



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7416 OF 2023

Sandeep Uttam Solwande,]
Age – 42 years, Occu. Nil,]
R/of. Dhiwar Building, Near Kokate Hospital,]
Opp. Sonal Building, Pimple Gurav,]
Pune – 411 061.] **...Petitioner**

Versus

1. The State of Maharashtra]
Through Principal Secretary,]
Department of Rural Development and]
Water Conservation Department,]
Maharashtra]
2. Deputy Commissioner, Vidhan Bhavan, Pune]
Division, Pune]
3. Chief Executive Officer, Pune Zilla Parishad,]
Pune] **...Respondents**

Mr. Umesh Pawar for Petitioner.

Ms. Akanksha Helaskar for Respondent No. 3.

Coram : Sharmila U. Deshmukh, J.

Reserved on : 18th April, 2026.

Pronounced on : 29th April, 2026.

Judgment :

1. ***Rule.*** Rule made returnable forthwith and heard finally with the consent of the parties.
2. By this Petition, the Petitioner is aggrieved by the order of dismissal issued by the Respondent No. 3- Chief Executive Officer, Zilla

Parishad, Pune which was upheld by the Respondent Nos. 1 and 2 vide orders dated 23rd June, 2017 and 10th October, 2018.

3. The facts as borne out of the Petition are that the Petitioner was appointed on the post of Junior Assistant in Zilla Parishad, Pune in the year 1997. By communication dated 28th March, 2013, the Block Development Officer, Maval informed the Chief Executive Officer, Zilla Parishad, Pune to take action against the Petitioner for misconduct pursuant to which by order of 5th April, 2013, the Petitioner came to be suspended. On 31st July, 2013, the Petitioner was served with copy of the chargesheet along with statement of allegations. The Petitioner forwarded his written statement dated 2nd September, 2013 to the Block Development Authority, which was his higher authority, who failed to forward it within time before the Disciplinary Authority and submitted the same on 10th October, 2013.

4. The Disciplinary Authority in the absence of written statement concluded that the Petitioner is not interested to give any explanation and appointed Inquiry Officer to conduct departmental inquiry of the Petitioner. It is pleaded that before the commencement of inquiry, the documents mentioned in Annexure-III of chargesheet were not supplied to the Petitioner and by communication of 2nd November, 2013, the documents were sought by the Petitioner from the concerned department of Zilla Parishad, Pune which was made

available on 25th November, 2013 and additional written statement came to be filed on 6th December, 2013. It is pleaded that the Inquiry Officer, during the pendency of proceedings passed order on 10th December, 2013 directing the Presenting Officer to provide all documents sought by the Petitioner. By letter of 11th December, 2013, the Presenting Officer furnished only some of the documents and the ground of non availability of other documents.

5. The Inquiry Officer concluded the hearing and filed Final Report on 29th March, 2014 holding that the Charge Nos 1, 2, 5 and 6 are proved and Charge Nos. 3 and 4 are partially proved. The Inquiry Officer sent his final report to the Disciplinary Authority and show cause notice dated 27th March, 2015 was issued by the Disciplinary Authority to the Petitioner which was duly responded by the Petitioner on 28th April, 2015. The Disciplinary Authority passed the order of dismissal on 30th June, 2015 which was appealed before the Appellate Authority. The Appeal came to be dismissed on 23rd June, 2017. The revision before Respondent No. 1 came to be dismissed on 10th October, 2018. Hence, the present Petition is preferred.

6. Mr. Pawar, learned counsel appearing for Petitioner has taken this Court through the findings of the Inquiry Officer and would submit that there were six charges leveled against the Petitioner i.e. not handing over the complete charge of the Social Welfare Department,

negligence in duty, misappropriation of government funds, non-furnishing of record for the purpose of audit, non-vacating of government quarters and misconduct under Rule 3 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964 [for short, "***Discipline and Appeal Rules, 1964***"]. He would point out that the findings in respect of Charge No 1 is based on the cancellation of files from serial nos. 101 to 116 from the statement of taking charge. He submits that the said statement which is at page 135 is a record of the Petitioner taking over charge from his pre-decessor Shri. S. V. Kendre and specifically endorses that charge was given of files only from Serial Nos. 1 to 100. He points out that the communication at page 131 would indicate that the Petitioner received the charge from Shri. S. V. Kendre only of files from serial no 1 to 100 and that at page 132, in the communication by Shri S. V. Kendre to Block Development Officer, there has been overwriting over Serial No 100 to look like Serial No 117. He submits that Respondent did not examine Shri S. V. Kendre to establish the charge against the Petitioner and the Inquiry Officer has itself noted that if handing over and taking over the charge would have been supervised by superior officer then any such discrepancy would have been revealed. He submits that in the absence of any evidence the Inquiry Officer has held that the charge has been proved.

