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PANDIT D. AHER
v.
STATE OF MAHARASHTRA

OCTOBER 31, 2006

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Service Law:

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*Maharashtra Civil Service (Pension) Rules, 1982—Rule 27—
Departmental proceeding—Charge of misconduct causing huge monetary
loss to Government—Delinquent found guilty—Punishment of forfeiture of
entire pension and gratuity and recovery of the loss to Government—
Departmental appeal and application before Administrative Tribunal
dismissed—Writ Petition on the ground that departmental proceeding was
vitiated on account of non-furnishing of copy of preliminary inquiry report
and non-compliance of procedure laid down under the Rules—Dismissal of—
In appeal, held: In view of finding of fact that charges of grave misconduct,
have been proved and the procedure laid down under the rule has been
followed, interference of Supreme Court not called for—Non-supply of
document is not material—Documents which are required to be supplied are
only those whereupon reliance is placed by the department.*

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*Practice and Procedure—Plea—Raising of—For the first time before
Supreme Court—Permissibility—Held: Such plea not permissible.*

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**A departmental proceeding was initiated against the appellant-official
on the charge that he had committed serious misconduct causing loss to the
Government to the tune of Rs. 2,85,658/-. Inquiry Officer found the appellant
guilty of the misconduct and by show cause notice punishment of forfeiture
of the entire pension and gratuity and recovery of the Government losses,
was proposed. Disciplinary Authority imposed punishment of forfeiture of
entire pension and gratuity permanently. Departmental appeal, as well as the
application before State Administrative Tribunal was dismissed.**

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**Appellant filed Writ Petition on the ground that a copy of preliminary
inquiry report had not been furnished to him as a result whereof he was
prejudiced in raising a proper defence; and that Disciplinary Authority had**

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not followed the procedures laid down in the Maharashtra Civil Service (Pension) Rules, 1982. High Court, rejecting the pleas of the appellant, dismissed the Writ Petition. A

In appeal to this Court appellant contended that inquiry proceeding was vitiated as several documents asked for by the appellant had not been supplied. B

Dismissing the appeal, the Court

HELD: 1. What was necessary for imposition of punishment was to arrive at a finding of misconduct which is of grave nature or misconduct involving negligence on the part of delinquent officer. The chargesheet issued against the appellant fulfils the aforementioned conditions. He was found guilty of commission of alleged acts of misconduct. Thus, on the basis of the findings arrived at in the departmental inquiry that he was guilty of such misconduct, it was not required to specifically mention therein that the delinquent was guilty of grave misconduct or negligence. [125-F-G] C

2. The appellant being a Supervisory Head, had a duty to see that the Scheme is implemented in its letter and spirit. Two of the charges framed against him clearly relate to administrative lapses on his part. In the departmental inquiry also, the said charges have been proved. D

[125-G-H; 126-A]

3. In view of finding of fact that all the procedures laid down under Rule 27 of the Rules have been complied with there is no reason to interfere therewith. [126-B] E

4. A finding of fact has been arrived at that a copy of the inquiry report was supplied to the appellant. A copy of the document which has not been relied upon, is not required to be supplied to a delinquent officer. The documents which are required to be supplied are only those whereupon reliance has been placed by the Department. [124-E-F] F

5. Submission of the appellant to the effect that documents had not been supplied to him does not appear to have been raised by him before the High Court. As no such contention had been raised, he cannot be permitted to raise it for the first time before this Court. [126-A-B] G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4612 of 2006

From the Judgment and final order dated 22-7-2005 of the High Court H

A of Judicature at Bombay in Writ Petition No. 4467/2005.

Shivaji M. Jadhav for the Appellant.

V.N. Raghupathy for the Respondent.

B The Judgment of the Court was delivered by

S.B. SINHA, J : Leave granted.

C This appeal is directed against a judgment and order dated 22.7.2005 passed by a Division Bench of the High Court of Judicature at Bombay in Writ Petition No. 4467 of 2005 whereby and whereunder the writ petition filed by appellant herein was dismissed.

D The appellant at all material times was working as Block Development Officer. A departmental proceeding was initiated against him on the purported charge that he had committed serious misconduct, causing loss to the government to the tune of Rs. 2,85,658/-. A departmental inquiry was conducted on the said charges. The Inquiry Officer in his report held the appellant to be guilty thereof. Two show cause notices were issued to him. On 21.12.1998, in the show cause notice, imposition of punishment of recovery of government losses to the tune of Rs. 2,85,658/- and forfeiture of pension for a period of five years was proposed. Another notice was served on him on 20.07.2000 proposing imposition of punishment of forfeiture of the entire pension and gratuity and to recover the amount of the government losses to the tune of Rs. 2,85,658/- which were not recoverable as per the earlier notice dated 21.12.1998.

E By an order dated 17.5.2002, the Disciplinary Authority imposed a punishment of forfeiture of entire pension and gratuity permanently. An appeal was preferred by him before the Appellate Authority which was dismissed. The appellant filed an application before the Maharashtra State Administrative Tribunal at Mumbai being O.A. No. 559 of 2004. The said original application was dismissed by the Tribunal.

