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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2226 OF 2017

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Mumbai 400 095

... **Petitioner**

V/s.

- 1. Managing Director,** Maharashtra State
Electricity Distributiion Co. Ltd. (H.O.),
Prakashgad, Bandra (East),
Mumbai – 400 041
- 2. The Executive Officer,** Maharashtra State
Electricity Distribution Co. Limited,
Vidyyut Bhavan, Sector – 17, Vashi,
Navi Mumbai.
- 3. Chief Engineer (Kalyan Zone),**
Maharashtra State Electricity Distribution
Co. Ltd., Tejashri Building,
Kalyan (West), Thane.

... **Respondents**

Mr. Sugandh B. Deshmukh with Mr. Bhushan G. Deshmukh, Mr. Aryan M. Deshmukh, Mr. Aniket Kanawade, Ms. Karishma Shinde, Mr. Vaibhav Thorave, and Mr. Irvin D'Souza for the petitioner.

Mr. Prashant Chavan, Senior Advocate with Mr. Ravindra Chile, and Mr. Dheer Sampat i/by M.V. Kini & Co., for respondent Nos.1 to 3.

CORAM : **AMIT BORKAR, J.**
RESERVED ON : **FEBRUARY 20, 2026.**
PRONOUNCED ON : **MARCH 5, 2026**

JUDGMENT:

1. By the present writ petition filed under Article 227 of the Constitution of India, the petitioner challenges the Judgment and Order dated 19 July 2016 passed by the Industrial Court, Thane, in Revision Application (ULP) No.22 of 2014, whereby the Industrial Court confirmed the Judgment and Order dated 14 February 2014 passed by the Labour Court in Complaint (ULP) No.75 of 2010.

2. The facts giving rise to the present petition are as follows. The petitioner entered the service of the respondents on 15 March 1980 as a Lower Division Clerk at Khopoli, District Raigad. He was subsequently promoted to the post of Upper Division Clerk (Accounts) and thereafter to the post of Assistant Accountant on 21 October 2001. At the relevant time, the petitioner was working in the audit section of the respondents at the O and M Division, Vashi, Navi Mumbai. The petitioner was functioning under the direct supervision and control of the Divisional Auditor and the Executive Engineer, and was required to discharge duties in accordance with the guidelines governing internal audit in addition to clerical work. The work relating to revenue, including maintenance of records, remittance of revenue to the Head Office, and submission of reports, was assigned to the revenue section. The Deputy Executive Engineer and Assistant Engineer were in charge of the sub-division and acted as the building authorities.

3. The Billing Authorities were required to coordinate revenue-related work, whereas the Divisional Accountant (Revenue) was stated to be fully responsible for all revenue matters. According to the petitioner, the audit section could effectively discharge its duties only if records from the revenue section were regularly made available and adequate manpower was provided. It is the petitioner's case that there was no prevailing practice of subjecting monthly accounts to post-audit by the audit department, which caused inconvenience to the audit section and particularly to the petitioner. The petitioner addressed notes through the Divisional Auditor to the Executive Engineer highlighting incomplete documents and discrepancies. It is further contended that the Executive Engineer, Vashi Division, called upon the petitioner to furnish an explanation by letter dated 20 June 2004, to which the petitioner submitted his reply by letter dated 29 June 2004.

4. Respondent No.2 placed the petitioner under suspension by order dated 6 July 2004 on allegations of improper audit of bank statements and BCDCR, coupled with charges of negligence. According to the petitioner, the Executive Engineer lacked competence to issue the suspension order, particularly when several employees were allegedly involved in the same misconduct and when respondent No.2 himself was a charge-sheeted employee facing disciplinary proceedings. The petitioner contends that respondent No.1 continued the suspension for several years in deliberate violation of Service Regulation 88. It is further alleged that the prolonged suspension was illegal and arbitrary. A charge-sheet came to be issued on 27 February 2006 after considerable

delay, which, according to the petitioner, was illegal and unsupported by evidence. The petitioner sought supply of relevant documents by letter dated 14 March 2006 for submitting an effective reply; however, no documents were furnished. The petitioner alleges that only a formal inspection of illegible documents was permitted on 13 June 2006 during a joint inspection, and that charges were framed without furnishing proper documents.