7. In respect of charge of negligence, he submits that the allegation of negligence was based not only on non-handing over of the charge, but also that there was no record kept of the material received from the Social Welfare Department and distributed, salary bills were not sent on time and salary deductions were not deposited in time. He submits that there was no evidence produced by the Respondents in support of the said charge and the Presenting Officer adopted the submissions advanced in support of charge no. 1. He submits that it was specifically pointed out that on 9th January, 2012, while taking over the charge from Shri. S. V. Kendre, the files as regards the receipt and distribution of material from the social welfare department were not handed over and that by order of 30th August, 2010, the responsibility of payment of salaries and deposit of deductions was the duty of the other clerk Smt. Khumbhare. He submits that the Inquiry Officer acknowledged that the Respondent did not lead any evidence in support of Charge No. 2, however, held that the charge is connected with the charge of not handing over charge and held the charge to be proved which is clearly unsustainable.

8. He would further submit as far as misappropriation of Government funds is concerned, the allegation was that the Petitioner had failed to deposit the OPD amount of Rs. 2,018/-. He would further

point out that Inquiry Officer has recorded that the Presenting Officer adopts the submission advanced in support of first charge. He would further submit that the Petitioner produced the Bank challan evidencing deposit of Rs. 2,018/- through the medical officer. He submits that despite accepting the said evidence, the Inquiry Officer thereafter, held that the allegation is connected with the allegation as regards non-handing over of charge and held the same to be partly proved.

9. He submits that in so far as charge no. 4 as regards non-submission of necessary records for the purpose of audit for period of 2011-2012 is concerned, there were no submissions canvassed by the Presenting Officer and the Petitioner had specifically stated that in the statement of allegation, there is no specific mention of which record was not made available for the purpose of audit. He submits that the Petitioner had specifically stated that the records were kept by Shri. S. V. Kendre and were not handed over to the Petitioner and whatever record was available to the Petitioner was made available to the auditors. He would submit that it was further pointed out that the audit report does not note any such objection that the complete records were not made available. He would further point out that Inquiry Officer held that there was no evidence produced by the Petitioner that he had handed over all files for audit purpose and held

the charge to be partly proved.

10. Insofar as the charge no. 5 of non-vacating of residential quarters is concerned, Mr. Pawar submits that upon being transferred from Panchayat Samiti, Maval to Primary Health Center at Mulshi, the possession of residential quarters at Maval was not handed over as the Petitioner's children were taking education in the local school and that he was ready to pay necessary rent to the Government. He would further submit that the circular of 6th May, 2002 of Government itself records that where the transfer is in Adivasi area, the family members of the concerned employee are permitted to occupy the residential quarters of the prior place of posting. He would submit that even accepting that residential quarters were not vacated, the same does not constitute misconduct inviting major penalty of dismissal from service.

11. He would further submit that charge no. 6 as regards the misconduct under Rule 3 is connected to the other charges and as none of the charges except the charge of non-vacating of residential premises are proved, even charge no. 6 is not proved. He submits that the findings of the Inquiry Officer is based on no evidence and is therefore, unsustainable.

12. *Per contra*, Ms. Helaskar learned counsel appearing for Respondent No. 3 would submit that even in the past, the Petitioner

was issued show-cause notice for misconduct. She would further submit that the findings of the Inquiry Officer are based on evidence which has come on record and therefore, this Court would be slow to interfere where there was some evidence on record to reach the said conclusion. She submits that adequacy of evidence cannot constitute ground for interference by the High Court in exercise of powers under Article 227 of the Constitution of India.

13. She would further point out that charge no. 1 as regards non-handing over of complete charge was proved on the basis of communication of 9th January, 2012 addressed by Shri. S. V. Kendre to Block Development Officer and by reason of the fact that there was cancellation of file nos. 101 to 116 which showed that the charge was not handed over. She submits that other charges were linked to first charge and therefore, stood duly proved. She would further submit that in view of admission that the residential premises were not vacated under the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964, the penalty of dismissal from service was rightly imposed. She would further submit that this Court cannot re-appreciate the evidentiary findings or substitute its view over that of Inquiry Officer. In support, she would rely upon the following decisions :

B. C. Chaturvedi vs. Union of India and Others¹***State of Rajasthan vs. Heem Singh***²**REASONS AND CONCLUSION :**

14. Before proceeding to advert to the merits of the matter, it would be prudent to bear in mind the limitations on the power of High Court while exercising powers under Article 226 or Article 227 of the Constitution of India in disciplinary proceedings. In ***Union of India vs. P. Gunasekaran***³, the Hon'ble Apex Court summarized the scope of interference with disciplinary proceedings as under:

"12.....The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to procedure prescribed in that behalf
- (c) there is violation of principles of natural justice
- (d) the authorities have not disabled themselves from reaching a fair conclusion by some consideration extraneous to the evidence and merits of the case.
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

1 (1995) 6 SCC 749.

