

CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)

RESERVED ON : 12.07.2024

PRONOUNCED ON : 19.07.2024

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The Applicant prays that the impugned order dated 27.10.2015 passed by Respondent No. 2, thereby dismissing the applicant from the post of Senior Technical Assistant after holding him guilty of the alleged misconduct for which departmental enquiry was conducted and also ordering recovery of Rs. 27,65,850/- towards the loss caused to the Government and the applicant be granted all consequential service benefits as if the impugned order had not been passed. The Applicant further prays that the impugned order dated 26.9.2016 passed by the Respondent No. 1, under which the appeal of the applicant preferred against the order dated 27.10.2015 came to be rejected.

2. Learned Counsel has submitted that the Applicant joined Government service as Senior Operator on 26.10.1987 and was later on promoted to the post of Senior Technical Assistant [Class-III] w.e.f April, 1988. Thereafter the applicant was granted time bound promotion in the year 2000 vis-à-vis the promotional post of Sericulture Development Officer, Grade-II. Learned Counsel has submitted that it is alleged that between 6.8.2005 to February, 2009 when the applicant was working at Purchase Centre, Pandharpur under the administrative control of District Sericulture Office, Solapur, certain misconduct was committed and particularly financial loss was caused to the Government. Learned Counsel has further submitted that the Applicant was subjected to Departmental Enquiry by Respondent No. 2 vide charge sheet

dated 21.10.2009. Learned Counsel has submitted that the Applicant denied the charges by submitting reply to the Charge Sheet. Learned Counsel has further submitted that the Enquiry Officer based on the oral and documentary evidence adduced before him by the Department held that the Charges No 1 and 3 are partly proved and Charge No. 2 is proved to some extent and Charge No. 4 is not proved. The Enquiry Officer submitted report dated 28.2.2011 to the Disciplinary Authority. Learned Counsel has further submitted that the Show Cause Notice dated 21.3.2011 was issued to the applicant by the Disciplinary Authority thereby calling his explanation. The Applicant submitted his reply on 15.4.2011. The Disciplinary Authority passed the impugned order dated 7.4.2012 dismissing the applicant from service and in addition thereto directed recovery of the amount of Rs. 27,65,850/- towards alleged loss to the Government by imposing attachment on the property of the Applicant. The Applicant preferred appeal against the said order before Respondent No. 1 on 23.4.2012. Learned Counsel has further submitted that the Applicant approached this Tribunal by filing Original Application in the year 2012, wherein the Respondent No. 1 was directed to decide the appeal by order dated 26.2.2013. Learned Counsel has further submitted that thereafter the Applicant approached the Tribunal by filing O.A 912/2013 challenging both the orders. By order dated 28.7.2015, the Tribunal allowed the Original Application and set aside both the impugned orders and remitted the matter back to the Disciplinary Authority to examine the matter afresh in the light of the decision of the Hon'ble Supreme Court in the case of Yoginath D. Bagade Vs. State of Maharashtra & Anr, AIR 1999 SC 3734. Thereafter, Respondent No. 2 issued show cause notice to the Applicant on 24.9.2015 calling upon him to submit his reply. The Applicant filed detailed reply on 13.10.2015. The Respondent No. 2 issued

show cause notice to the Applicant on 19.10.2015 thereby proposing to impose major penalty of dismissal from service so also recovery of amount of Rs. 27,65,850/-. The applicant submitted reply to the said show cause notice on 26.10.2015. However, by the impugned order dated 27.10.2015 the Respondent No. 2 dismissed the Applicant from service and ordered recovery of the aforesaid amount. Learned Counsel has further submitted that the Applicant preferred appeal against the said order of dismissal. However, as the Appeal was not decided the Applicant preferred O.A 603/23016, wherein the Tribunal by order dated 23.6.2016 directed the Respondent No. 1 to dispose of the Appeal in all respect by 30.9.2016. Thereafter, Respondent No. 1, decided the appeal by impugned order dated 26.9.2016, thereby confirming the order of punishment passed by Respondent No. 2 on 27.10.2015.

3. Learned counsel for the Applicant has submitted that the Applicant cannot be held responsible for the loss to the damage of Silk Cocoons. The Government did not provide a proper Godown and the necessary equipments to take care of the Silk Cocoons. The Godown was constructed on a Gutter and there was a constant dampness and insufficient space for storage of the Silk Cocoons. He read over the evidence of the witnesses and recorded heavily on the admission given by Mr Madne, who is District Silk Officer. Learned Counsel further submitted that there is a correspondence between the office of the Applicant and the District Silk Office at Solapur, wherein the Applicant has communicated the difficulties of storage of the Silk Cocoons. He also pointed out that there was a flood in August, 2006 which also caused the damage to the Silk Cocoons which were stored in the Government Godown. Learned counsel for the Applicant submitted that the Applicant cannot be blamed for dereliction of duty and it was not possible for him to stop the damage or any other natural

calamities. Learned Counsel further relied on the letter dated 3.5.2008 issued by Under Secretary, State of Maharashtra, Cooperative, Textiles and Industries Department to the Director, Silk Directorate, State of Maharashtra, informed that in the Reeling Centre, Pandharpur, Dist-Solapur on account of flood during the period 9.8.2006 to 12.8.2006, 600 kg of Silk Cocoons costing around Rs. 84000/- and wastage of Silk Cocoons of 175 kgs of Rs. 26250/-, totaling Rs. 110250/- loss is suffered by the Government and therefore that amount is to be deducted.

