

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 537 OF 2019

DISTRICT:- JALGAON

Shri Narendra Rajendra Thakur,
Age: 56 years, Occu: Nil,
R/o: Sahkar Nagar,
Near Dr. Naik Hospital,
Tq: Bhusawal, Dist. Jalgaon.

.. **APPLICANT**

V E R S U S

1. The State of Maharashtra,
Through it's Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
2. The Collector,
Mahabai Road, New Joshi Colony,
Prabhat Colony, Jalgaon.
3. The Sub Divisional Officer,
Anil Nagar,
Tq. Bhusawal, Dist. Jalgaon.
4. The Tehsildar,
Tehsil Office, Shanti Nagar,
Tq. Bhusawal, Dist. Jalgaon.

.. **RESPONDENTS**

APPEARANCE : Shri Umakant Aute, learned counsel
holding for Shri S.B. Talekar, learned
counsel for the applicant.

: Smt. M.S. Patni, learned Presenting
Officer for the respondent authorities.

**CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN
AND
: SHRI VINAY KARGAONKAR, MEMBER (A)**

DATE : 20.11.2023

ORDER

[Per : Justice Shri P.R. Bora, Vice Chairman]

Heard Shri Umakant Aute, learned counsel holding for Shri S.B. Talekar, learned counsel for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondent authorities.

2. The present applicant, who was working on the post of Talathi has been dismissed from Government services vide order passed on 12.6.2019 by invoking the provisions under Article 311(2)(b) of the Constitution of India. It is the contention of the applicant that his dismissal by invoking the provisions is wholly unsustainable since without conducting due departmental enquiry against the applicant he has been dismissed from the services. The applicant has denied the charges raised against him.

3. The respondents have in their affidavit in reply contended that since there were several complaints against the present applicant the respondents were constrained to dismiss him from the services. It is further contended that the show cause notice was issued to the applicant and though the applicant gave reply to the said show cause notice, the reply was found

unsatisfactory and thereafter the order has been passed thereby dismissing the applicant from the services of the Government. According to the respondents, no error has been committed by respondent No. 3 in passing the impugned order. The respondents have therefore prayed for dismissal of the Original Application.

4. When the present matter was taken up for consideration today, the learned counsel for the applicant informed that the applicant has by this time attained the age of superannuation and in the circumstances he is not now pressing relief of reinstatement in service. However, learned counsel submitted that the impugned order deserves to be set aside and the applicant deserved to be held entitled for the consequential benefits from the date of his dismissal till the date of his superannuation.

5. We have perused the impugned order. Detailed order has been passed by respondent No. 3. As mentioned in the said order, there were several serious complaints against the applicant. The impugned order also reveals that the show cause notice was issued to the applicant and he replied the same but the justification/explanation given by the applicant was found totally unsatisfactory and in such circumstances, the

order of dismissal has been passed against the applicant by invoking the powers under Article 311(2)(b) of the Constitution. We deem it appropriate to reproduce Article 311 herein below, which reads thus:-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State-

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply.

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank ins satisfied that for some

reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final”

6. Article 311(1) says that, no person who is a member of a civil service of the Union or all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority, which is subordinate to his appointing authority. Article 311(2) says that, no such person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. There are certain exceptions carved out, one of which is in sub-clause (b), which provides that, where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason recorded by that authority in writing, it is not reasonably practicable to hold such inquiry, the enquiry can be dispensed with.

7. In the instant matter it has to be seen whether the order dated 12.6.2019 issued by respondent No.3, thereby dismissing the applicant from the services by invoking provisions under Article 311(2)(b) of the Constitution of India r/w Rule 5(1)(8) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 can be sustained ?

