

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT NAGPUR**

**ORIGINAL APPLICATION NO.411/2018
WITH
CONTEMPT PETITION NO.23/2018
IN
ORIGINAL APPLICATION NO.480/2016**

DISTRICT : NAGPUR

ORIGINAL APPLICATION NO.411/2018

Pramod s/o. Wasudeorao Salve,
Age : 58 years, Occ : Retired,
R/o. 101, Vyankatesh Apartment,
Gonhisimm Umrer Road, Dighori,
Nagpur.Applicant

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
Medical Education & Drugs Department,
Mantralaya, Mumbai-32.
- 2) Director, AAYUSH,
Having its office at 3rd Floor,
Saint George Hospital Building,
Near C.S.T., Mumbai. ...Respondents

**CONTEMPT PETITION NO.23/2018
IN
ORIGINAL APPLICATION NO.480/2016**

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Age : 58 years, Occ : Retired,
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VERSUS

- 1) The State of Maharashtra
Through its Secretary,
Medical Education & Drugs Department,
Mantralaya, Mumbai-32.
- 2) Shri Sanjay Deshmukh,
Secretary,
Medical Education & Drugs Department,
Mantralaya, Mumbai-32.
3. Shri Kuldip Raj Kohli,
Directorate of Ayush Government
Dental College and Hospital Building,
4th Floor, Saint George Hospital,
P-Demelo Road, Fort, Mumbai. ...Respondents

**CORAM : Shri Shree Bhagwan, Vice-Chairman
Shri A.D.Karanjkar, Member (J)**

Reserved on : 23-08-2019.

Pronounced on : 04.10.2019.

COMMON ORDER:

Heard Shri S.P.Palshikar, learned Counsel for the Applicant and Shri S.A.Sainis, learned Presenting Officer for respondents. Both matters are connected with each other, therefore, both matters are decided by this common order.

2. In O.A. 411/18 the applicant is challenging the initiation of the departmental enquiry vide chargesheet Annexure A-1 dated 15-02-2018. Applicant has prayed for following reliefs:

" 1) Further be pleased to quash and set aside the communications at Annexure A-1, and A-2 respectively as illegal, bad in law;

2) Further be pleased to hold and declare that initiation of departmental enquiry against the applicant at present is nothing but an abuse of process of law;

3) Further be pleased to allow the original application with compensatory costs Rs.50,000/".

3. After completion of 26 years of service, the applicant made request for voluntary retirement by his proposal dated 01-02-2016. On 24-05-2016, it was informed to the applicant that his request for voluntary retirement was rejected. The applicant thereafter filed O.A.No.480/2016 and challenged the order dated 24-05-2016 on the ground that the decision should have been taken within a period stipulated under Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 and it was not done. Therefore, it was contended that by virtue of the deeming provision, the applicant stood automatically retired after the expiry of the notice period. The contention of the applicant was accepted by this Bench in O.A.No.480/2016 vide order dt/ 11-08-2017 and it was held that the applicant stood retired from the Government service w.e.f. 02-05-2016 and the respondents were directed to pay the retirement benefits to the applicant within a period of 3 months from the date of the order.

4. It is contention of the applicant that this order was not complied within 3 months. Therefore, the applicant issued notices dated 12-11-2017 to the respondents who were responsible for non-compliance of the order, informing that they had committed the contempt of the order and then filed Contempt Petition No.23/2018. It is submitted by the learned Counsel for the applicant that letter was written by the respondents to the Counsel for the applicant and it was informed that some time was required to comply with the order. Thereafter, one MCA was filed by the respondents for extension of time to comply the order. Thereafter, instead of complying the order, the respondents served chargesheet dated 15-02-2018 on the applicant for conducting disciplinary enquiry.

5. It is submission of the applicant that this action of the respondents is in fact vindictive action and only to defeat the claim of the applicant and for restraining the applicant from executing the order passed in O.A.No.480/2016 claiming retirement benefits, the charge sheet is served on the applicant.

6. Learned Counsel for the applicant has submitted that in paragraph 3 of the chargesheet Annexure A-1, it is mentioned that after receiving the chargesheet, the applicant shall submit his written statement within 10 days but without waiting for 10 days' period, on the same day order was issued on 15-02-2018 for conducting the enquiry and enquiry officer was appointed

for conducting the enquiry as provided under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

7. Learned Counsel for the applicant has submitted that this material was available against the applicant when previous O.A.No.480/2016 was filed and was decided. Therefore, only inference can be drawn that action of the respondents to conduct the departmental enquiry against the applicant is vindictive. Learned Counsel for the applicant in support of his submission has placed reliance on the judgment of the Hon'ble Apex Court in case of **State of Punjab V/s. V.K.Khann & Ors. [AIR 2001 SC 343]**.

