

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1164/2011
WITH
WRIT PETITION NO.1165/2011
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WRIT PETITION NO.1166/2011
WITH
WRIT PETITION NO.1167/2011
WITH
WRIT PETITION NO.1168/2011
WITH
WRIT PETITION NO.1169/2011

WRIT PETITION NO.1164/2011

PETITIONER :

Nagorao Narayanrao Wasekar
aged about 63 years, resident of Karnalbagh, Nagpur.

(Dead) through L.Rs.

- 1) Smt. Lilabai wd/o Nagorao Wasekar,
aged 65 years.
- 2) Vijay s/o Nagorao Wasekar,
aged 47 years.
- 3) Avinash s/o Nagorao Wasekar,
aged 35 years.
- 4) Sushma Umesh Nikam,
aged 34 years.

Nos.1 to 4 R/o Model Mill Closed
Gage, Karnalbagh, Nagpur.

- 5) Usha Manoj Dhoble, aged 40 years,
R/o 96, Pawan Bhumi, Wardha Road, Nagpur.

(Amendment carried out as per Court order dated

03/07/2017)

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...Versus...

- RESPONDENTS :
1. The Maharashtra State Warehousing Corporation,
583/B Market Yard, Gultekadi, Pune-37, through
its Chairman & Managing Director.
 2. The Regional Manager Maharashtra State
Warehousing Corporation, Gokhulpeth,
Nagpur.
 3. Food Grain Distribution Officer,
Civil Lines, Nagpur.
 4. The Departmental Enquiry Officer,
Maharashtra State Warehousing Corp., Pune.

Shri A.C. Dharmadhikari, Advocate for petitioners
Shri N.R. Saboo, Advocate for respondent no.1
Shri K.L. Dharmadhikari, AGP for respondent no.3

WITH

WRIT PETITION NO.1165/2011

PETITIONER : Narayan Gangaram Shettiwar
aged 61 years, Occupation - retired
employee, resident of Ayodyanagar, Nagpur.

...Versus...

- RESPONDENTS :
1. The Maharashtra State Warehousing Corporation,
583/B Market Yard, Gultekadi, Pune-37, through
its Chairman & Managing Director.
 2. The Regional Manager Maharashtra State
Warehousing Corporation, Gokulpeth,

Nagpur.

3. Food Grain Distributor Officer,
Civil Lines, Nagpur.

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4. The Departmental Enquiry Officer,
Maharashtra State Warehousing Corp., Pune.

Shri A.C. Dharmadhikari, Advocate for petitioner
Shri N.R. Saboo, Advocate for respondent no.1
Shri K.L. Dharmadhikari, AGP for respondent no.3

WITH

WRIT PETITION NO.1166/2011

PETITIONER : Ashok Jaywantrao Chilke,
aged 60 years, Occupation - retired
employee, resident of 104 Swastik
Apartment First Floor, Nilkanthnagar,
Hudkeshwar Road, Nagpur.

...Versus...

RESPONDENTS : 1. The Maharashtra State Warehousing Corporation,
583/B Market Yard, Gultekadi, Pune-37, through
its Chairman & Managing Director.

2. The Regional Manager Maharashtra State
Warehousing Corporation, Gokhulpeth,
Nagpur.
3. Food Grain Distributor Officer,
Civil Lines, Nagpur.
4. The Departmental Enquiry Officer,
Maharashtra State Warehousing Corp., Pune.

Shri A.C. Dharmadhikari, Advocate for petitioner
Shri N.R. Saboo, Advocate for respondent no.1
Shri K.L. Dharmadhikari, AGP for respondent no.3

WITH

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WRIT PETITION NO.1167/2011

PETITIONER : Surendra Baburao Bhandarwar,
aged about 62 years retired employee,
Resident of 29 A, Shri Sai Mandir Marg,
Ayodhyanagar, Nagpur.

...Versus...

RESPONDENTS : 1. The Maharashtra State Warehousing Corporation,
583/B Market Yard, Gultekadi, Pune-37, through
its Chairman & Managing Director.

