

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.3268 of 2010

THIRU.SPURGEON GNANAMUTHU

.. Petitioner

Vs.

1 THE CHAIRMAN
PUDUCHERRY HOUSING BOARD ANNA NAGAR
NELLITHOPE PUDUCHERRY.

2 THE SECRETARY
PUDUCHERRY HOUSING BOARD ANNA NAGAR
NELLITHOPE PUDUCHERRY.

3 THE SECRETARY TO GOVERNMENT
(HOUSING) GOVERNMENT OF PUDUCHERRY
PUDUCHERRY-605 001.

(R3 IMPLD. ORD. DT.06/12/12 BY VDPJ IN MP.1/12 IN WP.3268/10)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus, calling for the records relating to the impugned order of termination of the petitioner passed by the 1st respondent in No. 3585/PHB/Estt/E3/2009-10/314 dt 5.2.2010 and quash the same and to direct the respondents herein to reinstate the petitioner as Financial Adviser and Chief Accounts Officer in Puducherry Housing Board with Back wages and other service benefits.

For Petitioners	:	Mr.Jayesh B. Dolia for M/s.Aiyar & Dolia
For R1 & R2	:	Mr.T.P.Manoharan SC for Mr.T.M.Naveen
For R3	:	Mr.K.R.Harin, AGP (Puducherry)

ORDER

The prayer is for a writ of certiorarified mandamus, calling for the records relating to the impugned order of termination of the petitioner passed by the 1st respondent in No. 3585/PHB/Estt/E3/2009-10/314 dated 5.2.2010 and quash the same and to direct the respondents herein to reinstate the petitioner as Financial Adviser and Chief Accounts Officer in Puducherry Housing Board with Back wages and other service benefits.

2.1. The case of the petitioner is that the petitioner attended interview in response to the call letter given by the first respondent for the appointment to the post of Financial Advisor/Chief Accounts Officer which is a Group-A post on the scale of pay of Rs.10,000-325-15200/-. Pursuant to the said call letter, the said post was offered to the petitioner which the petitioner readily accepted and thereafter, the order of appointment was issued on 20.5.1999 by the first respondent by which the petitioner was appointed as Financial Adviser and Chief Accounts Officer of the Puducherry Housing Board on purely temporary basis with effect from 17.5.1999. He was placed on probation for a period of two years with effect from that date. Immediately, the petitioner joined in service and he had been working as Financial Adviser and Chief Accounts Officer of the

respondent board.

2.2. While so, by order dated 05.2.2010, the Chairman of the first respondent board issued a simple order of termination simplicitor by invoking Rule 5(1) of the Central Civil Services (Temporary Service) Rules 1965. The termination was taken effect forthwith. Challenging the same, the petitioner has come out with the present writ petition.

3. Heard both sides.

4. The learned counsel for the petitioner vehemently attacked the order of termination which is impugned herein on the ground that the Central Civil Services (Temporary Service) Rules is not applied to the services of the first respondent and therefore, invoking the same, the termination order ought not to have been passed. He further submits that the petitioner was appointed in permanent post of Financial Adviser and Chief Accounts Officer which was specifically created by the board under the relevant rules wherein the petitioner was permanently appointed. Though he had completed two years probation long back, purposely, his probation was not declared and when that being so, the order of termination simplicitor ought not to have been passed.

5. The learned counsel would further contend that though the impugned order says that it is the order of termination (simplicitor), the averments made in the counter affidavit filed by the first respondent would clearly establish that a great stigma is attached with the said order and thereby, it would have implications on the petitioner prospects, career and life. By relying upon the detailed official note made in the relevant file of the first respondent Board as reproduced at para 7 of the first respondent counter, the learned counsel submits that all these averments made in the note file which has been reproduced in the first respondent counter, has no basis. Assuming that there are some basis, an enquiry should have been conducted against the petitioner and in the absence of adopting any such procedure in the manner known to law, the issuance of impugned termination order is against the principles of natural justice and also hit by Article 14 of the Constitution. Hence, for this ground alone, the impugned order would not be sustainable and is liable to be quashed.