8. Respondents have filed their affidavit in reply which is at paper book page 55. It is contention of the respondents that the applicant was under suspension from 07-12-2005 to 6-12-2013. The suspension period was treated as suspension and later on, the suspension was revoked. It is contended by the respondents that the decision was taken that the suspension period be counted only for the pensionary benefits. Similarly, it is submitted that in one departmental enquiry minor punishment was awarded and one increment of the applicant was withheld without affecting future increments.

9. Main contention of the respondents is that the applicant did not resume the duty from June, 2014 to February, 2016 and he remained absent though no leave was at his credit. The

applicant submitted application for medical leave on the basis of certificate issued by the District Civil Surgeon, Gadchiroli. Thereupon, the applicant was directed to appear before the Medical Board. After examining the applicant, Medical Board, Nagpur came to the conclusion that the applicant was fit for duty and opined not to regularize the leave.

10. It is submitted that this conduct of the applicant was serious misconduct and therefore decision is taken by the Government to initiate departmental enquiry against him, consequently, chargesheet Annexure A-1 dated 15-02-2018 was served on the applicant. It is submitted that the action of the respondents is as per the law and there is no substance in the case of the applicant that issuance of the chargesheet is vindictive.

11. On the basis of these grounds, it is submitted by the respondents that the O.A. is devoid of any substance and is liable to be dismissed.

12. Contempt Petition No.23/2018 is filed by the applicant alleging that the respondents have deliberately and willfully not complied the order passed in O.A.No.480/2016 and avoided to pay retirement benefits to the applicant. It is submitted that the order passed in O.A.No.480/2016 is specific judicial order and it was not challenged by the respondents by filing Writ Petition, therefore, this order has attained finality and at this

stage, it is not permissible to examine the correctness of the order passed in O.A.No.480/2016 so far as it relates to the grant of retirement benefits. It is submitted that the lame excuses are shown by the respondents for non-compliance of the order putting fore the reason that the departmental enquiry is pending against the applicant and case under Prevention of Corruption Act for disproportionate assets is pending against him. It is submitted that considering the said material, final order was passed in O.A.No.480/2016, therefore, respondents have committed the contempt and they are liable to be punished.

13. The contempt petition is opposed by the respondents on the same grounds alleging that the applicant is prosecuted for possessing disproportionate assets as per the action of ACB and the applicant is facing the departmental enquiry. On the basis of this it is submitted that the applicant is not entitled for the regular pension and gratuity. It is submitted that as per the provisions under Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 and as per the Finance Department's notification dated 23-01-1993, the applicant is not entitled to the regular pension and gratuity. It is submitted that the respondents have not committed any contempt. Therefore, the contempt petition is liable to be dismissed with costs.

14. We have perused the chargesheet dated 15-02-2018 Annexure A-1. We have also perused the Annexure A-2 dated 15-02-2018. On perusal of both the documents, it seems that on the same day on which the chargesheet was issued the order was passed to conduct the enquiry and enquiry office was appointed. Thus, it seems that the mind was already made up by the respondents to conduct the departmental enquiry and only as a formality the applicant was called upon to submit his defense through written statement.

15. Annexure-1 to the charge sheet shows that the applicant while working as Assistant Professor in Government Ayurvedic College, Nagpur remained absent from the duty from June, 2014 to February, 2016 though there was no leave at his credit. The applicant submitted application for grant of leave on medical ground along with certificate issued by the District Civil Surgeon, Gadchiroli. The applicant was directed to appear before the Medical Board, Nagpur and Medical Board, Nagpur issued the certificate dated 01-04-2016 informing that he was fit for duty. In this regard we would like to point out that the O.A.No.480/2016 was filed by the applicant because his request for voluntary retirement was rejected vide communication dated 24-05-2016. O.A.No.480/2016 was filed by the applicant on 13-07-2016 and it was decided on 11-08-2017. In that O.A., some contentions were raised by the

respondents but at that time, the chargesheet was not served on the applicant for unauthorized absence from duty.

16. It is important to note that the respondents were aware of the final order in O.A.No.480/2016 dated 11-08-2017. By this order, it was held that the applicant stood retired from the service on 02-05-2016 and he was held entitled for the retirement benefits. The respondents did not challenge this order till today, when the applicant served notice alleging that the respondents committed contempt of the order, information was given to the Counsel for the applicant that more time was required to comply the order. It seems that the respondents did not comply with the order, consequently, the applicant filed Contempt Petition 23/2018 on 27-03-2018. It is pertinent to note that after receiving the notices of contempt dated 12-11-2017, the respondents' machinery moved and decision was taken to serve chargesheet on the applicant. It is pertinent to note that the respondents could have immediately issued the chargesheet when the applicant submitted application for grant of medical leave in 2016 but it was not done. The applicant was directed to appear before the Medical Board and Medical Board informed that the applicant was fit for duty and recommended not to regularize the leave.

