

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 997/2022 (D.B.)

Anil S/o Waktuji Thaware,
Aged about 55 years, Occ.: Service,
R/o Wardhasa Appa Nagar,
Morshi Road, Amravati - 444 603.

Applicant.

Versus

1. State of Maharashtra,
Through Principal Secretary,
Department of Skill Development and Entrepreneurship,
Mantralaya, Mumbai - 400 032.
2. The Director,
Directorate of Vocational Education and Training,
3, Mahapalika Marg,
Mumbai - 400 001.
3. Joint Director,
Vocational Education and Training,
Regional Office, Morshi Road,
Amravati.
4. The Manager,
Maintenance Unit,
Government ITI Campus,
Morshi Road, Amravati.
5. The Principal,
Government Industrial Training Institute,
Morshi Road, Amravati.
6. Shri Subhash Sahebrao Zape,
Retired employee,
Via. Vocational Education and Training,
Regional Officer, Morshi Road,
Amravati.

7. Shri Manik Damodar Wankhade,
Retired, R/o Aditya Colony,
Inside Tapovan Gate, Camp,
Amravati.

Respondents

Shri A.W.Thaware, the applicant in person.

Shri S.A.Sainis, Id. P.O. for the respondents 1 to 5.

None for the R-6 & 7.

**Coram :- Hon'ble Shri Justice Vinay Joshi, Member (J) &
Hon'ble Shri Nitin Gadre, Member (A)**

ORAL JUDGMENT

[Per :- Justice Vinay Joshi, Member (J)]

Judgment is reserved on 17th Mar., 2025.

Judgment is pronounced on 01st Apr., 2025.

Heard finally with the consent of applicant in person and Id. P.O.. Considered written notes of argument and the record made available for our perusal.

2. The applicant has challenged the impugned order dated 24.07.2019 issued by respondent no. 3 i.e. Joint Director, Vocational Education & Training, Amravati; whereby the applicant came to be terminated from service. He has also sought directions for reinstatement and claimed back wages.

3. It can be briefly stated that the applicant was selected on the post of Draftsman by following due process of law. Appointment order was issued on 26.05.1992. The applicant has joined on 03.07.1992 as a Draftsman at Maintenance Unit Amravati i.e. respondent no. 4. The said post was on the pay scale of Rs. 1400 – 2300 on clear vacancy for reserved category.

4. On 08.01.2008, the applicant was transferred on the post of Millwright Maintenance Mechanic due to abolition of post. The said order was challenged by the applicant before Industrial Court stating it to be unfair labour practice. The Industrial Court vide order dated 05.02.2013 declared that the respondents have indulged in to unfair labour practice and thereby set aside the order of transfer dated 08.01.2008. The said order was carried by the respondent to the High Court in W.P. No. 4562/2013. In said Writ Petition the order of Industrial Court of quashing transfer order dated 08.01.2008 was maintained with certain directions, which reads as below:-

(i) The order dated 8 January, 2008 absorbing / transferring the respondent no. 1 on the post of Millwright Maintenance Mechanic is quashed.

(ii) The petitioners are directed to absorb the respondent no. 1 in the post of Master Craftsman in the revised pay-scale of Rs.9300-34800 with grade pay of Rs.4300/-. This absorption shall be w.e.f. 8th January, 2008.

(iii) The absence of respondent no. 1 for the period from 8th January, 2008 till today shall be treated as duty period. The leaves which are balance in account of respondent no. 1 shall be adjusted and the balance period of absence shall be treated as leave without pay, however, it shall be treated that the respondent no. 1 had been in continuous service for all other purposes except for the actual emoluments.

(iv) The respondent no. 1 shall be permitted to report on duty on the post of Master Craftsman at Maintenance Unit at Amravati from 1st March, 2019. The service record of the respondent no. 1 shall be updated within one month and his regular salary shall be made available to him from February, 2019 paid in March, 2019 alongwith other employees.

(v) The issue of tendering unconditional apology by the respondent no. 1 and consideration of dropping of enquiry going on and/or proposed against the respondent no. 1 is referred for mediation to Shri S.Y.Deopujari, Advocate. The

Authorized officer/officers of the petitioners, and the respondent no. 1 shall appear before the learned Mediator at the High Court Mediation Center, Nagpur on 8th February, 2019 at 1.45 p.m. The learned Mediator shall submit report till 19th February, 2019. List the petition on 22nd February 2019, only to consider the report of mediation.