6. The learned counsel for the petitioner would further contend that the reason for passing the impugned order of termination against the petitioner has ultimately come out by the counter filed by the first respondent and in this regard paragraph 7 of the counter affidavit as

heavily relied upon by the petitioner is reproduced here under:

"7. I respectfully state that a perusal of the records available in the Board, would show that by G.O.Ms.No.11/2009-Hg. dt.30.07.2009, the Govt. of Puducherry has appointed one P.Angalane viz., a M.L.A as the Chairman of the Board. He has taken charge and functioning as the Chairman of the Board from 05.08.2009 till 19.01.2011. All the facts, circumstances, averments, allegations and claims made by the Petitioner in his Writ Affidavit in respect of the issuance of the impugned Termination Order dt.05.02.2010, are relating to the said period. As I am functioning as the Chairman of the PHB only from 06.05.2011, I am not personally aware of any of the facts, circumstances and events leading to issuance of the impugned Termination Order and hence, I am not in a position to give any answer or say anything from my personal knowledge relating to the same. But, the Notings made by the said Chairman, the then Secretary and the then Administrative Officer on 02.02.2010 & 05.02.2010 in the File No.3585/PHB/Estt/E3/2009-10, dt.02.02.2010 and available in the Records of the PHB, would state all the facts, circumstances and events leading to issuance of the impugned Termination Order. The said Notings are necessary for full, complete and effective adjudication of all the material issues involved in the above W.P by this Hon'ble Court".

7. The learned counsel would contend that all the said averments made in the counter of the respondents would clearly establish that at the first respondent's office, especially, in the office of the Chairman of the first respondent during the relevant period

only for some illegitimate purpose or un-disclosable reason, the then Chairman of the first respondent had taken a decision on his own either for his personal gains or otherwise and passed the impugned order of termination. Therefore, it is tainted with malafide. In this regard, the learned counsel would further contend that though the then chairman has not been arrayed as a party here in this writ petition, the averments made in paragraph 7 of the counter affidavit of the first respondent would clearly establish such a malafide intention on the part of the Chairman of the first respondent Board as who was instrumental in sending the petitioner out in an unceremonious manner and also in a manner unknown to law. Hence, the impugned order is totally unsustainable and liable to be interfered with.

8. Per contra, the learned senior counsel appearing for the first respondent Board invited the attention of this Court to Rule 7 of the Pondichery Housing Board which is reflected here under:

"7. Staff of the Board.- (1) The Board may, from time to time, create and appoint officers and employees as may, in its opinion be necessary for the efficient performance of its functions.

Provided that no posts shall be created without the previous sanction of the Government if the minimum salary of the post

exceed Rs.1,500 per month.

Provided further that in case of exigency, temporary posts for a period not exceeding six months, which has to be created in the interest of the Board and the minimum salary of which does not exceed Rs.500 per month, be created by the Chairman."

9. By quoting the said rule, the learned senior counsel submitted that the Board has got the power to create and appoint officers and employees for the efficient performance of its functions. However, in the first proviso, no post shall be created without previous sanction of the Government, if the salary exceeds Rs.1500/- per month. The second proviso would state that in case of exigency, temporary post for the period not exceeding six months can be created by the Chairman. By quoting the said proviso, the learned senior counsel would contend that the post which was created wherein the petitioner was appointed is only a temporary post within the meaning of 2nd proviso to Rule 7(1). When that being so, the petitioner cannot take any advantage of his continuance in the said post beyond six months period and therefore, the usual formality to be followed before terminating the incumbent need not be followed in the case of petitioner and therefore, the order of termination simplicitor without attaching any stigma to that has been passed by invoking the said provisions of the Central Civil Services (Temporary

Service) Rules 1965.

10. The further contention of the learned senior counsel is that even assuming that the post created where the petitioner was appointed is a permanent post, then there shall be a prior approval from the Government which is mandatorily required for creation of any post in a permanent nature and without the sanction of the State Government, if any appointment is made even in a post which was created on permanent basis that can be construed only as temporary post unless and until it is approved by the Government.

11. Therefore in that view of the matter also, he submits that the petitioner has no lien to claim continuance of his service at the first respondent Board and therefore, there is every justification on the part of the first respondent Board to invoke necessary provisions to terminate the petitioner by one month notice and accordingly, the order of termination of course by way of termination simplicitor was passed and therefore, the same is fully justifiable and sustainable.