17. In this background, considering the conduct of the respondents, it can be said that no just reason is shown by the

respondents as to why chargesheet was not issued to the applicant immediately or why chargesheet was not issued when the applicant filed O.A.No.480/2016 or when the applicant stood retired as per the final order in O.A.No.480/2016.

18. The Hon'ble Apex Court in case of **State of Punjab V/s. V.K.Khann & Ors. [AIR 2001 SC 343]** has observed as under (paper book page 40):

"While it is true that justifiability of the charges at this stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or malafide, motive involved in the matter of issue of a charge-sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion.

It is well settled in Service Jurisprudence that the concerned authority has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due

considerations it is in the affirmative the inquiry follows but not otherwise. Thus were even before reply was filed by the delinquent chief secretary to the charge-sheet issued against him, the Chief Minister made an announcement appointing an enquiry officer to go into the charges, thus indicating its mindset that the inquiry shall proceed irrespective of the reply it cannot be said that the attitude of the authorities towards the delinquent was free and fair."

In case of Vinod Pralhadrao Farkade v Cheeky Daikin Ltd. 2017 (4) Mh.L.J. 178, in para No.10 it is observed as under:-

"Under the 15th amendment to the Constitution, the first right of the employee was to show cause notice as against the charge sheet. The 42nd amendment to the Constitution maintained this right as being the first right of the employee. [See Union of India and others vs. Mohd. Ramzan Khan, 1991 (1) CLR 61 (SC) and Managing Director, ECIL vs. B. Karunakar, 1993 (4) SCC 727.]

In view of the above legal discussion, the inference is to be drawn that only for defeating the contempt proceeding the charge sheet was served on the applicant on 15-02-2018 and this decision was taken only to defeat the claim of the applicant regarding retirement benefits as per the order in O.A.No.480/2016. Legal position is settled that as a model employer, the State must act fairly. In the present case, it seems that as the applicant did not perform duty, therefore, he

did not receive the payment for the same. The applicant is not claiming any salary for the period of his absence. Therefore, respondents should have initiated action if according to them the conduct of the applicant remaining absent from duty constituted serious misconduct, but it was not done. Respondents remained silent for considerable period and when notices of the contempt were received by the officers of the respondents, chargesheet was served on the applicant. In our view, it is clearly unfair exercise of jurisdiction. Therefore, we are compelled to say that the action of the respondents serving chargesheet on the applicant is mala fide. Therefore, we accept the submission that the charge sheet Annexure A-1 dated 15-02-2018 is required to be quashed.

19. So far as the contempt proceeding is concerned, we have already pointed out that the respondents did not avail the opportunity to challenge the order passed in O.A.No.480/2016 by filing Writ Petition. Therefore, this order has attained finality and it is now binding on the respondents, therefore, the respondents cannot claim that they have justification for not complying the order passed in O.A. No.480/16, for the reason that criminal case regarding possession of disproportionate assets is pending against the applicant. In this regard, we would like to point out that when the O.A.No.480/2016 was decided same submissions were made and after considering the submissions of the respondents, decision was taken to direct

the respondents to pay retirement benefits within 3 months to the applicant.

20. The legal position is settled that when any competent Court or Tribunal has passed the order and it has attained finality then in any other legal proceeding before the same forum, it is not open to challenge the legality of that order. In the present case, unless and until the order to pay the retirement benefits is not set aside, the respondents cannot say that they are exempted from executing the order. Under these circumstances, we are compelled to say that unless and until the order in O.A.No.480/2016 regarding payment of retirement benefits to the applicant is not set aside by the competent Court, we cannot exempt the respondents from complying this part of the order. Hence, we are of the view that the respondents are liable to comply the order to pay retirement benefits to the applicant as per the direction in O.A.No.480/2016. In the result, we pass following order:

ORDER

- (A) Original Application No.411/2018 is allowed as per prayer clauses 1 and 2.
- (B) In Contempt Petition No.23/2018, the respondents are directed to comply the order to pay retirement benefits to the applicant as per the direction in

O.A.No.480/2016, within 30 days from the date of this order.

(C) The Contempt Petition No.23/2018 be taken up before the Bench after 5 weeks from the date of this order.

(D) In the circumstances, there shall be no order as to costs.

MEMBER (J)

VICE-CHAIRMAN

I affirm that the contents of the order in PDF format are word to word same as per the original judgment.

Name of Stenographer (H.G.) : Y. U. Kamble

Court Name : Hon'ble Division Bench

Judgment signed and : 04-10-2019.
pronounced on

Uploaded on : 04-10-2019.