2 (2021) 12 SCC 569.

3 (2015) 2 SCC 610.

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

15. The purpose of examining the findings of the Inquiry Officer is not to re-appreciate the evidence on record but to ascertain whether the findings are based on evidence, in which case, this Court would be slow to interfere as it is not the inadequacy of the evidence which vests the power in this Court to interfere, but where the findings are based on no evidence or there is failure to consider vital evidence which demonstrates perversity.

16. Taking the charges leveled against the Petitioner *ad seriatim*, the first Charge was of non-handing over of complete charge by the Petitioner to Shri. Kendre. The statement of allegation in respect of Charge no. 1 alleges that the Petitioner, upon being transferred from Panchayat Samiti to Primary Health Centre, Mulshi, did not hand over the complete charge of the Social Welfare Department files including the files in respect of material received and distributed and therefore, it appears that there is irregularity in distribution of material. Perusal of the Inquiry Report would indicate that the Presenting Officer has submitted that Chairman of Zilla Parishad has expressed displeasure about the working of the Petitioner and that the Block Development Officer had proposed initiation of inquiry for misconduct and the confidential report of the Petitioner in respect of posting is unsatisfactory.

17. The burden is upon the Respondent No 3 to prove the charges. The Respondent No. 3 has adduced any oral or documentary evidence in the inquiry proceedings. On the other hand, the Petitioner has produced the statement of taking over charge from Shri Kendre on 9th January, 2012. Perusal of the said statement of taking over charge would indicate that the files listed from serial nos. 101 to 116 have been canceled by striking out the said serial numbers. Most importantly, the endorsement below the said statement is that the

Petitioner has taken over charge of Serial Nos 1 to 100. The statement also bears the endorsement of Shri S. V. Kendre who had handed over the charge, that charge has been given. In the communication of 9th January, 2012 addressed by Shri Kendre which is at page no. 131-132 of same date, as far as page no. 131 is concerned, the endorsement by the Petitioner is that charge has been taken over of files from serial nos. 1 to 100 which is also endorsed by the said Shri. S. V. Kendre and in the communication of the same date of 9th January, 2012 at page no. 132, there appears to be an overwriting in the number of the serial and number 100 is overwritten as number 117. The overwriting is clear to the naked eye. There is clear evidence of tampering with the official documents.

18. The Inquiry Officer failed to appreciate the document produced by the Petitioner and has held that Petitioner has failed to handover the charge of files from serial 101 to serial no. 116. Notably, the Inquiry Officer observed there was some discrepancy about handing over and taking over of charge which is evident from its observations that such handing over and taking over of charge should have taken place in the presence of superior officer. The Respondent No. 3 did not lead the best evidence available by examining Shri S. V. Kendre who would have explained about the overwriting and would have also deposed about the files of which charge was handed over to the

Petitioner. By reason of withholding of evidence of Shri Kendre, the Inquiry Officer ought to have drawn adverse inference against the Respondent No 3.

19. The Inquiry Officer has ignored the vital evidence of the endorsements appearing on the end of the statement of handing over charge, the communication dated 9th January, 2012 and the overwriting in serial number of the files in the communication. The Inquiry Officer has taken into consideration only the striking of the Serial Nos 100 to 116 from the statement of charge to hold that the allegation of non handing over of complete charge has been proved. The finding of the Inquiry Officer is not supported by any evidence on record and is therefore perverse.

20. Dealing next with the charge of negligence in conduct of duties, apart from the allegation of non handing over of complete charge, the allegation is that the Petitioner has failed to maintain the files in respect of receipt and disbursement of material from the social welfare department and that being in charge of education department has not presented the salary bills on time and has not deposited the salary deductions in time. The statement of allegation is vague and bereft of any particulars as regards the time period during which the delay had occurred. There are no specifics as to when the salary bills were submitted, which would have demonstrated the delay and would

have also enabled the Petitioners to respond accordingly. As the statement of allegations did not set out the requisite particulars, the Petitioner was put to a disadvantage in submitting his defence.

