

(2020) 01 BOM CK 0123
In the Bombay High Court
Case No : Writ Petition No. 1691 Of 2018

Zilla Parishad

APPELLANT

Vs

Subhash Tukaramji Buche

RESPONDENT

Date of Decision : 29-01-2020

Acts Referred:

Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 — Section 4, 4(i)
Maharashtra Zilla Parishad District Services (Discipline And Appeal) Rules, 1964 — Rule 4(i), 6, 6(10), 6(10)(i)(a), 6(10)(i)(b)
Maharashtra Civil Services (Discipline And Appeal) Rules, 1979 — Rule 9, 9(2)
Constitution Of India, 1950 — Article 309

Citation : (2020) 01 BOM CK 0123

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : D.R. Bhoyar, J.R. Kidilay

Final Decision : Disposed Of

Judgement

(1) Heard.

(2) Rule. Rule made returnable forthwith. Heard finally by the consent of learned counsel appearing for the rival parties.

(3) By this writ petition Zilla Parishad, Wardha, has challenged judgment and order dated 02/07/2016, passed by the Industrial Court, Nagpur, whereby complaint filed by the respondent under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, has been allowed. It was declared by the Industrial Court that the petitioner had indulged in unfair labour practice under Item 9 of Schedule-IV of the aforesaid Act. The punishment of withholding of increments for three years permanently and treating suspension period between 07/08/1994 to 05/12/1996, as suspension period, was set aside and the petitioner was directed to pay all consequential benefits to the respondent within a period of six months.

(4) The respondent, who was working as Cashier (Junior Assistant) in the finance department of the petitioner was proceeded against in a departmental enquiry on 02 charges pertaining to loss caused to the State Exchequer due to handing over of cheques by the respondent to an unauthorized person, who claimed to be representing training institutes for grants given by the department of vocational education and training. The first charge pertained to the loss caused by such handing over of cheques to unauthorized person and the second charge pertained to violation of accepted procedure for distribution of such cheques, on the part of the respondent. An enquiry was instituted against the respondent on the said charges under the provisions of Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964. By enquiry report submitted on 13/06/1999, the Chief Executive Officer of the petitioner Zilla Parishad, rendered findings against the respondent and he was found partly guilty of charge No.1, while he was absolved for charge No.2.

(5) On the basis of the said enquiry report, the Chief Executive Officer of the petitioner Zilla Parishad as the disciplinary authority, issued show cause notice to the respondent on 20/08/1999. It was stated in the said show-cause notice that insofar as charge No.1 was concerned, the same stood proved against the respondent as per the enquiry report, while the said disciplinary authority disagreed with findings on charge No.2 in the enquiry report. In the said show-cause notice, it was stated that the disciplinary authority found on the basis of material on record that even the second charge was proved. On this basis, the respondent was called upon to show-cause as to why his service should not be terminated. The respondent submitted reply to the said disciplinary authority, in response to the show-cause notice.

(6) By order dated 07/11/2000, the petitioner issued order inflicting punishment of withholding increments for two years permanently with cumulative effect and further directed that the period of suspension would be treated as suspension for all purposes. Aggrieved by the said order issued by the petitioner, the respondent filed the aforesaid complaint before the Industrial Court. The respondent claimed that there was violation of principles of natural justice, because copy of the enquiry report was never furnished to him along with show-cause notice and further that while disagreeing with the findings in the enquiry report, the disciplinary authority ought to have issued notice under Rule 6(10)(i)(a) of the aforesaid Rules and having failed to do so, there was breach of the principles of natural justice. The respondent also claimed that the material on record was not sufficient to prove the charges against him and on this basis it was claimed that unfair labour practice was committed by the petitioner, further seeking relief of setting aside of the aforesaid order dated 07/11/2000, inflicting punishment upon him.

(7) By the impugned judgment and order dated 02/07/2016, the Industrial Court allowed the complaint and directed that the respondent be paid all consequential benefits.

The Industrial Court found that copy of the enquiry report was not furnished to the respondent along with show-cause notice and that therefore, there was breach of principles of natural justice and that the disciplinary authority ought to have given hearing to the respondent under Rule 6(10)(i)(a) of the said Rules.

(8) Shri. D. R. Bhoyar, learned counsel for the petitioner submitted that the Industrial Court committed error in holding that copy of the enquiry report was not furnished to the respondent with the show-cause notice. It was submitted that in the reply dated 06/09/1999, the respondent had specifically stated in the opening paragraph itself that he had received show-cause notice along with copy of enquiry report dated 30/06/1999. On this basis it was submitted that the finding of the Industrial Court was unsustainable regarding violation of principles of natural justice. It was further submitted that the contention raised on behalf of the respondent that there was violation of Rule 6(10) (i)(a) of the said Rules was also without any substance, because in the show-cause notice dated 20/08/1999, the petitioner had proposed punishment to be imposed upon the respondent under the said Rules and he had ample opportunity to demonstrate that the conclusion of the disciplinary authority in the present case regarding both charges being proved, was erroneous and that it was unsustainable. On this basis, it was submitted that the impugned order deserved to be set aside.

