

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

WRIT PETITION NO.5814 OF 2015

Ms. Sunita d/o Omkar Ambatkar ... **Petitioner**
Age 30 years, Occu: Nil
R/o Satkar Colony,
Near S.G.B.S.College, Purna
Tq. Purna, Dist. Parbhani

VERSUS

1. The Union of India
Through its Secretary,
Ministry of Health and Family
Welfare, Govt. of India,
Nariman Bhavan, New Delhi
2. The State of Maharashtra,
Through Its Seecretary,
Health Services Department,
Mantralaya, Mumbai.
3. The Commissioner,
Family Welfare and Director,
National Rural Health Mission,
State Health Society,
Arogya Bhavan, 3rd Floor,
St. Jeorge Hospital Premise,
P. D'mellow Road, CST,
Fort, Mumbai.
4. The Chief Executive Officer,
Zilla Parishad, Parbhani,
5. The Collector,
Collector Office, Parbhani.
6. The District Health Officer,
District Health Office,
Parbhani.
7. The Civil Surgeon,
Civil Hospital, Parbhani. ... **Respondents**

Mr. U. R. Awate and Mr. Amol Chalak, Advocates for the petitioner

Mr. M. B. Bharaswadkar, AGP for respondents 2, 3 5 & 7.

Mr. R. B. Bagul, Standing Counsel for Respondent No.1

Mr. Vivek Bhavthankar, Advocate for respondent No.4

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

RESERVED ON : 2nd March, 2017

PRONOUNCED ON : 31st March, 2017

JUDGMENT (Per K. L. Wadane, J.):

1. Heard the learned counsel for the parties.

2. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final disposal.

3. The petitioner has challenged the order dated 21.02.2015 passed by respondent No.3 by which services of the petitioner were terminated w.e.f. 05.08.2014.

4. Case of the petitioner, in brief, may be stated as follows:

i. The petitioner came to be selected as IPHS Coordinator purely on contract basis at District Civil Surgeon, General Hospital, Parbhani for a period of 12 months from 12.09.2008 to 11.09.2009. Subsequently, she was appointed from time to time during the period from

12.09.2008 to 11.09.2009, 15.09.2009 to 14.09.2010,
17.09.2011 to 31.03.2012.

ii. On 15.03.2012 a false complaint was forwarded to the Minister. Pursuant to which, Respondent No.3 directed Respondent No.4 to look into the matter and report. Petitioner replied the said complaint and denied the charges. Respondent No.3 informed to respondent No.4 that work of the petitioner was not satisfactory during the period from 05.03.2012 to 04.02.2014 and six months time was given to the petitioner to improve her performance.

iii. The Petitioner is suffering from Polio and she was to go to Vishakhapatnam for surgery and therefore she was on medical leave for three months from 18.08.2014 to 18.11.2014. She was under medical treatment till 20.01.2015.

iv. On 06.12.2014, respondent No.6 issued show cause notice to the petitioner to which the petitioner replied that she has completed more than seven years of service, her work was satisfactory and there was no complaint against her. The petitioner made applications to the Collector as well as Respondent No.6 on 19.01.2015 and 29.01.2015, requesting to allow

her to join duties. On 21.02.2015 termination order was issued, terminating services of the petitioner w.e.f. 05.08.2014 that too without hearing the petitioner.

5. Respondent No.6 filed affidavit in reply and has stated that respondent No.4 has conducted enquiry, in which it was revealed that petitioner was sending false reports without visiting to the concerned Health Centres. Therefore, it was intimated to the petitioner that if no improvement is shown, then no continuation in service will be given. After medical leave the petitioner did not join services and therefore, subsequently, after issuing various show cause notices, services of the petitioner are terminated on the ground of unsatisfactory performance.

6. Respondent No.3 filed affidavit and stated that performance of the petitioner was not satisfactory. The petitioner was appointed purely on temporary and contract basis and period of such contract came to an end on 05.08.2014. The Petitioner did not apply for continuation of services. Meantime, the proposal for discontinuation of services of the petitioner was received by respondent No.3 and on the grounds

mentioned in the proposal, respondent No.3 has terminated the services of the petitioner by order dated 21.02.2015 w.e.f. 05.08.2014.

7. We have heard Mr. U. R. Awate and Mr. Chalak, the learned counsel for the petitioner, Mr. M. B. Bharaswadkar, learned AGP for respondents 2, 3 5 & 7, Mr. R. B. Bagul, Standing Counsel for Respondent No.1 and Mr. Vivek Bhavthankar, learned counsel for respondent No.4.

8. The learned counsel appearing for the petitioner has stated that the petitioner was on medical leave from 18.08.2014 to 18.11.2014, which was sanctioned by respondent No.3. She had undergone surgery at Vishakhapatnam during the period from 08.09.2014 to 20.09.2014. She was taking bed rest from 20.09.2014 to 20.01.2015. Subsequently, the petitioner tried to join the duties but respondent no.6 did not allow her to join the duties. According to the learned counsel, termination order was passed by respondent No.3 without giving her opportunity of being heard which is against the principles of natural justice. The termination order is bad in law also on the ground that it terminates the services of the petitioner with

retrospective effect.

9. As against this, Mr. Bharaswadkar, the learned AGP argued that since services of the petitioner were temporary and purely on contract basis and as her term of contractual period was over, the petitioner did not apply for continuation of service nor the the department sent such proposal for continuation. On the contrary, department sent proposal for discontinuation of services of the petitioner on the ground that work performance of the petitioner was not good. Accordingly, respondent No.3 has rightly taken decision to terminate services of the petitioner and passed the impugned order. The learned AGP further argued that since the petitioner was not regular/permanent employee of respondent Nos. 7, it is not necessary to initiate departmental enquiry. Services of the petitioner can be terminated by giving show cause notice or by efflux of contractual period and accordingly it is terminated.