12. The learned Government Pleader appearing for the third respondent would contend that under clause 6 of the regulations for Pondicherry Housing Board all Group-A posts shall be filled up only by

the Chairman of the Board. Here, the said post created wherein the petitioner was appointed is Group-A post and the same shall be appointed by the Board consisting of Selection Committee headed by the Chairman. However, such appointment shall be subject to the approval of the Government. Therefore, whatever appointment is made for Group-A post by the Board of the first respondent, then it shall be subject to the approval of the Government.

13. He further submits that here in the case in hand, initially, after creating the post, eligible persons were called for interview and ultimately, they selected one Mr.Y.R.N.Sudhakar for the appointment of the said post and the petitioner was placed in the waiting list. The said Sudhakar did not accept the post after the same having been approved by the Government under clause 6 of the service regulations 1985. Only thereafter, the post was offered to the petitioner on 28.4.1999 as the petitioner was in the waiting list. This position is reflected in paragraph 6 of the counter affidavit filed by the first respondent.

14. Relying upon the said averments made by the first respondent in the counter, the learned Government Pleader would submit that the very appointment of the original selectee given by

the Board was in fact approved by the Government and only since he declined to accept the offer, the next man in the queue, i.e., the petitioner was offered with the appointment and he was appointed and therefore, in all practicalities, the appointment of the petitioner also to be taken as deemed to have been approved. Therefore, as required under the said clause 6 of the regulations, since approval has been given to the appointment of the petitioner also, there is no further approval required or was pending with the Government.

15. Therefore, the learned Government Pleader would contend that the stand taken by the first respondent that approval was awaited from the Government, therefore, till such time the appointment made to the petitioner shall be treated as a temporary one, may not be accepted and in this regard, the Government has not withheld any such approval either to the post or to the person appointed in the post. The learned Government Pleader also submitted that since the first respondent is an independent body has all its powers administratively and financially, the appointment and other service conditions of their employees including the petitioner are governed only by the relevant service regulations and therefore, any decision taken either to retain or remove the employee of the first respondent, it is for them to take a decision. Therefore, the

veracity of such decision will not be testified on the decision to be taken by the Government because the approval which was referred under Rule 7 since has already been given, no further act be done by the Government.

16. This Court have considered the rival submissions made by the learned respective counsel and also the materials placed before this Court for its perusal.

17. It is not in dispute that the post of Financial Adviser and Chief Accounts Officer vide a Group-A post was created by the first respondent wherein before making appointment, applications were called for by giving advertisement. 14 candidates submitted application to the said notification including the petitioner. Out of 14 candidates, 8 eligible candidates were called for interview on 13.11.1998. However, only 6 people including the petitioner had attended the interview. However, the selection committee selected one Y.R.N.Sudhakar for appointment. At that juncture, approval of the Government was sought for and the same was given by the Government in accordance with clause 6 of PHB service regulations 1985. Since the said Sudhakar declined to accept the offer, the next man in the queue, i.e., the petitioner, who was already placed in the

waiting list was offered the post. He had readily accepted the same and joined in service on 17.5.1989. The very appointment order dated 20.5.1999 itself states that the petitioner is placed on probation for a period of two years with effect from 17.5.1999. These factors would disclose that the post was created on a permanent basis within the meaning of Rule 7(1) of the Rules of the first respondent Board. Having created the said post, proper procedure was adopted for making selection to the appointment of the said post and after making selection of one of the candidate, approval under clause 6 of the regulations 1985 was also sought for from the Government, who in fact had given the approval. Only at that juncture, since the said individual declined to accept the offer, the petitioner was appointed. The petitioner had continued in the post for 10 years. However, his probation which he should have completed within two years from 17.5.1999 or at the most within four years from the date, had not been declared by the first respondent for the reasons best known to them.

18. When that being the position, suddenly, the impugned order of termination was issued by the Chairman of the first respondent by invoking Rule 5(1) of Central Civil Services (Temporary Service) Rules 1965.