2. The Regional Manager Maharashtra State
Warehousing Corporation, Gokhulpeth,
Nagpur.

3. Food Grain Distributor Officer,
Civil Lines, Nagpur.

4. The Departmental Enquiry Officer,
Maharashtra State Warehousing Corp., Pune.

Shri A.C. Dharmadhikari, Advocate for petitioner
Shri N.R. Saboo, Advocate for respondent no.1
Shri K.L. Dharmadhikari, AGP for respondent no.3

WITH

WRIT PETITION NO.1168/2011

4

PETITIONER : Vilas Wasudeorao Dewal
Age about 62 years, Retired Employee,
R/o 116 Kailash Nagar, Ayodhyanagar,
Nagpur - 24.

...Versus...

RESPONDENT : 1. The Maharashtra State Warehousing Corporation,
583/B Market Yard, Gultekadi, Pune-37, through
its Chairman & Managing Director.

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2. The Regional Manager Maharashtra State
Warehousing Corporation, Gokulpeth,
Nagpur.
3. Food Grain Distributor Officer,
Civil Lines, Nagpur.
4. The Departmental Enquiry Officer,
Maharashtra State Warehousing Corp., Pune.

Shri A.C. Dharmadhikari, Advocate for petitioner
Shri N.R. Saboo, Advocate for respondent no.1
Shri K.L. Dharmadhikari, AGP for respondent no.3

WITH

WRIT PETITION NO.1169/2011

PETITIONER : Kalidas Krishnaji Gadpayale,
aged about 62 years,
occupation - Retired Employee,
Resident of 33, Dambhare Layout,
Trimurti Nagr, Nagpur - 440022.

...Versus...

RESPONDENT :

1. The Maharashtra State Warehousing Corporation,
583/B Market Yard, Gultekadi, Pune-37, through
its Chairman & Managing Director.
2. The Regional Manager Maharashtra State
Warehousing Corporation, Gokulpeth,
Nagpur - 02.
3. Food Grain Distributor Officer,
Civil Lines, Nagpur -1.
4. The Departmental Enquiry Officer,
Maharashtra State Warehousing Corp., Pune.

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Shri A.C. Dharmadhikari, Advocate for petitioner
Shri N.R. Saboo, Advocate for respondent no.1
Shri K.L. Dharmadhikari, AGP for respondent no.3

CORAM : SMT. VASANTI A NAIK AND
ARUN D. UPADHYE, JJ.

DATE : 03.07.2017 ORAL JUDGMENT (PER : SMT. VASANTI A. NAIK, J.)
Since the issue involved in these writ petitions is identical and similar prayers are made therein, they are heard together and are decided by this common judgment. The petitioners were working with the respondent - Maharashtra State Warehousing Corporation on the posts of Junior Store Superintendents, Assistant Superintendents, Store Keepers etc., when they retired on attaining the age of superannuation. The original petitioner in Writ Petition No.1164/2011 had retired from service on 28.2.2005 and a no dues certificate was issued in his favour on 29.9.2005. By a charge-sheet served on the original petitioner in Writ Petition No.1164/2011, dated 13.12.2010, that is impugned in the petition, the original petitioner was asked to reply to the charges in respect of the events that occurred while the petitioner was in service in the year 2003 to 2005. According to the Corporation, the loss caused by the original petitioner to the Corporation is Rs.1,29,500/-. wp1164.11.odt The petitioner in Writ Petition No.1165/2011 retired on attaining the age of superannuation on 30.6.2009. He was also served with a similar charge-sheet dated 13.12.2010 levelling allegations in regard to his negligence in the years 1990 to 1995. The petitioner in

