(1995) 08 BOM CK 0048

Bombay High Court

Case No: Writ Petition No. 2455 of 1994

Deepak Mukundrai Trivedi		APPELLANT
	Vs	
Municipal Corporation of Greater Bombay and Others		RESPONDENT

Date of Decision: Aug. 11, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1996) 2 BomCR 1 : (1996) 1 MhLj 726

Hon'ble Judges: N.D. Vyas, J

Bench: Single Bench

Judgement

N.D. Vyas, J.
The petitioner in this petition is an Advocate of this Court and he has challenged the order of dismissal passed against him. While challenging the order of dismissal, he has also prayed for setting aside and quashing of the order of suspension.

2. Briefly stated, the facts giving rise to the present petition are as follows :-

(A) The petitioner was enrolled as an Advocate by the Bar Council of Maharashtra on 28th October 1980 and has been since then practising as an Advocate of this Court. On 1st March 1984 he was selected and appointed by the Respondent No. 1 in their Legal Department as an ''Assistant Law Officer''. As an Assistant Law Officer of the Respondent No. 1 the petitioner was required to act, appear and plead on behalf of the Respondents Nos. 1 and 2 in various Courts of Law. The Head of the Legal Department of the Respondent No. 1 is knows as the ''Law Officer'' who is assisted by several ''Deputy Law Officers'', ''Assistant Law Officers'' and ''Junior Law Officers''. The Legal Department of the Respondent No. 1 is divided into different sections such as High Court Section, City Civil Court Section, Small Causes Court Section etc. A Deputy Law Officer is appointed as the Head of each of such Section and is responsible for the working of the said Section. At the material time, the petitioner

was attached to the High Court Section and was working under the Deputy Law Officer in-charge of the High Court Section.

(B) It is averred by the petitioner in his petition that the service record right from his joining upto September 1990 was excellent, but however, trouble started when the previous Law Officer Smt. M.V. Shetty retired in the month of August 1990 and immediately after the retirement of Smt. M.V. Shetty as the Law Officer, Shri B.G. Nanal was appointed her successor and thus there was a transfer of the petitioner from High Court Section to the Small Causes Court Section. In paragraphs 6 and 7 of the petition, the petitioner has set out in detail as to how Shri Nanal treated the petitioner. In the month of September 1991, the petitioner was called by the Inspector (Enquiry) appointed by the Respondent No. 1 and was asked to give certain clarifications in respect of certain petitions wherein ''minutes of order'' were ''filed'' by the petitioner; that the petitioner informed the Respondent that ''minutes of order'' are not consent orders and in all the matters, orders have been passed on merits as the issue involved in all such petitions was covered either by a reported judgment or orders already passed earlier in similar petitions; that it was brought to the notice of Inspector (Enquiry) that it was the practice followed in this Court and that orders in forms of ''minutes of order'' were passed and that thereafter the petitioner did not hear anything about the matter for over a year.

(C) However, on 16th November 1992, the petitioner was served with an order suspending him from service. The order of suspension inter alia alleged that the petitioner was suspended from duty with effect from the date next to the date of service of the said order on him pending enquiry into his alleged "gross misconduct" and "gross negligence" of duties while dealing with the Court cases mentioned therein. He was further informed that it was not permissible for him to accept private employment or to draw any allowances other than that from the respondent No. 1 Corporation while under suspension and that if he was found accepting private employment or drawing any allowances other than that from the Respondent No. 1 he would be guilty of misconduct and would be subjected to disciplinary action.

(D) On 18th November 1992, the petitioner along with one Miss Rashida Rehman, who was also suspended by a separate order of suspension, filed a writ petition being writ petition No. 2643 of 1992 challenging the orders of suspension. On 18th December 1992, Justice B.N. Naik (as he then was) passed an interim order in the said writ petition whereby, after giving detailed reason, he admitted the petition and granted stay of suspension. On 16th January, 1993 the petitioner addressed a letter to the Municipal Commissioner i.e., respondent No. 2 inter alia recording therein the fact of his having filed the petition, the fact of the order of suspension being stayed and further that the petitioner had come to know that the Respondent No. 3, a retired Judge of the Bombay City Civil Court, had been appointed as an Enquiry Officer although he was not officially appointed as the Enquiry Officer and that the

