

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2345 OF 2016

Dhrubajit Amiya Kumar Ghosh
age about 39 years, presently
residing at 202, Raghunath Vihar,
Plot No. 78, Sector-50 (New),
Seawoods, Nerul (W),
Navi Mumbai 400 706

.... Petitioner

vs

1 Maharashtra Electricity
Regulatory Commission,
having its office at 13th floor,
Centre No.1, Word Trade Centre,
Cuffe Parade, Colaba,
Mumbai 400 005

2 The Deputy Director,
(Administration and Finance),
Maharashtra Electricity
Regulatory Commission,
having its office at 13th floor,
Centre No.1, Word Trade Centre,
Cuffe Parade, Colaba,
Mumbai 400 005

3 Mr. Suresh Mahajan,
Enquiry Officer,
Having his office at
760, First Floor,
Soban Bhuvan, Jehangir Vimadlal
Road, Parsi Colony, Dadar (E),
Mumbai 400 014

.... Respondents

Mr. Bhavesh Parmar i/b. Mr. Devmani J. Shukla for the Petitioner.
Mr. Rajeev Chavan, Senior Advocate with Mr. Ratnakar Singh for
Respondents 1 and 2.

**CORAM: ANOOP V. MOHTA AND
S. C. GUPTE, JJ.**

CLOSED FOR JUDGMENT ON : March 07, 2016

PRONOUNCED ON : April 26 , 2016

JUDGMENT (Per S. C. GUPTE, J.):

The Petitioner has challenged an order dated 8 February 2016 passed by Respondent No.2, terminating the services of the Petitioner who was, according to Respondent Nos. 1 and 2, on probation.

2 On 29 June 2012, the Petitioner was appointed to the post of Deputy Director (Legal) with Respondent No.1 on nomination basis, to be governed by the Maharashtra Electricity Regulatory Commission (Recruitment and Conditions of Services of Employees) Regulation, 2007. Under Regulation 20, the Petitioner's appointment was on a probation for one year, with option to Respondent No.1 to extend the probation period by a further period of one year. The Petitioner remained on probation without the period of probation being extended by any specific order.

3 On 17 December 2014, Respondent No.1 appointed Respondent No.3 for conducting an enquiry against the Petitioner as per Rule 8 of the Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979. On 8 February 2016, Respondent No.2, for and on behalf of Respondent No.1 terminated the services of the Petitioner by giving a thirty days' notice under Regulation 21. The Petitioner challenges the order of termination on the ground that as of 8 February 2016, the Petitioner cannot be treated as an employee on probation; that he had become a permanent employee upon completion of one year on 29 June 2013; and that Regulation 21, which only applied to probationers, did not apply to the Petitioner. It is submitted that Rule 8 was invoked and an inquiry was initiated against the Petitioner presumably on the ground that he was a permanent employee of the Commission on 17 December 2014.

4 There are two questions to be considered here. The first is of the applicability of Regulation 21 to the Petitioner. In other words, it is to be considered, whether the Petitioner continued to be on probation when he was terminated. The second is, whether or not the

termination was punitive. There is material on record to show that in case of various officers, who were appointed as Deputy or Assistant Directors in 2012, the process of confirmation was initiated in 2014 and was completed in the same year, whereupon letters of confirmation were issued to all these officers. That did not happen in the case of the Petitioner. The reason is said to be want of a certificate of proficiency in 'Marathi' language, which was a requirement for the post held by the Petitioner. There is correspondence on record that such certificate was demanded from the Petitioner, but not submitted by him. Not only this, but it appears from the record that the Petitioner had actually called for an English translation of a memo issued to the Petitioner in Marathi in the interregnum, suggesting lack of proficiency in Marathi. There are also documents on record which show that another warning memo was issued to the Petitioner in connection with attending the office late, absenteeism and careless attitude towards work. Another show cause notice was issued to the Petitioner in connection with purported negligence in attending some matters of the Commission before different courts. It is the Respondents' case that since the Petitioner was found to be wanting in efficiency to give him reasonable opportunity to mend his ways and

duties a departmental inquiry was conducted whilst the Petitioner was on probation. This was in keeping with the Government Resolution of 21 March 2000. Even during the departmental inquiry, dereliction of duties on the part of the Petitioner was noticed. As a result, on 23 December 2014, the Petitioner was suspended. Later on 11 February 2015, three additional charges were framed against the Petitioner and added in the departmental inquiry. Respondent No.3 submitted his report on 6 November 2015. Out of ten charges, five charges were said to be proved against the Petitioner. The Commission ultimately came to a conclusion that the performance of the Petitioner was not satisfactory. Therefore, taking an overall view of the matter, the Commission has taken a conscious decision to discontinue the services of the Petitioner in the probation period, under Regulation 21, by the impugned order. As the Petitioner was on probation since there was no specific confirmation order passed in his case, and as the Enquiry Officer found unsatisfactory service/behaviour on his part after a due inquiry in which a fair opportunity of hearing was given to him, the Commission took a decision to discontinue the services of the Petitioner.

