IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10573 OF 2015

1. **The State of Maharashtra,**
through the Principal Secretary,
Social Justice and Special
Assistance Department,
Having office at Mantralaya,
Extension Bhavan,
Mumbai – 400 032.

2. **The Director of Social Welfare,**
M. S., Pune having office
Pune – 411 001. **..Petitioners**

Versus

Smt. Prabha Krishnaji Kamble,
Warden – Class III,
Government Girls Hostel,
At Post/Taluka, Gadhinglaj,
District Kolhapur. **..Respondent**

Mr. N. C. Walimbe, Addl. G. P. a/w. Mr. N. K. Rajpurohit, AGP for the Petitioners.

Mr. Bhushan A. Bandiwadekar for the Respondent.

CORAM : A. S. CHANDURKAR & JITENDRA JAIN, JJ.

ARGUMENTS HEARD ON : 23rd JANUARY 2024.
JUDGMENT DELIVERED ON : 6th FEBRUARY 2024.

JUDGMENT: (Per Jitendra Jain, J.)

1. **Rule**. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By this petition under Article 227 of the Constitution of India, it challenges an order passed by the Maharashtra Administrative Tribunal, Mumbai (Tribunal) dated 16th February 2015, whereby the Original Application (for short "OA") of the Respondent has been allowed and the Petitioner-State has been directed to realise the services of the Respondent along with all retirement benefits on account of exoneration of all the charges framed against the Respondent.

Narrative of the events:-

(i) On 31st March 1979, the Respondent was appointed as a Warden Class-III and in the year 1981, she joined as warden of Sant Sakhubai Backward Class Government Girls Hostel at Ahmednagar, Maharashtra.

(ii) On 8th November 1983, the Respondent was placed on suspension on account of alleged misappropriation of funds.

(iii) On 17th December 1983, a charge-sheet alleging charges of misappropriation was issued to the Respondent. The Respondent submitted her detailed reply to the said charges.

(iv) On 10th August 1984, an Enquiry Officer was appointed to conduct an enquiry against the Respondent. The FIR was also filed with the Ahmednagar Police Station against the Respondent and her husband for the offences punishable under sections 409, 467, 477/

A, 468, 471 read with section 34 of the Indian Penal Code, 1860, on 28th May 1984.

(v) On 28th September 1984, the Enquiry Officer submitted his report to the Disciplinary Authority. In the said report, the Enquiry Officer came to a conclusion that Charge Nos.1, 3 and 5 are not proved and Charge Nos.2, 4 and 6 are proved.

(vi) On 12th September 1985, the Respondent was reinstated in her service, subject to the departmental enquiry being conducted against her.

(vii) On 8th May 2002, the Judicial Magistrate, First Class, Ahmednagar acquitted the Respondent and her husband from all the charges. The learned Magistrate in his order observed that the prosecution has failed to prove any sort of guilt against the accused-Respondent and the prosecution has failed to establish requisite ingredients of the sections of the Indian Penal Code, 1860 which were invoked in the FIR.

(viii) In the year 2006, the Respondent was called upon to submit her say on the charges levelled against her in the departmental enquiry proceedings.

(ix) On 20th November 2008, the departmental enquiry was concluded

and she was found guilty on account of Charge Nos.2, 4 and 6 and on the balance charges, she was not found guilty. The departmental enquiry officer after referring to the order of the Magistrate passed an order of compulsory retirement of the Respondent from her services w.e.f. 29th November 2008, under Rule 5(1)(vii) of the Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979. The said order also observed recovery of Rs.23,824/- from Respondent being financial loss incurred by the Petitioner-State. The aforesaid order was challenged in appeal by the Respondent.

(x) On 6th March 2009, the appeal filed by the Respondent was rejected and the order of compulsory retirement and recovery of the financial loss was confirmed. The said appeal order was further subject matter of review proceedings filed by the Respondent.

(xi) On 5th February 2011, the review application made by the Respondent was also dismissed.

3. Being aggrieved by the aforesaid proceedings and various orders passed against the Respondent, an OA No.121 of 2012 as came to be filed by the Respondent with the Tribunal on various grounds stated therein. The Tribunal vide order dated 16th February 2015, allowed the OA filed by the Respondent and exonerated the Respondent from all the

charges and further directed the Petitioner-State to grant all the service benefit to the Respondent from the date of her suspension till the date of her superannuation. The Tribunal gave various reasoning in support of its decision, namely, non-examination of any witnesses and opportunity of cross-examination being not allowed to the Respondent, delay in the proceedings, decision of the Magistrate in criminal proceedings, the nature of offence for which the charges were proved and the quantum involved, etc. It is on this backdrop that the present petition is filed by the Petitioner-State challenging the order of the Tribunal.