5. The petitioner opposed the charge-sheet by letter dated 14 June 2006 and denied all allegations. The departmental enquiry commenced on 12 October 2006 and was concluded on the same day. The enquiry was attended by the Inquiry Officer, Mr. Borkar, the Management Representative, Mr. P.N. Khodke, the petitioner, and his representative. According to the petitioner, the enquiry was conducted in an unlawful manner and in breach of the principles of natural justice. It is alleged that the enquiry procedure was not explained to him, that the Inquiry Officer acted with bias and assumed the role of prosecutor, and that the petitioner was not permitted to record his defence statement. It is further alleged that the management representative was not allowed to put questions to the petitioner. The petitioner challenges the punishment order dated 23 March 2010 as illegal on the ground that it lacks reasons and does not disclose consideration of the past service record.

6. According to the petitioner, respondent No.1 imposed only nominal punishments on other employees and officers of the revenue section and allowed them to continue in service, while granting promotions to certain higher officers despite their alleged

involvement and responsibility. It is further contended that one Mr. Sadashiv Bansode, then Divisional Accountant (Revenue), who had applied for anticipatory bail in connection with the alleged scam, was permitted to remain in service. On this basis, the petitioner alleges discrimination, bias, and victimization. The petitioner further states that he was on sanctioned leave on 21 April 2010, on which date the punishment order was brought into effect, allegedly in violation of the order dated 18 January 2010 passed in Writ Petition No.9771 of 2009. According to the petitioner, he became aware of the implementation of the punishment order only on 22 April 2010 when he reported for duty and was not permitted to resume work. The said action is challenged as illegal.

7. The petitioner also challenged the impugned order dated 28 September 2011, referred to as Part I, contending that the enquiry ought to have been held to be a mere formality conducted in violation of the principles of natural justice. According to the petitioner, there was no sufficient material to conclude that the enquiry was fair and proper. By Judgment and Order dated 19 July 2016, the Industrial Court dismissed Revision Application (ULP) No.22 of 2014 and confirmed the order dated 14 February 2014 passed by the Labour Court in Complaint (ULP) No.75 of 2010. Aggrieved thereby, the petitioner has filed the present writ petition.

8. The learned Advocate for the petitioner submits that respondent No.1 initiated a domestic enquiry in a manner amounting to a mere formality, as reflected in the letter dated 19 July 2006, by disregarding the explanation and reasoning placed

on record by the petitioner. It is contended that the reasons assigned in the said communication for initiating the enquiry were incorrect and unsustainable. It is further submitted that, by letter dated 8 October 2006 addressed to the Enquiry Officer, the petitioner specifically raised the grievance regarding non-supply of documents and requested directions to the Management Representative for furnishing copies thereof; however, no steps were taken by the Enquiry Officer in that regard. The enquiry commenced on 12 October 2006 and was concluded on the same day, with participation restricted to only four persons. The learned Advocate for the petitioner further submits that the Enquiry Officer permitted the Management Representative to proceed without producing oral or documentary evidence to substantiate the allegations contained in the charge-sheet. According to the petitioner, this deprived him of the opportunity to effectively cross-examine witnesses and test the veracity of the allegations. It is also contended that the petitioner was not permitted to lead evidence in defence. It is further submitted that the Enquiry Officer allowed the Management Representative to directly put questions to the petitioner during the enquiry proceedings, which, according to the petitioner, amounted to a serious violation of the principles of natural justice and settled legal norms governing domestic enquiries.

9. The learned Advocate for the petitioner submits that the findings recorded by the Enquiry Officer on 16 October 2006 are unsupported by evidence and material on record. It is contended that the findings merely reproduce the contents of the charge-

sheet and are based on assumptions and presumptions. According to the petitioner, the findings are non-speaking, lack reasons, and are therefore perverse and unsustainable in law. It is further submitted that certain officers who had awarded bill collection contracts to contractors without verifying antecedents, without ensuring insurance of revenue amounts, and without securing adequate deposits, were treated leniently. Particular reference is made to Shri Sadashiv S. Bansode, then Divisional Accountant (Revenue), who had allegedly applied for anticipatory bail in connection with the said scam, yet was permitted to continue in service with only a minor punishment.