19. On perusal of the said rule, this Court finds that the said Rule cannot be made applicable for the employees of the first respondent Board as their service conditions are governed by their own regulations called Puducherry Housing Board Service Regulations, 1985. When that being so, the invocation of the very Central Civil Services (Temporary Service) Rules 1965 itself, in the opinion of this Court is under total misconception on the part of the first respondent Board. If at all, the service conditions of the petitioner is governed by 1985 Regulations of the first respondent Board, then clause 16 of the said regulations could have been pressed into service. Even for invocation of the said clause 16, the condition stipulated is that if the Board decided that a service of any employee, namely, officiating servants services is no more required for the Board then that clause can be invoked.

20. Here in the case in hand, there is no such averments made in the counter affidavit nor any such documents produced before this Court through which the first respondent Board has taken any conscious decision deciding that the services of the petitioner was no more required for the first respondent Board. In the absence of all these factors, even the invocation of clause 16 of the regulation also

is out of context in the present case.

21. The learned counsel for the petitioner also invited the attention of this Court to Regulation 26 of the said Regulations 1985 wherein in the absence of any provision in the Regulations, what shall be the alternative mechanism has been spelt out and the same is reproduced hereunder :

“Application of other rules.- (a) In matters in respect of which no provision is made in these regulations, the Fundamental Rules and the Supplementary Rules, the Central Civil Services (Leave) Rules, 1972, the Central Services (Medical Attendance) Rules, 1944, as applicable to the employees of the Union territory of Pondicherry and also the instructions, rulings etc, issued by the Government of India and the Union Territory of Pondicherry thereunder shall apply to the officers and servants of the Board subject to the modification that the powers assigned to the Government under Fundamental Rules etc., shall be exercised by the Board and that powers assigned to the head of department in the said rules shall be exercised by the Chairman”

Therefore, it is clear that eventhough under Regulation 26, some alternative Rules are provided which can be pressed into service, infact, such Rules have not been pressed into service in the case of the petitioner while passing the impugned order. Therefore, this Court has no hesitation to hold that the very invocation of the Central Civil Services (Temporary Service) Rules 1965 for passing the

impugned order is totally unlawful and therefore, on that ground itself, the impugned order is liable to be interfered with.

22. The further contention made on behalf of the first respondent Board is that under Rule 7(1), if a permanent post is created, the same should have been approved by the Government by way of prior approval. In the absence of such a prior approval, for all purposes such a post created can be construed only as a temporary post within the meaning of second proviso to Rule 7(1). This contention of the learned senior counsel is not acceptable for the reason that only after the creation of the said post, applications were granted from the open market by the first respondent and only in response to the same, 14 candidates applied, of whom 8 were short listed, however only 6 had attended interview and ultimately, the petitioner was appointed. Moreover, before the petitioner's appointment, the approval of the Government also was obtained for the appointment and the same is admitted by the first respondent at paragraph 6 of the counter. Moreover, in the very appointment order itself, the petitioner was placed on probation for two years from 17.5.1999 and also the petitioner had been continuously working for ten years. All these factors would go to show that the post created was a permanent post and the appointment made therein was also

permanent in nature for which the approval of the Government was also already obtained and the petitioner also had completed probation long back, however, his probation was not declared so expressly by the first respondent.

23. In this regard, the learned senior counsel appearing for the first respondent by relying on the decision of the Hon'ble Supreme Court reported in **1997(10)SCC 682** in **State of U.P and others Vs. Rajendra Kumar Singh and another** has contended that simply by completing the period of probation an employee cannot claim to be made permanent unless and until, his service record is taken into consideration and a positive decision is taken by the appointing authority for making him permanent. In view of the said decision, the learned senior counsel would contend that, unless the probation of the petitioner is declared expressly by the first respondent, the petitioner cannot claim permanent status. However the fact remains that in the said case, service records of the employee was not good and if adverse remarks were considered, the termination order was issued without attaching any stigma and only in that context, the said decision was taken by the Hon'ble Apex Court. But here in the case in hand, there is no adverse remarks against the petitioner. Even though certain averments have been made in the counter affidavit at

paragraph 7 as extracted from the note file, there is no charges or complaint made against the petitioner and no enquiry was conducted.

