

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

WRIT PETITION NO.6743 of 2014

Avinash Jagadeorao Jadhav,
Age 36, Occu: Secretary,
R/o. 28, Anusaya Sadan, Nagesh Nagar,
Taroda (Bu.) road
Tq.& Dist. Nanded.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Agriculture Department,
Mantralaya, Mumbai 32
2. The Commissioner for Agriculture,
Maharashtra State, Pune.
3. The Director of Marketing,
Maharashtra State, Pune.
4. The Agriculture Produce Market
Hadgaon, Tq. Hadgaon,
Dist.Nanded,
Through its Administrator.
5. Kishor s/o Kerbarao Wankhede,
Age 43, Occu.Service (as a Secretary
of A.P.M.C. Hadgaon), Tq. Hadgaon,
Dist. Nanded.

(Respondent no.5 added as per Court's
order dated 19.8.2014 in C.A.No.8806/2014)

...RESPONDENTS

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Shri V.D.Salunke, Adv., h/f Shri D.M.Shinde, Adv., for
petitioner.

Shri G.R.Ingole, AGP for respondent State.

Shri S.S.Thombre, Adv., for respondent no.5.

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**CORAM: S.S.SHINDE
AND
P.R.BORA, JJ.**

Date of reserving
the judgment: **15.4.2015**
Date of pronouncing
the judgment: **30.4.2015**

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JUDGMENT : (PER P.R.BORA, J.)

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of the parties.

2. Order dated 5.7.2014 passed by the then Sabhapati of Agricultural Produce Market Committee, Hadgaon, whereby the services of the present petitioner came to be terminated, is questioned in the present petition.

3. As contended in the petition, the petitioner was selected as per the provisions of Section 35 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, by the Maharashtra State Agricultural Marketing Board, Pune, and his name was included at Sr.No.37 of the list of selected candidates. It is further contended that petitioner was selected after following due process of selection i.e. written test and interview. It is further contended that in the selection process so carried out, total 129 candidates were selected, including the petitioner. The petitioner has filed on record the list of said 129 selected candidates as Annexure A to the present petition. The name of the present petitioner stands at Sr.No.37 and he is shown to have been appointed at

Agricultural Produce Market Committee, Hadgaon, district Nanded. Accordingly, appointment order dated 27.8.2013 was issued in favour of the petitioner. It is further contention of the petitioner that though there was an order of appointment in his favour, initially he was not allowed to join to the post on which he was selected. It is further contended that after the petitioner made a grievance with the Maharashtra State Agricultural Marketing Board, Pune, that he was allowed to join w.e.f. 10.9.2013. It is the further contention of the petitioner that since the probation period of six months was going to be completed on 9.3.2014, prior to that the petitioner was constantly requesting respondent no.4 to send the report of the probation period, however, it was not sent. It is the further contention of the petitioner that instead of recommending the successful completion of the probation period of the petitioner, respondent no.4 terminated the services of the petitioner under its communication dated 5.7.2014.

4. Following five reasons are stated in the order dated 5.7.2014 whereby the services of the petitioner have been terminated:

a) That, in Writ Petition No.7720/2013, the Bombay High Court on 21.10.2013, ruled that the notification dated 7th January, 2013, on the basis of which the present petitioner came to be appointed, is illegal.

b) That Shri K.K.Wankhede has filed Writ Petition No.9560/2013, in the High Court of Bombay, Bench at Aurangabad, and that the notices are issued by the High Court in the said writ petition.

c) That the petitioner has not completed three months' training and has, thus, shown carelessness in performing his duties.

d) That the petitioner has remained absent without permission and has, thus, violated the service Rules.

e) That the petitioner is making false propaganda against the Managing Committee of the Market Committee.

