

(2013) 08 BOM CK 0257
In the Bombay High Court
Case No : Writ Petition No. 257 of 2013.

Suresh

APPELLANT

Vs

Secretary, Public Works Department and Others

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2013) 6 ALLMR 886

Hon'ble Judges : S.P. Deshmukh, J;A.H. Joshi, J

Bench : Division Bench

Judgement

A.H. Joshi, J.—Rule. Rule made returnable forthwith and heard finally by consent. Petitioner has prayed for following reliefs in the present petition:-

(A) To set aside the decision of the Respondent No. 1 dated 28.11.2011 in deciding the representation dated 14/7/2011 (Exh. 1)

(B) To decide the representations dated 14/7/2012, 17/1/2012, 23/10/2012 and 27/10/2012 as early as possible and reduce the punishment from removal to reversion and grant all consequential reliefs such as pensioner benefits, annual increments by treating the Petitioner as if he was in service.

(C) To draw an adverse inference against the Respondent No. 1 as per provisions of section 115 of Evidence Act for failure of Government in providing copies of relied documents and documentary evidence in support of enhancement of punishment from reversion to removal etc.

(D) To order the Respondent No. 1 to sanction Rs. 5 Lakhs as per application dt. 29/1/12 (Exh. D) dt. 29/11/12 as early as possible as advance pending decision of the representations dt. 14/7/2012, 17/1/2012, 23/10/2012 and 27/10/2012 out of 27 Lakhs reduced/recovered illegally from pension of the petitioner because of removal of the petitioner by the Respondent No. 1.

(E) To direct the Respondent No. 1 not to reduce amount of pension hereafter and to pay as early as possible the petitioner entire amount of pension reduced/

recovered from 1991 because of enhanced punishment of removal.

2. The petition has a long and chequered history. A brief reference thereto is as follows:-

a] The petitioner was serving as Assistant Electrical Engineer, Thane, in the Government of Maharashtra.

b] The petitioner was dealt with for disciplinary action, which ultimately resulted in completing the ex-parte departmental inquiry.

c] The Inquiry Officer furnished his findings and proposed major punishment by way of reduction in rank to a lower post in the department.

3. The charges for which the petitioner was tried can be referred briefly as follows:-

i] Demanding illegal gratification from private parties;

ii] Carrying out inspections of H.T. and M.P. installations when not authorized to do so;

iii] Carrying out superficial inspections;

iv] Submitting incorrect inspection notes.

4. The developments which had occurred thereafter, in the version of petitioner are summarized as below:

(a) During the course of departmental inquiry, on 01.10.1977, the petitioner asked for supply of copies of documents relied upon against him. On 20.11.1978, the Inquiry Officer (Mr. J.D. Kale) informed the petitioner in writing that the documents requested by the petitioner are not available, and hence those cannot be supplied.

(b) During pendency of the departmental enquiry and a writ petition filed by the petitioner for supply of documents, on 01.10.1981, a compromise took place between the Government and the petitioner. Copy of unsigned draft of minutes of compromise is seen at Exhibit-M page 87 of the paper book of this petition. Furtherance to the compromise, the Competent authority was to close the departmental inquiry initiated against the petitioner, and he was to be given deemed date of promotion in the light of Government Resolution dated 17.10.1977 and to decide on assigning the deemed date of promotion.

(c) Accordingly the petitioner was promoted but he was not given deemed date. Petitioner issued a notice of legal action in 1986, seeking deemed date of promotion pursuant to the compromise.

(d) Instead of giving deemed date, the departmental inquiry was resumed.

Petitioner could not attend the departmental enquiry since his wife was suffering from serious ailment of cancer.

The petitioner was sent photo copies of following documents:-

- (I) Inspection Report dated 25.09.1976 of M/s. Suchak Paper Mills, Dombivali.
- (II) Inspection Report dated 13.09.1976 of M/s. Borax Morarji Works, Ambarnath.
- (III) Inspection report of M/s. Swastick Household and Industrial Products Ltd., Ambarnath.
- (IV) Photo copy of Submission Book.
- (V) Copies of 176 Inspection Reports carried out by the petitioner during September 1976.
- (e) Under a letter dated 4.3.1987, the petitioner had communicated that he had received and even acknowledged the receipt of the extract of submission book of September 1976. However, the petitioner has refused to accept other documents because those were not the same documents on which the charge was based.
- (f) The petitioner had specifically pointed out that:-
 - (i) The documents at serial No. 1, 2, 3 and 5 were declined to be accepted as those inspection reports did not contain enclosures signed by him and merely cyclostyle forms, which were totally blank, were being tried to be served on him.
 - (ii) Along with the Inspection report he had attached copy of list of machinery in many cases and also the defect sheets, however those were not enclosed along with the letter dated 27.02.1987.
- (g) Petitioner again wrote to the Inquiry Officer on 11.03.1987 pointing out that the words "remaining documents are not produced by the Department" which were initially written in the letter dated 27.2.1987 however have been struck off, and enquired as to how many documents would be supplied to him. He further referred to those documents, as asked for by him through letter dated 23.02.1987 and requested that those be supplied. He also informed that after receipt of the documents the petitioner would be able to file additional written statement and attend the inquiry proceedings. Proceedings of the Departmental enquiry were being held at Aurangabad though the petitioner was posted at Thane.
- (h) Thereafter, the Inquiry Officer proceeded to hold the departmental enquiry ex-parte. Statements of witnesses were recorded.
- (i) On 15/5/1987, the Enquiry Officer furnished his report and the recommendations. The Enquiry Officer recommended that major penalty of reduction in rank, by reverting him to a lower post be inflicted on the petitioner.
- (j) The competent authority accepted the report partly i.e. to the extent of treating misconduct as partly proved, and decided to alter the punishment to dismissal, which was imposed.

