad about the concerned Corporation, with whom the petitioner had submitted the surety bond and salary statement, were forwarded to the Medical Officer and it is thereafter that he having realized that those were forged one. It has also been noticed that though the salary statement was

furnished as if he was posted in that Primary Health Centre, in fact, he was recently transferred to that post from some other office and for want of Last Pay Certificate (L.P.C.) no salary was drawn by this Office and therefore there was no question of this office issuing any salary statement of his and still he had produced it with that Corporation. Even the signatures of the Medical Officer were forged on it. It is on the basis of such clinching material that the Enquiry Officer had held both the charges having been duly proved.

7. After conclusion of the enquiry a final show cause notice was served to him (Exh. 'G'). In spite of service of such notice he did not turn up to make any submissions either in writing or orally and it is thereafter that the dismissal order was passed by the Disciplinary Authority/respondent No. 3.

8. Pertinently, in his appeal preferred under Rule 13 of the Rules before the Joint Divisional Commissioner (Exh. 'I') though the petitioner tried to demonstrate as to how the charge regarding absenteeism was not duly established, nothing was mentioned in respect of the second charge much less touching the evidence led before the Enquiry Officer and his appreciation thereof. After extending appropriate opportunity to the petitioner the Joint Divisional Commissioner dismissed his appeal and even the Revision under Rule 21 is dismissed by the State Government.

9. Resultantly, I find no infirmity and illegality in the disciplinary proceeding that was initiated against the petitioner and the conclusions drawn by the Enquiry Officer or in the judgment and orders passed by the appellate and revisional authorities.

10. Suffice for the purpose to observe that considering the gravity of the charge particularly in respect of the second charge which is in respect of the forgery committed by the petitioner, in my considered view the punishment of dismissal by no stretch of imagination can be said to be disproportionate. He was an employee of clerical grade working with the Health Department of the Zilla Parishad. Preparing bogus salary statements and even forging signatures of the Medical Officer is indeed a serious matter and deserves a drastic consequence.

11. I find no merit in the Writ Petition. It is dismissed.

12. The Rule is discharged.