

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.3150 OF 2015

Sow. Sanjana Changanlal Badgujar
Age : 46 years, Occ. Nil,
R/o. Bhatkheda, Tq. Erandol,
Dist. Jalgaon.

...Petitioner...

Versus

- 1 The State of Maharashtra
through Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
- 2 The Addl. Divisional Commissioner,
Commissioner Office, Nashik,
Dist. Nashik.
- 3 The Commissioner (Handicap Welfare)
3, Church Road, Maharashtra State,
Pune - 411001.
- 4 The Chief Executive Officer,
Zilla Parishad, Jalgaon.
- 5 The Deputy Chief Executive Officer,
Zilla Parishad, Jalgaon.
- 6 The Women & Child Welfare
Project Officer,
Integrated Child Welfare
Scheme Service.
Project Office, Erandol,
Tq. Erandol, Dist. Jalgaon.

...Respondents...

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Shri G. G. Suryawanshi h/f Shri G. P. Ingle, Adv. for petitioner.

Shri V. G. Shelke, AGP for respondent Nos.1 to 3.

Shri Vijay Sharma, Adv. for respondent Nos.4 to 6.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 10.12.2015

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] The petitioner is aggrieved by the impugned order dated 25.3.2009 delivered by the respondent no.4 – Chief Executive Officer, Zilla Parishad, Jalgaon, by which her proceedings against the order of termination dated 6.5.2008 have been dismissed. The petitioner is also aggrieved by the judgment and order dated 8.8.2013 delivered by the respondent no.3 – Commissioner (Handicap Welfare), by which her Appeal No.66/2012 has been rejected.

3] The petitioner claims to be an Anganwadi Sevika having been appointed on 1.10.1995 at village Bhatkheda Tq.Erandol Dist.Jalgaon. From the year 2003 onwards, the respondents have been issuing notices to her thereby contending that she is committing acts amounting to mis-

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conduct. A final show cause notice dated 22.4.2007 was issued and pursuant to her explanation dated 9.10.2007, the respondent no.6 – employer of the petitioner, issued the order of termination dated 6.5.2008.

4] The petitioner submits that there are 10 charges levelled upon the petitioner in the impugned order of termination. No enquiry has been conducted. The issue that Anganwadi Sevika is a workman and until the department frames its own rules, the employer – department shall have to conduct disciplinary proceedings in accordance with the Model Standing Orders, is the conclusion arrived at by this Court in the matter of *Dy. Chief Executive Officer (Child Welfare), Zilla Parishad, Ahmednagar & another v. Ratan Eknath Gund (2015 (2) Mh.L.J., 615)*.

5] Shri Suryawnshi, learned Advocate for the petitioner submits that the said judgment in the matter of *Ratan Eknath Gund (supra)* is based on the Division Bench judgment of this Court in the matter of *Sau.Vidya w/o Vishnu Wanare v. State of Maharashtra (2011 (2) Mh.L.J. 221)*. He submits that the termination order is not an innocuous order. Allegations have been

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specifically levelled upon the petitioner. Said order is stigmatic in nature and is by way of a punishment. He, therefore, prays for the quashing and setting aside of the order of termination and both the impugned judgments.

6] The learned AGP appearing on behalf of the State authorities has strenuously supported the impugned judgments. He submits that no perversity or error has been pointed out by the petitioner and the impugned judgments are required to be sustained.

7] Shri Vijay Sharma, learned Advocate appearing on behalf of the respondent nos.4 and 5, draws my attention to the judgment of the appellate authority dated 8.8.2013 wherein it was observed that a final show cause notice dated 24.1.2003 was issued to the petitioner listing out the charges against her. She has, by her reply, admitted of being guilty of all the charges and has further assured that she would not commit any such mis-conduct in future.

8] He, therefore, submits that in this fact situation, no enquiry is required to be conducted by the respondent no.6 - department since there is no possibility of the Enquiry Officer coming to a different

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conclusion in the light of the admissions of the petitioner.

9] He further submits that the petitioner was given several opportunities upto her order of termination. For almost five years, the respondent – authorities tolerated the mis-demeanors of the petitioner. Finally, considering the impact that was caused by the mis-demeanors of the petitioner, the respondent – authorities were left with no option but to issue the impugned order of termination.

10] He further submits that the competent authorities, which have delivered the impugned orders dated 25.3.2009 and 8.8.2013, have considered the submissions of the petitioner and after concluding that sufficient opportunity for improvement was given to her and since she failed to improve her conduct, the order of termination was passed. He submits that these conclusion, therefore, need not be interfered with in the writ or supervisory jurisdiction of this Court, which is limited.

11] With regard to the judgment of this Court in the matter of *Ratan Eknath Gund* (supra), he submits that the

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facts of the case are distinguishable and hence the said judgment would not be applicable to this case. However, in the alternative, he submits that this Court has concluded in paragraph nos.29 to 34 that the employer – establishment would be at liberty to conduct an enquiry in accordance with the rules. Reinstatement was denied and the employee in the said case was granted 40% back wages. He, therefore, submits that as an employer – establishment, it be permitted to conduct an enquiry in accordance with the rules.

12] I have considered the submissions of the learned Advocates, as recorded hereinabove.

13] It is not disputed that the order of termination dated 6.5.2008 specifically contains 10 charges, which are listed out from Sr.Nos.1 to 10 in the opening paragraph. It is also not disputed that no departmental enquiry was conducted against the petitioner.

