

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.797/2016 (D.B.)

Piraji S/o Shivram Amberao,
 Aged about 59 years, Occupation: Service
 (Retired Dy. Director of Land Record),
 R/o Adarsh Colony, Shastri Nagar,
 Bhavasar Chowk, Nanded, Tah. & Dist. Nanded.

... APPLICANT.

// V E R S U S //

- 1] The State of Maharashtra,
 Through it's Secretary,
 Revenue and Forest Department,
 Mantralaya, Mumbai- 32.
- 2] The Settlement Commissioner &
 Director of Land Record, Pune.

... RESPONDENTS.

Shri S.N. Gaikwad, Advocate for the applicant.

Shri V.A. Kulkarni, P.O. for respondents.

Coram:- Hon'ble Shri Justice M.G. Giratkar, Vice Chairman and
 Hon'ble Shri Nitin Gadre, Member (A).

Date of Reserving for Judgment : 13th November, 2024.

Date of Pronouncement of Judgment : 28th November, 2024

J U D G M E N T

Per : Vice Chairman.

(Delivered on this 28th day of November, 2024)

Heard Shri. S.N. Gaikwad, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The case of the applicant in short is as under:

The applicant was posted at Amravati on the post of District Superintendent of Land Record. He had passed an order in the capacity of Quasi-Judicial Authority on 26/02/2010 and also taken a wrong decision in the matter of Sau. Ashatai Lendhe. The Respondent No.2 has issued charge-sheet. Two charges were levelled against the applicant which are as follows -

- (1) Without proper evidence the applicant passed an order dated 26/02/2010 in the matter of Shri Awdhuth Maharaj Sansthan.
- (2) Taken a decision in the matter of Sau Ashatai Lendhe against the provisions of Maharashtra Land Revenue Code.

3. The Departmental Enquiry was conducted. The applicant was working in a Quasi-Judicial Authority. The orders were corrected in the Appeal, therefore, the applicant should not have been held guilty. Hence, the punishment of deducting 12% amount of pension for a period of 5 years is illegal and therefore liable to be quashed and set aside. Hence, the applicant filed the present O.A. for the following reliefs:-

- “(i) allow the instant original application with costs;*
- (ii) be pleased to quash and set aside the impugned order dated 19.09.2016 (ANNEXURE-A-15) issued by the respondent No. 1, as it being arbitrary, capricious, illegal and bad in law;*
- (iii) be pleased to hold and declare that the departmental enquiry conducted by the respondents is illegal and bad in law.”*

4. The O.A. is strongly opposed by the respondents. The material portion of reply in Para No.3, 4, 5, 8 and 9 are reproduced below:

“3. It is submitted that the Deputy Director of Land Records, Amaravati Region, Amaravati received the complaint about irregularities done by the applicant in case of Appeal No. 540/2009. The said authority scrutinized the complaint thoroughly and came to the conclusion that there is some substance in the complaint and accordingly issued show cause notice to the applicant on 15.02.2011. Having availed the opportunity the applicant could not justify his decision in the aforesaid appeal, satisfactorily in his reply. Consequently the Deputy Director of land Records, Amaravati proposed departmental enquiry against the applicant under Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. As Head of the Department, the answering respondent on receipt of aforesaid proposal, examined it and came to the conclusion to initiate departmental enquiry against the applicant, and in pursuance to it, issued memo of charge sheet on 04.10.2011. It is pertinent to mention here that, while coming to the conclusion the answering respondent verified the order passed by the applicant and found that it was neither based on the basis of documents available on record nor there was any mention how and on what evidence the applicant passed the said order. Moreover the said order was quashed and set aside by the Appellate Authority i.e. Deputy

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Director of Land Records, Amaravati observing that the applicant has passed the order without verifying the available record. It also observed that the applicant has not verified the variance in the record and should have got confirmed with the factual aspects by inspecting the spot. The applicant has not acted as per the provisions and not exercised the powers vested with in proper perspectives. The Apex Court and other several courts settled the provisions through several judgments that, though the applicant has passed the order in exercise the Judicial or quasi judicial function, but if the competent authority observes culpability of desire to oblige himself or unduly favored any of the parties for any improper motive, then it can proceed with the departmental enquiry. Hence there is no point in the case of the applicant.

