

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 210/ 2020 (S.B.)

Syed Mustaque Ali Ahmed Ali,
Aged about 59 years,
R/o Pir Babanpura,
Achalpur, Dist. Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Municipal Administration,
Mantralaya, Mumbai- 32.
- 2) Divisional Commissioner Amravati
Cum Regional Director of Municipal Administration,
Amravati Division,
Camp, Amravati.
- 3) Municipal Council, Achalpur,
Through its Chief Officer, Achalpur,
District Amravati.
- 4) Deputy Director of Municipal Administration,
3rd Floor, Sir Pochkhanwala Marg,
Warali, Mumbai-30.

Respondents

Shri R.V.Shiralkar, Id. Advocate for the applicant.

Shri A.M.Khadatkar, Id. P.O. for the respondents 1 & 2.

Shri N.S.Khandewale, Id. counsel for the respondent no. 3.

None for the respondent no. 4.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGEMENT

Judgment is reserved on 13th Sep., 2023.

Judgment is pronounced on 29th Sep., 2023.

Heard Shri R.V.Shiralkar, ld. counsel for the applicant, Shri A.M.Khadatkar, ld. P.O. for the respondents 1 & 2 and Shri N.S.Khandewale, ld. counsel for the respondent no. 3. None for the respondent no. 4.

2. Case of the applicant is as follows. By order dated 03.10.2008 (A-1) the applicant who was till then working as Sanitary Inspector in Municipal Council, Achalpur, was absorbed in State Cadre as per option given by him, and final order of absorption (A-2) was passed on 30.05.2011. Order dated 14.08.2012 (A-3) posting the applicant at Pusad as Tax Officer was modified on 23.11.2012 and he was given posting as Deputy Chief Officer, Pusad which he challenged by filing W.P.No. 4180/2012. Pursuant to order dated 19.06.2013 (A-4) passed by the Hon'ble High Court in W.P.No. 4180/2012, the applicant was heard on 11.12.2013 by respondent no. 2 who, by order dated 17.12.2013 (A-5), rejected his prayer for cancellation of absorption in State Cadre and gave him posting on vacant post of Deputy Chief Officer/Administrative Officer, Municipal Council, Achalpur as an exceptional case in pursuance of High Court's order. By order dated

04.03.2014 (A-6) the applicant was permitted to join on the post. In 2015 the applicant was given additional charge of Chief Officer. By order dated 30.05.2015 issued by Deputy Director of Municipal Administration one Abdul Sattar Abdul Gaffar was transferred from Municipal Council, Beed to Municipal Council, Achalpur. On 08.06.2015 Abdul Sattar Abdul Gaffar submitted joining report at Municipal Council, Achalpur. On the same day the applicant informed Abdul Sattar Abdul Gaffar through communication (A-7) that he, the applicant, was holding the post of Deputy Chief Officer and it was not vacant. The applicant forwarded copy of A-7 to Director of Municipal Administration. By order dated 21.10.2015 (A-8) Deputy Director, Municipal Administration promoted Abdul Sattar Abdul Gaffar to join on the post of Deputy Chief Officer-Grade A where he joined on 27.10.2015. As per proposal (A-9) forwarded by Chief Officer, Municipal Council, Achalpur by order dated 27.04.2016 period from 30.05.2015 to 27.10.2015 was directed to be treated as compulsory waiting period as per Rule 9 (14) (f) of The Maharashtra Civil Services (General Conditions of Services) Rules, 1981. Till October, 2015 no steps were taken. By letter dated 01.01.2016 (A-11) and then again by letter dated 12.02.2016 the applicant was called upon to submit his explanation. On 02.05.2016 respondent no. 3 passed order (A-12) fixing the responsibility on the applicant to pay Rs.

3,21,598/- . Thereafter, the applicant submitted explanation (A-13) of which no cognizance was taken. On 30.09.2016 the applicant retired on superannuation. Before his retirement no departmental enquiry was initiated against him. Yet his pensionary benefits were not paid nor was regular pension released. In office note (A-15) it was stated that no departmental enquiry was pending against the applicant. On 23.08.2017 respondent no. 2 wrote to respondent no. 3 letter (A-16) as follows:-

उपरोक्त विषयाच्या संदर्भाकित पत्राच्या अनुषंगाने, श्री सै. मुश्ताक अली अहमद अली, न.प.कर निर्धारक व प्रशासकिय सेवा (श्रेणी-ब), नगरपरिषद, अचलपूर यांचे सेवानिवृत्ती प्रकरण या कार्यालयास सादर करण्यात आले आहे.