5. The applicant has filed Contempt Petition alleging wilful disobedience of the said order of the High Court. However, the High Court has dismissed the Contempt Petition No. 178/2019 on 09.03.2020 with certain observations. Being aggrieved by the order passed in W.P. No. 4562/2013 dated 24.01.2019, the State has filed S.L.P. which was came to be disposed of; since stated to become infructuous.

6. In above background, departmental enquiry was initiated against the applicant under four charges. Enquiry was conducted precisely on the following charges:-

- I. The applicant remained absent on the post of Millwright Maintenance Mechanic from 05.10.2012 onwards.
- II. The applicant has not taken care of valuable machinery which has caused loss to the Government Property.
- III. The applicant has filed various legal proceedings and had not followed the Court orders.

IV. The applicant has seriously misbehaved with superior as well as made defamatory writings against the superiors.

7. On aforesaid charges, enquiry was held in which most of the charges were held to be proved. Having regard to the entire material, the Disciplinary Authority by accepting enquiry report vide impugned order dated 24.07.2019 has imposed major penalty of removal from service. The said order was challenged in the appeal, however, it was came to be dismissed on 08.10.2019.

8. The applicant in person has canvassed various grounds. It is contended that he has been victimized by the department. He was transferred on non-existing posts and thus the enquiry itself vitiates. It is submitted that the Industrial Court as well as High Court held that the action of transferring applicant on lower post of Millworker is erroneous. It is also submitted that the enquiry was not conducted in fair manner and thus the impugned order of removal is unsustainable in the eyes of law.

9. The department has resisted the application by filing affidavit-in-reply. All contentions raised in the application have been denied. Certain justifications have been given as regard to the action taken by the department. It is submitted that applicant was absent from duty for long period, despite Court Order directing him to join, he

remained absent. The findings recorded in enquiry were based on relevant material and thus it calls no interference.

10. Perusal of impugned order indicates that charge nos. 1, 3 & 4 have been held to be fully proved, whilst charge no. 2 was partly proved. Charge no. 1 pertains to unauthorised absence. It is alleged that though the applicant has joined on the post of Millwright Maintenance Mechanic, however, from 05.10.2012 he remained absent. It requires to be noted that in Writ Petition No. 4562/2013 the High Court has considered the issue of absence and specifically held that the said absence period shall be treated as continuous service for all purposes except for the actual emolument. It is held that the applicant's absence for the period from 08.01.2008 till the date of order (25.01.2019) shall be treated as duty period. The leaves which are balance shall be adjusted and the balance period of absence shall be treated as leave without pay. In aforesaid background, the charge no. 1 regarding unauthorized absence would not sustain as the High Court has held that it shall be treated as duty period.

11. As regard to charge no. 2; pertaining to causing loss to the institution by negligence, the said charge was not proved in the enquiry; hence, calls no interference. Charge no. 3 pertains to the various legal proceeding initiated and defended by the applicant. By any stretch of imagination, as to how that could be a charge or misconduct. If employee

resorts legal remedy how it could be treated as misconduct amenable to the departmental enquiry. Thus, the charge no. 3 would not sustain.

12. Charge no. 4 relates to misbehaviour with seniors. The applicant allegedly humiliated seniors as well as made certain derogatory writings. The applicant has not responded to said charge and thus ultimately it was held to be proved.

13. As stated above, charge nos. 1 and 3 are not sustainable in the eyes of law. Charge no. 2 is already held to be not proved. In the circumstances, only charge no. 4 about misbehaviour remains. It reveals that proper opportunity was not accorded to the applicant to defend on charge no. 4. The punishment was imposed on the basis of proved charges no. 1, 3 & 4 which would not sustain. As noted above, proper opportunity was not given to the applicant to defend charge no. 4, which exercise requires afresh. In consequence, the Authority is required to pass fresh order pertaining to charge no. 4. Hence the following orders:-

A. The **Original Application is Partly Allowed.**

B. The impugned order of termination dated 24.07.2019 is hereby quashed and set aside.

C. The applicant shall be treated as reinstated from the date of his termination and his subsequent period shall be treated as duty period. The leaves which are in balance in the account shall be

adjusted and the balance period shall be treated as leave without pay.

- D. The Authority shall conduct fresh enquiry restricted to charge no. 4 by giving adequate opportunity to the applicant and complete the enquiry within the period of three months from the date of communication of this order.
- E. During pendency of enquiry the Authority may exercise all rights as permissible under law.
- F. No order as to costs.

(Nitin Gadre)
Member(A)

aps

Dated – 01/04/2025

(Justice Vinay Joshi)
Member (J)

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)
& Hon'ble Member (A).

Judgment signed : 01/04/2025.

on and pronounced on