4. *It is specifically submitted here that no doubt the applicant has applied for documents, however the answering respondent has responded the application and relying on the rule 6.10.(2) of the departmental Enquiry Manual 1991 informed the applicant that there is no such provision in MCS(Discipline and Appeal) Rules, 1979 to deliver documents and list of witnesses by which each charge is proposed to be sustained and it is the only opportunity to the applicant to state whether the charges leveled against him and agreed to him or disagree to him. Thus the contention in respect of not responding the answering respondent as far as demanding the documents is concerned is baseless and not maintainable in the eyes of law.*

5. *That the answering respondent gave several opportunities to the applicant to submit his say in respect of charges leveled against the applicant. Only on failure of the applicant to file his say, the respondent appointed Presenting Officer Shri. A. S. Girigosavi, the then District Superintendent of Land Records, Yavatmal, as per order dated 14.03.2012 in furtherance of completion of enquiry. The said fact was immediately informed to the applicant.*

8. *During the proceedings, enquiry officer held hearing on 14.06.2011, 26.07.2012, 13.12.2012, 24.01.2013, 28.02.2013, 22.03.2013, 22.04.2013, 07.09.2013, 23.10.2013, 25.03.2013, 28.01.2016, 10.02.2016, 17.03.2016, 28.03.2016 and 16.05.2016. However the applicant was absent for hearing 10.02.2016 onwards and kept of submitting unnecessary representations only, and attended all other dates. Ultimately the enquiry officer submitted his report on 16.05.2016 and the same was served on the applicant on 14.07.2016. Thereafter the applicant filed his say vide letter dated 25.07.2016 denying all the charges against him and requested to exonerate him. From the above submission it will be revealed that the answering respondent has followed all the principles of natural justice, granted him hearing and after considering the gravity of the charges, findings of the enquiry officer, the evidence adduced by all the parties during the departmental enquiry. He also considered that the applicant is retired during the pendency, imposed the punishment of deduction of 12% amount of the pension per month, under Rule 27 of Maharashtra Civil Service (Pension) Rules, 1982. Accordingly punishment order was issued on 19.09.2016. Thus the enquiry as held cannot be said to be illegal and perverse.*

9. *It would not be out of place to mention here that, in the present facts and circumstances of this case, the Hon'ble Tribunal has no jurisdiction to interfere as far as findings of the enquiry officer as well as the punishment imposed by the competent authority where they are not arbitrary and utterly perverse and the punishment imposed is not disproportionate. The enquiry conducted against the applicant is totally in accordance with the principles of natural justice and in such circumstances no interference is called for from the Hon'ble Tribunal."*

5. Heard learned counsel for applicant Shri S.N. Gaikwad. As per his submission, the applicant was working as a Superintendent of Land Record. The order passed by the applicant in the case of

Awdhuth Maharaj Sansthan was challenged in the Appeal. The said order was set aside by the Appellate Authority. The Act of the applicant was in Quashi-Judicial Authority, therefore, the applicant should not have been held guilty. The learned counsel for applicant has submitted that in respect of Charge No.2, the order passed by applicant was corrected by the Superior Authority / Appellate Authority and therefore the applicant should have been exonerated.

6. The learned P.O. Shri V.A. Kulkarni has submitted that applicant was working as Appellate Authority. The Taluka Inspector of Land Record rejected the claim of Awdhuth Bhajani Mandal. They had approached to the Superintendent of Land Record (S.L.R.) in Appeal. Without any proper enquiry, the applicant has passed the order in favour of Awdhuth Bhajani Mandal. Only on the basis of affidavit filed by two persons, the applicant has passed the order in favour of Awdhuth Bhajani Mandal, Junivasti, Badnera.

7. Learned P.O. has submitted that a prudent man can say that for transfer of ownership, registered document is required. Without any registered document, the applicant has passed the order in favour of Awdhuth Bhajani Mandal. Hence, the order was not in Quashi-Judicial Authority, but it was the intentional order to support

the claim of Awdhuth Bhajani Mandal for the reasons well-known to the applicant. Learned P.O. has submitted that one Plot was purchased by Sau. Ashatai Lendhe. Without any registered document, the said Plot was directed to be recorded in the name of Sau. Ashatai Lendhe. The Disciplinary Authority received a complaint against the applicant about his mal-practice, therefore, the departmental enquiry was initiated. The applicant was given full opportunity in the departmental enquiry. After receipt of enquiry report, Disciplinary Authority has taken a proper decision for deduction of 12% amount from his pension amount for a period of 5 years. The learned P.O. has pointed out the Judgment of the Hon'ble Supreme Court in the case of ***State of U.P. & Ors. VS. Nand Kishore Shukla & Ano. reported in 1996 AIR 1561, 1996 SCC (3) 750.***

8. The learned counsel for applicant Shri. S.N. Gaikwad has pointed out the Judgment of the Hon'ble Supreme Court in the case of ***Zunjarrao Bhikaji Nagarkar VS. Union of India & Ors. (1997) 7 SCC, 409*** and submitted that whatever act of passing order by the applicant was in quasi-judicial power and therefore he cannot be held liable for the said act.