Submission of the Petitioner:-

4. The Petitioner submitted that the Tribunal ought not to have relied upon the criminal proceedings because it is settled position that the disciplinary and criminal proceedings are separate proceedings and the parameters required to test the veracity of these proceedings are different. The Petitioners further submitted that Tribunal ought not to have directed the Petitioner-State to grant all the benefits to the Respondent, since she was proved to have indulged in misappropriation of funds and she was found guilty on 3 out of 6 charges. The Petitioners further refuted the ground of delay for the purpose of allowing the application filed by the Respondent and quashing the disciplinary proceedings. The Petitioner submitted that there was sufficient material on record to prove the charges against the Respondent and the Tribunal

ought not to have interfere in the disciplinary proceedings. The Petitioner in support of its submissions have relied upon the decision in the case of ***Ex-Constable Ramvir Singh Vs. Union of India & Ors.***[1]***, State of Gujarat Vs. R. C. Teredesai & Anr.***[2] ***and Union of India Vs. H. C. Goel***[3]**.**

Submission of the Respondent:-

5. The Respondent opposed the Petition and supported the order of the Tribunal. The Respondent submitted that the disciplinary enquiry report, appeal order and review order are bad in law inasmuch as the same are non-speaking and without considering the detailed submission made by the Respondent in the course of proceedings. The Respondent further submitted that on account of delay of more than 2 to 3 decades between the enquiry report and the disciplinary enquiry, the proceedings are bad in law. The Respondent also submitted that the Petitioner-State has failed to prove the charges and as relied upon the order passed by the Magistrate dated 8th May 2002. The Respondent further in alternative, submitted that the charges which are alleged to have been proved and the punishment which is imposed on the Respondent is disproportionate and therefore, even on this account, the proceedings are bad in law and not justified. The Respondent, therefore, prayed for dismissal of the Petition.

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1 (2009) 3 SCC 97
2 (1969) 2 SCC 128
3 1963 SCC Online SC 16

6. The Respondent relied upon the case of ***Yoginath D. Bagde vs. State of Maharashtra & Anr.***[4] in support of the submission in case Disciplinary Authority disagrees with the findings of the enquiry authority, then reasons have to be recorded for such disagreement and in the absence of the same the proceedings are bad in law.

7. We have heard the learned counsel for the Petitioner-State and the learned counsel for the Respondent and with their assistance have perused the documents, pleadings, replies, etc. annexed to the Petition. We have also perused the original record of the Petitioner-State in connection with the proceedings against the Respondent.

Analysis and conclusion :-

8. In our view, for the reasons stated hereinafter, we do not find any grounds for interference with the order of the Tribunal.

9. Firstly, the enquiry was initiated in the year 1983 for the alleged offence of misappropriation during the period September-1982 to December-1982. The Petitioners-State lodged a complaint with the Police Station on 28th May 1984. On 28th September 1984, the enquiry officer submitted his report. On 8th May 2002, the Magistrate passed an order quashing the complaint against the Respondent and her husband for failure on the part of the prosecution to prove the charges. It was

4 (1999) 7 SCC 739

only on 20th November 2008, that is after 3 decades, that the compulsory suspension order came to be passed against the Respondent and for recovery of the financial loss. In our view, the order imposing punishment came to be passed almost after 30 years of the initiation of the enquiry proceedings. There is no explanation whatsoever by the Petitioner-State for such a long delay. Assuming, the Petitioner-State waited for the order of the Magistrate, then even in that scenario the Magistrate has passed an order on 8th May 2002, whereas order imposing the punishment was passed on 20th November 2008 which is almost after 6 and half years, for which again there is no explanation. In our view, if allegations made by the Petitioner-State were serious then they ought to have acted impromptu and ought not to have waited for such a long period of 30 years to impose the penalty. This delay in adjudication of the enquiry proceedings would be not only against the interest of the Petitioner-State, but also against the Respondent. The Petitioner-State by permitting such an employee against whom allegations are made of misappropriation of funds would in effect amount to acceding to and permitting such person to be in charge of affairs which is against the interest of the Petitioner-State. Insofar as the employee is concerned the sword of the allegations hanging over for a period of 30 years is also not proper. Looking from the employer and employee points of view, in our view, such proceedings ought to have

been completed within a reasonable period in the interest of the Petitioner-State and the Respondent. The unexplained delay of 30 years, in our view, vitiates the proceedings and also it waters down the deterrent effect, if later it is found the allegations to be true. In the present case, in our view, such a long unexplained delay would result into the proceedings being held to be bad in law.

10. Secondly, order dated 20th November 2008 whereby punishment is imposed on the Respondent is a non-speaking order. The said report only reproduces the findings of the enquiry officer and narrates the events in criminal proceedings and thereafter concludes that the Respondent is guilty of the charges and imposes penalty under Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979. There is no consideration of the Respondent's detailed submission dated 29th June 2006 by the said Authority. There is not even a reference to the said submission in the order. In our view, the Authority ought to have considered these submissions and given reasons for not accepting the same before imposing the punishment. In our view, non-consideration of these submissions and the order imposing the penalty without giving any reasons would vitiate the proceedings being contrary to the principles of natural justice and therefore on this count also, we do not find any fault in the Tribunal's order.

