
Reserved on : 01-02-2024
Pronounced on : 23-04-2024

ORDER

[PER : Shri Vinay Kargaonkar M (A)]

1. Heard Shri K.G.Salunke, learned Counsel for applicants in both cases, Shri V.R.Bhumkar & Shri M.P.Gude, learned Presenting Officers for respondent authorities in respective O.As.

2. In both these matters since the grievance raised and prayers made are identical, we have heard the common arguments and deem it appropriate to decide the O.As. by this common order.

3. Brief facts of the case :-

Applicants are challenging the impugned order dated 30-11-2018 passed by Superintendent of Police, Osmanabad i.e. respondent no.4 in the *de novo* departmental enquiry by which the applicant Police Constable (PC) Rahul Gaikwad is reverted to his basic pay of Police Constable for the period of 5 years and another applicant Lady Police Constable (LPC) Manisha Shinde is reverted to basic pay of Police Constable for the period of 4 years. Learned Counsel for the applicants submits that,

de novo departmental enquiry was conducted *ex-parte* and the applicants were not given an opportunity of hearing or to cross-examine the witnesses. The applicants were put under suspension by order dated 06-11-2017 contemplating departmental enquiry under section 25 of the Maharashtra Police Act. The charges levelled against both the applicants and another delinquent were of domestic in nature and not in regard to their official duties.

4. Submissions of the applicants :-

(a) Applicant in O.A.No.932/2022 Rahul Kerappa Gaikwad was appointed in the year 2008 on the post of Police Constable (PC) and applicant in O.A.No.933/2022 Manisha Subhash Shinde was appointed in the year 2010 on the post of Lady Police Constable (LPC) in Osmanabad District, respectively. The wife of applicant PC Rahul Gaikwad, namely, Jidnyasa Narayan Payale, is working as Police Naik at Police Station, Paranda, Dist. Osmanabad. Rahul Gaikwad and Jidnyasa Payale were married in the year 2013. Since there was dispute between Rahul Gaikwad and Jidnyasa Payale, they are living separately since 2015 and have filed divorce petition before the Family Court at Osmanabad in the year 2018.

(b) Respondent no.4 had issued show cause notice dated 06-06-2018 to the applicants as well as Jidnyasa Payale wherein it is alleged that on 29-05-2018 at around 12:10 pm in front of Police Headquarter, applicant Rahul Gaikwad and his wife Jidnyasa abused each other and also physically assaulted each other while they were in Police uniform. In the said show cause notice, it is further contended that non-cognizable offence is registered at Anandnagar, Osmanabad Police Station against applicant Rahul Gaikwad and Jidnyasa Payale. In pursuance of show cause notice dated 06-06-2018, departmental enquiry was conducted and punishment of stoppage of 2 increments without having any effect in future was imposed on the applicant Rahul Gaikwad and Jidnyasa Payale.

(c) Order of punishment by respondent no.4 Superintendent of Police was appealed before respondent no.3 i.e. Special Inspector General of Police, Aurangabad Range. Respondent no.3 has confirmed the punishment imposed upon the applicant Rahul Gaikwad but the punishment imposed on Jidnyasa Payale was reduced from stoppage of 2 increments to fine of Rs.500/-. Applicant has filed the O.A.No.595/2022 against the order of punishment

imposed by respondent no.3, which is pending before the Tribunal.

(d) Respondent no.4 by order dated 06-11-2017 had put applicants under suspension along with LPC Jidnyasa Payale as per the provisions of section 25(2) of Maharashtra Police Act thereby contemplating departmental enquiry against all of them. Respondent no.4 has made certain allegations in the suspension order which pertain to the domestic disputes of the applicants and Jidnyasa Payale. Applicants further submit that although respondent no.4 by invoking provisions of section 25(2) of the Maharashtra Police Act has initiated departmental proceedings against the applicants, the misconduct alleged therein is not in relation to their official dispute. Applicants further submit that respondent no.4 has issued order dated 01-02-2018 along with chargesheet to the applicants and another delinquent Jidnyasa Payale. In the said order respondent no.4 has raised certain allegations which pertain to the domestic problems of all the 3 delinquents.

