

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

**WRIT PETITION NO. 1436 OF 2007
WITH
CIVIL APPLICATION NO. 10024 OF 2016**

Shri Bhaskar s/o. Rajaram Pekam .. Petitioner
Age. 67 years, Occ. Nil,
R/o. C/o. Manish Music Center,
Sanmitra Colony, Jijai Chowk,
Work-shop Corner, Nanded.

Versus

1. The State of Maharashtra .. Respondents
Through – Secretary,
Rural Development,
Mantralaya, Mumbai.
2. Divisional Commissioner,
Aurangabad, Dist. Aurangabad.
3. Chief Executive Officer,
Zilla Parishad, Jalna.
4. Chief Executive Officer,
Zilla Parishad, Parbhani.
5. Block Development Officer,
Panchayat Samiti, Partur,
Dist. Jalna.

Mrs. Ranjana D. Reddy, Advocate for the petitioner.
Mr. R.B. Bagul, A.G.P. for respondent/State.
Mr. V.R. Sonwalkar, Advocate for respondent No.4.

**CORAM : S.V. GANGAPURWALA &
K.L. WADANE, JJ.
DATED : 01.02.2017**

ORAL JUDGMENT [PER : S.V.GANGAPURWALA,J.] :-

1. The petitioner was appointed as Panchayat Secretary on or about 21.06.1961. Since 01.05.1962 the petitioner was posted as Assistant Gram Sevak. In June, 1974, the petitioner was transferred to Panchayat Samiti, Partur. The petitioner was terminated under the order dated 29.04.1977. Vide present petition, the petitioner assails the said termination order and seeks pensionary benefits.

2. Mrs.Reddy, learned Counsel for the petitioner submits that since 15.11.1974 till 31.03.1977 the petitioner was on medical leave from time to time. The petitioner was constrained to be on leave on account of ill-health of his wife and his own illness. He had two small children. According to the learned Counsel, the petitioner could not resume his duty and the petitioner attained the age of superannuation on 30th November,

1997. The learned Counsel submits that the petitioner at no point of time received suspension order as contended by the respondents nor any Departmental Enquiry was conducted. The order of termination issued in the year 1977, copy of which received in the year 2006, is *per se ex-facie* illegal and same deserves to be set aside. Even if it is considered that the petitioner has discharged his duties from 1961 to 1974, still same would be qualifying service for the purpose of pension and retiral benefits. This aspect also needs to be considered. The learned Counsel submits that the termination order cannot be issued with retrospective effect.

3. The learned Counsel for the petitioner relies on the judgment of Division Bench of this Court in the case of **Assaram Raibhah Dhage Vs. Executive Engineer & Ors., reported in 1989 CLR 331.** The learned Counsel submits that the petitioner at no point of time was paid subsistence allowed and as subsistence allowance was not paid, the act of termination is hit by Article 11 of the

Constitution. The learned Counsel relies on the judgment of the Apex Court in the case of **Ghanshamdas Srivastava Vs. State of Madhya Pradesh reported in 1971 (3) SCC 802.**

The learned Counsel submits that the charges were never served upon the petitioner nor notice of Departmental Enquiry was served upon the petitioner. Fair opportunity was not given to the petitioner. As such the Enquiry stands vitiated, on account of non-compliance of the rule of *audi altram partem*. The learned Counsel relies on the judgment of Division Bench of this Court in the case of **Masood Alam Khan-Pathan Vs. State of Maharashtra & Ors., 2009 (5) Mh.L.J.68.** According to the learned Counsel, this Court can consider that the charges against the petitioner are not proved. To that extent judicial review is permissible. Learned Counsel relies on the judgment in the case of **Union of India & Anr. Vs. B.C. Chaturvedi, (1995) 6 SCC 750.**

4. The learned Counsel submits that considering the service rendered by the petitioner, the petitioner be

paid pensionary benefits at least for the period the petitioner has rendered service. The learned Counsel further submits that the documents relied by respondent No.4 cannot be taken into consideration as the said documents are not coming from the office of respondent No.4. The authenticity of said document is suspicious.

5. Mr.Sonwalkar, learned Counsel for the respondent submits that the petitioner from 15.11.1974 was on unauthorized leave. Even the petitioner never reported for duty. For the unauthorized absence the petitioner was suspended and thereafter Departmental Enquiry was initiated by appointing the Enquiry Officer. Notice was sought to be served on the address given by the petitioner. However, it was noticed that the petitioner had left the village. Panchanama to that effect was made. Thereafter, it transpired that the petitioner shifted to Nanded and notice by registered post was issued on that address. Same also could not be served and after conclusion of the Departmental Enquiry, the order of

termination has been issued on 29.04.1977. No illegality is committed. Learned Counsel placed reliance on the judgment of the Apex Court in the case of C. Jacob Vs. Director of Geology and Mining and Anr., reported in (2008) 1 SCC 115 to contend that the Court cannot direct the Department to consider stale claim and in case of abandonment of service, it would be a case of automatic termination.

6. We have considered the submissions canvassed by the parties. There is no dispute that the petitioner was initially appointed in the year 1961 and thereafter was posted as Assistant Gram Sevak in the establishment of Zilla parishad. In June, 1974, he was transferred to Panchayat Samiti, Partur and since November, 1974, the petitioner never attended the duty. The documents are filed on record to the effect that the petitioner was suspended and Departmental Enquiry was initiated against the petitioner for his long absentism. The Enquiry Officer was also appointed. Twice notices of the

Departmental Enquiry were sought to be served on the petitioner on the address given by the petitioner. Panchanama to that effect is also recorded. It is not disputed by the petitioner that the petitioner had left the village, the address of which was with the respondent. There is nothing on record to show that the petitioner had given fresh address to the respondent. The petitioner was also tried to be served with notice on other address at Nanded. Same has also returned back on the ground that the petitioner was not available. The notice was also pasted on the house of the petitioner, the address of which was given by the petitioner.

7. Considering the aforesaid aspect, the respondent has complied the rule of *audi alteram partem*. Fair opportunity was given to the petitioner. It is the petitioner who has not availed the said opportunity. The Enquiry Officer came to the conclusion that the petitioner is unauthorizedly absent. The petitioner also failed to give charge of his office as was directed to be

given and considering all the aforesaid aspects, the petitioner was terminated. After long slumber of 20 years, the petitioner has raised grievance with the respondents that the petitioner would stand retired in the year 1997 and he should be given his pensionary and retiral benefits for the period of 20 years. The petitioner did not turn up for discharging duties with the respondents. As has been observed by the Apex Court in the case of C. Jacob (Supra), it is a case of abandonment of service. There is no reason to doubt the genuineness of the documents produced by respondent No.4, which is a local body. There are no mala fides. Considering the aforesaid conspectus of the matter, the petitioner cannot be given benefit of qualifying service for pension. It would be a case of abandonment of service and same tantamount to automatic termination.

8. Considering all the aforesaid aspects of the matter, the grievance of the petitioner cannot be considered.

9. The writ petition is dismissed. Rule, as such, is discharged. No costs.

10. In view of disposal of the writ petition, connected civil application does not survive and accordingly stands disposed of.

[K . L . W A D A N E , J .]

[S . V . G A N G A P U R W A L A , J .]