

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 753/2011 (D.B.)

Kishor S/o Sopan Sheelwant,
aged 50 years, Occ. Nil, resident of
'Kishor Kunj', Raje Sambhaji Nagar,
Buldhana, Taluka and District Buldhana.

Applicant.

Versus

- 1) State of Maharashtra,
Ministry of Law and Judiciary, Mantralaya,
Mumbai-400 032 through its Secretary.
- 2) The Charity Commissioner,
Maharashtra State,
'Dharmadaya Ayukt Bhawan
3rd floor, Dr. Annie Besant Road,
Worli, Mumbai-400 018.
- 3) The Deputy Charity Commissioner,
Amravati Division, Amravati.

Respondents.

S/Shri S.T. Harkare, A.B. Mahajan, Advocates for the applicant.

Shri V.A. Kulkarni, P.O. for respondents.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 31st July, 2019.

Date of Pronouncement of Judgment : 24th September, 2019.

JUDGMENT**Per : Anand Karanjkar : Member (J).****(Delivered on this 24th day of September,2019)**

Heard Shri A.B. Mahajan, Id. counsel for the applicant and Shri V.A. Kulkarni, Id. P.O. for the respondents.

2. The applicant is challenging the order dated 10/11/2004 passed by the respondent no.2 thereby terminating the services of the applicant. The facts in brief are as under –

3. The applicant was appointed as Junior Clerk on 3/2/1984. In the course of time he was promoted as Senior Clerk. The charge sheet dated 22/5/2002 was served on the applicant, it was alleged that the applicant on several occasions remained absent from the duty and after 1/6/2001 till the date of issuance of the charge sheet, the applicant was absent from the duty without permission. It was also alleged that when show cause notice was issued to the applicant, he made insulting allegations against his seniors and threatened to sit on hunger strike in the office of Asst. Charity Commissioner Buldhana. The second allegation was that though the applicant was in service of the Government on the establishment of Charity Commissioner of Maharashtra State, violating the MCS Rules, the applicant was working as office bearer in the 11 Charitable/Educational Public

Trusts. After receiving the charge sheet reply dated 15/6/2002 was given by the applicant to the charge sheet. So far as the first head of charge was concerned, it was contended by the applicant that no misconduct was committed by him and he did not insult any Superior Officer. So far as the second head of charge was concerned, it was contended by the applicant that it was not possible for him to work as office bearer of the Public Trust, unless he had permission. It was contended by the applicant in the reply that he had submitted one application dated 18/6/2002 for relieving him from service and accordingly he requested the respondent no.2 to relieve him from the service w.e.f. 1/7/2002.

4. After receiving the reply, the Inquiry Officer was appointed and the inquiry was conducted. The Inquiry Officer recorded evidence of two witnesses (1) Shri B.P. Patil, then Assistant Charity Commissioner and (2) Shri Deepak Shamrao Jadhav, the Office Superintendent in the office of Deputy Charity Commissioner, Amravati. When the evidence of first witness Shri B.P. Patil, then Assistant Charity Commissioner was recorded, the applicant was present, thereafter he remained absent. The Inquiry Officer recorded evidence of second witness and thereafter the Inquiry Officer came to the conclusion that the applicant was not interested in leading the defence evidence, consequently, the Inquiry Officer submitted the

report vide Annex-A-5. The respondent no.2 the Disciplinary Authority perused the report submitted by the Inquiry Officer dated 30/4/2003, thereafter, show cause notice was issued to the applicant on 26/8/2004. Thereafter the Disciplinary Authority agreed with the findings recorded by the Inquiry Officer and came to the conclusion that in view of the mis-conduct of the applicant it was not suitable to retain the applicant in the Government service, consequently the respondent no.3 passed the impugned order Annex-A-3.

5. In order to challenge this order of termination, the O.A. was filed by the applicant on 20/4/2011, together with the application for condonation of delay. After hearing the respondents the application for condonation of delay was allowed.

