

(2012) 08 BOM CK 0115
In the Bombay High Court
Case No : Writ Petition No. 4006 of 2008

Sudhakar Chapke

APPELLANT

Vs

The Maharashtra State Electricity Distribution Company Limited and Executive Director (Distribution Commerce and Coordination Planning), The Maharashtra State Electricity Distribution Company Limited, Prakashgad, Ananta Kanekar Road, Station Road, Bandra, Mumbai - 400051

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Citation : (2013) 2 ABR 483 : (2013) 1 ALLMR 564 : (2013) 1 BomCR 604 : (2013) LabIC 1414

Hon'ble Judges : Vasanti A. Naik, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : R.L. Khapre and K.S. Narwade, for the Appellant; A.D. Mohgaonkar, for the Respondent

Judgement

A.B. Chaudhari, J.—By this petition, the petitioner has put to challenge the order dated 8/8/2008 passed by the respondent No. 2 Executive Director and Competent Officer removing the petitioner from service with effect from 9/2/2008 and treating the suspension period as a part of the punishment.

2. The petitioner was appointed in the year 1982 as a Junior Engineer in the Maharashtra State Electricity Board. He was promoted in the year 2003 as an Executive Engineer. During the course of his service, on 8/2/2008, on a complaint lodged by one Keshav Shende, Contractor from Pune, the Anti Corruption Bureau caught the petitioner red handed with a bribe amount of Rs. 50,000/-, which he had asked for clearing the pending bills of Keshav Shende to the tune of Rs. 15 - Rs. 17 lakhs. On 9/2/2008 the petitioner was put under suspension. Thereafter the respondent No. 2 issued him a charge-sheet by way of summary proceedings, inter alia, levelling the charge of dishonesty. He filed reply to the charge-sheet and thereafter on 30/6/2008 he was issued a show cause notice by the respondent No. 2 as to why he should not be removed from

service. He submitted his reply on 5/7/2008 to the said show cause notice and thereafter on 8/8/2008 he was removed from service by the impugned order.

2. In support of the writ petition, Shri Khapre, the learned Counsel for the petitioner, made the following submissions :

Admittedly, the petitioner was served with the charge-sheet for proceeding against him under Regulation No. 90 by way of summary proceedings. The regular departmental enquiry was not held as contemplated by Regulation No. 88 since recourse was taken to Regulation No. 90. In the absence of any evidence in support of the charge levelled against the petitioner about taking bribe of Rs. 50,000/- in cash and being caught red handed as alleged, since none was examined in the summary proceedings and since the petitioner was deprived of the opportunity of being heard, he could not have been removed from service in a summary manner. In other words, without holding a regular departmental enquiry, no such order could have been passed under Regulation No. 90. He further argued that the charge-sheet issued to the petitioner by the respondent No. 2 and the charge in the criminal case was the same. It is an admitted fact that the petitioner was acquitted in the anti corruption case by the judgment and order dated 5/10/2011 passed by the Special Judge, Sindhudurg. The acquittal of the petitioner for the same charge for which the show cause notice was issued under Regulation No. 90, therefore, must be regarded as a clear-cut proof of his innocence even in the proceedings of charge-sheet in the summary enquiry. In that view of the matter also, the impugned order of removal will have to be set aside being illegal. He relied on the decisions of the Aurangabad Bench of Bombay High Court on the said Regulation No. 90 in the case of Vasant Raghunath Tupekar Vs. Maharashtra State Electricity Board, , Dhanaykumar Chitriappa Bodale vs. The Managing Director, Maharashtra State Electricity Distribution Company Ltd. (Writ Petition No. 1853/2009 decided on 21/11/2009), Ramesh s/o Rangnathrao Sonawane vs. Maharashtra State Electricity Distribution Company Ltd. and others (Writ Petition No. 6513/2011 decided on 23/12/2011) and Vijay s/o Pandurang Jogi vs. The Managing Director, Maharashtra State Electricity Distribution Company Limited (Writ Petition No. 8005/2011 decided on 15/3/2012).

Learned Counsel Shri Khapre alternatively submitted that the petitioner should be granted the entire back wages or at least the arrears of the subsistence allowance from the date of his removal in order that the petitioner is able to defend the regular departmental enquiry effectively since it is not known where the enquiry will be held.

3. Per contra, Shri Mohgaonkar, the learned Counsel for the respondents, supported the impugned order and stated that the criminal appeal against the judgment and order of acquittal passed by the Special Judge, Sindhudurg was filed before the High Court of Bombay and the same has been admitted for final hearing. According to him, the petitioner was under suspension till the date of his removal vide suspension order dated 12/2/2008. The judgment rendered by the

Special Judge does not give an honourable acquittal to the petitioner, but he has been given the benefit of doubt. Though the judgments cited by the learned Counsel for the petitioner ordered reinstatement, it cannot be forgotten that this is a case where the petitioner was caught red handed with Rs. 50,000/- cash as a bribe amount. He, therefore, prayed for dismissal of the petition.