5. Shri V.D.Salunke, learned Counsel appearing for the petitioner, submitted that all the aforesaid reasons are apparently wrong and unsustainable, and petitioner could not have been terminated on the aforesaid grounds. Learned Counsel submitted that respondent no.4 has misinterpreted the interim order passed by the Principal Seat of the High Court at Bombay in Writ Petition No.7720/2013. Learned Counsel submitted that, on the contrary, in the interim order so passed in the aforesaid petition, the interests of the persons, who have resumed on the basis of the recommendations in question, have been adequately protected. Learned Counsel further submitted that in the Writ Petition filed by Mr.K.K.Wankhede, though notices have been issued against respondent no.4 and others, no interim order of any sort has been passed. Learned Counsel submitted that Ground nos. 3 to 5 are also untenable since without giving any opportunity of hearing to the petitioner, abruptly and arbitrarily, the services of the petitioner have been terminated. Learned Counsel for the petitioner took us

through the interim order passed in Writ Petition No.7720/2013 to demonstrate how the said order has been wrongly interpreted by the respondents. Learned Counsel, therefore, prayed for dismissal of the order dated 5.7.2014.

6. Shri Gajanan Chango Wagh, who is working as Divisional Manager, Maharashtra State Agriculture Marketing Board, Division Aurangabad, has filed affidavit in reply on behalf of respondent nos. 1 to 3. Respondent nos. 1 to 3 have supported the case of the petitioner and have taken an unambiguous stand that respondent no.4 has not followed proper procedure while terminating services of the petitioner. Shri K.K.Wankhede was subsequently added as respondent no.5 in this matter. Said Shri Wankhede has filed his affidavit in reply. Respondent no.4 has not filed affidavit in reply. Respondent no.5 has raised preliminary objection regarding maintainability of the petition. According to respondent no.5, the order dated 5.7.2014 impugned in the present petition is an appealable order and the petitioner ought to have preferred an appeal under Section 52B of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963. Respondent no.5 has referred to the interim order passed in Writ Petition No.7720/2013, and has submitted that in view of the order so passed, the services of the petitioner have been rightly terminated by respondent no.4. Learned Counsel submitted that the services of the petitioner have been terminated after following due process of law. He has, therefore, prayed for dismissal of the petition.

7. First, we will deal with the objection raised by respondent no.5 regarding maintainability of the present

petition. As has been contended by respondent no.5, there was alternate remedy available for the petitioner to file an appeal under Section 52B of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963. We do not find much substance in the objection so raised. Under Article 226 of the Constitution of India, the High Court, having regards to the facts of the case, has a discretion to entertain or not to entertain a writ petition. It need not be stated that where the writ petition has been filed for enforcement of any fundamental right and where there has been violation of principles of natural justice, or where the order in the proceedings are wholly without jurisdiction, writ petition can be entertained under Article 226 of the Constitution of India. In the instant case it is writ large that without giving any opportunity of hearing to the petitioner, his services have been terminated. It is gross violation of principles of natural justice.

Secondly, in the order of termination itself there is reference to the interim order passed in Writ Petition No.7720/2013 and also of the Writ Petition No.9560/2013 filed by Shri K.K.Wankhede. It is the specific case of the petitioner that on wrong interpretation of the interim order passed in Writ Petition No.7720/2013, his services have been terminated. This is also the reason for the petitioner to directly approach this Court invoking its extraordinary jurisdiction under Article 226 of the Constitution of India. We, therefore, reject the objection so raised by respondent no.5 regarding maintainability of the present petition.

8. We have carefully considered the submissions advanced on behalf of the petitioner as well as on behalf of

respondent nos. 1 to 3 and 5. As stated earlier, there are five reasons stated for terminating the services of the petitioner. We prefer to consider all the aforesaid five reasons in their order.