10. Looking to the nature of the employment of the petitioner, it is useful to refer to certain conditions of contract of employment between the petitioner and respondents, which reads as under:

(1) The temporary contractual employee may mind

it well that this project is funded by the government of India for a specific period. His/her assignment will automatically come to an end on the expiry of the specific period or end of the scheme/activity in which he/she is employed and no notice, notice pay, retrenchment compensation will be payable to him/her by the society.

(2) Since his/her appointment is being made for a specified period, he/she will neither have any right nor a lien on the post held by him/her. also he/she will not claim regular employment, absorption, regularization, age relaxation, earned leave, annual increment to condone technical breaks even if there is such a vacancy for the post held by him/her. Otherwise if he/she wants to leave the service, he/she can do this by serving one month notice or salary of one month, if one month notice is not served. No compensation or remuneration of expired period of contract will be payable by the society if his/ her services are terminated or he/she resigns from the services of the society before the specified period of contract."

11. Admittedly, the petitioner was appointed temporarily on contract basis. Therefore, she cannot claim right as of regular and permanent employee of the respondents. From the record, it is seen that the work performance of the petitioner was unsatisfactory.

Therefore, from time to time, intimations were given to her to improve her work performance, however, from the record, it is seen that inspite of opportunity being given, the petitioner failed to improve her work performance. Further, it is seen from the record that the contractual period of the petitioner was upto 5th August, 2014. Subsequently the petitioner did not apply for continuation nor department had sent proposal for her continuation in service. Therefore, on the date of expiry of contract i.e. 05.08.2014, services of the petitioner came to an end. Therefore, even it was not necessary for the respondents to pass formal termination order. Still, respondent No.3, after receipt of the proposal for discontinuation, has passed the impugned order and thereby terminated the services of the petitioner w.e.f. 05.08.2014.

12. From the affidavit of respondent No.7, it appears that petitioner did not resume her duties after expiry of medical leave for a period of 21 days. Therefore, respondent No.4 had issued letter dated 06.12.2014 directing the petitioner to join duties. Further it reveals from the record that the petitioner was on medical leave for three months during the period from 18.08.2014 to 18.11.2014. As no proposal for

continuation of service was sent, the services of the petitioner came to an end with effect from 05.08.2014. Therefore, the leave granted to the petitioner for three months was presuming the petitioner to be in service. However, subsequently such services of the petitioner were terminated by order dated 21.02.2015 with effect from 05.08.2014. Therefore, granting such medical leave to the petitioner is an irregularity on the part of the concerned respondent. It also cannot be said that services of the petitioner were terminated with retrospective effect. Letter dated 21.02.2015 is merely a communication to the petitioner. In fact the services of the petitioner were never continued after 05.08.2014. On 05.08.2014 the period of her contractual service came to an end.

13. Considering the nature of employment of the petitioner, it was not necessary for the respondents to initiate any departmental enquiry and thereafter terminate the services. Moreover, the respondents have, from time to time, informed to the petitioner that in case there was no improvement in her performance, then her services would be terminated. So, the services of the petitioner were terminated after giving notice mainly on the ground of unsatisfactory

work and for sending false report without visiting the health centers.

14. When the show cause notices were issued to the petitioner, she replied the same and therefore, it cannot be said that the petitioner was not heard. Mr. Awate, the learned counsel appearing for the petitioner has relied on the following judgments:

(1) Jagdish Prasad Vs. Sachiv, Zilla Ganna Committee, (1986) 2 SCC 338, wherein it is observed that "....But the order did cast a stigma on the service career of the appellant and it was in effect an order of termination on the charges of concealment of the fact that he was removed from his earlier service on the charge of corruption. The order thus was penal in nature, having civil consequences and it also prejudicially affected his service career."

(2) Assaram Raibhan Dhage Vs. Executive Engineer, Sub Divisional, Mula, 1988 (4) Bom. CR 158, wherein it is observed that the employment even if temporary, could not be terminated with retrospective effect.

(3) ABL International Ltd. and Anr. Vs. Export Credit guarantee Corp. of India, (2004) 3 SCC 553, wherein it

is observed that requirement of Article 14 extend even in the sphere of contractual matters.

(4) The learned counsel also relied the judgment in the case of Kumari Surelekha Vidyarthi Vs. State of UP and ors, (1991) 1 SSC 212 wherein it is observed that requirement of Article 14 extend even in the sphere of contractual matters and the State has no right to act whimsically and arbitrary.

(5) Satish Joshi Vs. Union of India and Anr., 2013 SCC Online Del 1156, wherein it is observed that even in the contractual matters, state does not have right to act whimsically and arbitrarily.

(6) The learned counsel also relied on the judgment in the case of Mohd. Abdul Kadir & Anr. Vs. Director General of Police, Assam and ors., (2009) 6 SCC 611, to contend that service continues when project or scheme is existed.

15. We have gone through the above case laws. Observations in the above judgments are not applicable to the facts of the present case simply because, as per the employment contract, services of the petitioner came to an end with effect from

05.08.2014. The petitioner did not apply for continuation nor the department has suo moto continued the petitioner in services. In view of the fact that her work performance was not satisfactory, the Department had sent proposal for discontinuation of services of the petitioner which were already came to an end in the month of August, 2014. Therefore, the observations of the above cited authorities are not applicable to the facts of the present case.

16. Considering the facts and circumstances of the case, we are of the opinion that there is no substance in the writ petition. Hence it is dismissed. Rule discharged. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC