

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1060 OF 2017

Shri Sharad Shripad Charankar,)
Age Adult, Occupation : Retired,)
Government Servant as Deputy)
Director of Small Savings, Mumbai)
And residing at Flat No.10, B-Wing,)
Pink Place, Kolhapur Road, Sangli,)
District Sangli) **....APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through the Secretary,)
(Expenditure), Small Savings)
Directorate, Finance Department,)
8th floor, New Administrative)
Building, Opp. Mantralaya,)
Mumbai 400 032)
2. The Hon'ble Minister for Higher and)
Technical Education, State of)
Maharashtra, Mantralaya,)
Mumbai 400 032)
3. The Desk Officer,)
Small Savings Administration,)

(Finance Department), Government)
 Of Maharashtra, Mantralaya,)
 Mumbai 400 032)

4. The Principal Secretary,)
 Finance Department, State of)
 Maharashtra, Mantralaya,)
 Mumbai 400 032) **...RESPONDENTS**

Mr. Prashant R. Suryawanshi holding for Mr. Gajanan M. Savagave, learned Counsel for the Applicant.

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar, Chairperson**
Ms. Medha Gadgil, Member-A

DATE : **10.01.2024.**

J U D G M E N T

1. The applicant was working as Deputy Director of Small Savings. He retired on 30.6.2008. He challenged the order dated 1.1.2016 passed by the Principal Secretary, Finance Department.

2. Learned Counsel for the Applicant has submitted that the applicant faced a Departmental Enquiry (D.E.) for the charge of bogus claim of incentive grant. The applicant was saddled with the punishment of an amount of Rs.6,52,018/- to be recovered as one time due to the loss suffered by the Government and permanent reduction of 10% from the pension. The applicant challenged the order dated 13.6.2016 of disciplinary authority before the Government in appeal and the Hon'ble Governor at the relevant

time delegated the charge to the Hon'ble Minister of Higher and Technical Education. The Hon'ble Minister partly allowed the appeal, though recovery of Rs.6,52,018/- was maintained. The second clause of the punishment i.e. about permanent reduction of 10% in pension was cancelled.

3. Learned Presenting Officer for the Respondents has submitted that the order passed by the Hon'ble Minister, Mr. Rajesh Tope, Higher and Technical Education Department was not as per the Rules as per Maharashtra Departmental Enquiries (Rules and Procedure) Manual. She has pointed out that before passing this order in Appeal the Government has not consulted the M.P.S.C. and thus it was violative of Clause 10.4 (Two) of the Maharashtra Departmental Enquiries (Rules and Procedure) Manual.

4. Learned P.O. has submitted that further order is passed in the name of His Excellency. However, the order passed by the Hon'ble Minister was never communicated to the Applicant as it was erroneous. Learned P.O. on instructions from Ms. Manisha Kamte, Deputy Secretary, Finance Department has submitted that subsequently another order was passed by the Hon'ble Finance Minister, Mr. Mungantiwar dated 01.01.2016 and the Appeal was decided again by the Hon'ble Minister (Finance) and the said order was communicated to the Applicant on the same day i.e. 01.01.2016 by the Principal Secretary, Finance Department, Mr.

Sitaram Kunte. She has submitted that the said order of the Finance Minister was passed only after consultation with the M.P.S.C. and in the said order earlier order passed by the Disciplinary Authority of recovery of Rs.6,52,018/- and 10% permanent deduction from the Applicant's pension, both were maintained. Learned P.O. has submitted that after the order was passed by the Hon'ble Minister of Higher and Technical Education the order was sent for consultation to the G.A.D. and then G.A.D. found that as per Clause 10.4 (two) of the Maharashtra Departmental Enquiries (Rules and Procedure) Manual the M.P.S.C. was required to be consulted so file was sent to the M.P.S.C. and M.P.S.C. gave opinion that it is very serious matter and the order of the Disciplinary Authority should have been maintained. Therefore, again file was sent to Finance Department, wherein the Finance Department placed the file before the Hon'ble Minister of Finance.

5. We have gone through the note dated 21.11.2015. The said note was put up by the Deputy Secretary, Mr. S.M. Mahadik after discussions with the Principal Secretary (Finance). But as the Principal Secretary (Finance) put query that whether the concurrence /consent of M.P.S.C. is required to be taken for punishment given in appeal and the decision was taken by the M.P.S.C. and it is accepted by the entire Executive Department of Finance that the consent / concurrence of M.P.S.C. is required in

respect of punishment given in appeal. The said note was prepared with two options as follows :

“१०. प्रस्तूत प्रकरणी श्री.चरणकर यांच्याविरुद्ध दि. ३१/०५/२०११ अन्वये दिलेली शिक्षा अपिलमध्ये कमी करण्यात आली आहे. तथापि, म.लो.आ. ने न्यास सहमती दिलेली नाही. अशा परिस्थितीत खालील बाबींवर आदेश व्हावेत -

१) म.लो.आ. चे अभिप्राय विचारात घेता श्री. चरणकर यांच्याविरुद्ध दि. ३१/०५/२०११ अन्वये बजावण्यात आलेले शिक्षादेश कायम करण्यात यावेत.

अथवा

२) शासन परिपत्रक सा.प्र.वि.दि.१०/०८/२००९ अन्वये दिलेल्या सुचनांस अनुसरून आयोगाचा सल्ला डावलण्यासाठी प्रस्ताव मंत्रीमंडळासमोर सादर करावा, जेणे करून श्री. चरणकर यांनी यांच्याविरुद्ध दि. ३१/०५/२०११ अन्वये बजावण्यात आलेले शिक्षेविरुद्ध दाखल केलेल्या अपिलावरील सुनावणी अंती झालेले शिक्षादेश कायम राहतील.”

It means Option No.1 : The decision till 31.05.2011 given by the Disciplinary Authority is to be confirmed

Or

Option No.2 : The advice given by the M.P.S.C., if rejected then the proposal is to be submitted before the Cabinet, so the decision of the Hon'ble Minister in Appeal of August 2013 can be confirmed.

At the foot of the said note the Hon'ble Minister (Finance) by order dated 26.11.2015 has endorsed Option No.1 and accepted. Thereafter, the Principal Secretary (Finance) by letter dated 01.01.2016 issued order in the name of His Excellency thereby confirming the order of the Disciplinary Authority on 31.05.2011. The Applicant was aggrieved and hence he challenged the order dated 01.01.2016 mainly on the ground that one Hon'ble Minister cannot change the decision taken by another Hon'ble Minister in appeal. Such decision is illegal.

6. We have gone through the note dated 21.11.2015. It is erroneous in view of the procedure laid down in the Maharashtra Departmental Enquiries (Rules and Procedure) Manual. In paragraph 4 of the note dated 21.11.2015 it is mentioned that the order issued by the Hon'ble Minister, Higher and Technical Education, thereby modifying the order dated 31.05.2011 was sent to the M.P.S.C. for concurrence. However, the M.P.S.C. did not grant concurrence, but gave opinion that cancellation of the punishment of permanent 10% deduction from the pension is not correct and unjust. The M.P.S.C. drew attention of the State to the Circular dated 24.12.1985. The paragraph 10.4 of the Maharashtra Departmental Enquiries (Rules and Procedure) Manual reads as below :

“ज्यांच्या बाबतीत महाराष्ट्र लोकसेवा आयोगाशी विचारविनिमय करणे आवश्यक आहे अशा शिस्तभंगविषयक बाबी

- खालील प्रकरणांमध्ये आयोगाशी विचारनिमय करण्यात यावा :-

(एक) जेव्हा शासनाने, अंतिम निर्णय घेण्यापूर्वी, ठपका ठेवणे, वेतनवाढ किंवा बढती रोखून ठेवणे किंवा, निलंबित करणे याव्यातिरिक्त अन्य शिक्षा लादण्याचे योजले असेल तेव्हा,

(दोन) राज्य सेवेतील ज्या अधिका-यांनी त्यांच्यावर लादण्यात आलेल्या कोणत्याही शिक्षेविरुद्ध राज्य शासनाकडे अपील दाखल केले असेल अशा अधिका-यांच्या बाबतीत, अशा अपिलावर निर्णय घेण्यापूर्वी। (लादण्यात आलेली शिक्षा ही ठपका ठेवणे, वेतनवाढ किंवा, बढती रोखून ठेवणे यापैकी एखादी असली तरीही, अशा रीतीने विचारविनयम करणे आवश्यक असेल)”

7. In this matter it is necessary to deal with the procedure i.e. paragraph 10.4 of the Maharashtra Departmental Enquiries (Rules and Procedure) Manual and the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred as 'MCS Rules 1979' for brevity). Before taking decision in appeal it is binding on the Government to discuss the matter with M.P.S.C. After going through paragraph 10.4 (two) of Maharashtra

Departmental Enquiries (Rules and Procedure) Manual, it is to be noted that M.P.S.C. is required to be consulted or discussed before taking decision in appeal. The word is used “prior to taking decision in appeal”. From the noting and also after going through the additional affidavit-in-reply dated 02.04.2019 filed on behalf of Respondents No.1, 3 and 4 through Mr. Sanjay Govind Gulekar, Desk Officer, in the office of Commissioner of Lottery, Mumbai, emphasis is given on paragraph 10.4 of the Maharashtra Departmental Enquiries (Rules and Procedure) Manual that the M.P.S.C was not consulted, but however surprisingly in paragraph 2.2 it is stated that,

“The Proposal of Punishment was submitted to the Government through the Secretary (Expenditure) and final order of punishment dated 01.01.2016 in the said appeal passed as follows:

- a) Recovery of Rs.6,52,018/- towards the loss of the Government in the form of incentive grant paid to the family of Mr. Gosavi on 14/6/2002.*
- b) Reduction in Pension Permanently to the extent of 10 percent in respect of all other charges.”*

Mr. Gulekar, Desk Officer in the affidavit dated 02.04.2019 has mentioned that the M.P.S.C. disagreed with the order passed by the Hon’ble Minister, Higher and Technical Education and gave options as follows :

In the opinion the M.P.S.C. has said that recovery amount of Rs.6,52,018/- should be made and cancellation of punishment of 10% reduction in pension amount permanently in respect of all other charges is not justified. This shows that the M.P.S.C. is having contrary view in respect of the second part of the

punishment. However, we fail to understand the procedure mentioned in paragraph 10.4. It does not say that after giving the decision in Appeal by the Appellate Authority the said order is to be sent to the M.P.S.C. for concurrence / confirmation / opinion.

8. At this stage let us advert to Rule 23 of the MCS Rules 1979 states about the ‘Consideration of appeal’. Rule 23(2) reads as below :

*“23. Consideration of appeal : (1)
.....
(2) In the case of an appeal against an order imposing any of the penalties specified in rule 5 of these rules or enhancing any penalty imposed under that rule, the appellate authority shall consider –”*

Further in Rule 23 of the MCS Rules 1979 the proviso (iv) reads as below :

23(2) “(iv) if the enhanced penalty which the appellate authority proposes to impose is one of the major penalties and an inquiry under rule 8 of these rules has already been held in the case, the appellate authority shall ... make such orders as it may deem fit; and ”

It means the M.P.S.C. should be consulted in all cases where the said consultation is necessary.

Further Rule 23 (2)(c) of the MCS Rules 1979 reads as below :

*“(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe, and pass orders –
(i) confirming, enhancing, reducing, or setting aside the penalty; or”*

Rule 23, proviso (ii) reads as below :

(ii) the Commission shall be consulted in all cases where such consultation is necessary.”

Thus, on combined reading of Rule 23(2)(c)(i) along with proviso (ii) of the MCS Rules 1979 and paragraph 10.4 (two) of the Maharashtra Departmental Enquiries (Rules and Procedure) Manual, it is made clear that the Appellate Authority is required to discuss or consult M.P.S.C. Thus, it means that the M.P.S.C. is required to be consulted or discussed before deciding the appeal and in cases where the consultation is found necessary. In all such cases where consultation is necessary the word used is 'such consultation is necessary'. It means it is up to the Appellate Authority to take decision in view of the facts of the case, legality or any other where the consultation is required to remove any doubt or for clarification of the facts.

9. We reiterate that the consultation or any opinion of either G.A.D. or of M.P.S.C. is not required at all when the Appellate Authority has passed the order. The power of Appellate Authority is statutory. Whenever order in appeal is passed it becomes quasi-judicial or judicial order. Such order can be challenged or changed only by following the proper procedure in accordance with the Rules. The order of Appellate Authority in such service matter can only be challenged before the Judicial Authority. When one Appellate Authority i.e. one Cabinet Minister has passed the order, assuming by violating certain procedure of not consulting M.P.S.C. yet that order cannot be set aside by the manner in which the Finance Department has put up the note and changed. The other

Minister of Finance Department has no power in law to change the earlier order passed by the Cabinet Minister or Higher and Technical Education Department which was the competent Appellate Authority. In the present case, Hon'ble Minister of Higher and Technical Education is a delegated competent Appellate Authority and the Appellate Authority is His Excellency the Governor. His Excellency Governor has delegated the powers to the Hon'ble Chief Minister giving directions that Appellate Authority can be appointed and the power to appeal as the Appellate Authority can be delegated to the Hon'ble Minister. The Hon'ble Chief Minister after receiving the order of the Hon'ble Governor, His Excellency has assigned this present matter to the Hon'ble Minister of Higher and Technical Education. In that capacity the Hon'ble Minister of Higher and Technical Education has decided the appeal after giving hearing to the applicant which is necessary. Surprisingly, this order was sent to the G.A.D. The G.A.D. has no business to send the matter to the M.P.S.C. for consultation / concurrence. Neither M.P.S.C., G.A.D. or any other Minister can sit in an Appellate Authority over the Appellate Authority. Respondents have failed to show us any such power or procedure justifying such action of the Finance Department putting up such note for approval before the Hon'ble Minister of Finance giving two alternative options. Moreover, we fail to understand when the powers are vested only with the Hon'ble Governor His Excellency, how the Hon'ble Minister was competent

unless the powers are delegated by His Excellency with directions to the Hon'ble Chief Minister and the Hon'ble Chief Minister delegates the Appellate powers to the Hon'ble Minister. Such powers of Appellate Authority cannot be enjoyed by any other Minister. The facts of such delegation of powers are mentioned in the order passed by the Hon'ble Minister, Higher and Technical Education and these facts were completely missing in the proposal or the order passed by the Hon'ble Minister, Finance.

10. There is another angle to this matter which is more serious. The applicant has submitted that he has filed Writ Petition No.10289/2015 before the Hon'ble High Court seeking direction to His Excellency the Governor to decide the appeal because the Appellate Authority is His Excellency the Governor as the appeal was not decided till then. The Division Bench of the Hon'ble High Court by order dated 08.01.2016 has passed the order thereby directing the concerned Respondents to dispose off the appeal filed by the Petitioner as soon as possible, preferably within eight weeks from the date of the order. Learned Counsel has submitted that the Appeal was not decided till mid of March 2016 and so he filed Contempt Application No.253/2016. Learned Counsel has submitted that the order dated 01.01.2016 was received by the Applicant on 25.02.2019 when reply of M.A.No.580/2018 in O.A.No.1060/2017 was filed by the learned P.O. and annexed the order dated 01.01.2016. Thereafter, the learned Counsel has submitted that he withdrew his initial prayer and by way of

amendment he deleted his first prayer by order of the Tribunal and he amended his O.A. on 30.04.2019 by challenging order dated 01.01.2016. The question was raised by us that when Mr. Sitaram Kunte, Additional Chief Secretary (Finance) informed by order dated 01.01.2016 to the Minister (Finance) to confirm the first order of the Disciplinary Authority of the year 2011 and it was sent by speed post on 02.01.2016, why the applicant filed Writ Petition. On 08.01.2016 at that relevant time the Government Pleader Ms. S. Bende was present. She did not say anything. Her submissions are not recorded. It means she did not say a word of the order passed by the Hon'ble Minister (Finance) and the order communicated by the Principal Secretary dated 01.01.2016. The second order dated 01.01.2016 of the Cabinet, the Hon'ble Minister Mr. Mungantiwar was not communicated to the Applicant. It was sent by speed post. The Applicant said it was not received. So the Applicant filed Contempt Petition No.253/2016 in Writ Petition No.10289/2015 dated 28.03.2016. Learned Counsel has submitted that he withdrew the Contempt Application because the Respondent had sent order dated 02.01.2016 which was received by the Applicant on 16.06.2016. Thereafter annexing the order passed by the Hon'ble Minister, Higher and Technical Education, Mr. Rajesh Tope in August, 2013, so the Applicant withdrew the Contempt Application. Thus, it is clear from this that the Government has twice opportunity to place the copy of order before

the Hon'ble High Court. The Hon'ble Minister (Finance) has changed the order of the earlier Minister and the Government has issued order of 01.01.2016. This fact was not disclosed in the Writ Petition when the Hon'ble High Court disposed of Writ Petition on 08.01.2010 and also when the Contempt Petition was withdrawn on 26.01.2016. Thus, the Department was cavalier while following the procedure in casual manner.

11. Hence, O.A. is allowed with the following order :

- (i) The order passed by the Hon'ble Minister dated 26.06.2015 is illegal and void ab initio and further order dated 01.01.2016 of the Principal Secretary is hereby quashed and set aside.
- (ii) Respondent-State is hereby directed to pay pension to the applicant which was deducted by 10% from 01.01.2016 till today by 15th March, 2024.
- (iii) No extension of time will be granted to the Respondents thereafter.

Sd/-

(Medha Gadgil)
Member (A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson

prk