(e) Applicants further submitted that respondent no.4 has appointed enquiry officer for conducting departmental enquiry. Said enquiry officer has conducted departmental enquiry without waiting for the reply or

without permitting the applicants to adduce any evidence or to cross-examine the witnesses. It is submitted that, the enquiry officer has proceeded *ex-parte* and arrived at a conclusion and filed enquiry report dated 02-05-2018 concluding that all 3 delinquents therein while working in the Police Department have maligned the image of the Department. The applicants were not given an opportunity of hearing in the enquiry and the same was conducted *ex-parte*.

(f) Applicants further submitted that after receiving the enquiry report dated 02-05-2018, respondent no.4 has issued another chargesheet dated 28-05-2018 and initiated *de novo* departmental enquiry wherein charges were same as were mentioned in the previous enquiry concluded on 02-05-2018. Respondent no.4 while deciding to conduct *de novo* departmental enquiry has not given any reason for not agreeing to first enquiry report and what was the necessity of conducting *de novo* departmental enquiry. The applicants further submitted that *de novo* departmental enquiry was concluded without giving opportunity to the applicants to adduce any evidence or cross-examine the witnesses. The enquiry officer has submitted the enquiry report dated 20-09-2018 to respondent no.4 wherein it is

concluded that both the applicants as well as the LPC Jidnyasa Payale have maligned the image of the Police Department. The findings given by the enquiry officer in the enquiry report of *de novo* departmental enquiry are similar to the earlier enquiry report dated 02-05-2018.

(g) It is further submitted that, based on the enquiry report dated 20-09-2018, final show cause notice was issued to all the 3 delinquents. In the said show cause notice, punishment proposed to both the applicants was dismissal from service whereas for similar charges delinquent LPC Jidnyasa Payale punishment of stoppage of one increment was proposed.

(h) Applicants have alleged that respondent no.4 has acted in biased manner and proposed the harsher punishment to both the applicants as compared to the punishment proposed for co-delinquent Jidnyasa Payale. The applicants further submitted that after receiving final show cause notice applicants had submitted detailed reply to the respondent no.4. Both the applicants have categorically stated that for imposing punishment of dismissal from services, respondent no.4 has to give opportunity of hearing to the applicants.

(i) It is further submitted that, respondent no.4 has issued the impugned order dated 30-11-2018 thereby reverting the applicant PC Rahul Gaikwad to his basic pay of Police Constable for the period of 5 years and applicant LPC Manisha Shinde, was reverted back to the basic pay of Police Constable for 4 years. Delinquent LPC Jidnyasa Payale was imposed minor punishment of fine of Rs.1000/- only. Respondent no.4 while imposing punishment on the applicants have invoked provisions of Bombay Police (Punishments and Appeals) Rules, 1956 under Rule 3(1)(a-2)(i) and LPC Jidnyasa Payale was imposed punishment under Rule 3(2)(4). It is contended that, when the charges in the departmental enquiry were interconnected with each other then why there is difference while imposing punishment to both the applicants and LPC Jidnyasa. The punishment imposed by respondent no.4 is biased and disproportionate, which is totally illegal and without considering the reply filed by the applicants. Both the applicants submitted that entire process carried out by the respondent no.4 from putting applicants under suspension, thereafter issuing chargesheet, conducting first enquiry, after receiving report of first enquiry from enquiry officer

and without recording reasons ordering second *de novo* departmental enquiry is bad in law.

(j) It is submitted by applicants that, in second *de novo* departmental enquiry also the applicants were not served with any notice for hearing and the enquiry was conducted and concluded when the applicants were on duty. In both the enquiries, the applicants were not given an opportunity of hearing and examining or cross-examining the witnesses. As such, both the enquiries are conducted without following the principles of natural justice. Even the quantum of punishment is disproportionate and shows biasness of respondent no.4 which cannot sustain in the eyes of law. In view of the submissions made Learned Counsel for the applicants prayed for allowing the O.As.

5. Submissions of respondents :-

(a) Respondents by filing their affidavit in reply have submitted that both the applicants and LPC Jidnyasa Payale were placed under suspension vide office order dated 06-11-2017 pending departmental enquiry against them for the misconduct that applicant PC Rahul Gaikwad developed illicit relationship with LPC Manisha Shinde in

the lifetime of his wife LPC Jidnyasa Payale and other charges. Due to the said behavior of these 3 Police Constables the dignity of the Police Department was maligned and therefore, regular departmental enquiry was ordered against them vide order dated 01-02-2018.

