

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 505 OF 2021

DIST. : PARBHANI

Bhaskar s/o Vaijinath Suryawanshi,
Age : 55 years, Occu.: Service,
Presently working as Craft Instructor
At Government I.T.I., Parali Vaijnath,
District Beed, R/o Shelu, Tq. Shelu,
Dist. Parbhani.

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APPLICANT

V E R S U S

1. The Principal/Headmaster,
Government Technical School,
Pathri, District Parbhani.
2. The Principal,
Industrial Training Institute (ITI),
Parali Vaijnath, Dist. Beed.
3. Rajesh Vitthalrao Dhanorkar,
Age. 43 years, occ. Service,
Presently working as Principal of
ITI, Wada, District Palghar.
4. Uday s/o Tukaram Kolhle,
Age 33 years, occ. Service,
Presently working as Instructor,
I.T.I., Kannad, Tq. Kannad,
Dist. Aurangabad.

...RESPONDENTS

APPEARANCE :- Shri Girish Kulkarni, learned
Advocate for the applicant.

: Shri B.S. Deokar, learned Presenting
Officer for the respondent nos. 1 & 2.

: Shri I.D. Maniyar, learned counsel for respondent no. 4.

: Shri S. S. Ware, learned counsel for respondent no. 4 (**absent**).

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman

DATE : **18th April, 2023**

O R A L - O R D E R

1. Heard Shri Girish Kulkarni, learned counsel for the applicant, Shri B.S. Deokar, learned Presenting Officer for the respondent nos. 1 & 2 and Shri I.D. Maniyar, learned counsel for respondent no. 3. Shri S.S. Ware, learned counsel for respondent no. 4 (**absent**).

2. By filing the present application the applicant has sought quashment of the order dated 1.7.2019, whereby respondent no. 1 has directed recovery of amount of Rs. 2,00,412/- from the applicant and has also questioned further order dated 5.8.2021 issued by respondent no. 2, whereby the aforesaid amount is directed to be recovered in 24 equal instalments.

3. It is the matter of record that during pendency of the present application since some amount was recovered out of the disputed amount, the applicant has incorporated the said facts

being subsequent events and has added one prayer for refund of amount, which has been recovered from the applicant.

4. The recovery as has been directed against the applicant is the monetary value of the items, which were found short or missing while the applicant handed over the charge of his post to the officer concerned. It is the contention of the applicant that while directing recovery, the respondents did not follow the procedure as prescribed under the rules governing the services of the applicant. It is also the contention of the applicant that false recovery is claimed against the applicant without giving him any opportunity of hearing in that regard.

5. It is the further contention of the applicant that in the year 2018 theft had occurred in the department and some articles were found to have been stolen. According to the applicant, the said articles are not found and hence were not delivered by the applicant while handing over the charge of his post to the officer concerned. It is also the contention of the applicant that the charge was not immediately taken by the officer concerned though he was transferred in the year 2019 and in the meanwhile the articles seem to have gone missing for which the applicant cannot be blamed. According to applicant, the recovery directed against the applicant is illegal and

unsustainable. The applicant has, therefore, prayed for setting aside both the orders impugned by him.

6. The respondents have denied the contentions raised in the Original Application and have resisted the prayer made therein. The respondent no. 1 has filed the affidavit in reply refuting the contentions raised in the Original Application. Respondent no. 3 has also filed separate affidavit in reply denying the allegations made against the said respondent. According to the respondents and more particularly respondent no. 3 the applicant is estopped from raising any objection as has been raised by him in view of the fact that while handing over the charge of the articles the applicant has put his signature below the said charge report having expressly mentioned therein about missing articles and approximate price thereof.

7. The learned counsel for the applicant has assailed the impugned orders on several grounds. According to the learned counsel, the impugned orders cannot be sustained on the ground that without conducting any enquiry in that regard and without giving any opportunity of hearing to the applicant, the said orders are passed.

