
(2008) 08 BOM CK 0068
In the Bombay High Court
Case No : Writ Petition No. 2318 of 2008

Satish Pralhadrao Raikwar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Constitution of India, 1950 — Article 309

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 — Rule 10, 11, 12, 13, 8

Citation : (2008) 6 ALLMR 233 : (2008) 6 MhLj 805

Hon'ble Judges : D.D. Sinha, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : S.S. Ghate, for the Appellant; B.H. Dangre, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—Rule returnable forthwith. Heard finally by consent of Shri Ghate, learned Counsel for the petitioner, and Mrs. Dangre, learned Additional Government Pleader for the respondents.

2. Shri Ghate, learned Counsel for the petitioner, states that petitioner was appointed as Daftari and posted in the Industrial Court, Amravati. Considering the performance of the petitioner, he was promoted to the post of Bailiff vide order dated 31.8.1990. The petitioner thereafter was posted as Clerk-cum- Typist vide order dated 29.11.2000. Vide order dated 19.5.1993, the petitioner was transferred from Amravati to Nagpur Industrial Court and since 1993, the petitioner was working in the Industrial Court, Nagpur till the passing of the impugned order. The petitioner was entrusted with the job of supplying certified copies of orders passed by the Labour Court as well as proceedings and documents. While working in the office of Labour Court, Nagpur, the petitioner was caught by the Anti Corruption Bureau while accepting bribe and, therefore, was prosecuted under the provisions of the Prevention of Corruption Act. The

petitioner was convicted vide judgment dated 10.4.2008 passed by the Special Court in Criminal Case No. 16/2000. The petitioner filed an appeal against the order of conviction before the learned Single Judge of this Court, which is admitted and pending. The respondent No. 2 in view of provisions of Rule 13(i) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, without giving opportunity of making representation in respect of penalty proposed to be imposed, passed the impugned order dated 28.4.2008 and dismissed the petitioner from service with effect from 28.4.2008. Hence, the petitioner has filed the present petition.

3. Shri Ghatge, learned Counsel for the petitioner, submits that action of the respondents is inconsistent with the first proviso to Rule 13(1) of the Rules of 1979, which requires grant of opportunity to the Government servant for making representation on the penalty proposed to be imposed before any order is made in a case under Clause (i). It is contended that in the instant case, the respondents failed to give the said opportunity to the petitioner before passing the impugned order and, therefore, the impugned order is not sustainable in law.

4. It is further contended by learned Counsel Shri Ghatge that the State Government has issued Circular dated 29.12.1992, which also requires the Disciplinary Authority to give opportunity to the concerned employee for making representation before imposition of punishment. It is submitted that the impugned order is also violative of the said Circular issued by the State Government and, therefore, same cannot be sustained in law.

5. Mrs. Dangre, learned Additional Government Pleader for the respondents, supports the impugned order. It is submitted that the first proviso to Rule 13 gives discretion to the Disciplinary Authority in respect of grant of opportunity to the Government servant of making representation on the penalty proposed to be imposed since the word used in the first proviso is "may". It is contended that in the instant case, the petitioner was involved in a very serious offence under the provisions of the Prevention of Corruption Act. The prosecution against the petitioner resulted in his conviction and, therefore, considering seriousness of the offence committed by the petitioner, special procedure provided under Rule 13 of the Rules of 1979 was adopted and under such peculiar circumstances, the Disciplinary Authority did not feel it necessary to grant opportunity to the petitioner to make representation against the proposed penalty since petitioner was already convicted by the competent Criminal Court. It is, therefore, submitted that the impugned order is sustainable in law.

6. Mrs. Dangre, learned Additional Government Pleader further submits that Circular dated 29.12.1992 reiterates the legal position stipulated in the first proviso to Rule 13 of the Rules of 1979 and, therefore, it cannot be said that the impugned order is not sustainable in law on that count.

7. We have considered the rival contentions of the learned Counsel for the parties and perused the provisions of Rule 13 of the Rules of 1979 as well as

Circular dated 29.12.1992. The following facts are not in dispute:

The petitioner, at the relevant time, was working as Clerk-cum-Typist in the Labour Court, Nagpur. The petitioner was caught red handed while accepting bribe and, therefore, was prosecuted for the offences punishable under the provisions of Prevention of Corruption Act and was convicted by the competent criminal Court.

8. It is no doubt true that Rule 8 of the Rules of 1979, which deals with imposition of major penalties mentioned in Rule 5, contemplates opportunity of hearing to be given to the delinquent before holding him guilty of the charge. Similarly, Rule 10 deals with procedure for imposing minor penalties. Vide Rule 13, the Legislature has evolved a special procedure in certain cases. In the instant case, it is not in dispute that the impugned order of dismissal is passed by the respondent No. 2 in view of Rule 13(i) of the Rules of 1979. Rule 13(i) contemplates that notwithstanding anything contained in Rules 8 to 12, if the Disciplinary Authority is of the opinion that any penalty is imposable on the Government servant on the ground of conduct, which has led to his conviction on a criminal charges, in such situation, the Disciplinary Authority is entitled to impose punishment without observing the procedure mentioned in Rules 8 to 12 of the Rules of 1979. The first proviso to Rule 13 contemplates that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under Clause (i). It is evident that grant of opportunity of making representation is a discretion vested in the Disciplinary Authority depending upon gravity of misconduct of the employee, which has led to his conviction on the criminal charges since the word used in the first proviso is "may". In the instant case, looking to the seriousness of the conduct of the petitioner, which has led to his conviction on criminal charges, the Disciplinary Authority decided not to exercise discretion in favour of the petitioner of granting opportunity of making representation on the penalty proposed to be imposed. We cannot close our eyes to the fact that the petitioner was caught red handed while accepting bribe and this conduct has led to his conviction on the criminal charges. Considering the purpose for which special procedure is required to be undertaken by the Disciplinary Authority in certain cases, which gives discretion to the Disciplinary Authority whether to follow the procedure stipulated in the first proviso to Rule 13 of the Rules of 1979 depending upon gravity of the misconduct, which has led to conviction of the Government Servant, we have to interpret the word "may" used in the first proviso to Rule 13 of the Rules of 1979 in the right perspective by holding that use of discretion necessarily will depend upon the gravity of misconduct, which has led to conviction, keeping in view the objective to be achieved vide Rule 13(i).

9. So far as Circular dated 29.12.1992 issued by the State Government is concerned, the said Circular cannot be read in isolation without considering scheme of provisions of Rule 13, which is the statutory Rule framed under Article

309 of the Constitution and, therefore, while interpreting the said Circular, similar analogy will have to be extended to the stipulations in the said Circular and by necessary implication, it will have to be held that giving an opportunity of making representation on the penalty proposed to be imposed is a discretion of the Disciplinary Authority and cannot be treated to be a mandatory requirement, which is undoubtedly not the purport of the first proviso to Rule 13 of the Rules of 1979.

10. For the reasons stated hereinabove, the petition is misconceived and devoid of substance and hence, the same is dismissed. The rule is discharged. No order as to costs.