then Law Officer Shri Nanal with the help of one Shri Kulkarni had stared having consultations and meetings with the Respondent No. 3, that such meetings were held in the office of Shri Kulkarni, that at the said meetings, various persons whose statements were recorded during the preliminary enquiry were called by the Respondent No. 3; that the Respondent No. 3 had been provided with vehicle for transportation and that the petitioner apprehended that the respondent No. 3 was sought to be prejudiced against the petitioner by putting facts before him in advance before the commencement of the enquiry. The petitioner by the said letter informed the Respondent No. 2 that in view of the said allegations which were on the basis of information received by the petitioner, the Respondent No. 3 should not be appointed as the Enquiry Officer and in the event of Respondent No. 3 being appointed as an Enquiry Officer, the petitioner reserved his right to object to the same and adopt appropriate proceedings. The said letter was in fact written on behalf of both the petitioners of the earlier petition i.e., the petitioner in the present petition as well as the Petitioner No. 2 in the earlier petition. No reply was given to the said letter by the Respondents.

(E) On 22nd January 1993, the Appeal which was preferred by the Respondents Nos. 1 and 2 was disposed of and the interim order of stay granted by Justice B.N. Naik (as he then was) was stayed. The order passed by the Appeal Court also recorded that the Appellants therein i.e., the Respondents Nos. 1 and 2 were agreeable to pay to the present petitioner and his co-petitioner in the earlier petition their full salary pending the disposal of the said petition.

(F) On 16th April 1993, another letter was addressed by the Petitioner''s Advocate to the Law Officer of the Respondent No. 1 whereby again grievances similar to those made on 16th January 1993 were made. No answer again was given by the Respondents. The petitioner stated in the said letter that the Respondents'' acts had caused apprehension in his mind that certain adverse opinion had been formed and the Respondent No. 3 had been prejudiced and that in view thereof, holding of an enquiry by the Respondents would be a mere formality.

(G) On 3rd May 1993, charge-sheets were served on the petitioner alleging several acts of misconduct. On the basis of the subject matters, the same could be classified, for the sake of convenience, into following groups :- (a) Dumping; (b) FSI relating to various encroachments; (c) Ground rent matters; (d) Repairs Cess; (e) Bawa community and (f) Unauthorised increase in F.S.I. while granting temporary water connection. All the charge-sheets were identical except particulars to which they related, in the sense, that the charge-sheets contained standard phraseology adopted by the Enquiry Officer viz that even though the petitioner was bound to take time for filing affidavits in reply in the matter concerned, he did not take time and/or oppose admission of the petition even though instructed as above, that affidavits in reply were not prepared by the petitioner; that the petitioner ''knew'' that the claim of the petitioners in the writ petitions concerned were ''untenable''

and that with ''dishonest'' and ''mala fide'' intentions, the petitioner acted in the manner as stated; that with ''dishonest intention'', the petitioner filed ''minutes of order'' thereby dishonestly ''agreeing'' to the false claims of the petitioners of the said petitions and that ''wrongful loss'' was caused to the Respondent No. 1 and that the acts and the omissions alleged therein on the part of the petitioner amounted to ''dishonesty'' and ''concealment of facts''. The fact remains that all these charges revolved around the orders passed by various Benches of this Court by way of ''minutes of order'' in Writ Petitions and that the petitioner was charged with misconduct under Rule 4 of the Municipal Servants'' Conduct and Discipline Rules.