4. We have heard the learned Counsel for the rival parties at length. We have also gone through the decisions cited before us. At the outset the action taken by the respondents under Regulation No. 90, namely, of summary nature without holding a regular departmental enquiry cannot be countenanced. Perusal of the record shows that no evidence was produced either for supporting the charges in the show cause notice under Regulation No. 90 or for affording an opportunity of hearing to the petitioner in such a serious case of charge of acceptance of bribe amount of Rs. 50,000/- from a Contractor and following the ratio laid down by this Court in the case of Vasant Raghunath Tupekar (cited supra), we hold that Regulation No. 90 could not have been taken recourse to in the present case also. We, therefore, concur with the judgment in the case of Vasant Raghunath Tupekar (cited supra) on the said question of law about adoption of procedure of summary nature under Regulation No. 90 and hold that regular procedure of departmental enquiry under Regulation No. 88 was required to be undertaken.

5. In the case of Vasant Raghunath Tupekar (cited supra), the charge was that because of negligence of the petitioner in that case in performing his duties, MSEB suffered a revenue loss of Rs. 16,35,466/-. The charge did not relate to acceptance of bribe. The Court granted the relief by quashing the order dated 12/3/2001 by which he was removed from service.

In the case of Dhanaykumar Chitriappa Bodale case was that he was guilty of causing loss of Rs. 2,66,121/- to the Company because of his acts of dereliction of duties. The Court held that the summary enquiry under Regulation No. 90 was not justified and set aside the punishment order.

In the case of Ramesh s/o Rangnathrao Sonawane (cited supra), the petitioner therein was prosecuted under the provisions of Prevention of Corruption Act so also in the departmental proceedings of summary nature under Regulation No. 90 and he was acquitted in the trial by the Special Court and, therefore, summary enquiry was found to be ill advised. The Single Judge observed that it was not necessary to decide whether Regulation No. 90 that is of summary nature would be applicable or whether employer ought to have resorted to Regulation No. 88. Relying on the decision of the Apex Court in the case of G.M. Tank Vs. State of Gujarat and Another, , the learned Single Judge held the order of dismissal to be illegal. The said judgment of the learned Single Judge was confirmed by the Division Bench in Letters Patent Appeal St. No. 3035/2012 on 14/2/2012.

In the case of Vijay s/o Pandurang Jogi (cited supra), Division Bench of Aurangabad Bench of Bombay High Court was dealing with the case of the

petitioner, who had accepted the bribe amount of Rs. 10,000/- and the proceedings of special trial resulted in acquittal of the petitioner in that case. He was acquitted on the ground that the sanction accorded was not legal and proper. He was also proceeded summarily under Regulation No. 90, which was found to be not the correct action and consequently, the Court set aside the order of dismissal from service.

6. We have seen the judgment and order of Sindhudurg in Special Case No. 7/2009. The facts in the said case disclose that the petitioner was caught red handed while accepting the amount of Rs. 50,000/- as the first installment on 8/2/2008 and the special Court gave him the benefit of doubt vide para (32) of the judgment insofar as demand of bribe was concerned. But the currency notes taken by him showed the traces of anthracene powder by bluish illumination so also the hands and pant of accused showed bluish illumination under the focus of ultra violet rays. It is noteworthy that a criminal appeal against the judgment and order of acquittal of the petitioner is pending in the High Court of Bombay. The decision of the Supreme Court in the case of G.M. Tank Vs. State of Gujarat and Another, will have no application as in that case, regular departmental enquiry was held in respect of charge of acquisition of movable and immovable properties disproportionate to his known sources of income and for which criminal charge, he was also acquitted. In the case at hand, no regular departmental enquiry was held in the matter of taking bribe amount of Rs. 50000/- and criminal appeal is pending in the High Court. Similar is the position on facts in the decided cases at Aurangabad Bench where regular departmental enquiry under Regulation No. 88 was not held, but summary enquiry under Regulation No. 90 was held, which was obviously found to be invalid.

7. Regulation No. 88 provides for holding of a regular departmental enquiry and as held by us, the respondent No. 2, however, resorted to summary procedure or summary enquiry contemplated by Regulation No. 90, which was not justified. In the wake of existence of Regulation No. 88 for holding a regular departmental enquiry, the question is :

Should the High Court while exercising its extra-ordinary writ jurisdiction, having found the order of removal to be illegal, automatically or mechanically grant the relief of reinstatement only because no regular departmental enquiry was held, particularly when there is a serious charge against the petitioner of corruption of accepting Rs. 50000/- and having been caught red handed ?