(9) On the other hand Shri. J. R. Kidilay, learned counsel appearing for the respondent submitted that the Industrial Court was justified in holding that principles of natural justice had been violated. It was submitted that proper reading of Rule 6(10) (i)(a) of the said Rules would show that the disciplinary authority ought to have issued show-cause notice to the respondent and granted hearing at the stage when it had decided to disagree with the findings in the enquiry report regarding charge No.2. This requirement of granting hearing to the employee at two stages was already recognized by the Hon'ble Supreme Court while considering a similar provision, in the case of Yoginath D. Bagde vs. State of Maharashtra and another reported in (1999) 7 SCC 739. It was further submitted that with passage of time, there was no question of putting the clock back and relegating the parties to the stage where the principles of natural justice were violated and that therefore, the writ petition deserved to be dismissed.

(10) Having heard the learned counsel for the rival parties and upon perusal of the material on record, it is found that the Industrial Court by the impugned judgment and order held in favour of the respondent by concluding that the principles of natural justice were violated. The first ground was the alleged non-supply of copy of enquiry report to the respondent along with the show-cause notice, thereby, causing grave prejudice to him. This finding was specifically rendered by the Industrial Court in paragraph 34 of the impugned order and it was held that the assertion made on behalf of the respondent that copy of enquiry report was not supplied to him remained unchallenged on the part of the petitioner.

(11) But, on a specific direction given by this Court, the petitioner placed on record reply to the show-cause notice submitted by the respondent. A perusal of the said reply dated 06/09/1999 submitted by respondent shows that in the opening paragraph itself, the respondent stated that he was in receipt of show-cause notice along with copy of the enquiry report dated 30/06/1999. This document is fairly admitted by the learned counsel appearing on behalf of the respondent. Therefore, the finding rendered by the Industrial Court in paragraph 34 of the impugned order is found to be unsustainable. It could not be said that there was violation of principles of natural justice in the present case due to non-supply of copy of enquiry report and therefore, to that extent the impugned order is found to be unsustainable.

(12) But, the next issue that arises for consideration is, as to whether the respondent was justified in insisting before the Industrial Court that there was violation of the principles of natural justice, because under Rule 6(10)(i)(a) of the said Rules, while disagreeing with the findings in the enquiry report on charge No.2, the disciplinary authority was not only required to give brief reasons, but it was required to issue notice and grant an opportunity of hearing to the respondent with regard to such disagreement. According to the learned counsel for the respondent, notice was required to be issued to the respondent at two stages. Firstly, at the stage when the disciplinary authority disagreed with the findings in the enquiry report pertaining to charge No.2 and it gave its brief reasons, because the respondent was entitled to explain or represent before the disciplinary authority as to why such disagreement was improper. Secondly, after this stage was crossed, the disciplinary authority could have issued show-cause notice under Rule 6(10)(i)(b) of the said Rules regarding penalty proposed to be imposed on the respondent.

According to the learned counsel for the respondent, by directly issuing show-cause notice dated 20/08/1999, regarding penalty proposed to be imposed on the respondent, principles of natural justice had been violated.

(13) A perusal of the impugned order passed by the Industrial Court shows that although the main reason why the Industrial Court held in favour of the respondent appears to be non-supply of copy of enquiry report, but the aforesaid argument raised on behalf of the respondent in the context of Rule 6 of the said Rules also weighed with the Industrial Court in holding in favour of the respondent. It was contended on behalf of the petitioner that such two stage issuance of notices and granting of opportunity of hearing under Rule 6(10) of the said Rules was not warranted.

(14) But, the judgment of the Hon'ble Supreme Court in the case of *Yoginath D. Bagde vs. State of Maharashtra* (supra) covers the position of law in favour of the respondent. In the said case, the Hon'ble Supreme Court was concerned with Rule 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, which has a parimateria provision as compared to Rule 6(10) of the aforesaid Rules. In the said Rules also, it is stated that when the disciplinary authority

disagrees with findings of the enquiry authority, brief reasons are required to be given and then there is a provision for issuance of notice for penalty proposed to be imposed on the employee.

(15) In the context of such similar Rule, the Hon'ble Supreme Court in the said judgment has held as follows :-

"28. In view of the provisions contained in the statutory rule extracted above, it is open to the disciplinary authority either to agree with the findings recorded by the enquiring authority or disagree with those findings. If it does not agree with the findings of the enquiring authority, it may record its own findings. Where the enquiring authority has found the delinquent officer guilty of the charges framed against him and the disciplinary authority agrees with those findings, there would arise no difficulty. So also, if the enquiring authority has held the charges proved, but the disciplinary authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the enquiring authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the rules made under Article 309 of the Constitution or the disciplinary authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the disciplinary authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the enquiring authority that the charges were established, "an opportunity of hearing" may have to be read into the rule by which the procedure for dealing with the enquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the enquiring authority, is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.