6. The learned counsel for the applicant submitted that the applicant was posted in the office of respondent no.3 at Amravati and the applicant requested for transfer to Buldhana on the ground of his health and his family problems. The request of the applicant was not considered, on the other hand, he was transferred to the office of respondent no.2 vide order dated 1/1/2003. The main contention of the applicant is that the order of termination is passed by the respondent no.2 without considering the facts and circumstances and the evidence available. It is contention of the applicant that the Inquiry Officer did not consider the contentions raised by the applicant in his

defence, therefore, the findings recorded by the Inquiry Officer stands vitiated.

7. According to the applicant, there was no case for initiation of the departmental inquiry. It is contended that remaining absence from the duty was not misconduct within meaning of the Rule 3 (1) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The findings recorded by the Inquiry Officer are challenged by the applicant on the ground that the Inquiry Officer did not consider the fact that the applicant was not only person in service of the Department who was office bearer in 11 public trusts. It is submitted that besides the applicant, several other employees were acting as office bearers of the educational and charitable trusts, but this evidence was not considered. According to the applicant, the extreme penalty of dismissal is imposed on the applicant, the nature of the alleged misconduct was not sufficient to invite such extreme penalty and therefore, the punishment awarded is shockingly disproportionate and it cannot be justified. On the basis of these grounds, the learned counsel for the applicant submitted that the order of termination is required to be set aside.

8. The learned counsel for the applicant has placed reliance on the Judgments, i.e., **Mohan Krishna Antrolkar Vs. Commissioner Prohibition and State Excise & Ano. 2001 (2) BCR,**

693, Sheshrao Daulatrao Raut Vs. State of Maharashtra & Ors., 1989 Mh.L.J.,476, Anil Kumar Vs. Presiding Officer & Ors., AIR, 1985 SC,1121, Sher Bahadur Vs. Union of India & Ors., AIR, 2002 SC, 3030, State of Punjab & Ors. Vs. Ram Singh Ex-Constable (1992) 4 SCC,54, Writ Petition No.1429/2005 in case of **Devisingh S/o Sandusing Rajput Vs. State of Maharashtra & Ors.**, decided on 31/8/2017 and Writ Petition No.5625/1997 in case of **Shri Vijay S/o Shamrao Bhale Vs. Godavari Garments Ltd. & Ors.**, decided on 7/7/2010. On the basis of these Judgments, it is submitted that the Inquiry Officer did not follow the legal norms, it was duty of the Inquiry Officer to question the applicant on the circumstances appearing against him in the evidence for giving him opportunity to explain the adverse circumstances. It is submitted that the mandatory provision under Rule 8 (20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 was violated by the Inquiry Officer, therefore, the impugned order is required to be quashed.

9. In the reply it is contention of the learned P.O. that following the rules, the charge sheet was served on the applicant, he was given opportunity to submit reply to the charge sheet, the Inquiry Officer was appointed, the applicant was permitted to participate in the inquiry and defend him. It is contended that when evidence of witness no.1 Shri B.P. Patil, then Assistant Charity Commissioner was

recorded, the applicant was present, but he declined to cross examine the witness. Thereafter, when second witness Shri D.S. Jadhav, Superintendent, Amravati was examined the applicant remained absent. Thereafter though notices were issued to the applicant, he did not participate in the inquiry.

10. The learned P.O. has supported the findings recorded by the Inquiry Officer on the ground that the Inquiry Officer recorded the findings on the basis of the unchallenged evidence. In addition it is contention of the learned P.O. that the applicant did not dispute his absence as described in the charge no.1, the applicant did not deny the charge about his absence from 1/6/2001 till the issuance of the charge sheet. The learned P.O. has also submitted that so far as the second charge is concerned, the applicant in his reply to the charge sheet did not dispute the allegation that he was office bearer in the public trust as mentioned in the charge no.2. It was pretended by the applicant in his reply to the charge sheet that as he had permission to work as office bearer of the 11 public trusts, therefore, he accepted those positions. The learned P.O. invited attention to the fact that though several opportunities were given to the applicant to appear before the Inquiry Officer and even before the Disciplinary Authority by issuing notices, the applicant remained absent for the reasons best known to him and considering the nature of the misconduct and

conduct of the applicant, the Disciplinary Authority has passed the order which is valid in law.