4. Learned P.O for the Respondents relied on the short Affidavit in reply dated 12.7.2017 of Damodar A. Kulkarni, Deputy Secretary in the office of Cooperation, Marketing and Textiles Department, Mantralaya, Mumbai and also the short affidavit in reply 14.7.2023 by Dr Kavita N. Deshpande, working as Assistant Director, Regional Office, Sericulture Department, Pune, and also the evidence of the witnesses. Learned P.O has submitted that the charges levelled against the Applicant were appropriate and the Applicant has failed to make out any fault or illegality in the orders passed by the Respondent-State. Under such circumstances, judicial intervention is not called for to interfere with the said reasoned orders. The order is supported by lawful findings. The Applicant was given very fair treatment and the Enquiry Officer has followed the due procedure as per the Maharashtra Civil Service Rules. The relevant care, maintenance, sale, purchase of stock of the Silk Cocoons were entirely the duty of the Applicant. The Applicant was alone responsible for taking care of the Silk Cocoons and so also in keeping the entire record about the storage and wastage of the Silk Cocoons. However, he has committed misconduct and failed in his duty. The record and the documents revealed the basis for arriving at the recovery of an amount of Rs. 27,65,850/- from the Applicant. The orders passed by the

Disciplinary Authority and the Appellate Authority are in consonance with the rules of natural justice and fairness. Considering the negligence on the part of the Applicant and the loss suffered by the State, the applicant was required to be dealt with strictly and hence the punishment of dismissal and recovery of the amount of Rs. 27,65,850/- is legal, correct and appropriate and it is to be maintained.

Assessment

5. The alleged incidence is for the period August 2005 to February, 2009, for which departmental enquiry was initiated against the Applicant. The enquiry was initiated on 21.10.2009 and four charges were framed against the Applicant. The Charges were pertaining to not taking care of the Silk Cocoons which were stored in the Godown of District Silk Officer at Pandharpur, Dist-Solapur. The incident has occurred during the period 2.8.2008 to 26.2.2009. The applicant being a Senior Technical Assistant was responsible for the storage, maintenance, sale and record of the Silk Cocoons which were purchased by the farmers. The Government has declared the policy to encourage the farmers who were dealing with Mulberry farming. As per the record 20347.700 kgs of Silk Cocoons was found less and 901.600 kgs extra wastage was noticed. The Silk Cocoons were not looked into after carefully so there was fungus and dampness and thus the Applicant has failed in performing his duties with full capacity and diligence thereby causing financial loss to the Government of Rs. 27,65,850/-. The Enquiry Officer conducted the enquiry and report was submitted on 28.2.2011. The Enquiry Officer held that Charge No. 1 was partly proved, Charge No. 2 was about financial loss to the Government and it was held proved partially. Charge No. 3 was about not maintaining the record properly and 901.600 kg of Silk Cocoon was found more than the record. That was also

partly proved and Charge No. 4 was about dereliction of duty and that amount of Rs. 26504/- was spent for maintenance of Silk Cocoons. It did not give expected results and so it was a waste. The Enquiry Officer has held that the said Charge No. 4 is not proved. The Disciplinary Authority after going through the report of the Enquiry Officer held that the Charges 1 & 2 are fully proved and therefore the property of the Applicant in order to recover an amount of Rs. 27,65,850/- was ordered to be attached. The Applicant filed Original Application No. 912/2013 and in the said case the Respondents were directed to follow the ratio laid down in the case of **Yoginath Bagde (supra)**, as the reason for disagreement with the Enquiry Officer were not given by the Disciplinary Authority.

