

ORAL ORDER

Heard Shri Akshay Kulkarni, learned counsel for the applicant and Smt. Sanjivani Deshmukh-Ghate, learned Presenting Officer for the respondent authorities.

2. By filing the present Original Application the applicant has challenged the order dated 19.3.2020, whereby respondent No. 2 has passed order placing the applicant under suspension. The applicant has also questioned the order dated 20.7.2020 passed by respondent No. 2, whereby the applicant has been reinstated in the services at the District Prison, Jalgaon.

3. The applicant is working as Jail Shipai with the department of Prisons. At the relevant time i.e. in the year 2020 the applicant was posted at District Prison, Beed. On 20.1.2020 the applicant had approached respondent No. 4 seeking one day casual leave on 21.1.2020 and had also prayed for weekly off on 22.1.2020 on the ground of the illness of his father. It is the contention of the applicant that respondent No. 4 without considering the genuine request of the applicant unsympathetically raised certain queries with the applicant. It is the further contention of the applicant that he never uttered a single word undermining authority of respondent No. 4. It is

the further contention of the applicant that respondent No. 4 however, vindictively proposed the disciplinary action against the applicant as a result of which the applicant came to be suspended vide order dated 19.3.2020. It is not in dispute that vide the subsequent order dated 20.7.2020 the suspension was revoked and the applicant was reinstated in service, however, came to be posted at District Prison, Jalgaon.

4. Learned counsel for the applicant assailed both the aforesaid orders on various grounds. It is the contention on behalf of the applicant that there were no sufficient reasons for passing the order dated 19.3.2020 placing the applicant under suspension. Learned counsel submitted that unless there are certain grave charges against the delinquent ordinarily the suspension order is not passed. Learned counsel submitted that the applicant has emphatically denied that he had any way entered in altercation with respondent No. 4 or used any undesired words for the said respondent, and even if it is assumed that same was the charge against the applicant it cannot be held to be such a charge for which suspension of the applicant was required. It is the further contention on behalf of the applicant that suspension under Rule 4 (1) (a) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979

can be ordered, in case enquiry is contemplated against the delinquent. Learned counsel submitted that in the impugned order though it has been indicated that enquiry was contemplated against the applicant no such enquiry has been ever conducted against him. Learned counsel submitted that without conducting any departmental enquiry as was indicated in the order dated 19.3.2020, respondent No. 2 has passed an order on 19.1.2022, thereby holding the applicant guilty of the charges leveled against him.

5. The respondents have filed their affidavit in reply denying the contentions raised by the applicant in the Original Application and the prayers made therein.

6. After having considered the submissions advanced by the learned counsel appearing for the applicant and learned Presenting Officer appearing for the respondents, the only ground raised in clause (XIII) of the grounds may be relevant for decision in the present matter. Perusal of the order dated 19.3.2020 makes it abundantly clear that the suspension was ordered in contemplation of the departmental enquiry against the applicant. In the affidavit in reply filed on behalf of the respondents nothing is disclosed whether any such departmental enquiry has ever been conducted against the

applicant. Learned Presenting Officer sought to contend that the preliminary enquiry was conducted and in the said preliminary enquiry the applicant was found to be guilty of the charges leveled against him. When further query was made whether in the said enquiry any opportunity of hearing was given to the applicant, learned Presenting Officer submitted that the statement of the applicant was recorded. The record reveals that the applicant was not given access to the statements given by the witnesses in the said enquiry nor any opportunity of cross-examining the said witnesses was given to the applicant. In sum and substance, from the record it is quite clear that the respondents did not conduct any departmental enquiry as provided under Rule 8 of the M.C.S. (Discipline and Appeal) Rules, 1979. In the order dated 19.3.2020 it has been clearly stated that the departmental enquiry was contemplated under Rule 8 of the M.C.S. (Discipline and Appeal) Rules, 1979. The enquiry under the said rule can only be conducted as per the procedure prescribed in the said rule or under Rule 9. No such enquiry has been conducted against the applicant.

7. The question arises if the suspension is ordered with an intention of conducting enquiry against the delinquent and when such enquiry is not conducted thereafter, whether such

period of suspension and the said order of suspension can be sustained.