11. We have perused the report of the Inquiry Officer which is at Annex-A-5. It is contention of the learned counsel for the applicant that this report is cryptic and the defence of the applicant was not considered by the Inquiry Officer, but we do not see any merit for the reason that even in reply to the charge sheet, the material facts were not disputed. In reply to charge no.1 it was contended by the applicant that he filed application for leave without pay w.e.f. 31/10/2000 and he was unable to attend the office due to his personal difficulties and therefore he did not commit any misconduct. It is pertinent to note that in reply to the charge sheet or even before the Inquiry Officer, the applicant did not disclose what were his personal difficulties, due to which he was unable to join his duty in the office for such a long period. It is pertinent to note that under charge no.1 it was alleged that since 1/6/2001 the applicant was absent without permission till the date of issuance of the charge sheet. So far as this fact is concerned, the applicant did not utter a word in the reply which is at Annex-A-4. Thus it seems even from the reply given by the applicant that on 31/10/2000 he submitted application to sanction leave without pay and thereafter there was no correspondence

between him and the office, he never informed the office what was his difficulty for not attending the duty.

12. It is pertinent to note that the applicant was attached to the office of the respondent no.3, the Dy. Charity Commissioner, Amravati, due to his continuous absence the office had to face several difficulties. Sub rules (1) (i), (ii) and (iii) of MCS (Conduct) Rules 1979 explain the minimum requirements from the Government servant, that every Government servant shall at all times maintain absolute integrity, devotion to duty and do nothing which is unbecoming of a Government servant. In view of this expectation it is necessary to examine whether the alleged conduct of the applicant constitutes misconduct.

In the present case, it seems that as per the meaning devotion to duty, the applicant was bound to attend the duty punctually and render his services to the office. This was the object for which the applicant was appointed in Government service. It appears that the applicant violated the norms and avoided to maintain devotion to the duty, not only this, it appears from the reply given by the applicant to the show cause notices that he made insulting allegations against his Superiors and he also threatened the Superiors to proceed on hunger strike in the premises of the public office at Buldhana. If this entire conduct of the applicant is considered, then it is not possible to accept

that the applicant was performing his duty with devotion. On the contrary, there was ample evidence that the applicant had no regard for his duty, for his office and for the Society, therefore, we do not see any merit in the contention that no misconduct was committed by the applicant.

13. It is important to note that the Rule 25 (a) of the Maharashtra Civil Services (Conduct) Rules, 1979 is as under –

“(25) Association of names with public institutions or works –

No Government servant shall, except with the previous sanction of Government –

(a) associate his own name or allow it to be associated with any public institution, such as, libraries, hospitals, schools or roads and the like; or with such objects, as shields, trophies, prizes, medals and cups and the like; or”

14. After reading Rule 25 (a) and considering the evidence that the applicant accepted the posts as office bearer in total 11 public trusts which were in the control of the Charity Commissioner (M.S.) inference is to be drawn that the applicant was associated with public institution. In view of this conduct it was necessary for the applicant to show that he had obtained permission of the Government before accepting the posts of office bearers of the public trusts. In the application it is contended by the applicant that permission was given to him by the Dy. Charity Commissioner to accept the posts as office

bearer of the various public trusts, but it is important to note that such permission in writing was never produced by the applicant before the Inquiry Officer or before the respondent no.2. We would like to point out that even when this application was heard, the learned counsel for the applicant was unable to point out that any such permission was given to the applicant to accept the position as office bearer of the educational public trusts or public charitable trusts. Once it is accepted that the applicant himself accepted that he was office bearer of total 11 charitable / educational public trusts, therefore, on his failure to produce the permission given by the competent authority, the inevitable conclusion will be the applicant committed the misconduct in terms of Rule 25, Clause (a) of the Maharashtra Civil Services (Conduct) Rules, 1979.

