Writ Petition No.8266 of 2004

31.07.2015 Shri Anil Lala, learned counsel for the petitioner.

Shri Rakesh Jain, learned counsel for the respondents Nos. 2 to 4.

Per: A.M. Khanwilkar, Chief Justice:

Heard counsel for the parties.

This petition under Article 226 of the Constitution of India takes exception to the order dated 13.08.2004 passed by the respondent No.4 in appeal and order of termination dated 23.05.2004 (Annexure P-8) passed by the respondent No.3.

2. Briefly stated, the petitioner was appointed as Class-IV employee on 04.01.1995 on regular basis. At the relevant time he was assigned the work of Process Server, in terms of order dated 06.07.1999 issued under the signature of respondent No.3. The incident in question, however, occurred on 07.07.1999 when the petitioner was working in the District Court establishment at Mandla. Since, the Peon assigned with the work of Water server was absent on that day, the petitioner was asked by the respondent No.2 to discharge that work. When the petitioner was asked to provide water by the District Nazir – respondent No.2, he refused to do so. It is also noticed from the charge-sheet served on the petitioner that the petitioner

was asked to perform the duties in the Court of First Additional District Judge, Mandla as Peon but even that instruction was not complied by the petitioner. Thus, the petitioner was proceeded departmentally on the charge of insubordination and also for unauthorisedly remaining absent between 08.06.1999 till 22.06.1999. The petitioner was served with the charge-sheet dated 14.10.2000 which contains three charges. The said charge-sheet reads thus :-

"**कार्यालय जिला एवं सत्र न्यायाधीश, मंडला**

—:आरोप पत्रः—

क्रमांक /दो—12—8/99, मंडला, दिनांक 14 अक्तूबर, 2000

मैं, बी.जी. यादव, जिला एवं सत्र न्यायाधीश, मंडला, आप श्री राजकुमार विश्वकर्मा, आदेशिका वाहक के ऊपर निम्नलिखित आरोप अधिरोपित करता हूँः—

प्रथमः— यह कि दिनांक 07—06—99 को जब आप कार्यालय में उपस्थित हुए तब जिला नाजिर श्री व्ही.एस.गोलवलकर द्वारा आपको आदेशित किया गया कि वाटर—मेन आज उपस्थित नहीं है, इसकिये न्यायालयो तथा अनविभागों में पानी भरने का कार्य करें लेकिन आपने पानी भरने से साफ इन्कार किया एवं न्यायालयों तााि अनुविभागों में पानी नहीं भरा जिससे न्यायाधीशों, अन्या कर्मचारियों आदि को असुविधा हुई।

द्वितीयः— यह कि श्री व्ही.एस.गोलवलकर जिला नाजिर द्वारा आपको प्रथम जिला न्यायाधीश मंडला के न्यायालय में भृत्य की ड्यूटी करने हेतु आदेशित किया गया तब आपने ड्यूटी करने से इन्कार किया तथा आकस्मिक अवकाश का आवेदन पत्र फेंककर आप कर्तवय से अनुपस्थित हो गये।

तृतीयः— यह कि दिनांक 8—6—99 से 22—6—99 तक बिना अवकाश स्वीकृत कराये, कर्तव्य से अनुपस्थित रहे तथा दिनांक 23—6—99

को कर्तव्य पर उपस्थित हुए।

यह कि जिला नाजिर द्वारा दिये गये आदेश का पालन नहीं करता तथा शासकीय कार्य का निष्पादन जान–बूझकर नहीं करना, आकस्मिक अवकाश का आवेदन पत्र फेंककर बिना अवकाश स्वीकृत कराये, बिना अनुमति प्राप्त किये, कर्तव्य से अनुपस्थित रहना तथा तत्पश्चात् बिना अवकाश स्वीकृत कराये कर्तव्य से अनुपस्थित रहना, म.प्र. सिविल सेवा (आचरण) नियम 1965 के नियम 3 एवं 74 का उल्लंघन है जो कि म.प्र. सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम 1966 के नियम 10 के अंतर्गत दंडनीय है।