(k) Any show cause notice was not served by the competent authority on the petitioner before imposing major penalty of dismissal which was higher than and different from the penalty proposed by the inquiry officer.

(l) The punishment of dismissal was imposed, and it was not interfered with, in appeal preferred before the State Government as well as all challenges against the said dismissal before Maharashtra Administrative Tribunal and Courts and all incidental petitions were decided against the petitioner.

(m) Thereafter, the petitioner demanded to the competent authority, copies of documents relied on, against the petitioner by the department under the provisions of the Right to Information Act, 2005. Petitioner was not supplied the documents asked for. Therefore, petitioner filed Writ Petition No. 7446/2005, and sought direction for supply of documents.

(n) The petitioner had also preferred several writ petitions namely Writ Petitions No. 4941/2011, 5879/2011 and 6370/2011 making similar demands. This Court, had by order dated 17.01.2011, directed the petitioner to approach the Information Commissioner. On 28.10.2011, the petitioner submitted a representation before the Information Commissioner.

(o) Thereafter, vide order dated 17.11.2011, this Court directed the Information Commissioner, Aurangabad to decide petitioner's application dated 14.7.2011 and 21.10.2011. Those applications were decided by the Information Commissioner, Aurangabad by order dated 19.12.2011. Thereby the Information Commissioner directed the Secretary, Public Works Department to supply to the petitioner information and copies of documents relied on against the petitioner as demanded by him within one month of the order.

(p) The aforesaid directions of the Information Commissioner were not complied with by the department. Therefore, the petitioner filed Writ petition No. 1272/2012, and prayed for consequential directions. This Court had directed by order in the writ petition to decide the representations dated 28.10.2011 and 14.07.2011 preferably within a period of three months in accordance with law.

(q) Thereafter, the Desk Officer, Public Works Department, Government of Maharashtra through communication dated 28.10.2011, communicated that in respect of items 3.1 to 3.6, 4.1 and 4.2 under the orders of the Information Commissioner, a Committee of Desk Officer, a Clerk-cum-Typist and one Clerk has been formed, which could procure documents from the divisions concerned and the public information officer, pursuant to aforesaid items copies of certain documents were served on the petitioner. Said letter refers to petitioner's representations dated 14.07.2011, 28.10.2011 so also the other representations dated 25.01.2012, 27.01.2012, 29.02.2012, 02.03.2012, 20.03.2012, 07.05.2012 and 21.05.2012, demanding various documents, however all documents demanded by the petitioner are not supplied.

(r) In the meantime, representations submitted by the petitioner before the

Government, praying for reconsideration of the penalty imposed on the petitioner were rejected by the State Government, by letters dated 28.11.2011 (Exh. I) and 29.8.2012 (Exh. H). Copies of these letters of rejection are on record at page Nos. 69 and 59 of the paper book.

5. The version of the State Government contained in these letters which are in vernacular, is summarized as follows:-

All claims made by the petitioner in various challenges before the Tribunal as well as the High Court were rejected and orders of the Government were confirmed and, therefore, it is not necessary to take a different view of the matter.

6. Now the petitioner is before this court and he has prayed for various reliefs as indicated in paragraph 2 of this petition.

7. This petition is vehemently opposed by the respondents, urging that:-

(a) The enquiry was proceeded ex-parte.

(b) All the documents were supplied to the petitioner.

(c) Though it is not disputed that the documents asked for by the petitioner, which he claims to be the foundation of his claim, are not traceable, yet the efforts are being made to trace those.

(d) Petitioner's grievance was looked into by all authorities and by courts and it cannot be reopened.

8. In the present petition, this Court, had directed the learned AGP on 14.1.2013 to show original acknowledgment showing delivery of documents to the petitioner, which were required pursuant to the order of information Commissioner dated 19.12.2011.

9. Learned A.P.P. has reported after taking instructions that since concerned files are yet to be traced, it may not be possible to state that all documents demanded by the petitioner are given to him.

10. Thereafter, the hearing was adjourned from time to time and this Court directed learned AGP to secure the information from Higher officials as to a particular date and place from which the concerned documents are not available. In reply we were informed that again a committee is appointed to have the trace of files.

