

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1911 OF 2012

Javed s/o Yakub Pathan,
Age 28 years, Occu. Service as
Dendra Pramukh-Cluster Chief
at Block Education Office,
Panchatay Samiti, Ashti,
R/o At Post Suleman Deola,
Tq. Ashti, District Beed.

... Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. Divisional Commissioner,
Aurangabad Division,
Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Beed.
4. Block Education Officer,
Panchayat Samiti,
Ashti.

... Respondents

.....
Advocate for petitioner : Mr. V. S. Panpatte
AGP for respondent nos. 1 and 2 : Mr. D. B. Bhange
Advocate for respondent nos. 3 and 4 : Mr. N. L. Jadhav
.....

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 26th JUNE, 2015

ORAL JUDGMENT (PER S. V. GANGAPURWALA, J.) :-

1. Mr. Panpatte, the learned counsel for the petitioner submits

that the petitioner was appointed on compassionate ground on account of death of his father vide appointment order dated 11.6.2010. The petitioner joined the services on 13.6.2010. Learned counsel submits that on 17.10.2011, a show cause notice was issued to the petitioner calling for the explanation as to why the services of the petitioner should not be terminated. Vide order dated 23.2.2012 the petitioner was terminated from service. The only ground of termination from service is that the petitioner, for some period from 2007 to 2009, had worked on daily wages with Maharashtra State Road Transport Corporation (M.S.R.T.C.). According to the learned counsel, at the said time, it was incumbent for the petitioner to work for survival of his family and it cannot be said that the petitioner was in regular employment. According to the learned counsel, the order of termination is illegal and does not stand to any reason. Learned counsel further states that pursuant to the interim order passed by this Court, the petitioner continued in service and now he is permanent employee working as Cluster Head.

2. Mr. Jadhav, learned counsel for the respondent Nos. 3 and 4 submits that the petitioner has given an affidavit in which he has stated that he has not been employed elsewhere. However, in the reply filed by the petitioner to the notice issued by respondent nos. 3 and 4, the petitioner has admitted that he was working as conductor

in MSRTC. According to the learned counsel, no illegality has been committed by the authority while passing the impugned order.

3. We have also heard the learned A.G.P. for respondent Nos. 1 and 2.

4. Upon considering the arguments canvassed by the learned counsel for the respective parties and also going through the pleadings, it is clear that father of the petitioner was working as Muster Karkun with the Zilla Parishad and while in service, he died. The petitioner applied for appointment on compassionate ground on or about 3.1.2007. The petitioner was appointed vide order dated 11.6.2010. Though the petitioner had applied in the year 2007 for appointment on compassionate ground, but no decision was taken by the respondents. During this period of three years, naturally, for the purpose of survival of the petitioner and his family members the petitioner was required to do some work. He was employed on daily wages for some interregnum period in the year 2007. There is nothing to show that he was employed in the year 2010. That means whenever the work was available the petitioner had to do work on daily wages with M.S.R.T.C. He was not in regular employment nor was appointed permanently. He was working on daily wages that too as and when the work was available.

Naturally, it cannot be said that the petitioner was in regular employment. For the purpose of survival of himself and his family, he got the employment on daily wages.

5. The another factor, which is also required to be considered is that pursuant to the interim order passed by this Court on 28.2.2012 the petitioner is continued in service with the respondent and now is permanent employee.

6. Considering the aforesaid conspectus of the matter, the impugned order dated 23.02.2012, terminating the services of the petitioner is quashed and set aside. Rule accordingly made absolute. Writ Petition stands disposed of. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

rlj/