(b) Respondents have submitted that, Sub Divisional Police Officer (SDPO), Omerga was appointed to conduct the departmental enquiry. The delinquents were given time of 10 days for submitting their replies to the charges levelled against them. Except LPC Jidnyasa Payale, other 2 delinquents (applicants) did not submit their replies to the enquiry officer. The enquiry officer presumed that both the applicants did not want to submit reply, and therefore, the delinquents (applicants) were called upon to remain present before the enquiry officer on 16-02-2018. The delinquents remained present on that day and their oral statements were recorded. The delinquents pleaded not guilty to the charges and expressed their desire to face departmental proceedings. In all 11 Government witnesses were examined in presence of the delinquents and their friend officers from 08-03-2018 to 13-04-2018 and the delinquents through their friend officers cross-examined the witnesses at length.

(c) Respondents have further submitted that, after examining the Government witnesses the second oral statement was recorded on 23-04-2018. Applicants did not record any defense witness and therefore they were called for recording their 3rd oral statement on 23-04-2018. Accordingly, their oral statements were recorded in which the delinquents had admitted to having received all the opportunities to defend their cases during the course of departmental proceedings. The delinquents submitted their final written statement on 28-04-2018. The enquiry officer summed up the proceedings and submitted his final report to the Superintendent of Police, Osmanabad on 02-05-2018.

(d) Respondents have further submitted that, Superintendent of Police, Osmanabad did not agree with the enquiry conducted by SDPO, Omerga and suo motu ordered *de novo* departmental enquiry and issued fresh chargesheet on 08-05-2018. The reasons for holding the *de novo* departmental enquiry have been mentioned in the order dated 08-05-2018. Both the applicants did not co-operate in the *de novo* departmental enquiry and their departmental enquiry was completed *ex-parte*.

(e) Respondents have submitted that, considering the gravity of charges proved against the applicants they were issued with show cause notice of dismissal from services. The charge proved against LPC Payale was not serious enough warranting punishment of dismissal, and therefore, she was issued with the show cause notice of stoppage of increment.

(f) Respondents have submitted that, considering the replies of the applicants to the show cause notices, lenient view was taken and applicant LPC Manisha Shinde was brought to the basic pay of Police Constable for a period of 4 years and applicant PC Rahul Gaikwad was brought to the basic pay of Police Constable for a period of 5 years. LPC Jidnyasa Payale was punished with fine of Rs.1000/-. Learned P.Os. in view of the aforesaid submissions have defended the impugned order and prayed for dismissing the O.A.

6. Analysis of facts and conclusions:-

(a) Learned Counsel for the applicants has raised mainly three issues for setting aside the impugned order dated 30/11/2018. Firstly, applicants have claimed that in

both the enquiries applicants were not offered opportunities of hearing and they were not allowed to examine or cross examine the witnesses, and both enquiries were conducted without following principles of natural justice. Affidavit in reply submitted by the respondents show that applicants were given all facilities to defend their case. In first enquiry in all 11 Government witnesses were examined in the presence of the delinquents (applicants) and their friend officer. Delinquents through their friend officer cross examined the witnesses at length and recorded the statements. After completion of first enquiry, the Superintendent of Police ordered second enquiry (*de novo* enquiry). In that enquiry delinquents did not co-operate and therefore enquiry officer had to complete the proceedings *ex-parte*. Thus contention of the applicants that both enquiries were conducted without following principles of natural justice is not substantiated.

(b) Secondly, applicants have asserted that departmental enquiries were initiated for domestic problems and it was not for any act which is against the department or relevant to the department. Charges levelled against all three delinquents are reproduced below.

"परिशिष्ट-२

पोशि/१४४१ आर के गायकवाड, मपोशि/१५८० एम. एस. शिंदे व मपोशि / १४४६ जे एन पायाळे (सध्या निलंबित यांचेविरुद्धच्या विभागीय चौकशीतील त्यांचेवर ठेवावयाच्या दोषारोपाचे अभिकथनपत्र.