5 From the foregoing narration, it is clear that the Petitioner was always treated as a probationer. The Commission followed the practice of confirming its employees on probation after considering their performance during probation, and there was no automatic or deemed confirmation. The Petitioner, thus, being on probation at the relevant time, awaiting his confirmation, is governed by Regulation 21 of the Regulations of 2007.

6 That a departmental inquiry was conducted against the Petitioner is not, in itself, in our view, a reason to accept the contention that the Petitioner was confirmed and that the inquiry against him was accordingly conducted by invoking Rule 8 of the Maharashtra Civil Services Rules. The relevant Government Resolution (i.e. G.R. dated 21 March 2000) provides for holding of such inquiry against a person even if he is on probation. The invocation of Rule 21, in the background, therefore, based upon an inquiry under Rule 8 of the Maharashtra Civil Services Rules, in no way, can be stated to be contrary to law or impermissible. There are no mala fides or illegality or breach of principles of natural justice pointed out before us in respect of the impugned action. We

accordingly see no infirmity or illegality in the impugned order.

7 Learned counsel appearing for Respondents 1 and 2 relied on the judgment of the Supreme Court in *Jai Kishan v. Commissioner of Police and anr*¹, in support of their action. In that case also the probationer had failed to improve his performance although allowed to continue in service beyond the maximum statutory period of probation. It was held that such person could not be deemed to have been confirmed. The termination, therefore, was held to be proper. Non-completion of satisfactory service, during the probation, can lead to termination. It is accordingly found by the Authority/Enquiry Officer in the present case. There is nothing to show that on expiry of the period of one year, the Petitioner had a right to be confirmed. On the contrary, as recorded, an option was given to the Respondents to extend the period of probation further.

8 The termination of services after giving thirty days time, by invoking Regulation 21, as his performance was found to be unsatisfactory by the Enquiry Officer, pursuant to the Enquiry

¹ 1995 Supp (3) SCC 364

conducted under Rule 8, and the Resolution referred to above, makes the Petitioner's case distinguishable from the judgments cited by learned counsel appearing for the Petitioner in his support, including *Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and ors*². In that case, the departmental inquiry itself was conducted behind the back of the appellant by the Vigilance Department. Such is not the case here. There was no breach of principles of natural justice. The right of the probationer, as laid down in the above judgment, is not in dispute. The question is, whether, in the facts and circumstances of the case, the Petitioner is entitled to claim such right.

9 The judgments of Supreme Court in *Dayaram Dayal v. State of M. P. and anr*³ and *Head Master, Lawrence School Lovedale v. Jayanthi Raghu and anr*⁴, for the reasons recorded above, are of no assistance to the Petitioner either. We have noted that the Petitioner never acquired the status of a confirmed employee. Still, the inquiry was conducted in accordance with the Resolution and the relevant

2 Supreme Court Civil Appeal No.8662/2015 decided on 15.10.2015

3 (1997) 7 SCC 443

4 Supreme Court Civil Appeal No.2868/2012 decided on 16.3.2012

Rule. The conduct of inquiry was an additional factor, which was not a requirement before terminating the services of a probationer like the Petitioner. The fact of unsatisfactory performance in itself, in our view, was sufficient for Respondents 1 and 2 to pass the order of non-confirmation. The impugned order, therefore, cannot be interfered with.

10 The aspect of non-production of certificate of knowledge of, and proficiency in, Marathi, which was a requirement under the relevant service conditions, also cannot be overlooked. Taking an overall view, considering that the Petitioner was not confirmed in the employment, apart from the reason of unsatisfactory performance recorded above, the Petitioner admittedly not having submitted a certificate of proficiency in Marathi, being one of the qualifications, namely, “written and verbal communication skill in Marathi and English”, the order of Respondents 1 and 2 cannot be faulted.

11 The inquiry was with the intention to assess the suitability or unsuitability of the Petitioner. It cannot be stated that the inquiry was “punitive in character”. The inquiry was to arrive at a proper

conclusion, before making him permanent and to ascertain correct facts, for considering whether or not to continue him. There is nothing wrong in such inquiry.

12 In the result, the Writ Petition is dismissed. There shall be no order as to costs.

(S. C. GUPTE,J.)

(ANOOP V. MOHTA, J.)