(H) On 5th May 1993, the petitioner addressed a letter to the Respondent No. 3, who was the Enquiry Officer, calling for certain particulars and documents. Similar letter was again addressed by the petitioner on 11th June, 1993. On 16th September 1993, an order was passed by the Respondent No. 3 on petitioner''s letter dated 11th June 1993 whereby, after stating that the petitioner was given copies of all the documents required by him from time to time, the Enquiry Officer stated that it was not possible to supply xerox copies of all the documents in writ petitions and the petitioner was given liberty to take inspection and have xerox copies made at his own cost. Curiously, the said letter also recorded that although the petitioner had insisted upon the copies of the notings on the brown dockets, the petitioner was informed that the brown dockets along with the writ petitions supplied to the Respondent No. 3 by the Legal Department did not show any notings in the hand writing of the petitioner and therefore supplying copies of the notings which were never sent by the Corporation did not arise. It was the petitioner''s contention that these notings would have shown what had happened in the matters in respect of which charges were levelled against him. The petitioner has further alleged in the petition that whenever he attended the enquiry, the Respondent No. 3 used to served upon him additional and supplementary statements recorded by the Respondent No. 3 in his own handwriting and it is further alleged by the petitioner that the petitioner raised his objections to such statements being recorded in the manner being done and also the manner in which they were furnished and that the Respondent No. 3 however, continued with the same practice and directed the petitioner to file his written statement.

(I) Under these circumstances, on 28th September 1993 the petitioner filed his written statement which was in two parts - Part I dealing with legal contentions which were applicable to all the matters and Part II dealing with factual aspects of each matter. On 5th October 1993, the petitioner addressed a letter to the Respondent No. 3 thereby putting on record that he had filed the written statement and as he was asked to admit his own notings made on green dockets he had admitted the same and that he had also requested that all the orders passed by the Courts in the concerned matters and produced by him should be admitted without any proof and by the said letter thus, the petitioner called upon the Respondent No. 1 through the Enquiry Officer to admit the documents enumerated therein and

further requested the Respondent No. 3 to keep available certain documents enumerated therein at the time of the hearing since the petitioner had also alleged victimisation and mala fides.

(J) On 7th October 1993 the recording of evidence commenced. Several grievances were made by the petitioner to which I shall advert little later, in respect of the way in which the evidence was recorded. However, the main grievance which is made by the petitioner is that several questions in cross-examination which the petitioner intended to put to Shri Nanal who was examined as a witness by the Respondent No. 1 were disallowed by the Respondent No. 3 and that although while disallowing, the Respondent No. 3 indicated that the same were being disallowed for reasons recorded separately, no such reasons have been supplied to the petitioner. On 23rd November, 1993 therefore by his letter addressed to the Enquiry Officer, the petitioner put on record that the cross-examination of Shri B.G. Nanal was in progress and in order to prove mala fides, strained relations and bias, the petitioner wanted to ask the questions enumerated in the said letter. In November 1993, recording of evidence was completed and that several objections which were raised by the petitioner were not considered nor findings on the said objections were given by the Respondent No. 1. To illustrate this point, the petitioner has relied on and annexed as Exh. ''M'' to the petition, minutes of the enquiry dated 26th November, 1993. As required to do so, on 1st December 1993 the petitioner filed his final statement.

(K) In April 1994, a Notice of Motion was taken out by the petitioner and his co-petitioner in the said earlier Writ Petition for order of suspension being reviewed and for permission that the petitioner be allowed to start private practice as the enquiry had not proceeded as expeditiously as it was contemplated. My brother, Dhanuka, J. passed an order in the said Notice of Motion directing the Respondent No. 1 in the earlier petition to furnish a copy of the report of the Enquiry Officer to each of the petitioners and if the Municipal Commissioner decided to issue show cause notices in pursuance of the said order, the Municipal Commissioner should do so latest by 15th October 1994 and that the petitioners therein would be entitled to file written statements as well as to have personal hearings in pursuance of the said show cause notices. The Municipal Commissioner was further directed to pass his final orders latest by 10th June, 1994.

(L) The petitioner was served with a show cause notice dated 11th May 1995 inter alia recording that on careful consideration of the petitioner''s various oral and written submissions in defence of charges levelled against him and evidence relied upon in the subject matter and on Enquiry Officer''s report thereon, the Respondent No. 2 held that all the charges levelled against the petitioner were conclusively proved and therefore an order was passed by the Respondent No. 2 on 9th May 1994 dismissing the petitioner from Municipal service and therefore, the petitioner was directed to show cause as to why he should not be dismissed from Municipal

service for the charges held as proved against him. Along with the said show cause notice, copy of the order passed by the Respondent No. 2 on Enquiry Officer''s report was sent to the petitioner. The petitioner showed cause by his letter dated 17th May, 1994. On 4th June, 1994 personal hearing was given. Thereafter, the petitioner was served with an order dated 28th June, 1994 passed by the Law Officer of the Respondent No. 1 inter alia stating therein that the petitioner had deliberately not filed affidavit in time though time was taken for filing of affidavit, that he had failed to give proper intimation to the concerned Department as per the Court''s direction, that the petitioner filed minutes in Court without taking proper instructions from the Department concerned which resulted in the judgment against the Corporation; that the preliminary enquiry instituted in the matter revealed a prima facie case for "gross misconduct" and "gross negligence" of duty on the part of the petitioner and therefore the Respondent No. 2 had passed order dated 13th November, 1992 placing the petitioner under suspension and ordering full-fledged departmental enquiry and accordingly full-fledged departmental enquiry was held; that on consideration of petitioner''s various oral and written submissions, defences and charges levelled against him and the evidence relied upon in the matter and the Enquiry Officer''s report, the Respondent Nos. 2 held the charges levelled against the petitioner as proved against him and passed order dated 9th May, 1994 that the petitioner be dismissed and that a show cause notice was served on him and after considering the written reply as well as on hearing the petitioner at personal hearing, the Respondent No. 2 passed final order on 22nd June, 1994 to the effect that the petitioner be dismissed from Municipal service and that therefore petitioner was dismissed from Municipal Service. Despite demands, the order passed by the Respondent No. 2, as mentioned in the said order of 28th June, 1994 of the Law Officer, is not disclosed to the petitioner.

3. The petitioner, in these circumstances filed the present petition challenging the order of suspension and the validity of the entire departmental enquiry which resulted into order of dismissal on various grounds. Before I deal with the grounds, it is necessary to point out that the Respondents have not filed any affidavit whatsoever in reply to the petition although inter alia serious charges of bias, victimisation and mala fides have been made. In view of this, it was submitted on behalf of the petitioner that the allegations made in the petition are deemed to be proved. The petitioner has challenged the order of suspension as well as the order of dismissal broadly on the following grounds. The first and foremost is that the principles of natural justice have been violated inasmuch as - (a) no opportunity was given to the petitioner for cross-examining Shri Nanal, the then Law Officer against whom the petitioner had made allegations of bias and victimisation; (b) that witnesses were examined and their statements were recorded behind the back of the petitioner; (c) that additional and supplementary statements were recorded behind the petitioner''s back; (d) that further report supposed to have been submitted by the Respondent No. 3 in March, 1994 was supplied to the petitioner

only after personal hearing i.e., in June 1994 and thus, no opportunity was given to the petitioner to make his submissions thereon; (e) that witnesses were tutored by the Respondent No. 3 to say what they were expected to say; (f) that the Enquiry Officer acted in dual capacity inasmuch as he acted as the Prosecutor as well as the Judge and lastly, that material witnesses were not examined. It was very strenuously submitted on behalf of the petitioner that the petitioner was victimised inasmuch as that at least in 150 Writ Petitions, the Advocates appearing for the Respondent No. 1 had filed ''minutes of order'' without obtaining any prior approval and/or consent of the concerned department and that the Respondents had not taken any action though such acts were considered as misconduct qua the petitioner and that according to Shri Nanal, the then Law Officer, the minutes of order were consent orders, however he had himself filed ''minutes or order'' in several matters, a list whereof was given by the petitioner in Enquiry No. 3. Moreover, the petitioner in order to substantiate this stand, had by his application dated 5th October, 1993 (Exh. ''K'' to the petition) requested the Respondent No. 3 to have the said orders produced. However, the said request was rejected by the Respondent No. 3. The petitioner has also alleged in the petition that the respondents were biased against the petitioner from the start of the enquiry and this war recorded by the petitioner in his letters annexed as Exh. ''D'' and ''F'' to the petition. The petitioner has further alleged that it became obvious that even before the appointment of the Respondent No. 3 as an Enquiry Officer or the Respondent No. 3 starting with the enquiry proceedings, he not only started visiting the Legal Department but called upon the witnesses as well as other officers of the Respondent No. 1 Corporation, had discussions with them and had recorded their statements and that the Respondent No. 3 recorded supplementary as well as additional statements of witnesses who were examined in the preliminary enquiry and that the statements of some other witnesses whose statements had not been recorded at the preliminary enquiry stage were also recorded by the Respondent No. 3, after serving the charge-sheet on the petitioner on 3rd May, 1993 and the petitioner has given particulars thereof in ground (h) of paragraph 25 of the petition. The petitioner has also alleged that the enquiry was conducted in violation of the guidelines contained in the ''Yellow Booklet'' as well as the ''White Booklet'' and has in detail dealt with the submissions in the petition. Lastly, the petitioner has alleged that the misconduct alleged against the petitioner was ''misconduct'' as defined in rule 4 of the Municipal Servants'' Conduct and Discipline Rules. Rule 4 reads as follows :-

"4. Dishonesty, wilful mis-statements or concealment of facts and tampering with or destruction of records will amount to misconduct."

The said charge, according to the petitioner, was in any view of the matter, not proved.

4. As stated earlier, there is no affidavit in reply filed by any of the Respondents. In view thereof, the allegations made against the Respondents can be taken as

uncontroverted. However, to leave no room for doubt, I have dealt with the Petition on merits.

5. Before I proceed further, it is necessary to mention here that the petition is filed challenging the decision arrived at a departmental enquiry. The powers of the High Court under Article 226 of the Constitution of India in respect of departmental enquiries are very limited. The Supreme Court has in the decision of State of Andhra Pradesh Vs. Sree Rama Rao, inter alia held as under :-

"The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding ... under Article 226 of the Constitution."
The Supreme Court again in the case of State Bank of India & Ors. v. Samarendra Kishore Endow & Anr. 1994 I CLR 663 reaffirmed the above position. In view of the above, it is very clear that powers of Court under Article 226 of the Constitution in the exercise of its writ jurisdiction are very limited. It is only in cases where either principles of natural justice are violated or there are procedural irregularities or findings are either perverse or without any evidence, that the Court in exercise of its writ jurisdiction interferes with the decisions arrived at departmental enquiries. Shri Chinoy, the learned counsel appearing for the petitioner, submitted that in the instant enquiry, principles of natural justice are violated as it is very clear that although in the petition, allegations of victimisation were made against Shri Nanal, the then Law Officer of the Respondent No. 1, and although an opportunity was given to the petitioner to cross-examine, that opportunity was not effective at all in

view of the fact that admittedly, the Respondent No. 1 did not permit the petitioner to ask series of questions to Shri Nanal. The petitioner has heavily relied on his letter dated 23rd November 1993 addressed to the Respondent No. 3 (annexed as Exh. ''L'' to the petition) wherein the Petitioner has inter alia recorded the fact that Shri Nanal''s cross-examination was in progress and that the petitioner wished to ask questions enumerated therein. It is also a matter of record that witnesses examined earlier behind the back of the petitioner were formally examined in the presence of the petitioner. It is again a matter or record that a copy of the further report which was allegedly of March 1994 and no opportunity was given to the petitioner to reply to the same. Coming to the next contention of Shri Chinoy that witnesses were tutored in order to have desired answers, ground (h) of the petition in detail deals with the same. Again there is no running away from the fact that the allegations made by the petitioner in his two letters dated 16th January 1993 and 16th April 1993 were neither replied nor even contents thereof were denied on affidavit. Therefore, it is not disputed that the Respondent No. 3 in fact had acted in dual capacity, firstly in its capacity as a presenter preparing a case against the petitioner and secondly, judging the same himself. Lastly, although the petitioner had made an application for examining certain witnesses viz. Mrs. Shetty and then Deputy Law Officer of the High Court Section under whom the petitioner was working, the same were not examined by the Corporation. It was Mrs. Shetty who was the Law Officer at the time when the petitioner is alleged to have committed or omitted to do certain acts which according to the Respondent No. 1 amounted to misconduct. The above facts reveal the way the entire enquiry was conducted. In these circumstances, it is difficult to accept the submission of Dr. Chandrachud that proper procedure was followed. Except the bare assertion on the part of the learned counsel, there is nothing to support it. The record shows otherwise. The most significant and glaring allegation which had gone unchallenged before me was that of the conduct of the Enquiry Officer. The two letters mentioned above written by the petitioner indicate conduct of the Enquiry Officer much prior to the actual commencement of the enquiry. The allegations were to the effect that the Respondent No. 3 i.e., the Enquiry Officer had started attending the office of the Respondent No. 1 and that he had been seen discussing the matter with the officers of the Respondent No. 1 and was making use of Respondent No. 1''s vehicle for transportation. All these allegations go to show that the departmental enquiry conducted against the petitioner was not at all held in a proper manner. In my opinion the entire departmental enquiry was vitiated and the resultant order of dismissal is thus rendered illegal.