21. Apart from the vague allegations contained in the statement of allegations, the Respondent No 3 did adduce any oral or documentary evidence in support of the said allegation. No records were produced by the Respondent No 3 to prove the delay in presenting the salary bills or deposit of deductions and no witness was examined in support of the said charge. The entire documentary record was in possession of the Respondent No 3 and was not adduced, which mandated drawing of adverse inference.

22. The Inquiry Officer failed to consider the order of 30th August, 2010 produced by Petitioner stating that the responsibility of sending salary bills and deposit of deductions was entrusted to other clerk and also that on 9th January, 2012, Shri S. V. Kendre had not handed over the said files as regards the receipt and disbursement of material. There is no discussion and no finding of the Inquiry Officer on the documentary evidence produced by Petitioner. The Inquiry officer has accepted that there is no evidence produced by Respondent No. 3 and thereafter goes on to holds the charge to be proved on the ground that there is mention of earlier allegation about non handing over of the complete charge. As the charge no. 1 itself is not proved, the

charge no. 2 also stands disproved. The statement of allegations in respect of Charge No 2 was not confined only to non-handing over of complete charge, but also included charge of delayed submission of salary bills and salary deductions. In view of the documentary evidence produced by the Petitioner, it was incumbent on the Inquiry Officer to deal with the evidence, which has been ignored by the Inquiry Officer.

23. Insofar as the Charge no. 3 of misappropriation of government funds is concerned, the charge is very serious in nature which if proved, would have justified the termination of Petitioner's services. The allegation is that OPD sum of Rs. 2,018/- was not deposited in the Bank and has been misappropriated by the Petitioner. As usual, there is no oral and documentary evidence produced by Respondent No. 3. The Petitioner has produced the Bank challan showing the deposit of amount in the Bank through the Medical Officer which finding was noticed by the Inquiry Officer. Despite noticing the said evidence, the Inquiry Officer has held the charge is linked to charge no. 1 of non handing over the complete charge by the Petitioner and therefore, held the charge to be partly proved. There is absolutely no connection between charge of misappropriation of government funds and non-handing of charge by the Petitioner and no basis for connecting the two charges. The findings indicate a sustained attempt to hold against the Petitioner on all counts despite absence of any cogent evidence on

record.

24. Insofar as Charge no. 4 is concerned, the allegation is that for the year 2011-2012, the records were not made available for the purpose of audit. The statement of allegation is extremely vague and no details as regards the files which were not made available for the purpose of audit for the year 2011-2012. The only allegation is that the auditor has expressed displeasure over non-availability of files. In order to prove the charge, it was necessary to lead some evidence to prove that files were not made available by the Petitioner. No evidence was led by the Respondent No 3 and even the audit report was not placed on record to establish that any adverse remarks about delayed handing over of the files was recorded by the auditor.

25. The Inquiry Officer accepted that Respondent No. 3 has not produced any evidence in that respect, however held that the allegation is partly proved because the Petitioner did not submit any evidence to show that all files were made available. Firstly it is the duty of the Respondent No. 3 to establish the Charge and secondly without any specific details as to the files which were not made available during the audit for the year 2011-2012, it was virtually impossible for the Petitioner to make any submissions or produce any evidence in that respect. The records were in the possession of Respondent No. 3 and therefore, the Petitioner even otherwise could not have produced any

record.

26. Insofar as the allegation about non-vacating of residential premises, the Petitioner has admitted that the government premises were retained and has stated that he is ready and willing to pay the necessary rent for occupying the said premises.

27. Insofar as the charge of misconduct under Rule 3 of the Conduct Rules of 1967 is concerned, the said charge is dependent on the other charges alleged against the Petitioner. Except the Charge of non-vacating of residential premises, the rest of the charges have not been proved.

28. Rule 4 of Discipline and Appeal Rules, 1964 provides for imposition of penalty for good and sufficient reasons and sets out the penalties therein as under :

"4. Nature of penalties – Without prejudice to the provisions of any law for the time being in force, the following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Parishad servant namely :-

(i) censure;

(ii) withholding of increments or promotion;

(iii) recovery from pay of the whole or part of any pecuniary loss caused to the Zilla Parishad by negligence or breach of orders;

(iv) reduction to a lower service, grade or post or to a lower time scale, or to a lower stage in a time scale;

(v) compulsory retirement;

(vi) removal from service which shall not be a disqualification for future employment;

(vii) dismissal from service which shall ordinarily be a disqualification for future employment;

(viii) fine not exceeding rupees ten in respect of a Parishad servant belonging to the District Service (Class IV) and fine not exceeding rupees twenty-five in respect of temporary Parishad servant belonging to the District Technical Service (Class III) or District Service (Class III).

