

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1553 OF 2017

Manisha w/o Sunil Patil,
Age : 39 years, Occupation : Nil,
R/o Jargaon, Taluka Pachora,
District Jalgaon.

...PETITIONER

-VERSUS-

- 1 Gram Panchayat,
Jargaon, Taluka Pachora,
District Jalgaon.
Through its Sarpanch.
- 2 Gram Sevak,
Gram Panchayat, Jargaon,
Taluka Pachora,
District Jalgaon.
- 3 Block Development Officer,
Panchayat Samiti, Pachora,
Taluka Pachora,
District Jalgaon.

...RESPONDENTS

...
Advocate for Petitioner : Shri Patil Sandesh R.
Advocate for Respondents 1 and 2 : Shri Dhobale Nitin L.
Advocate for Respondent 3 : Shri Sharma Vijay.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd August, 2017

Oral Judgment :

- 1 Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2 While issuing notice on 08.02.2017, I had recorded the submissions of the learned Advocate for the Petitioner in paragraphs 1 and 2 as under:-

- "1. *The petitioner is aggrieved by the impugned orders of termination dated 18.04.2016 and rejection of her Appeal dated 18.10.2016. Specific allegations have been leveled upon her and by virtue of a resolution passed by the Gram Panchayat, referring to the allegations, she has been terminated from service.*
2. *I find that the case of the Petitioner is covered by the judgment of the Hon'ble Apex Court in the matter of Dipti Prakash Banerjee versus Satyandra Nath Bose [(1993) 3 SCC 90] and the judgment of this Court in the matter of Deputy Chief Executive Officer versus Ratan Eknath Gund [2015 (2) M.L.J. 616]."*

3 Shri Dhobale, learned Advocate appearing on behalf of Respondent Nos.1 and 2/ Gram Panchayat and Gram Sevak and Shri Sharma, learned Advocate appearing on behalf of Respondent No.3/ BDO, have strenuously supported the impugned orders. It is strenuously canvassed that the Petitioner is guilty of having manufactured bogus documents. Since it came to light, the show cause notice was issued to her on 19.03.2016. After her explanation was found to be unsatisfactory, the Gram Panchayat passed the resolution on 16.04.2016 and dismissed the service of the Petitioner on 18.04.2016. Since grave and serious charges were levelled upon the Petitioner, the Respondents have rightly

issued the notice to her and after considering her explanation, have dismissed her service by way of punishment.

4 This Court, in the matter of Ratan Eknath Gund (supra), has concluded that permanent employees of the Gram Panchayat/ Zilla Parishad cannot be dismissed from services on the ground of misconduct, without conducting an enquiry.

5 The Petitioner, in the instant case, is a permanent employee having worked from 02.02.2007 till her dismissal on 18.04.2016. Having put in nine years of service, the Respondents cannot be justified in dismissing her services by issuing a notice and without conducting a departmental enquiry to prove the serious charges levelled upon her.

6 It was open to the Respondents to place the Petitioner under suspension pending the disciplinary enquiry and conduct an enquiry to prove the charges. The legal requirement was that the Petitioner would have been entitled to suspension allowances as per the Rules.

7 In the light of the above, the impugned order dated 18.10.2016 dismissing the First Department Appeal of the Petitioner and her dismissal order dated 16.04.2016 effective from 18.04.2016, cannot be sustained.

8 The Honourable Supreme Court, in the matter of the Chief Executive Officer, Krishna District Central Cooperative Bank Limited and another vs. K. Hanumantha Rao and another, 2017 (2) SCC 528 : 2017 (4).

Mh.L.J. 484, has concluded that even when it comes to the issue of quantum of punishment, the matter deserves to be remanded to the disciplinary authority for deciding appropriate quantum of punishment.

9 In the instant case, the order of dismissal has been passed without even conducting a departmental enquiry and as such, the right of the employer to follow the law as is laid down in the matter of Ratan Eknath Gund (supra) cannot be curtailed. By applying the doctrine of relation-back and keeping in view the law laid down by the Honourable Supreme Court in paragraphs 8 and 9 of *Vidya Vikas Mandal and another vs. Education Officer and another*, 2007(3) Mh.L.J. 801 (SC), the Petitioner can be treated as being under suspension w.e.f. 18.04.2016, rather than reinstating her keeping in view that the charges levelled upon her are grave and serious in nature. She would be entitled for suspension allowance as per the Rules considering the law laid down in Ratan Eknath Gund (supra).

10 In the light of the above, this Writ Petition is partly allowed. The impugned order dated 18.10.2016 is quashed and set aside and the order of dismissal dated 18.04.2016 is converted into an order of suspension keeping in view that the Employer would conduct a departmental enquiry into the charges levelled against the Petitioner by issuing a formal charge-sheet.

11 Considering the above, the Petitioner shall be treated as being under suspension w.e.f. 18.04.2016. Respondent No.1/ Gram Panchayat shall pay the arrears of suspension allowance to the Petitioner from 18.04.2016 within a period of EIGHT WEEKS from today and shall continue to pay the suspension allowance as per the Rules in the light of the law laid down in Ratan Eknath Gund (supra) till the departmental enquiry is concluded in an order to be passed by Respondent No.1/ Employer.

12 Respondent No.1 would be at liberty to issue the charge sheet to the Petitioner within THREE WEEKS from today and after obtaining the explanation from the Petitioner, it may proceed to conduct a domestic enquiry, if necessary, and in accordance with law.

13 Rule is made partly absolute in the above terms.