F Before the High Court, contentions raised by the appellant were:

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- (i) A copy of the preliminary inquiry report had not been furnished to him as a result whereof he was prejudiced in raising a proper defence in the departmental proceedings;
 - (ii) Disciplinary Authority had not followed the procedures laid down in the Maharashtra Civil Service (Pension) Rules, 1982 (for short
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“the Rules”).

By reason of the impugned judgment, the High Court rejected the said contentions stating that the preliminary inquiry report having not been relied upon nor having been referred to in the report of the Inquiry Officer. It was found that a copy of the report in fact had been supplied to him and he also cross-examined the witnesses on the basis thereof. It was, therefore, held that the appellant was not prejudiced by reason of non-supply of the preliminary inquiry report as alleged or otherwise.

In regard to the purported non-compliance of Rule 27 of the Rules, the High Court opined that show cause notice having been served upon the appellant and he having shown cause thereto, the question of non-compliance of the principles of natural justice did not arise. It was further held that it was not necessary to specifically state in the impugned order that the appellant had committed grave misconduct or negligence.

Mr. Shivaji M. Jadhav, learned counsel appearing on behalf of the appellant would, however, submit that the inquiry proceeding was vitiated as several documents asked for by the appellant had not been supplied.

Rule 27 of the Rules reads thus:

“27. Right of Government to withhold or withdraw pension - (1) Government may, by order in writing, withholding or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before

- A his retirement or during his re-employment, shall after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.
- B (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during the re-employment.
- (i) shall not be instituted save with the sanction of the Government;
- C (ii) shall not be in respect of any event which took place more than four years before such institution, and;
- (iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.....”
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The question as to whether the proceedee has committed grave misconduct or negligence during his tenure of service is essentially a question of fact. The power of the government to pass an order of withholding or withdrawing the pension or part thereof in terms of the said Rule is not in dispute. It is also not in dispute that a departmental proceeding was initiated and the appellant was found guilty of commission of the alleged misconduct therein. A finding of fact has been arrived at that a copy of the inquiry report was supplied to him. A copy of the document which has not been relied upon, is not required to be supplied to a delinquent officer. The documents which are required to be supplied are only those whereupon reliance has been placed by the Department.

Charges levelled against the appellant were:

- G “(1) Violated Rule 136 of Zila Parishad and Panchayat Samiti conduct of Account Code 1968 while implementing the Jewandhara Well Scheme in Surgana.
- (ii) Has violated Government Decision bearing No. JRY-1090 -CR-1674 52 dated 16.11.1996 and an excess amount of Rs. 1,75,198.00 has been distributed and thus has committed misconduct as contemplated under
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Rule 3 of Maharashtra Civil Services (Conduct) Rules, 1979.

(iii) While working as Block Development Officer in Panchayat Samiti, Surgana during the period from 6th November, 1987 to 16th April, 1991 having spent an amount on housing under Gharkal Scheme. The quality of work was inferior and that the same had become dilapidated and was inhabitable and thus an amount of Rs. 1,13,587.17 though was spent has gone waste and thus a misconduct as contemplated under Rule 3(3) of Maharashtra Civil Services (Conduct) Rules, 1979 has been committed.”

Indisputably, the charges are of grave nature. The appellant has not only been charged with negligence in his duty, the State is also said to have suffered losses on account of his action and/ or inaction in implementing the Jeevandhara Well Scheme.

In its counter-affidavit, Respondent herein stated that the preliminary inquiry had been conducted by one Shri Nagargoje. As the appellant had cast aspersions against him, the preliminary inquiry was entrusted to three different officers, viz., Chief Accounts and Finance Officer, Zila Parishad, Nashik, Executive Engineer (B&CD), Zila Parishad Nashik and Executive Engineer (Minor Irrigation), Zila Parishad Nashik. The appellant had been indicted by all the said officers. Preliminary inquiries further were confidential in nature. They were meant for arriving at a satisfaction by the disciplinary authority as to whether a departmental proceeding should be initiated or not.

It is now well-settled that what was necessary for imposition of punishment was to arrive at a finding of misconduct which is of grave nature or misconduct involving negligence on the part of delinquent officer. The chargesheet issued against the appellant fulfils the aforementioned conditions. He was found guilty of commission of alleged acts of misconduct. Thus, on the basis of the findings arrived at in the departmental inquiry that he was guilty of such misconduct, in our opinion, it was not required to specifically mention therein that the delinquent was guilty of grave misconduct or negligence.

The appellant was a Block Development Officer. He was incharge of the Scheme which was to be implemented in his Block. He, being a Supervisory Head, had a duty to see that the Scheme is implemented in its letter and spirit. Two of the charges framed against him as noticed hereinbefore clearly relate to administrative lapses on his part. In the departmental inquiry also, the said

A charges have been proved.

Submission of the appellant to the effect that documents had not been supplied to him does not appear to have been raised by him before the High Court. As no such contention had been raised, we are of the opinion that he cannot be permitted to raise it for the first time before us.

B As noticed hereinbefore, a finding of fact has been arrived at that all the procedures laid down under Rule 27 of the Rules have been complied with. We do not see any reason to interfere therewith.

C For the reasons aforementioned, we do not find any merit in this appeal which is dismissed accordingly. No costs.

K.K.T.

Appeal dismissed.