15. We have perused the record and proceeding, it seems that there was evidence of Shri B.P. Patil, then Assistant Charity Commissioner and Shri D.S. Jadhav, Superintendent. This evidence was unchallenged evidence. The applicant declined to cross examine Shri B.P. Patil, the then Assistant Charity Commissioner, the applicant remained absent when evidence of Shri D.S. Jadhav was recorded. Thereafter, the applicant never appeared in the inquiry. The learned Inquiry Officer has observed as under –

“(13) As the delinquent did not appear, since the evidence of witness no.2 was recorded, in spite of notice, his statement to the charges could not be recorded by me”.

16. Thus it is crystal clear that there was reasonable evidence before the Inquiry Officer for holding that the misconduct was committed by the applicant as alleged in the charge sheet. So far as the Judgments on which the reliance is placed by the applicant are concerned, we would like to point out that on the basis of facts and circumstances of each case, considering the gravity of the misconduct and nature of the evidence, views are taken in individual manners.

17. So far as contention of the applicant regarding violation of Rule 8(20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 is concerned, we would like to point out that the applicant cannot take advantage of the ratio in case of **Devisingh S/o Sandusing Rajput** (Writ Petition No.1429/2005) and **Shri Vijay Shamrao Bhale** (Writ Petition No.5625/1997) for the reason that the applicant avoided to avail this protection given to him by the Rules. It is important to note that the applicant deliberately remained absent after examination of witness no.1 was completed. There is evidence that the Inquiry Officer issued notices to the applicant and called upon him to participate in the inquiry. We have already considered the facts observed by the Inquiry Officer in para-13 of the report. As the applicant did not remain present before the Inquiry Officer, the Inquiry

Officer had no alternative other than to submit the report without following the procedure under Rule 8(20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. In this regard, we would like to point out that so far as the charge no.2 is concerned, candid admission is given by the applicant that he was office bearer of 11 public charitable / educational trusts, therefore, on failure of the applicant to produce the permission given by the competent authority, the misconduct is proved.

18. The applicant is not dismissed from the service only for the reason of his absence for a long period, but he is dismissed because he was discharging other activities without seeking permission of the respondent no.2, he was acting as office bearers of several educational/ charitable public trusts and it was in violation of law. The applicant remained absent without applying for leave, when he was called upon to show cause, he made allegations against his superiors and he threatened to proceed on hunger strike and to create a show in the public. This conduct of the applicant giving threat to proceed on hunger strike was in fact sufficient evidence to show that he had no regard for duty and it was his desire to defame the Government Institution in the esteem of the society. It is pertinent to note that after receiving the report of the Inquiry Officer, the respondent no.2 issued show cause notice dated 26/8/2004 to the applicant. In spite of it, the

applicant did not take any care to appear before the respondent no.2 to make any submission. Under these circumstances, in our opinion there is no flaw in the inquiry.

19. The legal position is settled that the Administrative Tribunal should not interfere in the findings recorded by the Inquiry Officer and punishment awarded, unless it is shown that the findings are not supported by evidence or the findings are perverse or the findings are contrary to law. We have also recorded finding that the conclusions drawn by the Inquiry Officer are based on the evidence and on admission of the applicant and considering the nature of the misconduct and the arrogant attitude of the applicant, punishment of termination is awarded by the respondent no.2. Consequently we do not see any merit in this application. Hence, the following order-

ORDER

The O.A. stands dismissed. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 24/09/2019.

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 24/09/2019.
and pronounced on

Uploaded on : 24/09/2019.