संदर्भाकित पत्रामध्ये नमुद केल्याप्रमाणे, नगरपरिषद प्रशासन संचालनालयाचे पत्र दि.२७.४.२०१६ मध्ये, श्री अब्दुल सत्तार, उपमुख्याधिकारी (श्रेणी-अ) हे दि. ८.६.२०१५ रोजी नगर परिषद अचलपूर येथे रुजु होण्यास गेले असता, त्यांना रुजु करून घेतले नाही व पद रिक्त नसल्याचे मुख्याधिकारी नगरपरिषद यांनी दि. ८.६.२०१५ चे पत्रान्वये संचालनालयास कळविले. त्यानंतर त्यांना संचालनालयाचे दि.१२.१०.२०१५ च्या आदेशान्वये, दि. २७.१०.२०१५ रोजी मध्यान्हपूर्व मुख्याधिकारी न.प.अचलपूर यांनी रुजु करून घेतले. त्यामुळे त्यांचे दि. ३०.५.२०१५ ते २७.१०.२०१५ या कालावधीतील वेतन भत्ते अचलपूर नगरपरिषदेने नगरपालिका फंडातून अदा करावे व हा खर्च चुकीची माहिती देऊन श्री सत्तार यांना रुजु करून घेतले नाही, याबाबतची जबाबदारी निश्चित करून संबंधितांकडून वसूल करून, नगरपालिका फंडात जमा करण्याबाबत संचालनालयाचे पत्रात निर्देश आहेत.

नगरपरिषद प्रशासन संचालनालयाचे पत्र दि.२७.४.२०१६ मध्ये वरिल प्रमाणे दिलेल्या निर्देशानुसार केलेल्या कार्यवाहीचा अहवाल विनाविलंब या कार्यालयास सादर करावा.

On 06.02.2017 respondent no. 3 submitted letter (A-17) as follows:-

महोदय,

उपरोक्त विषयाबाबत सविनस कळविण्यात येते की, श्री. सै. मुस्ताक अली अहमद अली, सेवा निवृत्त उपमुख्याधिकारी हे अचलपूर नगरपरिषद मध्ये दि. २१/११/१९८४ ते ३०/०९/२०१६ पर्यंत कार्यरत होते. ते दि. ३०/०९/२०१६ रोजी सेवानिवृत्त झाले असून त्यांच्या अचलपूर नगरपरिषद मधील सेवाविषयक माहिती खालील प्रमाण देण्यात येत आहे.

१. असाधारण रजेचा कालावधी - निरंक

२. शासकीय घेणे बाकी आहे काय ? - होय,

मा. आयुक्त तथा प्रा. संचालक न.प. प्रशासन मुंबई यांचे पत्र क्र.नपप्रस-५/नग-संवर्ग-०४-न.प.बदली/कर्त. काला/प्र.क./२०१५ दिनांक २७ एप्रिल २०१६ अन्वये व मा.मु.अ. दि. ०२/०५/२०१६ च्या पत्रा अन्वये रु. ३२१५९८/- वसूल करण्याबाबत आदेशीत असून सदरचे पत्र या सोबत जोडले आहे.

३. कोणतीही विभागीय चौकशी प्रस्तावित अथवा प्रलंबीत आहे काय ? - निरंक

४. कोणतेही फौजदारी प्रकरण प्रलंबीत आहे काय ? - निरंक

In this communication it was reiterated that no enquiry was either contemplated or pending and no judicial matter was pending against the applicant. By order dated 05.04.2018 (A-21) respondent no. 1 directed respondent no. 2 as follows:-

सदर प्रकरणी श्री. सय्यद मुस्ताकअली अहमदअली यांचेकडून मुख्याधिकारी यांनी खुलासा मागविला असता त्यांनी खुलासा सादर केलेला नाही, तथापि त्यांची कोणत्याही प्रकारची विभागीय चौकशी झालेली दिसून येत नाही. तरी सदर प्रकरणी विभागीय चौकशी झाल्यानंतर जबाबदारी निश्चित करणेसंबंधी निर्णय घेण्यासाठी श्री. सय्यद मुस्ताकअली अहमदअली, कर निर्धारक व प्रशासकीय सेवा श्रेणी-ब यांची महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ च्या नियम ७ नुसार चौकशी करण्याचे ठरविले आहे.

तरी महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ च्या नियम १० नुसार श्री. सय्यद मुस्ताकअली अहमदअली, कर निर्धारक व प्रशासकीय सेवा श्रेणी-ब यांना बजवावयाचे दोषारोपपत्र व जापन तयार करून १५ दिवसांत या संचालनालयास सादर करावेत.

3. The impugned recovery was effect pursuant to the following note in notesheet (A-15):-

लेखापरिक्षक व आस्थापना प्रमुख यांचे अहवाल विचारात घेता श्री.मुश्ताक अली यांनी दिलेल्या नोटीसच्या अनुषंगाने सादर केलेले उत्तर समाधानकारक दिसून येत नाही. तेव्हा मुख्याधिकारी यांनी दि.०२.०५.२०१६ च्या पत्रान्वये निश्चित केलेली जबाबदारी व कपातीची रक्कम कायम करणे योग्य. तेव्हा उपरोक्त प्रमाणे मा.आयुक्त तथा प्रादेशीक संचालक यांना पुढील उचित कार्यवाहीकरीता सादर करावे.