8. As has been noted hereinabove the order dated 19.3.2020 specifically says that since it was necessary to conduct the departmental enquiry against the applicant under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, the applicant was suspended with immediate effect. From the facts which have come on record there has remained no doubt that no enquiry under Rule 8 of the M.C.S. (Discipline and Appeal) Rules has been conducted against the applicant. It is the matter of record that vide order dated 20.7.2020 suspension was revoked and the applicant was reinstated in service. No further orders are however passed as about the period of suspension undergone by the applicant. As has been revealing from the documents on record and from the submissions made on behalf of the respondents, a preliminary enquiry was held in regard to the misconduct alleged against the applicant and on the basis of the said report respondent no. 2 has passed an order of censure against the applicant on 19.1.2022. I deem it appropriate to reproduce the entire said order / communication which reads thus:-

“विषय :- श्री. संजय दशरथ राठोड, तत्का. कारागृह शिपाई, बीड जिल्हा कारागृह सध्या कार्यरत जळगाव जिल्हा कारागृह यांचे गैरवर्तनाबाबत.

संदर्भ :- अधीक्षक, लातूर जिल्हा कारागृह यांचे कडील प्राथमिक चौकशी अहवाल दि. १६.१२.२०२१.

उपरोक्त संदर्भीय विषयान्वये कळविण्यात येते की, श्री. संजय दशरथ राठोड, तत्का. कारागृह शिपाई, बीड जिल्हा कारागृह सध्या कार्यरत जळगाव जिल्हा कारागृह हे बीड जिल्हा कारागृह येथे कार्यरत असताना दि. २०.०१.२०२० रोजी अधीक्षकांशी हुज्जत घालून केलेले गैरवर्तन तसेच अधीक्षकांना धमकी दिले प्रकरणी करण्यात आलेल्या प्राथमिक चौकशीत श्री. राठोड, कारागृह शिपाई यांनी केलेले गैरवर्तन सिद्ध होत आहे.

श्री. राठोड, कारागृह शिपाई यांनी कोणत्याही परिस्थितीत वरिष्ठांना शिवीगाळ करणे हे उचित नाही. सदरची बाब गणवेशधारी कर्मचा-यास शोभणारी नाही, याबाबत आम्ही तीव्र नाराजी व्यक्त करीत आहोत.

सही/-
(स्वाती साठे)

कारागृह उपमहानिरीक्षक
मध्य विभाग, औरंगाबाद

प्रति,

श्री. संजय दशरथ राठोड,
कारागृह शिपाई,
जळगाव जिल्हा कारागृह

(मार्फत-अधीक्षक, जळगाव जिल्हा कारागृह)

प्रत :- अधीक्षक, जळगाव जिल्हा कारागृह यांना माहिती व पुढील कार्यवाहीस्तव.”

9. The papers of the enquiry stated to be conducted against the applicant were directed to be produced on record. Accordingly, the said papers are produced on record. The said record reveals that the preliminary enquiry was conducted by one L.R. Sangle In-charge Superintendent of Latur District Prison Class-I. On the basis of the aforesaid report the order of

censure has been passed by respondent no. 2 as aforesaid. From the documents produced on record it is revealed that the enquiry was not conducted as per the procedure prescribed under rule 8 as was envisaged in the order of suspension dated 19.3.2020. In the preliminary enquiry the In-charge Superintendent of Latur District Prison has recorded the statements of (1) Shri Mahadeo Sambhaji Pawar on whose complaint the further proceedings were initiated; (2) Shri S.U. Malshikhere who was Jailor Grade-II; (3) Shri O.M. Amjat Ali, (4) Shri A.P. Salve; and (5) Shri S.S. Shinde, Prison Peon. The statement of the applicant was also recorded. No doubt, Shri Sangle in his report of preliminary enquiry recorded a conclusion that from the statements recorded by him, it has been proved that the applicant misbehaved with the Jail Superintendent namely Shri Mahadeo S. Pawar on 21.1.2020 and on the basis of the said report, respondent no. 2 has passed an order of censure against the applicant.

10. On a query made by the Tribunal whether the order of Censure has been taken note of in the service book of the applicant, it is informed by the respondents that there was no such direction from respondent no. 2 and as such no entry has been taken of the said order in the service book of the applicant.