(बी.जी. यादव)
जिला एवं सत्र न्यायाधीश
मंडला

3. The petitioner submitted response after receipt of the said charge-sheet. In the reply submitted on 07.11.2000, the petitioner asserted thus:-

महानुभाव,

प्रार्थी/आवेदक सविनय जवाब प्रस्तुत करता है :–

1. यह कि आवेदक के आरोप पत्र की कंडिका प्रथम विशिष्ट रूप से इंकारी है। जवाब में कथन है कि मेरे द्वारा उच्चाधिकारियों के आदेश का विधिवत् पालन किया गया है। मैं छोटा कर्मचारी आपके आदेश की अवहेलना करने की कभी कोई चेष्टा नहीं की है।
2. यह कि आवेदक के द्वितीय आरोप पत्र की कंडिका अनावश्यक रूप से भ्रामक है इस कारण अस्वीकार है। जवाब में कथन है कि आवेदक ने अर्जित अवकाश का आवेदन दिया है। जिसमें नायब नाजिर/नाजिर द्वारा मेरे से दुर्व्यवहार करते हुये मेरे पेट में अधिक दर्द होने से मैं आवेदन पत्र देकर चला गया था एवं आरोप पत्र में यह भी दर्शित नहीं है।
3. यह कि आरोप पत्र की कंडिका तृतीय अस्वीकार है। जवाब में कथन है कि आवेदक के पेट में लगातार दर्द नहीं होता कभी कभी गैस के कारण अधिक दर्द होने लगता है और बेचैनी बढ़ जाती है इस कारण आवेदक चिकित्सकीय इलाज करवाने के लिये जिला चिकित्सालय मण्डला गया और आवेदन के साथ संलग्न कर नायब नाजिर/नाजिर को दिया था

लेकिन मेरे साथ ही उपेक्षित व्यवहार करते हुये मुझे जानबूझकर अपमानित किया चूँकि आवेदक पेट के दर्द से भी पीड़ित था और ऊपर से जबरा कार्य करने के लिये दबाव डाला जा रहा था इसलिए मैं आवेदन देकर अपने घर चला गया था।

आवेदक 8.6.99 से 22.6.99 तक चिकित्सकीय अवकाश पर था। स्वीकृत मेडिकल सर्टिफिकेट दिया जाता तब चिकित्सकीय अवकाश स्वीकृत किया जाता है पूर्व में आवेदन निरस्त किया जाना स्पष्ट कर्मचारी को मिलने वाली सुविधा से वंचित किया जाना है व कर्मचारी के प्रति द्वेश पूर्व अभियोजन का खुला प्रमाण मैं एक छोटा कर्मचारी नियमों व आदेश का विधिवत् परिपालन करता रहा हूँ और करूँगा।

(अतिरिक्त कथन)

आवेदक के साथ श्रीमान् नायब नाजिर/नाजिर द्वारा जानबूझकर आवेदक को परेशान करने की हैसियत से जबरन कोई भी कार्य सौंप दिया जाता है और मेरे सामने उन्हीं भृत्य को भगा कर उनसे आवेदन लेकर उनका आवेदन स्वीकार करते हैं और मेरे द्वारा दिये आवेदन को अस्वीकार कर देते हैं। मैंने कार्यालय पदस्थ अधिकारियों के आदेश का विधिवत् पालन किया है और सक्षम कार्य मुझे सौंपा जाता है कर्तव्य पूर्वक निवेदन करता हूँ यही मेरा आरोप पत्र का जवाब है।

अतः श्रीमान जी से निवेदन है कि आवेदक का आरोप पत्र का जवाब स्वीकार करते हुये की जा रही जॉच कार्यवाही से दोषमुक्त किये जाने की दया करें।

स्थानः निवास
दिनॉकः 7–11–2000

आवेदक
राजकुमार विश्वकर्मा
आ0 वा0 निवास

4. The petitioner appeared before the Inquiry Officer on 20.12.2002 for the first time. The petitioner chose to remain absent thereafter and did not participate in the inquiry for reasons best known to him. On 20.12.2002, the Inquiry Officer had adjourned the proceedings to 24.12.2002, which fact was within the knowledge of the petitioner.