6. We have gone through the entire record of the Enquiry Officer and so also the evidence of all the witnesses. Mr Madne, at the relevant time was working as Silk Development Officer at Solapur. We have considered the nature of the charges and we found admittedly the Applicant was responsible for looking after the stock of the Silk Cocoons, maintaining the record, looking after the sale and purchase of the Silk Cocoons. However, the Silk Cocoons to the tune of Rs. Rs. 27,65,850/- were damaged and loss suffered by the Government. There is also charge that the Applicant did not make proper entries of the Silk Cocoons in the Register

7. We have gone through the statements of Mr Tanaji Thorat, who was working as Peon. He has stated in the Chief that because of the flood and due to rats and some insects the Silk Cocoons are always damaged. The State has examined Balasaheb Suryavanshi, his Assistant Shri D.Y Salunkhe, Silk Development Officer from Solapur. Mr Sanjay Phule and Mr Patankar, Senior Technical

Assistant. All the persons were working at the Relief Centre, Pandharpur. Khairuddin Zari and Priyanka Ganacharya. There are many other circumstances which are responsible for causing the wastage or damage of the Silk Cocoons and it mainly on the ground of insufficient space for storage. Witness Priyanka Ganacharya has admitted that the farmers should bring Silk Cocoons to the Centre five days after they are ready. However, with a view to get the benefit of more weight the farmers bring these Silk Cocoons within three to four days so that they are monetarily benefitted. Thus, the quality suffers. For drying Silk Cocoons it is necessary to have electricity supply and if there is fluctuations and discontinuity in the electric supply then it affects the drying process of the Silk Cocoons. The electricity supply was not continuous. The Godown is constructed on underground Gutter, so there was issue of cleanliness.

8. We are aware that the Tribunal is not an Appellate Authority, but we can examine correctness of charges and the order of the Disciplinary Authority in judicial review where the scope is very limited to procedure and principles of natural justice. After perusal of the entire enquiry report and also the evidence, we found that most of the charges are such for which the Applicant cannot be held responsible as they are very much related to logistics and so also the storage facility and availability of the necessary equipments, machinery to do away with the Silkworms (insects). Hence our attention was drawn by the learned counsel for the Applicant to the relevant portion of the evidence of witnesses highlighting or disclosing the defects or inadequacy of the space. We found that the admissions are given by the witnesses on this issue. We also came across the policy of the Government to support the Mulberry farming and the farmers as the Government has adopted the policy to purchase Silk Cocoons

from the farmers. We found that the admissions are given by the witnesses on this issue. We also came across the policy of the Government to support the Mulberry farming and the farmers as the Government has adopted the policy to purchase Silk Cocoons from the farmers. Though the policy was prepared with a noble object, it was necessary for the Government to create adequate infrastructure to implement the same for the intended result. However, it is revealed from the discussion of the evidence of the witnesses in the enquiry report itself that the supply of the Silk Cocoons from the farmers was much more than the storage capacity of the Godown at the center at Pandharpur. All the witnesses said and corroborated this fact and also admitted that if the Godown is fully stuffed, the Silk Cocoons are damaged and because of the Silkworms (insects) also they are damaged. Thus, prevention of such circumstances was beyond the human control or any other person, i.e., the delinquent officer. Thus, from the findings of the Enquiry Officer we found that the charge that he did not maintain the record properly and the entries in the Register were not updated is correct and only to that extent the charge is said to be proved. The said Charge is mentioned in Charge No. 1. Further the entries made in the purchase register, stock register and wastage of stock register are not properly maintained by the Applicant. The charge is also levelled about the damage of Silk Cocoons on account of fungus. But, however, the enquiry report itself discloses that the fungal infections can occur due to dampness, conditions of the storage etc. Thus, we found considering the charges levelled against the Applicant and proved, we are of the view that the punishment imposed is absolutely disproportionate. If a person is found guilty, the punishment always should be proportionate to the extent of wrong done or the fault of the delinquent officer. In the present case the Applicant is not charged for misappropriation of the amount or deliberate

action of damaging or destroying the Government stock of Silk Cocoons. The charge is that he failed in keeping the Silk Cocoons intact with due care and diligence. However, as we have observed above a person may be very diligent and careful, however, it does not suffice the purpose if no adequate infrastructure is provided. Thus, the Respondents have not properly framed the charges against the applicant and it was leading to miscarriage of justice.

9. In view of the above, we pass the following order:-

- (a) The impugned order dated 27.10.2015, passed by Respondent No. 2, Disciplinary Authority and order dated 26.9.2016 passed by Respondent No. 1, the Appellate Authority dismissing the Applicant from service is hereby quashed and set aside.
- (b) However, we maintain the findings of the Enquiry Officer and the Disciplinary Authority that the Applicant was negligent in maintaining the Stock Register, Purchase Register and Wastage Register of Silk Cocoons during his tenure at Pandharpur. Thus, the applicant is liable for minor punishment.
- (c) The order passed by Respondents No. 1 & 2 ordering recovery of Rs. 27,65,850/- from the Applicant towards loss caused to the Government is modified and that recovery can be made to the tune of withholding gratuity and amount of earned leave by way of minor punishment.
- (e) The applicant is reinstated in service from the date of the dismissal. However, as he has not worked during the period from the date of dismissal till his superannuation, he is entitled to 50% of the salary and regular pension. He is not entitled for interest on any amount.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai

Date : 19.07.2024

Dictation taken by : A.K. Nair.