Even then the question arises whether such an order could have been passed by respondent no. 2, the answer is off-course, "NO". On the basis of the preliminary enquiry wherein the officer concerned has only recorded the statement of the concerned witnesses, to which the applicant was not given access and was also not given any opportunity to cross examine the said witnesses, cannot be held to be an enquiry in the eyes of law and on the basis of such enquiry no such order could have been passed by respondent no. 2. It is significant to note that in the order of censure, respondent no. 2 has held the applicant guilty of the misconduct alleged against him. The applicant could not have been held guilty in such a manner without giving him any opportunity of participating in the said enquiry. Mere recording of the statement was not enough. He must have been given an opportunity to controvert the witnesses whose statements are recorded in the preliminary enquiry. The conclusion thus recorded by respondent no. 2 holding the misconduct alleged against the applicant to have been proved, therefore, cannot be sustained. Though the applicant has not prayed for setting aside the said order dated 19.1.2022, after having noticed the facts as aforesaid the said order being passed in utter disregard of the principles of natural justice deserves to be set aside.

11. It is further significant to note that the In-charge Superintendent of Latur District Prison, Class-I, who conducted the preliminary enquiry and submitted the report, while recording his conclusions that from the statement of the witnesses the misconduct of the applicant with Superintendent of Prison on 21.1.2020 is proved, has further recorded his opinion that if the In-charge Superintendent of Prison namely Mahadeo S. Pawar had considered the request of the applicant on the humanitarian point of view and had granted the applicant one day casual leave and one weekly off perhaps the further undesired events could have been avoided. The enquiry officer has recorded that from the statement given by the applicant it is revealed that on the day of incident the applicant was intending to take his father for his treatment at Belgam, Karnataka State, for his disease of paralysis and had come to the prison premises with his ailing father and was requesting Superintendent Shri Pawar to verify whether his father was really suffering from paralysis or not by visiting the vehicle which was kept parked outside the gate of the prison but that was not done by Shri Pawar which resulted in occurrence of further undesired event. It appears to me that while passing the order of censure, respondent No. 2 shall not have lost sight

of the aforesaid fact recorded in the same report of preliminary enquiry.

12. Now the question arises whether the order of suspension dated 19.3.2020 can be sustained. I have discussed hereinabove that the order of suspension is passed in contemplation of the departmental enquiry against the applicant under Rule 8 of the M.C.S. (Discipline and Appeal) Rules. It is not in dispute that no such enquiry has been conducted. In the circumstances, the order of suspension cannot be sustained and has to be set aside or else, it would amount to sort of punishment to the applicant without any express order in that regard. Moreover, from the facts which have come on record, it does not appear to me that there was any reason in putting the applicant under suspension even if the enquiry was to be conducted on the charge that he misbehaved with his superior officer. For both the aforesaid reasons the order dated 19.3.2020 deserves to be set aside.

13. Insofar as another prayer made in the application seeking quashment of the order dated 20.7.2020 is concerned, the documents on record reveals that such prayer was made by the applicant in O.A. No. 304/2020 earlier filed by him. In the said O.A. submission was made on behalf of the applicant that the

only prayer pressed by him was a direction against respondent Nos. 1 & 2 to consider the request of the applicant to transfer the applicant either at Jalgaon or at Paithan Open Jail. It was also submitted on behalf of the applicant that he had already submitted a representation in that regard on 22.7.2020. In the circumstances, the said O.A. came to be disposed of with a direction to respondent Nos. 1 & 2 to decide the representation of the applicant dated 22.7.2020 on merit as per the rules. In the circumstances, no such prayer could have again be made by the applicant in the present O.A. No relief in that regard, therefore, can be granted and the said prayer deserves to be rejected. In the result, the following order is passed:-

ORDER

- (i) The order of suspension issued on 19.3.2020 by respondent No. 2 is quashed and set aside.

- (ii) Consequently, the applicant shall be held to be on duty in the entire period of suspension and shall be entitled for the wages and emoluments as if he was on duty. The payable monetary benefits shall be remitted to the applicant within 12 weeks from the date of this order.

- (iii) The order dated 19.1.2022 passed by respondent No. 2 also stands set aside.

(iv) The request for quashment of the order dated 20.7.2020 stands rejected.

(v) The Original Application thus stands partly allowed in the aforesaid terms without any order as to costs.

VICE CHAIRMAN

O.A.NO.666-2019 (SB)-2022-HDD-Suspension