8. In the order of termination the following allegations are made against the applicant: -

(i) that, the applicant though took in his custody 5 vehicles allegedly involved in transportation of illegally excavated minor minerals on 10.8.2018 and kept those 5 vehicles within the premises of Tahsil Office, Bhusaval, did not prepare any Panchanama of the seizure of the said vehicles or of keeping the said vehicles in the premises of Tahsil Office, Bhusaval;

(ii) that, the said 5 vehicles were illegally removed from the place where they were kept and on that count the applicant blamed Tahsildar, Bhusawal, Shri Sanjay Tayade and used against him filthy language and thereby caused his insult;

(iii) that, in the past the applicant had entered into the premises of Tahsil Office under the drunken condition and had abused his senior officers;

(iv) that, no work assigned to the applicant is being completed by him within the given time which creates embarrassing position for the senior officers in the Tahsil Office;

(v) that, the applicant does not become available to the people who have worked with him;

(vi) that, the applicant on some or other pretext frequently remained absent and his office is mostly found closed;

(vii) that, the applicant does not collect the orders and notices as well as applications received from the citizens and the complaints to be considered on LOKSHAHI DIN;

(viii) that, on the portal of the Maharashtra Government also there are several complaints received against the applicant;

(ix) that, the applicant did not respond to the queries made by his superior officers;

(x) that, under the influence of liquor the applicant makes phone calls to his superior officers; and

(xi) that, the Deputy Collector (Revenue), Collector Office, Jalgaon inspected the record of the applicant on 7.9.2018 wherein it was noticed that while holding additional charge of the Bhusaval City, the applicant got done the mutation entries by dispensing with the stamp fees, and thus, caused revenue loss to the applicant and there are certain other complaints also.

9. Having regard to the nature of complaints against the applicant as mentioned above, it does not appear to us that there could have been any difficulty in conducting regular enquiry into the misconduct alleged against the applicant. The disciplinary authority has not recorded any such reason or has explained the circumstances making the holding of the regular enquiry against the applicant impossible. The provision under Article 311(2)(b) is to be used sparingly and under extraordinary circumstances. We did not find any such reason for not conducting the regular enquiry against the applicant. The order of dismissal passed by invoking the powers under Article 311(2)(b) of the Constitution therefore cannot be sustained and deserves to be set aside.

10. In the impugned order, the reference is also given of Rule 5(1)(8) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. It is not understood as to why such reference is given, for the reason that the applicant was not on probation neither he was a temporary Government servant. Thus, on both counts the impugned order appears to be unsustainable and deserves to be quashed and set aside.

11. As has been submitted by the learned counsel appearing for the applicant that during the pendency of the

present Original Application the applicant attained the age of superannuation. In the circumstances, further submission has been made by the learned counsel that the present O.A. can be disposed of by setting aside the impugned order and the applicant can be made entitled for the consequential benefits from the date of his dismissal till the date of his superannuation.

12. It is true that during the pendency of the present O.A. since the applicant has attained the age of superannuation, even though the order of his dismissal is set aside, it may not be possible to direct his reinstatement in service. However, the submission made on behalf of the applicant that the applicant be held entitled for all service benefits from the date of his dismissal till the date of his superannuation, cannot be accepted. The acts of misconduct alleged against the applicant in the impugned order are pertaining to the period while the applicant was in service. It is also the matter of record that the applicant was suspended vide order dated 16-08-2018 issued by Sub Divisional Officer. The applicant was thus under suspension when his service came to be terminated. In the aforesaid circumstances, the respondents do possess the right to conduct enquiry against the applicant

for his alleged misconduct while in service even after his retirement by invoking the relevant provisions under the Maharashtra Civil Services (Pension) Rules, 1982, if they so desire.

13. For the reasons stated above, the following order is passed:

ORDER

[i] The order dated 12.6.2019 impugned in the present O.A. is quashed and set aside. Respondents, however, are not precluded from conducting enquiry against the applicant in respect of the misconduct alleged against him under the provisions of the Maharashtra Civil Services (Pension) Rules, 1982, if they so desire, and in such circumstances, payment of back-wages and all consequential benefits shall abide by the result of the aforesaid enquiry. Such enquiry must be initiated as expeditiously as possible and not later than two months from the date of uploading* this order on the website of the Tribunal and shall be completed within three months thereafter. The applicant shall ensure that the enquiry proceedings shall not be delayed or protracted at his instance.

(ii) The Original Application is allowed in the aforesaid terms. There shall be no order as to costs.

MEMBER (A)

VICE CHAIRMAN

HDD/YUK O.A.NO.537.2019

***Order is uploaded on the website on 01-01-2024.**