Writ Petition No.1166/2011, who had retired by securing voluntary retirement on 20.11.2008 was also served with a charge-sheet dated 13.12.2010 pertaining to the events that occurred during the period from 1989 to 1994 and from 2000 to 2002. The petitioner in Writ Petition No.1167/2011 had retired on attaining the age of superannuation on 31.10.2008. A no dues certificate was issued in his favour within a couple of months from the date of his retirement. By a charge-sheet served on him on 13.12.2010 he was allegedly held to be responsible for the loss caused to the Corporation during the period from 1995-96 and 2003-04. The petitioner in Writ Petition No.1168/2011, who had retired on 24.2.2009 after attaining the age of superannuation was also served with a similar charge-sheet dated 13.12.2010 that related to the events of the years 1989 and 1998 to 2003. The petitioner in Writ Petition No.1169/2011 who had retired from service on 31.12.2006 and had also received a no dues certificate was served with a charge-sheet dated 13.12.2010. The charges wp1164.11.odt against the petitioner in this case pertained to the years 1994 to 1998. The petitioners in all the writ petitions have challenged the action on the part of the respondent - Corporation of initiating a departmental enquiry against them after their retirement. The petitioners have sought a declaration that the respondent - Corporation did not have the authority to initiate the departmental enquiry against the petitioners after they retired from service. Shri Dharmadhikari, the learned Counsel for the petitioners submitted that it is a well settled position of law that a Corporation or any other authority cannot initiate a departmental enquiry against its employees unless the regulations that govern the service conditions of the employees provide for the initiation of a departmental enquiry after the retirement of the employees. It is submitted by taking this Court through the regulations framed by the respondent - Corporation in respect of the service conditions of its employees that there is no provision in the said regulations that authorizes the Corporation to initiate a departmental enquiry against its employees after their retirement. It is submitted that in the absence of any regulation authorizing the Corporation to do so, the Corporation would not be empowered to initiate the enquiry. It is submitted that the departmental enquiry is not only initiated against the petitioners after the retirement of the petitioners but the enquiry relates wp1164.11.odt to the events that have allegedly occurred long ago. It is submitted that an enquiry is sought to be initiated against most of the petitioners in respect of the events that took place between the years 1990 to 1998. It is stated that in respect of a couple of petitioners the events pertained to the year 2003-04. It is submitted that in no case the events in respect of which the charge-sheet is served on the petitioners relate to the year 2005 onwards. It is submitted that the Corporation has sought to initiate a departmental enquiry against the petitioners without any authority of law. Shri Saboo, the learned Counsel for the respondent - Corporation has supported the action of the Corporation. The learned Counsel referred to the Staff Service Regulations of the Corporation and specially, Regulation 110 thereof to submit that in the matters for which a specific provision is not made in the regulations, the matters would be regulated in the same manner as in the case of employees of the Government of Maharashtra. It is stated that though

there is no specific regulation in the Staff Service Regulations of the Corporation providing for the initiation of a departmental enquiry after the retirement of an employee, in view of Regulation 110 of the Regulations, the Corporation can take recourse to the provisions of the Maharashtra Civil Services Rules to initiate the enquiry after the retirement of its employees. It is submitted that in view of Rule 27 (2) (b) of the Maharashtra Civil Services (Pension) Rules, 1982 a departmental enquiry could be initiated against a Government servant after his retirement. The learned Counsel relied on Rule 27 (2) (b) (ii) of the Rules of 1982 to substantiate his submission. It is submitted that under the said provisions the Corporation is entitled to initiate an enquiry in respect of any event which has taken place less than four years before the institution of the departmental enquiry. It is submitted that the date of the event would mean the date on which the Corporation has discovered the event. It is submitted that the Government had recovered the dues from the Corporation several years later and it was then noticed by the Corporation that the petitioners had caused loss to the Corporation and hence the date on which the Corporation became aware of the loss would be the date on which the event would be deemed to have occurred. It is submitted that after the retirement of the petitioners the amounts were sought to be recovered from the petitioners towards the loss caused by them to the Corporation but since the said amount could not have been recovered without conducting an enquiry, a statement was made in the writ petitions filed by the petitioners on the earlier occasion that the Corporation would recover the loss after holding a departmental enquiry against the petitioners. The learned Counsel sought for the dismissal of the writ petitions. On hearing the learned Counsel for the parties, it appears that the Corporation did not have any authority in law to initiate the departmental enquiry against the petitioners by the issuance of charge-sheet dated 13.12.2010. We find nothing in the Staff Service Regulations of the respondent - Corporation that authorizes the respondent - Corporation to initiate a departmental enquiry against its employees after their retirement even if any loss is caused to the Corporation. Regulation 110 on which a reliance has been placed by the respondent - Corporation refers to the application of the Rules, Regulations and Orders of the Government of Maharashtra, to the matters, in respect of which the Regulations are silent. Regulation 110 specifically provides that in respect of all the matters for which specific provisions have not been made in the Regulations, would be regulated in the same manner as the case of the employees of the Government of Maharashtra. By assuming that Regulation 110 of the Regulations may come to the rescue of the respondent - Corporation for taking action as per the service conditions that govern the services of the Government servants of the State of Maharashtra, it would be necessary to consider whether the action on the part of the respondent - Corporation of initiating the enquiry against the petitioners after their retirement is correct or not. We do not find anything in the Maharashtra Civil Services (Pension) Rules which specifically empowers the Government to initiate the departmental enquiry against the employees after their retirement. However, Maharashtra Civil Services (Pension) Rules, 1982 and Rule 27 thereof provides for the right