11. The appeal order dated 25th March 2009 and the review order dated 5th February 2011 are also non-speaking and therefore the illegality which crept in the order imposing the penalty/punishment was carried forward by the Authorities in appeal and review proceedings. Therefore, even on this count, the proceedings and imposition of punishment on the Respondent is bad in law.

12. We are conscious of the fact that the criminal proceedings and disciplinary proceedings are separate and require different parameters for judging with respect to these proceedings. However, the Petitioner-State themselves have relied upon the pendency of these proceedings with respect to certain charges and therefore now they cannot turn around and submit otherwise. The order of the Magistrate states that the prosecution had failed to prove the charges although evidence was led of two witnesses. In our view, on the basis of the same evidence and charges if criminal proceedings are quashed by the Magistrate then certainly that would be one of the relevant factors to be considered along with other factors for testing the reasoning of the Tribunal in allowing the Original Application. In our view, therefore no fault could be found in the reasoning of the Tribunal in relying upon the Magistrate's order for allowing the Original Application, moreso, because this was not the sole ground on which the Original Application

has been allowed, but it was one of the grounds/reasoning of the Tribunal. The Supreme Court in the case of ***Ram Lal Vs. State of Rajasthan***[5], has observed that an order passed in criminal proceedings can certainly be considered in adjudication of the disciplinary proceedings and in our view, the present case falls within the parameters laid down by the said decision.

13. Out of the 6 charges framed against the Respondents, only following 3 were held by the Disciplinary Authority to have been proved, namely following:-

> *"2. That she has produced bogus vouchers in the name of the supplier and tempered the vouchers which leave scope to doubt that this was done with a view to misappropriating the government money.*
>
> *4. That she is a tried to present as if the rates of the Adinath Provision Stores, Ahmednagar are the lowest one so that she should be permitted to make the purchases at the said rates from the open market. The rates shown as lowest on the basis of credit bills are higher than the purchases actually made by her in cash. This leaves scope to doubt for intention to misappropriate the Government money.*
>
> *6. That she has shown the exaggerated wastage of grain that the approved rate and debited the same to the account of grain articles and fire wood. By this way an amount of Rs.3,084-95 has been embezzled".*

14. In our view, the financial loss with respect to charge no.4 was Rs.3,085/-. As against this, imposition of penalty of compulsory retirement would in our view be disproportionate moreso, since the Respondent was directed to pay back Rs.3,084/-. Insofar as, charge no.6

5(2024) 1 SCC 175

is concerned, no witness was examined at the time of disciplinary enquiry nor the Respondent was allowed to cross-examine the accountant. In our view, therefore even with respect to the charges which were proved, the offence does not seem to be grave for passing order of compulsory retirement.

15. The Respondent is justified in relying upon the decision in the case of ***Yoginath D. Bagde*** ***(supra)*** since in the present case also the Disciplinary Authority has not given any reason from disagreeing with the findings of the enquiry authority nor appellate authority has given the same. In the absence of such disagreement being recorded in writing, in our view, the disciplinary proceedings are required to be quashed.

16. We now propose to deal with the case laws cited by the Petitioner-State. The decision in the case of ***Ex-Constable Ramvir Singh*** ***(supra)*** has been relied upon for the proposition that a contention not raised before the lower authority cannot be permitted to be raised. In our view, the said decision is not applicable to the present case, inasmuch as, the issue of delay, merits and validity of the proceedings and the principles of natural justice were raised by the Respondent before the lower authority. The decision in the case of ***R. C. Teredesai*** ***(supra)*** would also not be applicable since the said decision deals with

the powers of the enquiry officer to recommend punishment or not. The decision states that if penalty or punishment is recommended by the enquiry officer then the said material has to be given to the delinquent officer. In the present case, the Respondent was given the enquiry report and therefore this issue does not arise in the present proceedings before us. Insofar as the decision in the case of ***H. C. Goel (supra)*** is concerned on the same line as stated above, the said decision is not applicable to the facts of the present case.

17. In our view and on a reading of the Tribunal order as a whole, we do not find any perversity in the order challenged before us. The Tribunal in paragraph No.26 has observed that even in their independent assessment, order imposing the penalty cannot stand. In our view, the order of the Tribunal has considered all the aspects and no fault can be found in the said order dated 16th February 2015.

18. For the aforesaid reasons, the writ petition stands dismissed. Rule is discharged with no order as to costs.

(JITENDRA JAIN, J.) (A. S. CHANDURKAR, J.)