

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 664 OF 2017
(Subject:- Dismissal)**

DISTRICT:- AURANGABAD

Shaikh Kalim S/o Sk. Mannu,)
Age:- 53 years, Occ: Nil,)
R/o: Shahida Colony, Jatwada Road,)
Aurangabad.) **APPLICANT**

V E R S U S

1. **The Secretary,**)
The State of Maharashtra,)
Through its Govt. Pleader)
M.A.T. Aurangabad.)
2. **Divisional Joint Registrar,**)
Co-operative Societies,)
Aurangabad.)
3. **Commissioner for Co-op. and**)
Registrar of Co.-Op. Societies,)
Office at Pune.)
4. **District Dy. Registrar,**)
Shakti Sahakar Building,)
Ind. Floor, C.B.S. Road,)
Aurangabad.) **RESPONDENTS**

APPEARANCE : Shri Ajay Deshpande, learned counsel
for the applicant.
: Shri M.B. Bharaswadkar, learned Chief
Presenting Officer for the respondent
authorities.

CORAM : **Justice Shri V.K. Jadhav, Member (J)**
AND
Shri Vinay Kargaonkar, Member (A)

RESERVED ON : 29.08.2024.

PRONOUNCED ON : 06.09.2024.

ORDER

[Per : Shri Vinay Kargaonkar, Member (A)]

Heard Shri Ajay Deshpande, learned counsel for the applicant and Shri M.B. Bharaswadkar, learned Chief Presenting Officer for the respondent authorities.

2. **Brief Facts:** In this Original Application, the applicant seeks to quash and set aside the impugned order dated 06.02.2017 issued by respondent No. 4 (Annexure 'A'). The applicant seeks directions to respondents Nos. 1 to 4 for the payment of pensionary benefits, P.F., G.P.F., gratuity, and other related emoluments.

3. **Pleadings and arguments by the applicant:-**

- (i) The applicant was appointed as a Peon on 28.03.1990 by the Divisional Joint Registrar, Co-operative Societies. He joined the office of the Assistant Registrar, Co-operative Societies, Gangapur, Dist. Aurangabad on 29.03.1990. The applicant asserts that his service

record is unblemished, having served the government diligently. Initially, he worked at the Co-operative Societies office in Aurangabad before being transferred to Soyegaon, Dist. Aurangabad. As the sole breadwinner for his family, the applicant faced difficulties due to the distance of his workplace from his home, which prevented him from attending to his family's needs. His mother was seriously ill and required treatment, and his wife was also suffering from an incurable disease that required surgery. Additionally, the applicant's brother was undergoing treatment for cancer. These circumstances forced the applicant to take on significant responsibilities at home, leading to his inability to attend work regularly at Soyegaon. The financial burden of medical expenses, combined with the educational needs of his school-going children, placed the applicant under severe stress. Unable to relocate his family to Soyegaon due to their medical conditions, he experienced mental distress, which contributed to his frequent absences from duty.

- (ii) Due to his absenteeism, the District Deputy Registrar, Co-operative Societies, Aurangabad issued a show-

cause notice to the applicant on 09.06.2016. The Assistant Registrar, Co-operative Societies, Soyegaon subsequently directed the applicant to resume his duties.

- (iii) The applicant has served diligently for 26 years without receiving any memos or charge sheets, consistently complying with orders from higher authorities. Despite his previously unblemished service record, he was directly terminated from service due to absenteeism. As a result of his termination, he is not eligible for a pension or other pensionary benefits.
- (iv) According to Government Resolution, Finance Department, Resolution No. 10 PEN 1009/C.R.-33/SER-4, Mantralaya, Mumbai dated 30.10.2009, a government servant who completes a minimum of 20 years of qualifying service is entitled to a pension at 50% of the average basic pay received during the last 10 months. The respondents have not adhered to this rule, depriving the applicant of his pension and other benefits such as gratuity and Provident Fund (P.F.). The applicant contends that, having completed 20 years of

service, he is entitled for pensionary benefits like Pension, Gratuity and Provident Fund (P.F.)

4. **Reply of the respondents:-**

- (i) The applicant was appointed as a Peon by an order dated 28.03.1990. He joined the service and was posted at various locations, including Gangapur, Soygaon, and Aurangabad. While serving in the office of the Assistant Registrar, Co-operative Societies, Gangapur, the applicant received 13 warning letters, memos, or show cause notices for being absent from duty without permission or prior approval from the Competent Authority. Specifically, during his tenure at Gangapur from 29.09.1990 to 25.01.1993, he was absent for 244 days out of 797 working days without obtaining the necessary approval or permission.
- (ii) While serving in the office of the Assistant Registrar, Co-operative Societies, Sillod/Soygaon from 02.06.1993 to 02.06.1997, the applicant received several warning letters, memos, and show-cause notices. During this period, he was absent for 98 days without permission,

and this period of absence was treated as extraordinary leave, or leave without pay.

- (iii) Upon his transfer to the office of the Divisional Joint Registrar, Co-operative Societies, Aurangabad, the applicant received letters, notices, and memos seeking explanations for unauthorized absenteeism and unprofessional behavior while on duty. During his tenure at the District Deputy Registrar, Co-operative Societies, Aurangabad, he was absent for 81 days out of 264 working days without prior permission or approval.
- (iv) During his tenure, the applicant's leave applications were often submitted in response to memos issued for taking leave without prior permission. His service record contains entries in red ink, indicating disciplinary issues. Even after his transfer to the Taluka Soygaon office on 25.05.2011, his behavior did not improve. The Assistant Registrar, Co-operative Societies, Taluka Sillod/Soygaon issued six memos and show-cause notices to the applicant for habitually remaining absent from duty without informing the competent authority or obtaining permission for leave.