5. As aforesaid, the petitioner did not appear on the returnable date which was granted pursuant to the request

made by him to give him time to engage defence Assistant, or on subsequent dates fixed by the Inquiry officer, for the reasons best known to him. As a result, the Inquiry Officer proceeded with the inquiry and after examining the departmental witnesses closed the inquiry. In the inquiry report submitted on 28.08.2003, the Inquiry Officer found all the three charges framed against the petitioner, as proved. The Inquiry Officer then called upon the petitioner to submit his reply, to which the petitioner responded on 8.10.2003 (Annexure P-7). In this reply, the petitioner reiterated the stand taken by him in the previous reply filed by him on 17.10.2000. In addition, the petitioner alleged that the departmental enquiry is at the behest of respondent No.2, who was biased because of refusal to do his personal work in the past.

6. The inquiry report was submitted to the Disciplinary Authority. The Disciplinary Authority considered the inquiry report as well as the evidence collected during the inquiry and the response filed by the petitioner to the charge-sheet. The petitioner was also afforded personal hearing by the Disciplinary Authority before passing the impugned order dated 23.2.2004. The Disciplinary Authority accepted the findings recorded by the Inquiry

Officer and concluded that all the three charges have been proved against the petitioner. The defence taken by the petitioner has also been considered by the Disciplinary Authority and negatived. The Disciplinary Authority then finally proceeded to impose punishment of removal from service. Against this decision, the petitioner preferred a statutory appeal before the respondent No.4, which came to be rejected on 13.08.2004. The Appellate Authority affirmed the opinion of the Disciplinary Authority and confirmed the order of punishment of removal. In this backdrop, the petitioner has approached this Court by way of present writ petition.

7. The first contention raised by the petitioner, is that, the decision of the Appellate Authority is not a speaking order. No reasons have been recorded for dismissing the appeal. The second point raised by the petitioner is that the procedure prescribed under Rule 14(11) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 has not been complied with in the present case. Further, the inquiry proceeded *ex parte* without affording any opportunity to the petitioner. As a result, the entire inquiry against the petitioner is vitiated on that count. The next contention urged before us, is that, the appointment of the

petitioner was as a Process Server. The posting of the petitioner was to discharge the work of Process Server. He was, however, called upon to do the work of Water Server, who was absent on that day. Since the petitioner was not posted as Water Server, by no stretch of imagination, it can be said to be a case of insubordination even if the allegation made by the concerned departmental witness is accepted as it is. The last point urged before us, is that, in any case the punishment of removal is excessive. Besides these points, an attempt was made by the learned counsel for the petitioner to persuade us to reappreciate the evidence produced during the inquiry to take a view different than the one taken by the Inquiry Officer and the Appellate Authority. No other contention has been raised before us.

8. Per contra, learned counsel for the respondents submits that the order dated 13.08.2004 (Annexure P-9), which is impugned in this petition, is in the nature of communication. The reasons for rejection of the appeal are found in the proposal which has been considered by the Appellate Authority along with the other material. The entire proposal note has been placed on record along with the return. In response to the second contention, it is submitted that the provisions of Rule 14(11) of the Rules of