9. There is no dispute that the applicant was charge-sheeted by the Disciplinary Authority for the following two charges namely:-

दोषारोप क्रमांक १ :-

मौजे-कारला येथील शिट नंबर ४ प्लॉट नंबर २८७ क्षेत्र ३२४ चौ.मी. ही मिळकत चौकशीवेळी श्री. अवधुत महाराज देवस्थान, ग्रामपंचायत कारला या नांवाने दाखल असताना सबळ पुरावा उपलब्ध नसतानाही अपीलात ती श्री. अवधुत भजनी मंडळ, जुनी वस्ती, बडनेरा यांचे नावे दाखल करणेचे आदेश पारित केलेले आहेत.

सबब त्यांनी त्यांचे कर्तव्यात कर्तव्यपरायणता व सचोटी राखलेली नाही. यास ते सर्वस्वी जबाबदार असून त्यांनी महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ मधील नियम ३ (१) (एक) (दोन) (तीन) चा भंग केलेला आहे.

दोषारोप क्रमांक २ :-

शहर अंजनागांव सुर्जी जि. अमरावती येथील शि.नं.२० प्लॉट क्र.६/७/१२ क्षेत्रफळ ५००० चौ. फूट या मिळकतीबाबत सौ. आशाताई लेंधे यांचा नावाचा अंमल घेणेकामी परवानगी प्रदान केलेली आहे. सदर आदेश अंत्यत त्रोटक व महाराष्ट्र जमीन महसूल अधिनियमाच्या परस्पर विरोधी निर्णय पारित केलेला आहे. तसेच वरिष्ठ कार्यालयास चुकीचा अहवाल सादर केलेला आहे.

सबब त्यांनी त्यांचे कर्तव्यात कर्तव्यपरायणता व सचोटी राखलेली नाही. यास ते सर्वस्वी जबाबदार असून त्यांनी महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ मधील नियम ३(१) (एक) (दोन) (तीन) चा भंग केलेला आहे.

10. The Disciplinary Authority had received complaint against the applicant about his malpractice by passing illegal orders. It is clear from the record that Awdhuth Maharaj Sansthan, Karla was

having Registration No.141. Sheet No.4, Plot No.286 and 287 were recorded in the name of Awdhuth Maharaj Devsthan. The area of the said plot is about 460.9 sq. mtr. and 186.6 sq. mtr. The Awdhuth Maharaj Bhajani Mandal applied for ownership and transferring the name before the Taluka Inspector of Land Record. The said application was rejected. Awdhuth Bhajani Mandal filed appeal before the applicant. In the appeal, two affidavits were filed by two persons. The applicant without verifying the documents in respect of ownership passed the impugned order in favour of Awdhuth Bhajani Mandal, Junivasti, Badnera. The material portion of the order passed by applicant is reproduced below:-

अनुमान:-

मौजा कारला ता.चांदूररेल्वे येथील शिट नं.४ प्लॉट नं.२८७ क्षेत्र ३२४ चौ.मी. ही मिळकत अवधुत भजनी मंडळ जुनीवस्ती बडनेरा हयांचे ताब्यात व वापरात असुन गावठांण भूमापनाच्या वेळी तत्कालीन विशेष जिल्हा निरीक्षक भूमि अभिलेख तथा चौकशी अधिकारी मोशी हयांनी सदर मिळकतीबाबत दिलेला निर्णय चुकीचा असल्याचे माझे मत झाले आहे. सबब मी अधीक्षक भूमि अभिलेख, अमरावती महाराष्ट्र जमीन महसुल अधिनियम १९६६ चे कलम २५५(३) नुसार प्राप्त प्राधीकार शक्तीचा वापर करुन खालील प्रमाणे निर्णय देत आहे.