14] Insofar as the contention of Shri Sharma is concerned that the appellate authority has considered the admission of guilt expressed by the petitioner and hence no enquiry is required to be conducted, I am unable to agree with the said submission. A final notice dated

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24.1.2003 was issued and the petitioner has admitted the charges levelled upon her. She had assured of a good conduct in future. This aspect, however, is not the basis and foundation of the order of termination dated 6.5.2008.

15] A long list of documents are referred to in the impugned order of termination. There is no reference to the notice dated 24.1.2003 and the reply – admission of the petitioner. This, therefore, leads to the conclusion that the past has been buried by the respondents and the order of termination dated 6.5.2008 has been issued on the basis of a fresh show cause notice issued to the petitioner. As such, it is apparent that the order of termination is not based upon and is not in relation to the earlier admission of guilt by the petitioner, way back in the year 2003.

16] The issue as to whether an Anganwadi Sevika is a workman or not and whether an enquiry under the Model Standing Orders will have to be conducted until the concerned department formulates its own Discipline and Appeal Rules, is no longer *res integra*. This Court, in the case of *Ratan Eknath Gund* (supra) has considered the

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view taken by the Division Bench in the cases of *Sau.Vidya Vishnu Wanare* (supra) and *Mahananda w/o Anurath Bhosale v. Chief Executive Officer, Z.P., Osmanabad* dated 14.7.2011 delivered in Writ Petition No.521/2006 and has concluded that an Anganwadi Sevika is a workman thereby requiring a domestic enquiry if the punishment of dismissal is to be imposed upon such Anganwadi Sevika.

17] The observations of this Court in paragraph nos.28 to 34 in *Ratan Eknath Gund* judgment (supra) read as under:-

"28. Nevertheless, once the order of termination is held to be illegal and bad in law, the illegality which has rendered the worker unemployed, has its own effects on the mind, body and soul of a workman. In the peculiar facts emerging from this case, I am of the view that it would be justifiable to soften and reduce the rigours of unemployment on the respondent, who is said to have been rendered a widow on account of the passing away of her husband. As such, payment of amount equivalent to 40% of the back wages upto the date of judgment of the Industrial Court, could compensate the respondent.

29. It is clear that the petitioners had not conducted a domestic inquiry as is required by Law. It was never comprehended by the petitioners that it was required to conduct a domestic inquiry as per the Model Standing Order in light of the conclusions drawn by the Division Bench of this Court in the

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above referred 2 judgments i.e. in the case of *Sau. Vidya Wanare and Mahananda Bhosale* (supra). However, the respondent has been terminated for committing misconducts. 30. In my view, for such ignorance on the part of the petitioners, it would be unusual to prevent the petitioners from not proceeding in accordance with Law against the respondent in the facts of this case. The petitioners have lost confidence in the Respondent. I am, therefore, of the view that the petitioners should be given an opportunity, to issue a charge sheet in accordance with the Mode Standing Orders against the respondent and proceed to conduct a domestic inquiry in accordance with the procedure laid down thereunder within a period of two months from today.

31. The issue of "doctrine of relation back", in my view, will have its application in the facts of this case. If the petitioners conduct a domestic inquiry against the respondent, the ultimate result of proving the charges shall be related back to the date of termination of the respondent. The amount awarded to the respondent, is to reduce the rigours of unemployment and litigation as she cannot be faulted for the incorrect procedure adopted by the petitioners.

32. In the event, the charges are held to be proved, the respondent shall have her own rights as against the petitioners. The petitioners shall be precluded from recovering this amount from the respondent. Needless to state, in the event the charges are not proved against the respondent, she shall stand to gain all service benefits, as are available in Law.

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33. With these observations, till the employer petitioners complete the enquiry as per the Model Standing Orders, there shall be no reinstatement for the Respondent. However, it is clarified that if within two months, the petitioners do not initiate the domestic enquiry, it shall be concluded that they have acquiesced their right to conduct such an enquiry and the respondent shall then be entitled to reinstatement with continuity of service.

34. In the light of the above, the writ petition is partly allowed to the extent of depriving the respondent of 60% of the back wages and permit the petitioner to conduct an enquiry as per the Model Standing Orders. The petitioners shall refrain from delaying the completion of the enquiry. They shall endeavour to complete the same within three months from the date of receipt of her explanation to the charge sheet."

18] In the light of the said ratio, this petition succeeds. The order of termination dated 6.5.2008 shall be kept in abeyance. The impugned orders dated 25.3.2009 and 8.8.2013 stand quashed and set aside.

19] I am, therefore, required to follow the said view and apply the doctrine of "relation back". The respondent – competent authority is permitted to initiate disciplinary proceedings by issuing a specific charge-sheet-cum-show cause notice to the petitioner in

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accordance with the Model Standing Orders within a period of two months, failing which it shall be concluded that they have acquiesced their right to conduct such an enquiry. In this situation, the petitioner would then be entitled for reinstatement, continuity of service and back wages from the date of her termination dated 6.5.2008.

20] As like in the case of *Ratan Eknath Gund* (supra), the respondent – establishment is directed to pay 40% back wages to the petitioner from the date of her termination till the conclusion of the enquiry. The deprivation of 60% back wages shall be subject to the enquiry conducted by the establishment. The directions in paragraph nos.31 and 32 of the judgment in *Ratan Eknath Gund* (supra) would equally apply to this case.

21] This petition is, therefore, partly allowed and Rule is made partly absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE, J.)