

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

WRIT PETITION NO.8050 OF 2008

Shri Baban Kashiram Jadhav	...	Petitioner
Versus		
Municipal Corporation	...	Respondent

.....

Mr. Prakash Devdas for the Petitioner.

Mr. P.M. Palshikar a/w Mr. Vinod Mahadik for the Respondent.

.....

CORAM : S.C.GUPTE, J.

DATE : 11 JULY 2016.

P.C. :

. This Writ Petition concerns the legality of an order passed by the Labour Court at Mumbai on a reference under the Industrial Disputes Act, 1947. By the impugned order, the Labour Court at Mumbai answered the reference of the Respondent-workman in the negative.

2 The reference concerns termination of the Respondent-workman from the services of the Respondent-Municipal Corporation. The termination was on the footing that the Petitioner-workman was a temporary employee and his services were terminated on the ground that he remained absent for a period of 139 days, resulting into an automatic termination under Rules 28(c) and 164 of Municipal Service Regulations.

3 The Petition can be disposed of on a short legal point, namely, applicability of the relevant Rules of Municipal Service Regulations *vis-a-vis*

Model Standing Orders by which the employees of the Municipal Corporation including temporary employees are governed. It can hardly be disputed, and indeed not disputed by learned Counsel for Respondent-Municipal Corporation, that what is applicable to the Municipal Corporation's employees including the Petitioner herein in the matter of termination for misconduct are Model Standing Orders and not the Municipal Service Regulations. It is, however, submitted by learned Counsel for the Respondent-Municipal Corporation that the provisions of a departmental inquiry, etc., forming part of the Model Standing Orders, are applicable only in the event of a misconduct. It is submitted that in the present case, what is alleged against the Petitioner-workman is not misconduct, but simply his absence for a period of 139 days, calling for an automatic termination of his services under the relevant rules. It is a matter of fact that what is alleged against the Petitioner-workman, is his having remained absent without any justification for the relevant period. The Petitioner-workman has an explanation to offer for his absence. He relies on his medical record for the relevant period showing his being continuously under medical treatment for the relevant period. Whether one may call it misconduct or not, the termination is for breach of service conditions by the Petitioner-workman. If service rules or conditions are breached and as a result, services are terminated, it is essentially a termination for misconduct. It is hardly relevant whether the Respondent-Municipal Corporation actually calls it a misconduct or otherwise. There is also some contest on whether the Petitioner-workman was merely a temporary employee or was working in a permanent post. In the premises, the termination of the Petitioner-workman's services without holding a departmental inquiry and affording an opportunity to him to show cause,

cannot be sustained.

4 **Rule** is accordingly made absolute and the impugned order of the Labour Court at Mumbai, rejecting the reference is quashed and set aside. The Respondent-Municipal Corporation is directed to reinstate the Petitioner-workman in service with continuity of service.

5 Considering, however, the fact that there is no inquiry as to the entitlement of the Petitioner-workman to back wages, since the reference was rejected on the ground of the alleged breach of service regulations and automatic termination of services as a result, the matter is remanded back to the 6th Labour Court at Mumbai for consideration of the question of back wages payable to the Petitioner.

6 The Petition is, accordingly, disposed of.

7 On the application of learned Counsel for the Respondent-Municipal Corporation, it is directed that the order of reinstatement of the Petitioner shall not be implemented for a period of four weeks from today.

(S.C.GUPTE, J.)