24. When the very post itself is a permanent one where the petitioner was appointed and after completing his probation, when he was working for a decade, in no stretch of imagination, it can be said that the post is still temporary and the petitioner was working temporarily, and therefore, mere order of termination simplicitor can be passed against him. Therefore, this Court finds no force in the said contention of the learned senior counsel.

25. As have been rightly pointed out by the learned counsel for the petitioner, the petitioner was working continuously for ten years with unblemished record. All went on well, only during the tenure of one member of legislative assembly, who became the Chairman of the first respondent Board it seems the trouble started. In the counter affidavit at paragraph 7, the present Chairman has stated that only between the period of 05.8.2009 and 19.1.2011 during which the said individual was the Chairman of the first respondent all these issues had happened and ultimately, the order of termination was issued. Moreover, the counter affidavit further states that the subsequent incumbent, who filed the counter, is not in a position to

give any answer or say anything from his personal knowledge relating to the issue. On seeing the note which were reproduced in the counter affidavit, it can be presumed that the decision taken to terminate the petitioner seems to be only a prejudicial decision taken by the then Chairman of the Board and therefore, there is every force in the contention of the learned counsel for the petitioner that the order impugned is tainted with malafide.

26. Therefore, for all these reasons, this Court is of the considered view, that the impugned order is totally unsustainable and hence, is liable to be quashed and therefore, accordingly, is quashed.

27. Insofar as the consequential benefits to be given to the petitioner is concerned, the petitioner has filed an additional supporting affidavit wherein he has stated the following factors:

(The amount specified below is approximate and the correct figure will be produced before the respondent, Puducherry Housing Board)

Total salary and other allowance that would have been drawn by the petitioner from the respondent, Puducherry Housing Board from the period of 5.2.2010 to 30.06.2014, total months 53 x 52489/- is	Rs.27,81,917/-
Wages received from the Puducherry CO-OP Sugar Mills Ltd., Lingareddipalayam, Puducherry from the period of 12/04/2010 to 31/08/2012, starting salary Rs.38,740/- total 29 months of drawn amount	(-) Rs.13,10,595/-

Total salary and other allowance that would have been drawn by the petitioner from the respondent, Puducherry Housing Board from the period of 5.2.2010 to 30.06.2014, total months 53 x 52489/- is	Rs.27,81,917/-
Wages received from VCO Consultants & Service Pvt Ltd, Bangalore from the period 01/06/2013 to 30/06/2014 total months 13 x 25000/-	(-) Rs.3,25,000/-
Remaining backwages payable amount	Rs.11,46,322/-

28. The said averments of the petitioner shows that he had worked for gain somewhere from 12.4.2010 and he had worked at various places in three spells. According to the learned counsel for the petitioner, the petitioner had been working still for his survival.

29. Taking into consideration of the above factors including the fact that the petitioner had been working for gain during this period, this Court is of the view that the following order shall be passed:

- (i) The impugned order dated 5.2.2010 is quashed;
- (ii) There shall be a direction to the first respondent to reinstate the petitioner and his probation shall be declared forthwith;
- (iii) Since the post where the petitioner was appointed has already been approved as averred at paragraph 6 of the counter affidavit of the first respondent, if at all any further post approval is

required, within the meaning of Rule 7(1) of the proviso, the same shall be requested for, by the first respondent and on such request, the third respondent shall send a formal approval considering the fact that the petitioner had been in service from 1999 onwards, immediately;

(iv) Insofar as the benefits and backwages of the petitioner is concerned, since the petitioner is admittedly, working for gain for all these years without any break, he is not entitled for full salary. However considering the plight of the petitioner as he has been unnecessarily dragged on by the action of the first respondent, he shall be entitled to claim 50% of the salary. Therefore, the first respondent is directed to calculate 50% of the salary for the petitioner and the same shall be paid within a period of three months from the date of receipt of a copy of this order.

(v) At any rate, the aforesaid directions, shall be complied with by the respective respondents within a total outer limit of six months period from the date of receipt of a copy of this order.

30. The writ petition is allowed with above terms. No costs.

22.11.2016

Index : Yes
Internet : Yes

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To

- 1 THE CHAIRMAN
PUDUCHERRY HOUSING BOARD ANNA NAGAR
NELLITHOPE PUDUCHERRY.
- 2 THE SECRETARY
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R.SURESH KUMAR,J.

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