

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6014 OF 2009
WITH
CIVIL APPLICATION NO.9221 OF 2015

Smt. Vimalai Ganpat Nila,
Age 49 years, Occ.
R/o Kabansangavi, Tq. Chakur
District Latur.

..Petitioner

Versus

1. The Chief Executive Officer,
Zilla Parishad, Latur.

2. The Deputy Chief Executive Officer,
Zilla Parishad, Latur.

3. Child Development Project Officer,
ICDES, Chakur, Dist. Latur.

4. Smt. Lata Parmeshwar Sangave
Age 27 years, Occ. Service
R/o Kabansangavi, Tq. Chakur
District Latur.

5. The State of Maharashtra
Through Department of Women and
Child Welfare, Mantralaya,
Mumbai.

..Respondents

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Advocate for Petitioner : Shri V.G.Sakolkar h/f Shri M.P.Gude
Advocate for Respondents 1 & 2 : Shri V.D.Hon, Sr. Advocate
i/b Shri A.V.Hon,
AGP for Respondents 3 & 5 : Smt. S.S.Raut
Advocate for Respondent 4 : Shri P.G.Rodge
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CORAM : RAVINDRA V. GHUGE, J.
Dated: May 04, 2016
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ORAL JUDGMENT :-

1. This petition was admitted by order dated 10.9.2009.
2. I have heard the learned Advocates for the respective sides at length.
3. Issue of termination dated 31.5.2000, with retrospective effect is one of the challenge put forth by the petitioner. The second aspect put forth is that the impugned order of termination dated 31.5.2000 made effective from 15.5.2000, sets out a charge of unauthorized absenteeism against the petitioner, inasmuch as the pending criminal case under Section 309 of the Indian Penal Code (attempt to commit suicide) was also set out.
4. The petitioner had initially approached the learned Division Bench of this Court challenging the oral termination. By judgment and order dated 29.3.2001, Writ Petition No.476 of 2001 was rejected. The Special Leave Petition, filed by the petitioner is also said to be rejected. At that point in time, the Regular Criminal Case No.214 of 1988 was pending before the learned Chief Judicial Magistrate, Latur. Subsequently, the petitioner has been acquitted by judgment and order dated 20.12.2001, which is subsequent to the order passed by the learned Division Bench on 29.3.2001.
5. Shri Rodge, learned Advocate on behalf of respondent No.4, Shri V.D.Hon, learned Sr. Advocate on behalf of respondent Nos.1 and 2 and the

learned AGP contend that since the learned Division Bench of this Court had already dealt with the termination of the petitioner and has rejected the Writ Petition, the petitioner cannot once again challenge her termination. It is submitted that the same cause of action cannot be subjected once again to judicial review.

6. Shri Rodge submits that respondent No.4 has already been appointed in place of the petitioner. The said appointment as Anganwadi Karyakarti is an honourary post. Having been confirmed as Anganwadi Karyakarti, the reinstatement of the petitioner is likely to unseat the fourth respondent.

7. Shri Hon points out from the documents tendered across the Bar, which are collectively marked as Exhibit 'X' for identification that respondent No.4 was appointed by order dated 15.12.2001 and by Clauses 1 and 5 of the terms and conditions set out, she has been made aware of the pending litigation and that she would be covered by the result of the pending litigation. It was further pointed out that respondent No.4 has submitted an undertaking dated 15.12.2001 that in the event the decision with regard to the petitioner's case is against the Zilla Parishad and if her appointment is upheld, she would have no right to continue. Shri Hon, therefore, submits that in the event the petitioner succeeds in this petition, respondent No.4 will have to be terminated.

8. This Court in the matter of Deputy Chief Executive Officer Vs. Ratan

Eknath Gund [2015 (2) Mah.L.J. 616], has concluded that a stigmatic termination of Anganwadi Karyakarti is unsustainable in law and unless the charges are proved by conducting a departmental enquiry, the employer cannot presume that the said charges have been established. Similarly, the learned Division Bench of this Court in the matter of Asaram Raibhah Dhage Vs. Executive Engineer and others [1989 II CLR 331], has concluded that any termination with retrospective effect, be it a temporary, probationer or permanent employee, is unforeseen in law and is unsustainable. These two aspects were not before the learned Division Bench, when the petitioner challenged her oral termination in Writ Petition No.476 of 2001. It was after she received the order of termination dated 31.5.2000 that lodged a complaint before the CEO, Zilla Parishad, which was turned down by the impugned order. She then filed an appeal before the State and the same was also rejected by the impugned order. The said termination order dated 31.5.2000 was not before the learned Division Bench.

9. An additional facet that would have a direct impact on the result of this case is the acquittal of the petitioner by judgment dated 20.12.2001, vide which, she has been acquitted of the offence under Section 309 of the IPC. The termination order mentions that because the said offence was registered against her and she has been remaining unauthorizedly absent, that the Zilla Parishad has issued the termination order. With the said judgment, resulting in the acquittal of the petitioner, it is trite law that the petitioner will therefore, have to be reinstated in service, since no enquiry

has been conducted against her.

10. The stand taken by the Zilla Parishad does not indicate that it desires to conduct an enquiry against the petitioner. Be that as it may, in the event respondent No.1 as an employer desires to deal with the charges levelled upon the petitioner, the same could have been permitted, but for the fact that the charge of unauthorized absenteeism is of the year 2000 and it would be unfair to permit the respondent to commence an enquiry after 16 years when the petitioner has already reached the age of 56 years and would be shortly retiring.

11. The above aspects have not been considered by the lower authorities in the impugned orders. The impugned order of termination dated 31.5.2000 and the order of the State dated 17.11.2008 are quashed and set aside.

12. In so far as the backwages are concerned, the learned Sr. Advocate for the Zilla Parishad submits that the petitioner had assailed her written termination order after eight years. Her silence for eight years, though she was before this Court in the earlier Writ Petition as on 29.3.2001, would disentitle her to the backwages. He further submits that the Zilla Parishad is funded by the State and is financially weak. Shri Sakolkar, on the other hand, submits that the petitioner is entitled for full backwages.

13. The Honourable Supreme Court in the matter of Nicholas Piramal India Ltd. Vs. Harising [2015 II CLR 468] and Gauri Shankar Vs. State of Rajasthan [2015 II CLR 497], has concluded that backwages in between 25 to 50 per cent could be awarded for reducing the rigors of litigation and the hardships suffered by an employee. The said ratio can be made applicable to this case, at least from 2008, when the petitioner had approached the State for challenging her termination.

14. In the light of the above, this petition is partly allowed. The impugned order of termination dated 31.5.2000, made effective retrospectively from 15.5.2000 is quashed and set aside. The petitioner is reinstated in service with notional continuity from 15.5.2000. She shall be entitled for backwages to the extent of 25 per cent from the date of filing of her appeal before the State till her reinstatement.

15. Rule is made partly absolute in the above terms.

16. Pending Civil Application does not survive and is disposed off.

(RAVINDRA V. GHUGE, J.)

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