11. On the whole, it emerges that the respondents have not been able to supply copies of documents demanded by the petitioner.

12. We do not propose to deal with the question as to whether even now similar to a suit u/s 9 of the CPC or like in a court of Chancery, a claimant could urge before this court that the decision arrived at by the employer or competent authority was rendered in non-observance of principles of natural justice or without following mandatory provisions of law, and pray for a declaration to that

effect.

13. We are alive and conscious of the fact and law that there will be numerous hurdles in the way of the petitioner in having any such a petition decided in this Court. However, the State, which is the ultimate repository of justice, would neither be entitled nor could claim that it is precluded from exercising the inherent powers and duty to do justice, by going into the probe of a jurisdictional question which goes to the root of the case.

14. Such introspection and action by the State is analogous to a defendant who succeeds in a suit, yet volunteers to honors a losing plaintiff on moral and/or ethical grounds and with the inherent sense of justice.

15. It has to be borne in mind that present case is not one between two private litigants who may be in a lis against one another on a contractual or even a legal right and would be entitled to set up the pleas such as res-judicata, merger, Estoppel or any other plea, such as in section 11 to 13 of the CPC contending that any reconsideration is barred by law.

16. In the present case, the State is the only party and the duty to do justice rests, upon State. The State ought to exert to do justice when the onus comes upon it. The basic concept of doing justice is being "just" on the first ever occasion of being "just" and to continue to be "just" and do "justice". Even though a party has failed in getting a favorable judicial review, the duty of the State in doing justice is unshaken and unshirkable.

17. If a litigant who seeks justice succeeds in showing to the Government that he was met with an unfair treatment, in this case due to inability to supply documents relied on which litigant feels are of vital importance, nothing in law and under the Constitution shall preclude the State from honouring its obligation of doing justice.

18. We are, therefore, of considered view that rejection of petitioner's writ petitions etc. and his failure in the challenges raised in the Courts, ought not and cannot come in the way of the State Government to consider and decide petitioner's representations on its own facts, law and on merits. The view of the Government that due to adverse decisions in the court it is not necessary for the Government to take any different view of the matter amounts to Government's shirking away its duty and responsibility of doing justice.

19. The State ought to be open in considering the grievances and making it to demonstrate that justice is not only done but it is made to appear to every concerned that it has been so done.

20. We are, therefore, of considered view that the Government ought to consider the petitioner's point of view and record findings on points raised by him including allowing him to furnish his points in a consolidated manner, considering the duration of litigation, his age, apathy of the Government in neglecting to supply to him the documents and also that he is required to pursue his cause

without legal aid.

21. In aforesaid state of facts, we consider that the petitioner is entitled to be heard by the State notwithstanding dismissal of his claims before various Courts and dismissal of his appeal by the State and rejection of his representations, if the State finds after hearing and consideration of the points agitated by him, that there is a substance in the petitioner's representations, the State shall decide the same in accordance with law without being baulked by that the challenge to the order of dismissal has attained finality.

22. In the process of hearing, we had directed the learned AGP to ascertain as to the name and position of the officer who shall give to the petitioner hearing and also give him a date on which he shall appear before the officer concerned.

23. The learned AGP has taken instructions and has orally informed that the Secretary, Public Works Department, Mantralaya, whose address is at 2nd Floor, Madam Cama Road, Hutatma Rajguru Chowk, Mumbai-32 shall give hearing to the petitioner and the petitioner shall appear before him on 30.9.2013 at 02-30 p.m.

24. We express our concern that while deciding the case, the Secretary should keep in mind that present case is not a lis between two individuals but is a claim and clamor for justice against one department of the State, and keeping in mind that the ultimate object is to do justice and not to conduct a ritual of deciding the representations.

25. We wish and express our belief that the Government or any of its officers are believed not to act perfunctorily.

26. Considering that the party in person is urging his cause, he would always have limitations of lack of expertise. Therefore, it would be open to the petitioner to furnish a fresh simplified and consolidated representation and the same be decided.

27. As stated before us, for compliance of these directions, the petitioner shall appear before the Secretary, Public Works Department, Mantralaya, Mumbai on 30.9.2013 at 02-30 p.m. and the officer concerned may give him next date of hearing during which period, further efforts to trace the documents for which the committee is appointed by the Government, as seen from letter dated 20.8.2013 signed by the Desk Officer, Public Works Department, Mantralaya, Mumbai, be made and if the documents are traced, the same be given to the petitioner.

28. We express our belief that a serious effort should be made by the State Government to trace the documents for which the petitioner has approached the Public Information Officer as well as the Information Commissioner and even this Court.

29. For the reasons recorded above, Rule is made absolute to the extent of quashing the communications dated 28.11.2011 (Exh. I-page 69) and 29.8.2012

(Exh. H-page 59) and observations contained in the foregoing paragraphs bearing numbers 13 to 21 and 27.

30. Pending civil applications, if any, are disposed of. There shall be no order as to costs.