of the Government to withhold or withdraw the pension. There is no specific rule which relates only to the power of the Government to initiate a departmental enquiry after the retirement of a Government servant. Rule 27 of the Rules of 1982 however provides that a part or whole of the pension of a Government servant could be withdrawn or withheld either permanently or for a specific period, if the Government servant is found guilty in any departmental or judicial proceedings in respect of the pecuniary loss caused to the Government. Sub Rule 2 of Rule 27 of the Rules provides that if the departmental proceedings are continued against the Government servant after his retirement the same would be continued against him as if he had continued in service. Sub Rule 2 (b) of Rule 27 of the Rules, on which great reliance has been placed by the learned Counsel for the Corporation, reads thus : - "Rule 27 (2) (b) : The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment. - wp1164.11.odt (i) shall not be instituted save with the sanction of the Government, (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". The Corporation has relied only on the provisions of Rule 27 (2) (b) (ii) of the Rules. This Rule provides that a departmental proceedings, if not instituted against the Government servant while he was in service shall not be instituted after his retirement in respect of any event which took place more than four years before the institution of the departmental proceedings. Even assuming that Rule 27 (2) (b) (ii) of the Rules applies to these cases as is stated on behalf of the Corporation, in the circumstances of the case the Corporation could not have initiated the departmental enquiry against the petitioners by service of charge-sheet dated 13.12.2010 when the charges against none of the petitioners relate to the events which took place within four years before the service of the charge-sheet dated 13.12.2010. The events by which the petitioners are allegedly held to be responsible for causing loss to the Corporation wp1164.11.odt pertain to the years 1990 to 2004-05. The charge-sheet dated 13.12.2010 is served on all the petitioners in December, 2010. The events that had resulted in causing loss to the Corporation should have taken place within four years before 13.12.2010. The events should have taken place after 13.12.2006. However, none of the events had taken place in the year 2006. The petitioners are served with the charge-sheet pertaining to the events that had taken place from the year 1990 to 2004-05. Even Rule 27 (2) (b) (ii) of the Rules would not give any right or authority to the respondent - Corporation to initiate the departmental enquiry by service of the charge-sheet dated 13.12.2010. There is no other rule on which the respondent-Corporation has relied on. Rule 27 (2) (b) (ii) of the Rules will not be helpful to the Corporation for initiation of the departmental enquiry against the petitioners after 13.12.2010. We have minutely perused the charge-sheets served on each of the petitioners. At the outset, in every charge-sheet, it is mentioned that while the petitioners were working during the period which

is specified therein, they had committed the acts that had resulted in causing loss to the Corporation but none of the charge-sheets refers to the period after 2005. We have already mentioned herein above that the events referred to in the charge-sheet should have taken place after 13.12.2006. The events that are mentioned in each of the charge-sheets have taken place long time back. We do not find that Rule 27 (2) (b) (ii) of the Rules would help the Corporation in defending the petitions. While holding so, we are not inclined to accept the submission made on behalf of the respondent - Corporation that since the Corporation was made liable to make good, the losses to the Government several years later it should be considered that the events took place when the Corporation was made liable for the losses. There is no legal base for the submission made on behalf of the respondent - Corporation. In the circumstances of the case, it would be necessary to allow the writ petitions and quash and set aside the impugned charge-sheets. Hence, for the reasons aforesaid, the writ petitions are allowed. The impugned charge-sheets are quashed and set aside. It is hereby held that the respondent - Corporation would not be entitled to initiate a departmental enquiry against the petitioners. The petitioners are permitted to withdraw the amount deposited by the respondent - Corporation in this Court. Rule is made absolute in the aforesaid terms with no order as to costs. JUDGE JUDGE

Wadkar