

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.144 OF 2023

Mr. Satturam Dattatraya Kokitkar,)
Aged about 63 years,)
Retired Deputy Engineer, PWD,)
in ZP (Works) Sub Division, Kagal,)
District : Kolhapur and having)
Residential address as Rachana Residency)
F-1, 36A/24, 'E' Ward, Tarabai Park,)
Kolhapur 416 003) **.....Applicant**

Versus

1) Government of Maharashtra,)
Through Additional Chief Secretary)
Public Works Department,)
Mantralaya, Mumbai 400 032)

2) Divisional Commissioner, Pune)
Having its office at Vidhan Bhavan,)
(EGS Branch), Pune 1)

3. Chief Executive Officer,)
Zilla Parishad, Kolhapur,)
District Kolapur) **...Respondents.**

Mr. M.D. Lonkar, learned Advocate for Applicant.

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

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil (Member) (A)

DATE : **28.02.2023**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. Applicant prays to hold and declare that the charge memo dated 15.02.2021 issued by the Respondent No.2 is unconstitutional, illegal and bad in law and the same be quashed and set aside with directions to the Respondents to release all pending retiral dues payable to the him.

2. Learned Advocate has submitted that the Applicant was initially appointed as Junior Engineer and Assistant Engineer, Grade-II w.e.f. 02.07.1982 and 01.03.1984 respectively. Thereafter he was promoted to the post of Deputy Engineer w.e.f. 31.10.1997. By order dated 23/29.10.2015 contemplated Departmental Enquiry was initiated against him as contemplated under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred as 'MCS Rules 1979' for brevity). The Applicant submitted reply to the said order on 09.11.2015 denying the allegations. Learned Advocate has submitted that by separate communication dated 29.10.2015, further, a show cause notice was issued to the applicant as to why D.E. should not be instituted against you under the aforesaid rules. The applicant has submitted his reply to the aforesaid show cause notice on 07.12.2015. Learned Advocate has argued that the first charge-sheet was issued and served on the applicant is the admitted

fact. However, the said charge-sheet was void as it was not issued by the Competent Authority. Learned Advocate has submitted that the applicant retired on 31.05.2017 and the charge-memo was issued on 15.02.2021 for initiating D.E. against the applicant for the imputation of charges pertains to the year 2010-2012. The enquiry is contrary to the Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred as 'MCS Pension Rules' for brevity), hence, be quashed and set aside.

3. Learned Advocate for the Applicant relied on the following judgments :

- (i) Judgment of Hon'ble Bombay High Court Aurangabad Bench in Writ Petition No.4655/2014 dated 15.09.2015 filed by Motilal Babulal More Versus The Zilla Parishad & Ors.
- (ii) M.A.T Nagpur Bench Nagpur in O.A.No.638/2017, dated 30.01.2023, Purushottam Vishnupant Lute Versus The State of Maharashtra & Anr.

4. Learned Presenting Officer for the Respondents has submitted that initially charge-sheet was issued in the year 2015. Thereafter no steps were taken. However, on 15.02.2021 by approval of the Planning Department, charge-sheet was issued. Hence, in view that charge-sheet is of the year 2015, Rule 27 of MCS Pension Rules is not applicable.

5. We have considered the submissions of learned Advocate and learned Presenting Officer. We have also gone through the detail note of Public Works Department, Mr. Matpati, Section Officer and also further note of the Planning Department. As per Rule 27(2)(b)(ii) of the MCS Pension Rules the charge-sheet shall not be in respect of any

event which took place more than four years before such institution. We reproduce relevant sub clause 3 of Rule 27 of the MCS Pension Rules which reads as follows :

“27. Right of Government to withhold or withdraw pension

(1)

(2)

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, ***shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.***

6. It is admitted fact that the charge-sheet was issued on 15.02.2021 by the Chief Executive Officer who is not the Competent Authority, but the Divisional Commissioner is the competent authority. There is no provision of delegation of powers at the time of issuance of charge-sheet to the competent authority so far as the Departmental Enquiry is concerned. In the noting of PWD also the Respondent-State has taken a correct stand based on the Rules that charge-sheet cannot be issued by any Government Officer or Higher authority, but it is to be issued only by the Competent Authority. In the present case, earlier the charge-sheet was issued in the year 2015 by the Chief Executive Officer of Zilla Parishad who is not the Competent Authority. Subsequently, the charge-sheet was issued by the Competent Authority and the Departmental Enquiry was instituted in the year 2021.

7. In view of the relevant provisions of MCS Rules 1979, the earlier charge-sheet which was issued by the authority who was not competent; is void ab initio. Hence, that charge-sheet cannot be considered for fixing the date of the institution of the Departmental Enquiry. Thus, the second charge-sheet which was issued in the year 2021 by the Competent Authority i.e. Divisional Commissioner is to be taken as the date of institution of D.E. If it is so, the events for which the charge-sheet is issued in view of Rule 27(2)(b)(ii) of the MCS Pension Rules should have been occurred only four years prior to the date of institution. When the charge-sheet is issued on 15.02.2021 the incidents for which the applicant is charged should have been taken place till the year 2016-2017 and not before that. In the said D.E. incidents for which the applicant is charged are of the year 2010 to 2012 which is obviously beyond the four years prior to the date of the institution of the D.E.

9. Under such circumstances, in view of the rules and keeping in mind the present set of facts the D.E. is not legal and the same needs to be quashed and set aside..

10. Though we have heard parties for interim relief, after hearing the parties at length, and considering the pleadings and rules, we are of the view, that granting of interim relief is as good as allowing the main relief. Therefore, we heard the matter finally at the interim stage. In view of the above, we pass the following order :-

ORDER

- (a) O.A. is allowed.
- (b) The Departmental Enquiry initiated against the applicant vide charge memo dated 15.02.2021 is hereby quashed and set aside.
- (c) Respondents are directed to release all the pensionary benefits to the applicant as per law within three months from the date of this order.

SD/-
(Medha Gadgil)
Member(A)

SD/-
(Mridula Bhatkar, J.)
Chairperson

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Versus
Government of Maharashtra & Ors. ..Respondents

Mr. M.D. Lonkar – Advocate for the Applicant

Ms. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Ms. Justice Mridula Bhatkar, Chairperson
Ms. Medha Gadgil, Member (A)

DATE : 8th March, 2023

ORDER

1. Heard Mr. M.D. Lonkar, learned Advocate for the Applicant and Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents
2. Ld. Advocate for the applicant makes oral application for speaking to minutes of the order dated 28.2.2023 passed in the above matter. Ld. Advocate submits that in line 2, para 6, page 4 of the judgment there is typographical mistake in mentioning the date as '15.02.2021' and it should be corrected as '23/29.10.2015'.
3. Ld. PO submits to the order of the Court.
4. Correction be carried out accordingly. Speaking to minutes disposed off.

Sd/-

**(Medha Gadgil)
Member (A)
8.3.2023**

Sd/-

**(Mridula Bhatkar, J.)
Chairperson
8.3.2023**

Dictation taken by: S.G. Jawalkar.

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