6. Assuming that the departmental enquiry did not suffer from any infirmity, let us now examine whether there has been any material before the Respondent No. 3 to hold the petitioner guilty as charged. Rule 4 of the Municipal Servants'' Conduct and Discipline Rules reproduced above shows that dishonesty, wilful mis-statements or concealment of facts, and tampering with or destruction of records would amount

to misconduct. Thus, in other words, any misstatement or concealment of facts and tampering with or destruction of records done ''dishonestly'' or ''wilfully'' would amount to misconduct. It has not been proved that the petitioner was guilty of mis-statement or concealment of facts and tampering with or destruction of record and that he had done it dishonestly and wilfully. The controversy in fact centres around the question as to whether the orders which were passed as ''minutes of the orders'' were passed by consent given by the petitioner in the circumstances alleged against him. As far as the ''minutes of the order'' are concerned, there is no question of misrepresentation or concealment of facts and tampering with or destruction of the record. Assuming that although instructions were given to the petitioner to draft affidavits in reply or although instructions were given to the petitioner to apply for time, the question still remains whether the ''minutes of order'' per se would amount to consent orders. The Respondent No. 3 has on the basis of evidence led before him by person, no less than Shri Nanal who was once a Law Officer and against whom the petitioner has made allegation that at least in 150 matters such orders have been obtained, has come to the conclusion that these orders were orders by consent. It is difficult to understand this conclusion. When an order is passed in terms of minutes of order, it is always an order ''in invitum''. It is an abbreviated form of Court''s order, wherein neither facts are discussed nor reasons are given. Thus, it is a bare order of the Court bereft of any discussion of facts or law. By initialling or even signing the minutes of order, the parties are not agreeing to whatever is contained therein. To avoid future complications or non-implementation of such an order due to any ambiguity that the Courts some times ask the parties viz. the counsel to draw up the minutes of the order. Initialling and/or signing is not done in order to obtain consent to the minutes but to lend authenticity to the said minutes so that in future there is no confusion about the same. However, it is possible that in a given case, there can be an order in terms of minutes of the order which can be termed as a Consent Order when the Court records in the minutes of order or the operative part of the order that the same is obtained by consent in which case it will have the same effect as that of a Consent Order. In the absence whereof, it is difficult to understand how ''minutes of order'' would amount to a Consent Order. Day in and day out, such orders are being passed by this Court. Parties even go in appeal from such orders. In view thereof, the very foundation on which all these charges were based was erroneous. The charge-sheets proceeded on the basis that all the ''minutes of the orders'' in question were obtained by consent and that the petitioner was at fault in giving such consent. In order to give a colour of alleged dishonesty and in order to make it fall under Rule 4 of the Municipal Servants Conduct and Discipline Rules, it appears that certain words have been added in all the charge-sheets viz. ''dishonestly'', or ''with an intent''. As such, it had to be proved that these minutes were allowed to be passed dishonestly or with an ulterior motive. It is settled law that findings cannot be based on mere suspicion or surmises. This has been ignored in the present matter. Order passed in terms of the minutes of order per se cannot mean that the