1966 have no application to the fact situation of the present case. The petitioner having appeared before the Inquiry Officer was obliged to abide by the further dates indicated by the Inquiry Officer. The Inquiry Officer was, therefore, not obliged to adjourn the matter as per the time specified in Rule 14(11) of the Rules of 1966. As regards the argument of the petitioner that the petitioner was appointed as Process Server and was, therefore, not obliged to discharge the duties of the Water Server and thus, it will not be a case of insubordination, it is submitted that the same is ill-advised. In that, the petitioner was appointed as Peon Class-IV employee. He was required to discharge the work in that capacity, as would be assigned from time to time. Further, this submission is *de hors* the plea taken before the Inquiry Officer or in the appeal and more so, not specifically taken in the pleadings in the writ petition. Hence, this contention cannot be taken forward by the petitioner. With reference to the next argument of the petitioner about punishment being excessive, it is submitted that the punishment of removal itself was a lighter punishment in the fact situation of the present case. In that, it is a case of proved insubordination and for which no other punishment can be prescribed especially when reading of three charges together, it is

manifest that the petitioner completely disregarded the authority of his superiors and committed major misconduct. With reference to the argument that the finding of fact recorded by the Inquiry Officer is not in conformity with the evidence on record, it is submitted that this Court should be loath to re-appreciate the evidence to take a view different than the one taken by the Competent Authority, even though some other view may be possible, in exercise of writ jurisdiction. For, that is not the scope of judicial review. The judicial review can be in respect of the process followed during the inquiry and not of the opinion recorded by the Inquiry Officer itself.

9. After having considered the rival submissions, we may now turn to the first argument of the petitioner about the vagueness and infirmity of no reasons recorded in the order of the Appellate Authority. No doubt, the petitioner has been communicated about his removal by way of communication dated 13.8.2004 (Annexure P-9). However, we are in agreement with the submission of the respondents that the same, was only a communication and not the order of the Appellate Authority as such. The order can be traced to the proposal note and consideration thereof by the Appellate Authority. The Appellate Authority considered all

aspects of the matter, which were placed before him along with the proposal including the evidence collected during the departmental inquiry, response of the petitioner and the opinion of the Inquiry Officer. Suffice it to observe that it is not possible to countenance the argument of the petitioner that the decision of the Appellate Authority is without recording reasons, as contended. The reasons can be traced to the proposal which is quite elaborate and has been placed on record along with the response filed by the respondents. Hence, this argument will have to be negatived.

10. Reverting to second contention about non-compliance of Rule 14(11) of the Rules of 1966 we deem it apposite to reproduce the relevant provision, which reads thus:-

> "**14. Procedure for imposing penalties**:-
>
> *** *** ***
>
> (11) The inquiring authority, shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presiding Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence-
>
> (i) inspect within five days of the order or within such further time not exceeding five days as the enquiring authority may

allow, the documents specified in the list referred to in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf.

Note.- If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(iii) Give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of the Government but not mentioned in the list referred to in sub-rule (3).

Note:- The Government servant shall indicate the relevance of the documents required by him to be discovered and produced by the Government."

11. On a bare reading of this provision, it is seen that the same comes into play where the Government servant fails to appear within the specified time or refuses or omits to plead, to produce the evidence before the Presiding Officer.

The Inquiring Authority is required to adjourn the case to a later date as per the time frame prescribed, to prepare the defence. That time is to provide opportunity to the delinquent employee to participate in the inquiry. Admittedly, in the present case, the petitioner appeared before the Inquiry Officer on 20.12.2002 for the first time. The Inquiry Officer granted time to the petitioner as requested, till 24.12.2002 for appointing a Defence Assistant to espouse his cause. That request was accepted by the Inquiry Officer. It was not for taking inspection or submitting list of witnesses as such. It is also noticed from the record, which fact has remained unchallenged, that the petitioner did not participate in the inquiry after 20.12.2002 for the reasons best known to him. Notably, no grievance is made that the adjournment granted by the Inquiry Officer after 24.12.2002 was not in conformity with the time period specified in Rule 14 (11). Therefore, reliance placed on Rule 14(11) of the Rules of 1966, in the fact situation of the present case, is of no avail. Hence, even this contention must fail.