10. Per contra, the learned Senior Advocate for the respondent submits that the petitioner worked as Assistant Accountant in the Nerul Sub-Division from 21 December 2001 to 24 June 2004. It is submitted that account papers for the months of February 2003 and April 2003 were forwarded by the Revenue Department to the Audit Department after a delay of eight to ten months. It is further stated that Mr. Mariguddi, being the authorised bill collection cadre holder of MSEB, Vashi Division, was supervising four electricity bill collection centres, and that one Tharpatti, UDC (Accounts), Vashi Division, in conspiracy with Shri Mariguddi, misappropriated amounts of Rs.2,00,03,750/- in cash and Rs.1,85,24,310.56 through cheques. Interest at the rate of 12% was also accounted for in relation to the said misappropriation. A supplementary complaint in this regard was lodged with the police on 1 December 2004.

11. The learned Senior Advocate for the respondent further submits that the petitioner, despite being posted in the Audit Section, failed to raise objections regarding the said misappropriation or to point out financial irregularities committed by the concerned agency. It is submitted on behalf of the respondent that considerable time was required to collect relevant material documents prior to issuance of the charge-sheet. Since several documents had been seized by the police authorities, the respondent was unable to prepare and issue the charge-sheet earlier. The learned senior Advocate for the respondent submits that the petitioner did not raise any objection regarding non-supply of documents before the Enquiry Officer and voluntarily participated in the enquiry proceedings. This aspect, according to the respondent, stands recorded by the Revisional Court. It is further submitted that the petitioner was granted an opportunity to cross-examine the respondent's witnesses. The Labour Court and the Industrial Court have concurrently held that the enquiry was fair and proper, that full opportunity was afforded to the petitioner during the domestic enquiry, and that the punishment order was legal and valid.

REASONS AND ANALYSIS:

12. The main issue in this matter revolves around two aspects. First, whether the departmental enquiry conducted against the petitioner was fair. Second, whether the punishment imposed on him can legally stand.

13. The petitioner has consistently contended that the enquiry was only a formality and that the decision against him was already decided in advance. According to him, respondent No.1 initiated the enquiry by issuing a letter dated 19 July 2006 without properly examining the explanation already submitted by him. It is his case that the reasons mentioned in that letter for starting the enquiry were incorrect and that the entire process was carried out with a predetermined approach. The petitioner has also relied upon his letter dated 8 October 2006 addressed to the Enquiry Officer. In that letter he clearly complained that important documents were not supplied to him and requested that directions be issued to the Management Representative to provide copies of those documents. However, the material placed before this Court shows that no effective step was taken by the Enquiry Officer to address this grievance. What further raises concern is the fact that the enquiry began on 12 October 2006 and was concluded on the very same day. The charges in the present case relate to serious financial allegations. In such circumstances, completion of the entire enquiry within a single day assumes considerable importance. Such haste shows that fair opportunity was not given to the petitioner to defend himself.

14. The petitioner has further argued that during the enquiry the Management Representative did not place any oral or documentary evidence to support the allegations made in the charge sheet. According to the petitioner, because no witnesses were examined and no documents were properly proved, he was deprived of the opportunity to cross examine witnesses and

challenge the accusations made against him. It is also his case that he was not permitted to lead evidence in his defence. These submissions go to root of the matter. It is true that a departmental enquiry does not strictly follow the technical rules contained in the Evidence Act. However, certain basic principles of principles of natural justice cannot be ignored. If the management does not lead evidence, or if the employee is not given a meaningful opportunity to test the case against him, then the enquiry loses its fairness. The petitioner has also alleged that the Enquiry Officer allowed the Management Representative to directly question him and that the Enquiry Officer himself assumed the role of a prosecutor. Even when these allegations are examined cautiously, the record indicates that the neutrality expected from an Enquiry Officer was not properly maintained.

15. The petitioner has also questioned the findings recorded by the Enquiry Officer on 16 October 2006. According to him, those findings are not supported by evidence. On examination, it appears that the findings mainly reproduce the allegations stated in the charge sheet and then reach a conclusion without discussing the evidence or the reasoning. In a disciplinary enquiry the findings must show that the authority has applied its mind to the material on record. The decision must explain what evidence was relied upon, why that evidence was accepted, and how the charges were proved.