Hence, this Original Application for following reliefs:-

A. Hold and declare that action of respondents to recover amount of Rs. 3,21,598/- from the pensionary benefits of the applicant without conducting departmental enquiry and after retirement of the applicant is not permissible and same be declared as illegal.

B. Direct the respondents to immediately release all pensionary benefits of the applicant like gratuity, leave encashment, difference of arrears of pension and to start his regular pension within stipulated period, in the interest of justice.

C. Direct the respondents to grant interest of delayed payment of gratuity and pension as per Rule 129-A and 129-B of M.C.S. (Pension) Rules, 1982, from date of retirement till its actual payment, in the interest of justice.

D. Grant any other relief which this Hon'ble court deems fit and proper in the facts and circumstances of the case.

4. Stand of respondent no. 2 is that summary enquiry was conducted against the applicant. Further stand of respondent no. 2 is as follows:-

This answering respondent has submitted memorandum of allegations for initiating departmental enquiry against the applicant on 28.05.2018 and further proceedings are still going on at the office of respondent no. 1 to initiate disciplinary action against the applicant as per service laws and rules. The copy of communication issued by this answering to the office of respondent no.1 on 28.5.2018 is annexed herewith and marked as Annexure R-1.

5. Stand of respondent no. 3 is as follows:-

At the outset the answering respondent submits that the applicant has not made out any legal ground, muchless to seek interference of this Hon'ble Tribunal in the matter of wrongful loss caused to the Municipal Council. The order of recovery is just and proper and hence does not call for any interference of this Hon'ble Tribunal. The note sheet dated 01.10.2005 clearly states that the applicant had wrongly shown the post of Deputy Chief Officer as "Not Vacant". Thus for the period from 30.05.2015 to 27.10.2015 the salary of Mr. Abdul Sattar was paid from the funds of Municipal Council, Achalpur. It was on the deliberate and wrong assertion made by the applicant that 'no post is vacant of Deputy Chief Officer' in the Municipal Council, Mr. Abdul Sattar was required to wait from 30.05.2015 to 27.10.2015. The salary of Mr. Abdul Sattar was paid from the funds of Municipal Council, Achalpur. Thus the applicant was responsible for causing financial loss to the answering respondent. The financial loss needs to recovered from the applicant as he himself was held responsible for the same.

6. In his rejoinder the applicant has stated:-

Respondent no. 4 has put official note stating the reason for compulsory waiting period as an administrative delay under Rule 9 (14) (f) of M.C.S. (General Condition of service) Rules, 1981. The matter was reported by the applicant on 8.6.2015 to the respondent no. 4 and no action has been taken by the respondent no. 4 for 5 months. It is pertinent to note that matter regarding Abdul Sattar was pending with respondent no. 4 for 5 months. If timely decision was taken then delay would not have occurred. There is no delay which has occurred because of the applicant if the respondent no. 4 could have clarified position without delay then period of 5 months and payment for that period would not have arisen. Delay which has occurred is because the respondent no. 4 has not taken decision immediately.

The applicant has further stated:-

The applicant submits that the respondent no. 3 has no authority to pass an order dated 2.5.2015 thereby fixing the responsibility on the applicant to pay Rs. 3,21,598/- without holding departmental enquiry. No opportunity of hearing was granted before fixing the liability to pay Rs. 3,21,598/- thereby violating principles of natural justice. The order passed in violation of principles of natural justice needs to be quashed and set aside. This amount was deducted from gratuity of the applicant and deposited with Municipal Council, Achalpur subject to the result of the original application.

7. In his additional affidavit the applicant has stated:-

No document has been brought on record by the respondents to show that chargesheet was issued to the applicant and since no chargesheet was issued there is no question of departmental enquiry as departmental enquiry cannot be initiated without chargesheet.

8. There is substance in the assertion of the applicant that no departmental enquiry was initiated against him at any point of time. There is nothing on record to come to the contrary conclusion.

9. The impugned recovery has civil consequences. Therefore, it could not have been effected without following the procedure of departmental enquiry which would have ensured observance of principles of natural justice. The recovery was also bad in view of ratio laid down in State of Punjab and Ors. Vs. Rafiq Masih (White Washer) etc

2015 (1) ALL MR 957 (S.C.). This ruling lays down *inter alia* that recovery from retired employees would be impermissible in law.

10. In view of discussion made hereinabove, **the O.A. is allowed.** The impugned recovery is held to be bad in law. The recovered amount shall be refunded to the applicant and remaining retiral benefits, with interest as applicable under Rule 129 (a) and 129 (b), shall be paid to him within two months from today. No order as to costs.

(Shri M.A.Lovekar)
Member (J)

Dated :- 29/09/2023.
aps

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

Name of Steno : Akhilesh Parasnath Srivastava.

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

Judgment signed on : 29/09/2023.
and pronounced on

Uploaded on : 03/10/2023.