Explanation:.....”

29. The term “misconduct” has not been defined in the Conduct Rules of 1967 or the Discipline and Appeal Rules of 1964. Rule 3 of the Maharashtra Zilla Parishad (Conduct) Rules, 1967 mandates that every employee must maintain absolute integrity, discharge his duties and avoid conduct which is unbecoming of a public servant. Rule 7 of the applicable Rules would indicate that penalties from (i) to (iv) are in nature of minor penalties whereas the penalties from (v) to (viii) fall within the ambit of major penalties. There is no submission canvassed by Ms. Helaskar, that the conduct of non vacating the residential quarters, would invite major penalty of dismissal and indeed such a submission could not have been canvassed.

30. This is a classic case where despite no evidence being led by the Respondent No 3, the Inquiry Officer has reached a conclusion that all charges have been proved. Even the charge of non vacating the residential premises is not proved by adducing evidence by Respondent No 3 but by reason of admission by the Petitioner himself.

The findings of the Inquiry Officer are therefore based on no evidence.

31. In the decision of *B. C. Chaturvedi vs. Union of India* (supra), the Hon'ble Apex Court considered the issue of justification of interfering with the punishment imposed by the disciplinary authority. It held that if the High Court reached a finding that there was some evidence to reach the conclusion, it become unassessable and the High Court had no jurisdiction to direct re-consideration of order of penalty. It further held that though High Court did not function as Court of Appeal, when the finding was utterly perverse, the High Court can always interfere with the same.

32. In *State of Rajasthan vs. Heem Singh* (supra), the Hon'ble Apex Court has considered the scope of exercising judicial review in disciplinary matters and has held as under:

“37.....Within the rule of preponderance, there are varying approaches based on context and spectrum. The first end of spectrum is founded on deference and autonomy-deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is entrenched feature of our jurisprudence. Service jurisprudence has recognised it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct....”

33. The Hon'ble Apex Court has defined the fine balance which is required to be maintained while exercising judicial review in disciplinary matters. The Courts are not disabled from interfering with the findings in inquiry proceedings, where the findings are perverse and unsustainable based on no evidence. This is precisely the case in the present proceedings. There is not an iota of evidence which has been adduced by the Respondent No 3 and the Inquiry Officer has held that all charges are proved. It is not a case of inadequacy of evidence but a case of no evidence which would warrant interference under Article 227 of the Constitution of India.

34. Based on the Inquiry Report which concluded that all charges were proved, the drastic punishment of termination from service, which is a major penalty, has been imposed on the Petitioner. The findings of the Inquiry Officer being perverse are unsustainable and are required to be quashed and set aside except the Charge of non handing over of government quarters, which charge has been admitted by the Petitioner himself. By itself, the non vacating of the government quarters is not a substantial misconduct. The penalty of termination from service is disproportionate to the charge of non handing over of government premises on transfer.

35. In *B. C. Chaturvedi vs. Union of India* (supra), the Hon'ble Apex Court has held in paragraph 18 as under:

“18..... The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

36. The order of termination by the Disciplinary Authority was based on acceptance of Inquiry Report, which had held that all charges against the Petitioner are proved. The findings of the Inquiry Officer on all charges except Charge No 5 have been set aside. It is not a case where though all charges have been proved, the penalty being disproportionate is required to be set side, but, a case where the findings are found to be perverse based on no evidence and only one charge is proved, which is not a substantial misconduct. The order of dismissal is of the year 2015 and in order to shorten the litigation, in my view, the punishment can be moulded by this Court. Considering the nature of Charge No 5 and the readiness of the Petitioner to pay the rent for the use of the residential premises, in my view, the penalty under Rule 4(iii) of Discipline and Appeal Rules can be imposed.

37. The Respondent No 3 is entitled to recover from pay of the Petitioner the whole of the pecuniary loss caused to the Zilla Parishad by reason of non vacating of the residential property after transfer

taking into consideration the period of occupation.

38. In light of above, the Petition partly succeeds. The impugned order of termination of service is quashed and set aside and the penalty under Rule 4(iii) of Discipline and Appeal Rules is imposed. Subject to the penalty imposed, the Petitioner is reinstated to the post of Junior Assistant with the continuity of service, backwages and other consequential benefits.

39. Rule is made absolute in the above terms.

[Sharmila U. Deshmukh, J.]