16. The petitioner has also pointed out that other officers who were connected with the bill collection work were treated differently. In particular, reference is made to Sadashiv S. Bansode,

who according to the petitioner was holding the post of Divisional Accountant (Revenue). It is submitted that even though serious allegations were raised in relation to the same incident, he was allowed to continue in service after receiving only a minor punishment. The material on record suggests that some other officers who were part of the revenue chain also received comparatively lighter treatment. By itself, such differential treatment may not automatically invalidate the disciplinary proceedings against the petitioner. However, it is still an important surrounding circumstance. When strict punishment is imposed upon one employee while others connected with the same episode are treated leniently, the Court must examine whether the disciplinary process was fair and whether the punishment imposed is proportionate. In the present case, the inconsistent treatment does raise a genuine concern that the petitioner may have been singled out.

17. On the other hand, the respondents have opposed the petition by emphasizing the seriousness of the misconduct. According to them, the petitioner was working as Assistant Accountant during the relevant period and large scale financial misappropriation took place in the bill collection system. The respondents have referred to the delay in forwarding certain account papers, the alleged conspiracy involving persons connected with bill collection centres, and the substantial financial loss suffered by the organisation. There is no dispute that financial irregularities are serious matters and an employer is certainly entitled to take disciplinary action if negligence or misconduct is

established. However, the seriousness of the allegations cannot dispense with fair enquiry.

18. The respondents have also argued that the petitioner did not raise any objection before the Enquiry Officer regarding non supply of documents and that he voluntarily participated in the enquiry proceedings. This argument does not appear to be correct when the record is carefully examined. The petitioner's letter dated 8 October 2006 clearly records his complaint that relevant documents had not been supplied to him. Once such a grievance is placed on record, the Enquiry Officer is expected either to ensure that the documents are supplied or to record reasons for proceeding without them. That was not done. Further, the fact that the petitioner remained present in the enquiry cannot be treated as waiver of his procedural rights, especially when the entire enquiry was completed within a single day.

19. The respondents have also attempted to justify the delay in issuing the charge sheet by stating that many documents had been seized by the police and therefore time was required to collect the necessary material. This explanation may justify some delay in issuing the charge sheet. However, it does not justify conducting the enquiry without making sure that the employee has access to the relevant documents. If the documents were not readily available, the enquiry could have been adjourned or suitable arrangements could have been made to provide copies. Conducting the enquiry in haste has clearly caused prejudice to the petitioner.

20. The respondents have placed considerable reliance on the fact that both the Labour Court and the Industrial Court have held that the enquiry was fair and proper. Normally, when two courts have recorded concurrent findings, this Court would be slow to interfere. However, the supervisory jurisdiction of this Court is meant to correct situations where the decision making process itself suffers from serious illegality. In the present case, the courts below did not properly consider the effect of non supply of documents, the absence of proper evidence in the enquiry, and the fact that the entire enquiry was concluded within a single day. Because these important aspects were not adequately examined, the concurrent findings cannot be treated as final or conclusive.

21. When the matter is viewed as a whole, it becomes clear that the enquiry suffered from serious defects. The petitioner repeatedly complained that necessary documents were not supplied to him. The management did not properly lead evidence. The petitioner was not given a real opportunity to cross examine witnesses or to lead evidence in his defence. The findings recorded by the Enquiry Officer do not contain proper reasoning and do not refer to evidence on record. These deficiencies go to the very root of the enquiry. As a result, the punishment imposed on the petitioner cannot be sustained.

22. However, one more aspect needs to be taken into consideration while granting the final relief. During the pendency of these proceedings the petitioner has already superannuated from service on 31 May 2015.

23. In these circumstances, the orders passed by the Labour Court and the Industrial Court cannot be sustained and they are set aside. The punishment order passed against the petitioner is also quashed and set aside. Since the petitioner has already retired on 31 May 2015, the respondents shall treat him as having remained in service until the date of his superannuation and shall calculate his retiral benefits on that basis.

24. Considering the long passage of time and keeping in view the overall circumstances of the case, the petitioner shall be entitled to full back wages for the period from the date on which the punishment order came into effect until the date of his superannuation on 31 May 2015. This amount shall be taken into consideration for the purpose of calculating retiral benefits payable to him.

25. The respondents shall therefore recalculate the retiral benefits of the petitioner by treating the punishment order as if it had never existed. The amount payable to the petitioner shall be determined and paid within a period of eight weeks from the date of this judgment.

26. Since the petitioner has already retired from service, the question of holding any fresh departmental enquiry at this stage does not arise.

27. The petition is accordingly allowed in the above terms.

(AMIT BORKAR, J.)