party is guilty of dishonesty or of concealment or the same was done with ulterior motive. In fact, I have gone through the charges, the material available and it appears that the witnesses who had no knowledge about this Court''s procedure were asked questions about the meaning of words ''minutes of order''. It is surprising that the Respondent No. 3 who is a retired Judge of the Bombay City Civil Court could not distinguish or see the difference between the two viz. ''minutes of the order'' and ''consent terms.'' The above observations are made in order to clarify the misconception which people would be carrying and/or capable of carrying regarding ''minutes of order''. As far as this matter is concerned, it is very clear that all the orders which were passed were in the form of ''minutes of order''. Orders in such form are usually passed when either in a similar matter between may be the same parties or others, similar orders have been passed or where there is a reported or unreported decision of the Court wherein it is found unnecessary to discuss law or even facts. After examining all the charges and the material produced, it appears that these orders were passed ''In Invitum'' and not by ''consent'' and in respect of each and every such order there was at least one order which was passed earlier in a similar matter. Just because subsequent to the passing of the orders in question, in some other matter, different conclusion was reached or different order was passed, cannot mean that the order which was passed earlier on the basis of the minutes was passed as a result of any dishonest intention on the part of any party.

7. The petitioner, an Advocate of this Court, at the relevant time, was in the full-time employment of the Respondent No. 1. During arguments, Shri Chinoy, the learned counsel appearing for the petitioner, inter alia submitted that the petitioner being an Advocate of this Court had, in any view of the matter, in exercise of his discretion entitled to invite an order being passed in the form of ''minutes of order'' when there was a precedent in the form of an earlier order in a similar matter. This submission warrants a closer scrutiny as it deals with the role of an Advocate vis-a-vis the Court and vis-a-vis his client or employer if he is in a full-time employment as in the present case. The Supreme Court in the case of State of U.P. & Ors. v. U.P. State Law Officers Association & Ors. reported in 1994 I CLR 608 had the occasion to deal with the duties of lawyers who are engaged by the Government or different public bodies. The Supreme Court inter alia observed :-

"14. Legal profession is essentially a service-oriented profession. The ancestor of today''s lawyer was no more than a spokesman who rendered his services to the needy members of the society by articulating their case before the authorities that be. The services were rendered without regard to the remuneration received or to be received. With the growth of litigation, layering became a full-time occupation and most of the lawyers came to depend upon it as the sole source of livelihood. The nature of the service rendered by the lawyers was private till the Government and the public bodies started engaging them to conduct cases on their behalf. The Government and the public bodies engaged the services of the lawyer purely on a

contractual basis either for a specified case or for a specified or an unspecified period. Although the contract in some cases prohibited the lawyers from accepting private briefs, the nature of the contract did not alter from one of professional engagement to that of employment. The lawyer of the Government or a public body was not its employee but was a professional practitioner engaged to do the specified work. This is so even today, though the lawyers on the full-time rolls of the Government and the public bodies are described as their law officers. It is precisely for this reason that in the case of such law officers, the saving clause of Rule 49 of the Bar Council of India Rules waives the prohibition imposed by the said rule against the acceptance by a lawyer of a full-time employment.

15. The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the Courts every fact or urge every proposition of law which his client wants him to do, however irrelevant it may be. He is essentially an adviser to his client and is rightly called a counsel in some jurisdictions. Once acquainted with the facts of the case, it is the lawyer''s discretion to choose the facts and the points of law which he would advance. Being a responsible officer of the court and an important adjunct of the administration of justices the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. This relationship between the lawyer and the private client is equally valid between him and the public bodies.

16. Over the years, the public sector has grown considerably, and with its extension and expansion, the number of lawyers engaged in the public sector has increased noticeably so much so that it can truly be said that today there is a public sector in the legal profession as well. The expansion of the public sector activities has necessitated the maintenance of a permanent panel of lawyers. Some of the lawyers are also in full-time employment of the public institutions as their law officers. The profile of the legal profession has thus undergone a change."

