

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2798 OF 2005

Dr. Prabhakar Ramling Chaudhari .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri R. S. Deshmukh, Advocate for the Petitioner.

Shri S. A. Ambad, A.G.P. for Respondent Nos. 1 to 3.

CORAM : S. V. GANGAPURWALA AND

A. I. S. CHEEMA, JJ.

DATE : 09TH APRIL, 2015.

PER COURT :

. The present petitioner was appointed as Medical Officer vide order dated 08.07.1970. His services were terminated in the year 1977. The petitioner assailed the said order of termination by filing civil suit bearing R.C.S. No. 209 of 1979. The petitioner sought the relief of declaration that the termination is null and void and that he is still in service and for damages. The Trial Court decreed the suit and set aside the order of termination, however rejected the prayer for damages. The respondents/State filed an appeal before the District Court bearing R.C.A. No. 87 of 1987. The same was transferred to the Maharashtra Administrative Tribunal. The present petitioner also filed cross objection to the extent of denial of relief of damages. The

Maharashtra Administrative Tribunal allowed the appeal filed by the respondents/State and dismissed the cross objection. Aggrieved thereby the present petition.

2. Mr. Deshmukh, the learned counsel for the petitioner submits that, the petitioner was duly appointed in the year 1970, though the appointment order states that, the appointment is for a period of one year or till the candidate selected by the M.P.S.C. is available. So it was a substantive post on clear vacancy. The learned counsel submits that, the petitioner is entitled to the benefit of Government Resolution dated 19th September, 1975 by virtue of which the Government had taken policy decision to confirm and make permanent all such employees who were appointed on temporary posts. According to the learned counsel said Government Resolution is rightly considered by the Trial Court, however, the Tribunal has misconstrued the said Government Resolution. By the judgment of the Tribunal the purpose of the Government Resolution stands frustrated. The learned counsel further submits that, the order of termination is stigmatic. It is on the basis of the report of one Mr. Chavan, the said action was taken and when the order of termination is punitive in nature, the principles of natural justice are required to be followed. No enquiry was conducted, as such the order is per-se illegal. The judgment and order of the Tribunal on this ground deserves to be quashed and set aside.

3. The learned counsel for the petitioner further submits that, the juniors to the petitioner were retained. If at all the respondents wanted to resort to the policy of termination, the principle of last come first go ought to have been applied. The respondent/State Government is expected to be a model litigant.

4. We have considered the submissions canvassed by the learned counsel for the petitioner, so also the judgments delivered by both the Courts. The order of appointment reads as under :

"GOVERNMENT OF MAHARASHTRA

Urban Development, Public Health and Housing
Department,

Resolution no. UDO-1070/78413-D

Sachivalaya, Bombay-32, Dated 4th May, 1972.

Letter No. II-1070-A dated 19th February, 1972 from the
Joint Director of Health Services, Poona

RESOLUTION :- Government is pleased to appoint the persons shown in the accompanying statement to the posts of Medical Officers in the Maharashtra Public Health Services, Class-II as shown against their names, for a period of one year in case of Non-bonded candidates (shown at S. No. 1 41 to 444 in the Statement) and two years in the case of bonded candidates (shown at S. No. 1 to 40 in the statement) with effect from the date of their appointment shown against their names or till they replaced by the candidates selected by the Maharashtra Public Service Commission, whichever is earlier."

5. It is not disputed that, by virtue of aforesaid order the

petitioner came to be appointed. The petitioner was a non bonded candidate. The appointment of a particular persons would be governed by the terms and conditions enumerated in the appointment order. The appointment was for one year or till the date of appointment of candidate selected by the M.P.S.C. whichever is earlier. The petitioner continued in service upto the year 1977. The order of termination reads as under :

"As your services are no longer required by Government they will stand terminated on the expiry of one month from the date of receipt of this notice."

6. Perusal of the order of termination, it is manifest that the said order of termination is termination simplicitor. The same even remotely does not suggest to be stigmatic or punitive. It only shows the services of the petitioner are no longer required, as such, he stands terminated after expiry of one month from the date of notice of termination. The said termination order cannot be said to be based on the report of any person. As such, we have no hesitation to hold that, the said termination is not punitive, but simplicitor termination pursuant to the terms and conditions of the appointment order.

7. Much emphasis has been led by the learned counsel for the petitioner on the Government Resolution dated 19th September 1975. The decision of the Government of extending the benefit of permanency to the temporary Government servant was on certain condition. The said conditions of the Government

Resolution are enumerated below :

"1. The original appointment of the Govt. servant concerned to the respective post or cadre must have been made in conformity with the relevant recruitment rules, and the prescribed method of recruitment.

2. The Govt. servant concerned must have produced the requisite physical fitness certificate and must have passed the prescribed Departmental Examination or test, if any. The Govt. servant concerned must possess a good record of service in Govt.

3. In the case of every Govt. servant, who satisfies these conditions and becomes eligible to be treated as a permanent Govt. servant, a declaration to that effect should be issued by the authority competent to appoint him to the particular post as soon as possible after completion of continuous service of not less than three years in the relevant post or cadre. On such a declaration being recorded, the Govt. servant concerned should be held eligible for all benefits of substantive status in Govt. service.

4. These orders are applicable only with reference to the first appointment of a person to Govt. service i. e. he should be given the status of permanency in terms of the orders only in respect of the post to which he is appointed by direct recruitment. In respect of subsequent appointment by promotion, he will be deemed to be permanent in the cadre to which he is promoted only on his confirmation in that cadre in a substantive vacancy.

5. The question of issuing such amendments as may be necessary to the relevant provisions of the

Bombay Civil Service Rules, will be considered separately by the Finance Department."

8. It would appear that, the policy decision of the Government to make those appointed temporary employees as permanent was based on various conditions that the Government servant concerning to the respective post or cadre must have been made in conformity with the relevant recruitment rules and the prescribed method of recruitment. The petitioner was not selected through M.P.S.C. The very condition of the Government Resolution dated 19.09.1975 itself is not satisfied. As such, said Government Resolution would not come to the benefit of the petitioner.

9. As far as contention of the petitioner that the juniors to the petitioner have been retained, there is no material as such. However, the same also would not be relevant, as the petitioner cannot claim a vested right for the said post, pursuant to the order of appointment itself.

10. In the light of the above, we do not see any error in the judgment delivered by the Tribunal. As such, the writ petition is disposed of. Rule discharged. No cost.

[A. I. S. CHEEMA, J.]

[S. V. GANGAPURWALA, J.]