12. Reverting to the next contention that the petitioner was appointed and posted as a Process Server and therefore, was not expected to discharge the work of Water Server,

even this argument must fail. Firstly, the petitioner has failed to substantiate that he was appointed as a Process Server. The record, however, indicates that the petitioner was appointed on the post of Peon Class-IV employee. Indeed, at the relevant time he was posted as Process Server, but it is established in the inquiry that on the given day the Peon posted as Water Server was absent. For that reason, the petitioner was asked to do that work. It is not the case of the petitioner that the work of Water Server cannot be assigned to a Peon Class-IV employee. Nor it is argued that the District Nazir has had no power to assign the work of Water Server to another Peon under him albeit given posting of a Process Server, if it was expedient to do so because of absence of peon posted as Water Server. Moreover, the defence taken by the petitioner in response to the notice received after the charge-sheet was served on the petitioner and again after the inquiry report was served on the petitioner, is that, the incident as alleged and noted in the charge did not happen. The argument now canvassed was not raised in the said response and before the Appellate Authority. Even in the writ petition, no material facts have been mentioned to pursue this argument. The averments in paragraph 5.5 and 5.8 of the writ petition, on the other hand,

are that the petitioner was directed by the respondent No.2 to perform duties of Peon and he refused to do the same as he was suffering from acute stomachache and he left the office after giving leave application. In view of this pleading, it is not open to the petitioner now to argue across the bar that the duties of Water Server were not assigned to him on the given date or that his refusal to do that work, does not entail in insubordination. Notably, charge No.2 which is independent of the incident referred to in charge No.1, is also of insubordination. Even that charge has been proved against the petitioner.

13. In our opinion, this argument is an argument of desperation and does not require any further consideration for want of specific pleading in the writ petition or taken by the petitioner during the inquiry or before the Appellate Authority.

14. Before we deal with the argument that the punishment as imposed is excessive, we may now advert to the last point agitated before us about the correctness of the finding of fact recorded by the Inquiry Officer. We are in agreement with the submission of the respondents that in exercise of writ jurisdiction, the scope of interference in matters of departmental proceedings is circumscribed. The High Court

does not sit over the said decision as a Court of appeal. The scope of judicial review is limited to the decision making process and when the petitioner demonstrates and substantiates the position that the finding recorded by the Authority is manifestly perverse and a case of jurisdictional error, which has caused serious miscarriage of justice to the petitioner. In the present case, the petitioner having failed to participate in the inquiry proceedings and more so, when the evidence adduced by the department is of high officials, which has been accepted as trustworthy by the Competent Authority, it is not open for this Court to disregard the said concurrent finding or to doubt the said evidence. We hold that it is not possible to re-appreciate the evidence, which has been taken into consideration by the Inquiry Officer, the Disciplinary Authority and also weighed with the Appellate Authority for recording finding that all the three charges framed against the petitioner have been duly proved. As a result, even this submission must be rejected.

15. That takes us to the last aspect about the punishment as imposed being excessive. Considering the three charges framed against the petitioner, even if charge No.3 is to be kept aside for considering the punishment of removal, charge Nos.1 and 2 singularly and together leave no manner

of doubt that it is a case of insubordination and disregarding the instructions given by the superiors. That is a major misconduct. Not only that, the petitioner is questioning the entire inquiry on the argument that the departmental inquiry has been initiated at the behest of respondent No.2 and alleging *mala fide* exercise of powers. The petitioner having deliberately failed to comply with the instructions issued by the superior officer and as he has the audacity to also allege bias against his superiors – which he has failed to substantiate, cannot be heard to complain about the punishment of removal from service being excessive. The punishment of removal, in one sense, is a lighter punishment than the other punishment, which may disentitle him to seek employment elsewhere. Thus understood, we find no merit even in the last argument made by the petitioner about punishment being excessive.

16. Hence, this petition **fails** being devoid of merits and is dismissed with no order as to costs.

Ordered accordingly.

(A. M. Khanwilkar)
Chief Justice

(J.K.Maheshwari)
Judge

AM.