- (v) Due to the applicant's frequent absenteeism, a Departmental Enquiry was proposed in accordance with Section 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as the "Rules of 1979"). A show-cause notice dated 12.10.2015 was issued, requesting an explanation as to why the enquiry should not proceed. The applicant did not respond to this notice. Consequently, the Departmental Enquiry was initiated on 11.01.2016. After the enquiry was completed, the Enquiry Officer submitted his report on 30.11.2016, which confirmed the charges related to the applicant's absence from duty from 08.06.2011 to 19.09.2015.
- (vi) While the applicant attended to his family and personal matters, he consistently neglected his responsibilities toward his job and the Government. He took undue advantage by staying away from work without properly sanctioning leave. The Departmental Enquiry was conducted in accordance with legal procedures. From the outset, the applicant showed a lack of seriousness toward his duties. Throughout his career, he received multiple memos, show-cause notices, and warning

letters. Despite being given ample opportunities to rectify his approach, he failed to respond appropriately. Following the due process as stipulated in Section 8 of the Rules of 1979, an order dated 06.02.2017 was issued, terminating the applicant from service.

- (vii) In view of facts and circumstances explained hereinabove, there is no merit and substance in the present Original Application and it deserves to be dismissed with costs.

Reasoning and Conclusions:

5. The applicant was dismissed from his job due to frequent absenteeism, which has severely impacted his livelihood. However, this absenteeism was not a result of negligence or a lack of commitment to his duties but rather due to a series of personal crises that placed him under immense stress.

6. During the period in question, the applicant was managing the illnesses of his mother, his wife and brother, which required his constant attention and financial support. Additionally, he was responsible for his children's education, further straining his mental and financial resources. These

circumstances created a situation where the applicant was mentally overwhelmed and unable to perform his duties effectively. His absences were not intentional but a consequence of the severe stress he was experiencing.

7. The applicant's absenteeism was not a deliberate act of negligence or misconduct but was due to significant personal challenges, including serious family illnesses and financial difficulties. This context warrants a compassionate approach rather than strict punitive measures.

8. **Principle of Proportionality:**

In service law, the principle of proportionality is essential in determining whether the punishment is commensurate with the misconduct. Dismissal from service, particularly when it results in the loss of all retiral benefits, should be reserved for the most egregious cases of misconduct.

9. **Relevant Supreme Court Judgments**

(i) **Ranjit Thakur v. Union of India [(1987) 4 SCC 611]:-**

In **Ranjit Thakur v. Union of India** (supra), the Hon'ble Supreme Court affirmed that the doctrine of proportionality is a fundamental aspect of judicial review. The Court emphasized that punishment should not be

disproportionate to the gravity of the misconduct. If the punishment is shockingly disproportionate, it is liable to be overturned. The Court stated:

“The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias.”

(ii) **Union of India v. G. Ganayutham [(1997) 7 SCC 463]**:-

In Union of India v. G. Ganayutham (supra), the Hon'ble Supreme Court elaborated on the concept of proportionality in administrative actions. The Court held that while disciplinary action may be warranted, the punishment must not be excessive or disproportionate to the nature of the misconduct. The Court observed:

“The Court or Tribunal will be entitled to interfere with the punishment if it finds it ‘shocking to the conscience’ or ‘totally disproportionate’ to the nature of the offence committed.”

Given these judgments, the applicant's dismissal for absenteeism, which was driven by unavoidable personal hardships, appears excessively harsh. Dismissal is typically reserved for cases of gross misconduct or intentional wrongdoing. In this instance, the applicant's absenteeism

stemmed from factors beyond his control, making the punishment seem disproportionate. The dismissal of the applicant, particularly with the loss of all retiral benefits, is disproportionate and fails to consider the significant personal hardships he faced. Following the Supreme Court's guidance in **Ranjit Thakur v. Union of India** and **Union of India v. G. Ganayutham**, the termination needs to be reduced to lesser punishment. We feel that punishment of removal from service will be more appropriate.

10. Need for a Compassionate Approach:

In cases involving personal hardships, it is crucial for the respondents to adopt a compassionate approach. The applicant's situation required understanding and support rather than strict punitive measures. A more balanced response, such as counselling or a less severe disciplinary action, would have been more appropriate given the circumstances.

11. The applicant's long service and the absence of any major penalties prior to this case indicate that he had been a reasonable employee. His absenteeism, though problematic, did not negate his potential for rehabilitation. A

compassionate approach would have acknowledged the challenges he faced and provided him with the opportunity to continue his service. A lesser punishment of removal, as compared to termination, is justified in this case to balance the principles of discipline and fairness. By opting for removal, the applicant remains eligible for compassionate pension and other retiral benefits, which are crucial for ensuring financial security in the applicant's post-service life. This approach not only serves as a proportionate response to the misconduct but also acknowledges the applicant's long-standing service, thereby preventing undue hardship on the applicant and his dependent family members.

12. This approach would not only serve justice but also reflect a humane and understanding stance, balancing discipline with compassion for an employee in distress.

Hence following order:

ORDER

- (i) The termination order dated 06.02.2017 passed by respondent No. 4 is hereby modified, and the applicant is instead subjected to the lesser punishment of removal from service.

- (ii) Respondents shall pay to the applicant compassionate pension under rule 101 of The Maharashtra Civil Services (Pension) Rules, 1982 and other benefits like GPF, Gratuity as applicable by law within two months from the date of this order.
- (iii) The Original Application is allowed in above terms without any order as to costs.

MEMBER (A)**MEMBER (J)****Place:-Aurangabad****Date : 06.09.2024**

SAS O.A. 664/2017(S.B.) Dismissal