29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which enables the disciplinary authority to disagree with the findings of the enquiring authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own findings, the disciplinary authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the

enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with."

(16) In the aforesaid judgment, the Hon'ble Supreme Court also relied upon earlier three Judge Bench judgment in the case of Punjab National Bank vs. Kunj Behari Misra reported in (1998) 7 SCC 84, wherein the same position of law had been laid down.

(17) In the facts of the present case, Rule 6(10)(i) (a) and (b) becomes relevant which reads as follows :-

"6. Procedure for imposing major penalties - (1) to (9)

(10) (i) If the Disciplinary Authority, having regard to its findings on the charges, is of the opinion that any of the penalties specified in clauses (iv) to (vii) of Rule 4 should be imposed, it shall -

(a) furnish to the Parishad servant a copy of the report of the Inquiring Authority, and where the Disciplinary Authority is not the Inquiring Authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Inquiring Authority; and

(b) give him a notice stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time such representation as he may wish to make on the proposed penalty, provided that such representation shall be based only on the evidence adduced during the enquiry."

(18) Applying the said position of law laid down by the Hon'ble Supreme Court and consistently followed thereafter, it becomes clear that in the present case, the disciplinary authority erred in directly issuing show-cause notice dated 20/08/1999 under Rule 6(10)(i)(b) for the penalty proposed to be inflicted on the respondent, without first giving an opportunity to the respondent at the stage when the disciplinary authority differed with findings in the enquiry report pertaining to charge No.2. Therefore, there was clear violation of the principles of natural justice in the present case. Although the Industrial Court did not give detailed reasons for accepting said contention raised on behalf of the respondent, the conclusion was correct, in the facts and circumstances of the present case.

(19) At this stage, the learned counsel appearing for the petitioner submitted that if it was found that there was violation of principles of natural justice, the parties could be relegated back to the stage where such violation had taken place, so that the respondent could be proceeded against from that stage. In response, the learned counsel appearing for the respondent submitted that with

passage of long period of time, it was impracticable to relegate the parties to the aforesaid stage. It was further submitted that even charge No.1 found to be partly proved in the enquiry report was not supported by material on record. It was further submitted that instead of relegating the parties to the stage at which they were in the year 1999, this Court could pass appropriate orders on the basis of the material on record. In this regard reliance was placed on the judgment of the Hon'ble Supreme Court in the case of Om Kumar and others vs. Union of India reported in (2001) 2 SCC 386.

(20) There cannot be any doubt about the fact that when it is found that there is violation of principles of natural justice, the parties could be relegated to the stage at which there was such violation. But, in the present case the defective show-cause notice was issued on 20/08/1999 i.e. more than 20 years ago and no purpose would be served by relegating the parties to that stage. In the said decision Om Kumar and others vs. Union of India (supra), the Hon'ble Supreme Court has laid down that in rare cases, instead of remitting the matter to the disciplinary authority for fresh decision on quantum of punishment, the Court could substitute its view, due to passage of long period of time.

(21) In the present case, the material on record does indicate that the respondent could have been more careful, while distributing cheques for the said grants to the training institutes, particularly when the very same person was appearing before him for collecting such cheques for various training institutes. It could have been inquired whether the very same person was authorized by all such training institutes for receiving cheques for the grants. To that extent, for having failed to exercise due care, the respondent could certainly be held responsible and appropriate penalty could be imposed upon him. The enquiry report also found that charge No.1 was only partly proved. In such a situation, imposition of penalty of withholding of increment for two years permanently with cumulative effect was clearly disproportionate.

A perusal of Section 4 of the aforesaid Rules shows that the petitioner could impose penalty of censure under Section 4(i) of the said Rules. On the basis of the aforesaid position of law laid down by the Hon'ble Supreme Court, to ensure that litigation is cut-short, particularly when long period of time has been consumed in litigation, in the peculiar facts and circumstances of the present case, this Court is of the opinion that it would be in the interest of justice that while upholding the impugned order, setting aside the punishment imposed by the petitioner by order dated 07/11/2000, it be directed that penalty of censure under Section 4(i) of the aforesaid Rules is imposed on the respondent.

(22) In view of the above, the writ petition is disposed of in the following manner :-

(a) The finding rendered by the Industrial Court that principles of natural justice were violated due to non supply of copy of enquiry report is set aside.

(b) The finding rendered by the Industrial Court that there was violation of

principles of natural justice, as opportunity of hearing was not granted under Rule 6(10)(i)

(a) of the said Rules, when the disciplinary authority disagreed with the finding in the enquiry report, is found to be in consonance with law and it is upheld.

(c) Although the relief granted by the Industrial Court regarding payment of consequential benefits to the respondent is upheld, it is directed that penalty of censure be imposed on the respondent under Rule 4(i) of the said Rules.

(23) Rule is made absolute in above terms. There shall be no order as to costs.