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१) पोशि/१४४१ आर के गायकवाड:-

बाब क्र. १ :- पोशि/१४४१ आर के गायकवाड तुमचा मपोशि/१४४६ जे. एन पायाळे याचेसोबत प्रेम प्रकरणामधुन दि.२९/०४/२०१३ रोजी आंतरजातीय नोंदणी पध्दतीने विवाह झाला आहे. तुम्हा दोघाना ०४ वर्षाची श्रेया नावाची मुलगी असून ती मपोशि/पायाळे यांचे वडिलांकडे बाशी येथे शिक्षणास आहे. मपोशि/पायाळे हया पो मु उस्मानाबाद येथील शासकीय निवासस्थान क्र. ८०/१२ मध्ये राहतात. तुमचे पहिले लग्न झालेले असतानाही मपोशि/१५८० एम एस शिंदे यांचेशी प्रेमसंबंध ठेवून पत्नी मपोशि/१४४६ जे. एन पायाळे यांना दि. २९/०९/२०१७ रोजी ०२.०० वाजेच्या सुमारास घरी असताना दारु पिवून घरी येवून “मला मनिषा बरोबर दुसरे लग्न करायचे आहे, तु मला सोडून दे” असे म्हणून लाथा बुक्क्यांनी मारहाण करून जिवे मारण्याची धमकी दिलेवरून तुमचेविरुद्ध पो स्टे. आनंदनगर उस्मानाबाद येथे अदखलपत्र गुरनं. ४१८/२०१७ क. ३२३, ५०४, ५०६ भादवि प्रमाणे गुन्हा दाखल आहे

बाब क्र. २ :- पोस्ते अंबी येथुन माहे १०/२०१७ ग्रामपंचायत सार्वत्रीक निवडणूकीदरम्यान तुम्हांस बंदोबस्तासाठी पो. स्टे. लोहारा येथे दि. १४/१०/२०१७ रोजी रिपोर्ट करण्याच्या सुचना असतानाही सदर महत्वाच्या बंदोबस्तास गैरहजर राहिलात. व दि. १५/१०/२०१७ रोजी ०२.२० वा. सुभाष आबा शिंदे यांचे देवगाव रोड परंडा येथील घरी सपोफौ /१११४ पठाण व मपोशि/१४४६ पायाळे याना मिळून आलात.

बाब क्र. ३ :- पोशि/१४४१ आर. के. गायकवाड यानी स्वत ची पत्नी मपोशि/१४४६ पायाळे या जिवंत असतानाही मपोशि / १५८० एम. एस. शिंदे हिचेशी अनैतिक संबंध ठेवून त्यामधून जन्मास आलेल्या मुलीचे वडील म्हणून नाव लावून शुचा राहूल गायकवाड असे नाव ठेवले.

२) मपोशि/१५८० एम. एस. शिंदे :-

बाब क्र. १ :- मपोशि/१५८० एम.एस. शिंदे तुम्ही स्वतः अविवाहीत असताना राहुल शिवाजी व्हनकळस यांचे सोबत लग्न झालेले नसतानाही पुणे येथे गेटकिन पध्दतीने लग्न झाल्याचे भासवून विवाहीत असलेल्या राहुल शिवाजी व्हनकळस याचे नावाचा पती म्हणून वापर केला.

बाब क्र. २ :- मपोशि/१५८० एम. एस. शिंदे तुम्ही स्वतः अविवाहीत असतानाही यांनी विवाहीत मपोशि/१४४६ पायाळे या जिवंत असताना त्यांचे पती पोशि/१४४१ गायकवाड यांचेशी अनैतिक संबंध ठेवून त्यामधून जन्मास आलेल्या मुलीस वडील म्हणून पोशि / १४४१ गायकवाड यांचे नाव लावले.

३) मपोशि/१४४६ जे. एन. पायाळे :-

बाब क्र. १ :- मपोशि/१४४६ जे. एन. पायाळे तुम्ही मपोशि/१४३३ एस. एस. जटाले व इतर दोघांशी संगणमत करून त्यांना घेवून दि. १५/१०/२०१७ रोजी ०२.२० वा. फिर्यादी श्री. सुभाष आबा शिंदे यांचे देवगाव रोड परंडा येथील घरी जावून त्यांना "आम्हांस एस.पी. साहेबांनी पाठविले आहे. तुमच्या घराची झडती घ्यायची आहे. तसे पत्र आहे." असे खोटे सांगितले, त्यावर त्यांनी तुम्हास पत्र दाखव असे म्हणताच "तु गेट उघड, नाहीतर तुला मारीन, बघुन घेईन" असे धमकावून शिवीगाळ केलेवरून तुम्हा सर्वविरुद्ध पो.स्टे. परंडा येथे अदखपात्र गुरनं. ३५५/१७, क.५०४,५०६,३४ भादंवि प्रमाणे दाखल आहे.

अशा प्रकारे पोशि/१४४१ आर. के. गायकवाड, मपोशि/१५८० एम.एस. शिंदे तुम्ही शासकीय सेवेत असताना नैतिक अधःपतनाचे, कलंकित नितीमता, बेशिस्त, व बेजबाबदारपणाचे वर्तन करून व मपोशि/१४४६ जे. एन. पायाळे यांनी बेशिस्त व बेजबाबदारपणाचे वर्तन करून पोलीस खात्याची प्रतिमा मलीन केली आहे.

(पंकज देशमुख)
पोलीस अधीक्षक उस्मानाबाद
तथा शिस्तभंगविषयक अधिकारी

प्रति,

पोशि/१४४१ आर. के. गायकवाड, मपोशि/१५८० एम. एस. शिंदे व मपोशि/१४४६ जे. एन. पायाळे
(निलंबित)

मार्फत : उप विभागीय पोलीस अधिकारी, उमरगा तथा चौकशी अधिकारी."

(c) Although the two charges against both the applicants outwardly seem to be personal in nature but their conduct is certainly unbecoming of Police officers. The conduct of Policemen and women within Police lines is of

paramount importance for maintaining discipline, professionalism, and fostering a positive work environment. Police lines serve as the hub for administrative, training and operational activities. Here Policemen and women are expected to adhere to a code of conduct that upholds integrity, respect and adherence to law and regulations. Law enforcement agencies are entrusted with upholding the law and protecting the community. Policemen and women who engage in behaviour that undermines public trust even in their personal lives are subject to disciplinary action to maintain the integrity of the Police force.

(d) Thirdly applicants have stated that punishment given to both the applicants is disproportionate and not equitable. It is also stated that when the charges against all three delinquents were interconnected with each other then why there is vast difference in the quantum of punishment inflicted on them. Delinquent LPC J. N. Payale is punished with fine of Rs.1000/- only whereas delinquent LPC Manisha Shinde is brought to basic pay of Police constable for four years and delinquent PC Rahul Gaikwad is brought to the basic pay of Police Constable for five years.

(e) In the personal administration, the principle of "similar charges - similar punishment" stands as a cornerstone of fairness and equity. This fundamental principle asserts that individuals who commit similar offences should receive comparable punishment, regardless of personal background, social status or other extraneous factors. Upholding this principle is essential for maintaining the integrity of personal administration and fostering trust in the administrative process of the organization. When charges are similar, consistency in sentencing sends a clear message that all employees are equal and disciplinary authority treats all individuals equally under the law. It serves as a powerful deterrent against misconduct and reinforces the notion that no one is above the law.

(f) In this scenario, the charges against three delinquents are interconnected to some extent, yet the charges against LPC J. N. Payale are comparatively less serious compared to those against PC Rahul Gaikwad and LPC Manisha Shinde. However, the quantum of punishment inflicted on the three delinquents varies substantially. Therefore, we believe that the punishment given to PC Rahul Gaikwad and LPC Manisha Shinde is disproportionately severe considering their misconduct.

Typically, Tribunals are not expected to substitute the punishment given by the disciplinary authority. However, in this case, we are making an exception. Instead of referring this matter to the Superintendent of Police, Osmanabad, for reconsideration of the punishment given to PC Rahul Gaikwad and LPC Manisha Shinde, we deem it appropriate to revise it ourselves. Hence following order:

O R D E R

- [i] O.As. are partially allowed.
- [ii] Both the applicants shall be subjected to a revised penalty of "reduction to basic pay of Constable for one year."
- [iii] No order as to cost.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 23-04-2024.