(a) In so far as first ground is concerned, it is apparently untenable. We have carefully gone through the interim order passed in Writ Petition No.7720/2013. Paragraph no.22 of the said order is material in so far as the controversy raised in the present matter is concerned, which is reproduced here-in-below:

"22. Though a case is made out for passing an order of interim relief for preventing the Respondents from acting upon the impugned order, the question is whether the appointments of 51 appointees who have already taken charge can be disturbed today. Though the Petitioner claims that it represents several Market Committees, none of the 51 Market Committees in relation to whom 51 appointments have been made before this Court. It is not clear whether the concerned Market Committees have any objection as regards the appointees deputed by the 2nd Respondent Board. If an individual Market Committee has any grievance, it is for the individual Market Committee to adopt appropriate proceedings in accordance with law. Therefore, while passing the interim order in this Petition, we are not disturbing the appointments of 51 appointees who have already taken charge of the posts of Secretaries. Accordingly, there will be interim relief in terms of prayer clauses (c) and (d). We make it clear that notwithstanding the grant of prayer clauses (c) and (d), the appointments of 51 Secretaries who have already taken charge shall not be disturbed. A list of 51 Secretaries is tendered on record by the learned counsel appearing for the 2nd and 3rd Respondents which is marked "X" for identification. We, however, make it clear that it will be open for the concerned Market Committees to adopt appropriate proceedings as regards appointment of those 51 Secretaries."

It is clear case made out by the petitioner that his name is included in the list of 51 Secretaries who have already resumed to their posts. The contention of the petitioner that he has resumed to the post of Secretary of the Market Committee, Hadgaon, is fortified by letter dated 10.9.2013, written by the then Sabhapati of respondent no.4 Market Committee to the Managing Director of Maharashtra Agricultural Marketing Board, Pune, which clearly demonstrates that the petitioner was allowed to resume his duties on 10.9.2013. No doubt, it is also contended in the said letter that the appointment of the petitioner will be subject to outcome of the petition filed by respondent no.5, namely, Shri K.K.Wankhede. The termination letter itself carries an averment that the petitioner was got resumed to his duties on 10.9.2013. Learned Division Bench, while passing an interim order in Writ Petition No.7720/2013, on 21.10.2013, has amply made it clear that appointment of 51 Secretaries who have already taken charge shall not be disturbed. No doubt, it has also been further mentioned that appointments of said 51 Secretaries shall be subject to further orders which may be passed in the said writ petition.

(b) Learned Counsel for the petitioner has also placed on record the subsequent circular dated 16/12/2014, issued by the Director, Maharashtra Agricultural Marketing Federation, Pune, wherein it has been clarified that the interim order passed in Writ Petition No.7720/2013, is being wrongly interpreted. It is further clarified in the said circular that the candidates to whom the High Court has provided protection vide the interim order passed shall be allowed to join their

duties and who have been terminated or relieved from duties shall be reinstated.

It is, thus, quite evident that respondent no.4 has wrongly interpreted the aforesaid order. In the circumstances, the said interim order cannot be a ground for terminating the services of the petitioner.

(c) The second ground in the order of termination is also equally untenable. It is true that Shri K.K.Wankhede has filed the writ petition before this Court bearing W.P.No.9560/2013 and notices are issued in the said writ petition. However, admittedly, there is no interim order passed in the said writ petition of any sort. In the circumstances, mere filing of the said Writ Petition by Shri Wankhede cannot be a ground for terminating the services of the petitioner.

(d) In so far as ground nos. 3 to 5 are concerned, it is the case of the petitioner that no opportunity of hearing has been given to the petitioner to put forth his case in respect of the allegations so made. The averments made in this regard by the petitioner have remained uncontroverted. The principles of natural justice have not, thus, been followed before terminating the services of the petitioner.

In the aforesaid circumstances, the impugned order dated 5.7.2014 cannot be sustained and deserves to be set aside and quashed.

9. We are, therefore, inclined to allow the present petition and hence pass the following order

ORDER

- a) The impugned order dated 5.7.2014 is quashed and set aside.
- b) Respondent no.4 is directed to reinstate the petitioner to the post of Secretary, Agricultural Produce Market Committee, Hadgaon, with continuity of service and backwages, and to release salary of the petitioner from 10.9.2013 and onwards till the date of termination.

Petition allowed in above terms. Rule made absolute. No order as to costs.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

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