8. The parameters of the writ jurisdiction in the matter of granting reliefs have well been defined. In the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , the Constitution Bench of the Apex Court pronounced the law thus :

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if

he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/ Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

9. The above decision followed by the apex Court in the case of U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, . In Union of India (UOI) Vs. Y.S. Sadhu, Ex-Inspector, , the Apex Court again followed these decisions. In Y.S. Sandhu's case, the High Court in writ jurisdiction had set aside the order of dismissal and ordered consequent reinstatement as the witnesses examined earlier in the departmental enquiry were not produced for cross-examination. The Apex Court found fault with the High Court in granting the relief of reinstatement in writ jurisdiction, but directed that the enquiry shall be completed from that stage and the entitlement of the delinquent would be decided depending upon the result of disciplinary proceedings.

10. In the case at hand also, no regular departmental enquiry under Regulation No. 88 has at all been held against the petitioner. Therefore, we do not agree

with the submission made by Shri Khapre that the petitioner should be granted the relief as a consequence of having found the order of removal to be illegal as was done by the Aurangabad Bench of Bombay High Court in the aforesaid decisions. The first reason is that this is a case of a person having been caught red handed with a sum of Rs. 50,000/- as the first installment towards the bribe amount and in the decisions rendered by Aurangabad Bench of Bombay High Court, the question whether extra-ordinary writ jurisdiction should be exercised in such cases to grant relief of reinstatement was not considered by the Court, that too in the context of the aforesaid binding judgments of the Apex Court. In other words, having found that the action under Regulation No. 90 was not justified, the Division Bench at Aurangabad Bench of Bombay High Court in those cases straightway granted the relief of reinstatement by quashing the orders of removal/termination of petitioners in those cases. In the instant case, we have carefully examined the question whether in the extra-ordinary writ jurisdiction, this Court in the fact situation should mechanically grant the relief of reinstatement only because this Court finds that the action under Regulation No. 90 taken against the petitioner by removing from service cannot be countenanced. Our answer is, the discretionary writ jurisdiction cannot be exercised to order reinstatement, but to follow the course pronounced by the Apex Court.

11. As noted above, in the said Constitution Bench judgment, the Supreme Court was of the view that where an enquiry report was not furnished to the delinquent employee in the disciplinary proceedings, the Court should not mechanically set aside the order of punishment or order reinstatement on that score by resorting to the short-cuts, but the Court should examine the matter and after examining, if it sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the Authority/ Management to proceed with the enquiry, by placing the employee under suspension and continuing the enquiry from the stage of furnishing him the report and all other questions should be left open to be decided at the final stage.

12. The aforesaid judgment of the Constitution Bench and the other judgments of the Supreme Court were not considered by the Aurangabad Bench of Bombay High Court in the aforesaid decisions cited by learned Counsel Shri Khapre. A Full Bench of this Court in the year 2007 following the decision of the Apex Court in the case of U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, and other related judgments, in the case of Saindranath Jawanjal Vs. Pratibha Shikshan Sanstha and The Presiding Officer (Additional), School Tribunal, had also adopted the said course. We, therefore, find that the judgments of the Aurangabad Bench of Bombay High Court in the cases cited before us by learned Counsel Shri Khapre straightway granting relief of reinstatement in the extra-ordinary writ jurisdiction run counter to the Constitution Bench judgment in the case of Managing Director, ECIL, Hyderabad and others (cited supra) and thus, are per incuriam to the said extent. The upshot of the above discussion is that the only relief that could be granted to the petitioner in the instant case is to set aside the

order of removal from service, direct reinstatement of the petitioner formally and to reserve liberty in favour of the respondent employer to proceed to hold a regular departmental enquiry under Regulation No. 88 in accordance with law. Hence, we pass the following order :

ORDER

- i) Writ Petition No. 4006/2008 is partly allowed.
- ii). The impugned order dated 8/8/2008 passed by the respondent No. 2 removing the petitioner from service is quashed and set aside with liberty to the respondent employer to hold a regular departmental enquiry against the petitioner in accordance with law and complete the same in any case within a period of six months from serving of the charge-sheet on the petitioner. The charge-sheet shall be served on the petitioner within eight weeks from today.
- iii) The respondent employer shall issue formal order of reinstatement in service to the petitioner and shall be at liberty to place him under suspension pending regular departmental enquiry. Within a period of one week from the date of reinstatement, the petitioner shall be paid subsistence allowance from the date of suspension.
- iv) The respondents shall fix the schedule and venue of the enquiry and shall hear the petitioner as to the amount required by him. The respondents shall take decision according to the fact situation after hearing the petitioner and accordingly make payment, if so decided, to the petitioner.
- v) The issue about back wages, period of suspension, period of unemployment, etc. shall be decided by the Disciplinary Authority simultaneously upon culmination of the enquiry proceedings.
- vi) No order as to costs.