8. The learned counsel has further argued that in the month of September, 2018 theft had occurred in the workshop and the said incidence was immediately reported by the applicant to respondent no. 1 on 12.9.2018, however, no cognizance of the said report was taken by the respondents. The copy of the said complaint is placed on record by the applicant. The learned counsel submitted that articles, which were found missing while the applicant handed over charge of his post, perhaps are those articles which might have stolen in the incident of theft occurred in the month of September, 2018.

9. The learned counsel further submitted that after the applicant was transferred, at the instance of the respondents the delay has occurred in taking over the charge from the applicant. The learned counsel further argued that the procedure prescribed under the law was not followed while taking over the charge from the applicant. According to the learned counsel, the order dated 1.7.2019 is illegal and contrary to the principles of natural justice and he had therefore prayed for setting aside the said order and has also prayed for directions that the amount already recovered from the applicant be refunded to the applicant.

10. Opposing the submissions made on behalf of the applicant Shri Maniyar, learned counsel appearing for respondent no. 3 brought to my notice the Charge Report dated 21.6.2019. There are separate charge reports departmental-wise. There are total 3 such reports, wherein details of the items/articles handed over by the applicant in his possession to new incumbent are noted down. The learned counsel invited my attention to the note below the list of not found or missing articles with the approximate price thereof. The learned counsel submitted that the said report is duly signed by the applicant. The learned counsel submitted that in the present application the applicant has not even whispered about the said list and his signature below the said report. The learned counsel submitted that when the applicant himself has admitted the list of missing articles there was no reason for the respondents to conduct any enquiry in that regard. The learned counsel submitted that the applicant being the custodian of the said articles was held responsible for missing of said articles and accordingly order of recovery was issued. The learned counsel submitted that no error has been committed by the respondents. The learned counsel, therefore, prayed for dismissal of the application.

11. The learned Presenting Officer has adopted the arguments advanced on behalf of respondent no. 3 and has also prayed for dismissal of the present application.

12. I have duly considered the submissions advanced by the learned counsel for the applicant, learned counsel appearing for respondent no. 3 and the learned Presenting Officer for respondent nos. 1 & 2. I have also gone through the documents filed on record. As has been argued on behalf of the applicant his foremost objection is that without conducting any enquiry the recovery has been directed against the applicant. It has to be examined to what extent the objection so raised carries the substance.

13. After having gone through the contents of the documents filed on record by respondent no. 3, those of handing over charge by the applicant, there appears no substance in the objection so raised by the applicant. The aforesaid documents under the signature of the applicant clearly demonstrate that some articles were missing and hence could not be handed over to the new incumbent by the applicant. The charge report contents list of such articles along with price of the said articles, total of which is mentioned at the bottom of the said list. Endorsement thereon is more significant which reveals that fact

of missing articles is admitted by the applicant and has put his signature below it. In view of the fact that the act of missing of the articles was admitted by the applicant, there was no reason for the respondents to conduct any further enquiry in that regard. The applicant though now has taken a plea that he was constrained to put his signature below the charge report and it was not voluntary act of the applicant, it is difficult to accept the said submission.

14. In the Original Application the applicant has not taken any such plea that his signature below the charge report was obtained by the respondents under duress or under threat. Though it was also sought to be contended by the learned counsel that in the legal notice issued by the applicant to the respondents the applicant has raised such plea. My attention was invited to the relevant portion of the said notice. In the Original Application contentions about service of legal notice are not taken. In the Original Application it is not the case of the applicant that while preparing the charge report his signatures were obtained below the said report under duress or under threat. In absence of any such averment in the Original Application or any such ground raised in exception to the impugned orders and further having regard to the documents

placed on record by the respondent no. 3 evidencing that the applicant has admitted the fact of missing the articles while handing over charge of his post, it does not appear to me that any case is made out by the applicant to set aside the order of recovery. Hence, the following order :-

ORDER

The Original Application fails and is accordingly dismissed, however, without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 18.4.2023