निर्णय:-

मौजा कारला ता.चांदूररेल्वे येथील शिट नं.४ प्लॉट नं.२८७ क्षेत्र ३२४ चौ.मी. ही मिळकतीवर श्री. अवधुत महाराज संस्थान

कारला ऐवजी श्री. अवधुत भजनी मंडळ
जुनीवस्ती वडनेरा र.नं. महा ६१३/०९ अमरावती
अशी नोंद करणेत यावी.

11. The impugned order passed by the applicant *prima facie* is illegal. A prudent illiterate man can say that for transfer of immoveable property, registered document is required. The applicant without any registered document in favour of Awdhuth Bhajani Mandal directed to transfer / record the name of Awdhuth Maharaj Bhajani Mandal in place of Awdhuth Maharaj Devsthan. This order is not only illegal but *prima facie* appears to be passed by malpractice.

12. In respect of Charge No.2 one Smt. Ashatai Lendhe had purchased plot. The applicant has passed the order to record the said plot in her name without verifying registered sale deed. It appears from the order passed by the applicant that he has not passed the order in a judicial capacity. The impugned orders passed by the applicant were set aside in the Appeal. In the Appeal, it was observed that without any material documents, the applicant has passed the impugned orders.

13. It is the case of the applicant that he was working in a Quasi-Judicial Authority and therefore he cannot be charge-sheeted in the departmental enquiry. The learned counsel for applicant Shri.

S.N. Gaikwad has vehemently argued that the order passed by applicant was in a Quasi-Judicial Authority. Therefore, in view of the judgment of the Hon'ble Supreme Court in the case of ***Zunjarrao Bhikaji Nagarkar VS. Union of India & Ors. (cited supra)***, the impugned order of punishment is liable to be quashed and set aside. In the cited judgment, the Authority / Petitioner has passed the order of release of Vehicle, but the penalty amount was not mentioned in the order. There was no reason for not awarding the penalty. Therefore, it was held that it is not a mis-conduct, but the order was passed in Quasi-Judicial Authority.

14. The cited Judgment of the Hon'ble Supreme Court in the case of ***Zunjarrao Bhikaji Nagarkar VS. Union of India & Ors. (cited supra)*** is not applicable in the present case because the applicant was working as a Superintendent of Land Record. He was well aware of transferring the ownership by a registered sale deed. An illiterate / prudent person is aware that immoveable property cannot be transferred without any registered document. The applicant being the Appellate Authority, it was his duty to see as to whether any registered document is produced on record. The claim of Awdhuth Bhajani Mandal was rejected by the Taluka Inspector of Land Record. As per the Revenue record, the plots were belonging to Awdhuth Maharaj Devsthan. Those plots were recorded in the name of

Awdhuth Maharaj Devsthan. The said Devsthan was having a trust having registered number. The Awdhuth Bhajani Mandal was not the owner of the said plots. The applicant on the basis of only two affidavits, directed to record the name of Awdhuth Bhajani Mandal in place of Awdhuth Maharaj Devasthan. *Prima facie* it appears that the applicant has intentionally passed such illegal order in favour of Awdhuth Bhajani Mandal.

15. In respect of direction to record the name of Sau. Ashatai Lendhe, it is clear that without any registered document the applicant directed to record her name. The applicant was well aware that without any registered document, the name cannot be recorded in the Revenue Record.

16. It appears that the applicant had intentionally passed the illegal order, therefore, punishment issued by the Disciplinary Authority is perfectly legal and correct. The applicant cannot say that he had passed the impugned orders in a Quasi-Judicial Authority. Moreover, this Tribunal cannot interfere in the finding / punishment recorded by the Disciplinary Authority. The material portion of the Judgment of Hon'ble Supreme Court in the Case of ***State of UP & Ors. VS. Nand Kishore Shukla & Ano. (cited supra)*** is reproduced below:-

“ It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a Government servant based upon the proved misconduct against the Government servant. Its proportionality also cannot be gone into by the Court. The only question is whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the respondent to disable him to seek any appointment elsewhere. Under these circumstances, we think that the High Court was wholly wrong in setting aside the order.”

17. In view of the above cited Judgments by the side of respondents, this Tribunal cannot interfere in the impugned punishment order. Hence, we proceed to pass the following order :—

O R D E R

The O.A. is dismissed with no order as to costs.

(Nitin Gadre)
Member (A).

(Justice M.G. Giratkar)
Vice Chairman.

Dated :- 28 /11/2024.

PRM.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Piyush R. Mahajan

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 28/11/2024.