It will be observed from the above excerpts that the relationship between the lawyer and the private client is equally valid between him and the public bodies like the Respondent No. 1 before me. From the above observation of the Supreme Court, it would be also clear that no doubt an Advocate has the duty as amplified therein to the Court being an Advocate of the Court but also has a duty to the public body for which he is working full-time. It would be too broad a proposition to say that an Advocate who is in the full-time pay-roll of a public body being an officer of the Court can in his discretion act without any reference to this employer. I am not at all prepared to accept such a broad proposition. No doubt, he owes a duty towards the Court, but that cannot mean that he has to use his own discretion and take

whatever decision he wishes to take. Even as an Advocate working independently he is not entitled to do so. He always has a duty to his client even if he is in private practice. But once he is in employment of a public body the duty is still more as so much more trust and so much more confidence are put in such a person. An Advocate in such circumstances has, apart from his duty towards the Court, a duty to take instructions, to inform his superiors, to acquaint other members of the department as to what would happen in the matter which is before the Court and later on to inform them as to what happened in Court. It would be too much to say that he can take decision on his own and come to the conclusion that there is an earlier order and therefore a similar order may be passed. It is another matter when despite his seeking instructions he has failed in getting any instructions. In such a case, he must very fairly state to the Court that although he tried to get instructions, he has failed. However, as an officer of the Court, he is duty bound to inform the Court of any previous orders passed in similar matters. In all cases, it would be the duty of an Advocate whether working independently or full-time for any public body to keep his client fully informed as to the happenings at the hearings. There are the parameters under which an Advocate working full-time for a public body has to function. His behaviour at all time must be transparent, honest and above board. Then only in can be said that he has not only discharged his duty to the Court but also to his client. In the case before me, there is no material to show that the petitioner has failed in his duty or that he had acted dishonestly and that his actions amounted to misconduct. Assuming that the petitioner did not care to obtain instructions or failed to prepare affidavits although so instructed, it can be said that this reflected on his professional ability and therefore departmental enquiry was not a proper procedure and that the only body would be the Bar Council which deals with unprofessional conduct of Advocates. Shri Chinoy, learned counsel appearing for the petitioner, relied on an unreported decision of this Court dated 6th September 1983 in Writ Petition No. 134 of 1982, Lakshmi Kant Chatterji v. Union of India & Ors. where Pendse, J. (as he then was) inter alia held that the question of professional incompetency should be left to the body constituted by the professionals for holding inquiries against Advocates and that there cannot be a question of holding departmental enquiry.

8. In these circumstances, as I have already come to the conclusion that the charges levelled by the petitioner against the Respondents, viz. that of bias, victimisation and of mala fides are not controverted as no affidavit in reply has been filed, after hearing the parties and seeing the record, it is clear that the principles of natural justice have not been complied with. In view of the above, the entire enquiry is vitiated and therefore the order of dismissal cannot stand and has to be struck down.

9. Dr. Chandrachud, learned counsel appearing for the Respondents, submitted that if the Court was inclined to strike down the order of dismissal, reinstatement should not be awarded in view of the fact the Respondent have lost confidence in the

petitioner. Dr. Chandrachud relied on the decision of the Supreme Court in the matter of Workmen v. Bharat Fritz Werner (P) Ltd. and Anr. reported in 1990 I CLR 875 wherein the Supreme Court inter alia held, after referring to various decisions and its earlier decision, that reinstatement has not been considered as either desirable or expedient in certain cases where there had been strained relations between the employer and the employee, when the post held by the aggrieved employee had been one of trust and confidence, or when, though dismissal or discharge was unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive or prejudicial to the interests of the industry, and that in cases where it is felt that it will not be desirable or expedient to direct reinstatement the workman is compensated monetarily by awarding compensation in lieu of reinstatement for loss of future employment. As far as this aspect of the matter is concerned, the petitioner has made very serious allegations of bias, mala fides and victimisation. The record of the enquiry produced before me is not at all satisfactory. This is one of those cases in which I cannot come to the conclusion on the basis of the material produced before me; that it would be undesirable if the petitioner is reinstated. To me, it appears that assuming the Respondents were right in their submissions that certain decisions were taken by the petitioner on his own, to colour them as having been done with dishonest intention would be wrong. This is not one of those cases which falls under any of the exceptions carved out by the Supreme Court in the decision cited by Dr. Chandrachud and mentioned above. With the result, I do not accept the contention of Dr. Chandrachud. The petition has to be allowed and thus, the petition is made absolute in terms of prayers (b) and (c). Dr. Chandrachud applies for stay of the order. The order is stayed for is weeks. There shall be no order as to costs.

10. Petition allowed.