

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 236 OF 2016
IN
WRIT PETITION NO. 11576 OF 2014

Sau. Kiran s/o Chaganlal Pawar,
Age : 36 years, Occu. Govt. Service,
R/o Datta Nagar, Wanjola Road,
Opp. Datta Mandir, Bhusawal,
Tq. Bhusawal, District Jalgaon

PETITIONER

VERSUS

1. The State of Maharashtra,
through Commissioner,
Integrated Child Development
Service Scheme, Maharashtra State,
Raigad Bhavan, 1st Floor,
Rear Wing, C.B.D. Belapur,
District Thane
2. The Commissioner,
Women & Child Development
Commissionerate,
Pune-1, District Pune
3. The District Women & Child Development
Officer (Urban), Bhusawal,
Gangaram Plot, Plot No. 3105,
B-2/124, Rathod Tower,
Behind Municipal High School,
Bhusawal, District Jalgaon

RESPONDENTS

Mr. S.D. Kulkarni, Advocate holding for
Mr. S.S. Kulkarni, Advocate for the Petitioner
Mr. R.V. Dasalkar, A.G.P. for respondent Nos. 1 to 3

**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.**

**ORDER RESERVED ON : 23rd JUNE, 2017
ORDER PRONOUNCED ON : 18th JULY, 2017**

ORDER (PER : SANGITRAO S. PATIL, J.) :

Heard the learned counsel for the petitioner and the learned A.G.P.

2. The petitioner has prayed for review of the judgment and order dated 2nd May, 2016, passed in Writ Petition No. 11576 of 2014.

3. The learned counsel for the petitioner submits that the petitioner had challenged the judgment and order dated 8th December, 2014, passed by the Maharashtra Administrative Tribunal ("Tribunal", for short) in Original Application No. 653 of 2013, wherein the show-cause notice dated 31st August, 2013 was challenged by the petitioner. The said Original Application was rejected and the impugned notice of termination dated 31st August, 2013 was kept intact. During pendency of the writ petition, the services of the petitioner came to be terminated on 23rd January, 2015. Therefore, the petitioner amended the writ petition and challenged the

order of termination on the ground that it was passed without holding any enquiry as contemplated under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short, "Discipline and Appeal Rules"). The learned counsel submits that termination of the petitioner without holding any enquiry as contemplated under Rule 8 and without extending any opportunity of hearing to the petitioner, would be totally illegal and unsustainable. The respondents were directed to maintain status quo as per the order dated 29th January, 2015. However, the respondents terminated the services of the petitioner even though the order of status quo was in operation. He submits that the effect of terminating the services of the petitioner without following the due procedure as laid down in Rule 8 of the Discipline and Appeal Rules has not been considered in the judgment of this Court. The judgment and order passed by the Tribunal has been confirmed by this Court. However, the termination of the petitioner was not the subject matter of that judgment. He submits that the petitioner needs to be given an opportunity to agitate her grievance against her illegal termination. He submits that the legality and correctness of the termination of the petitioner has not been considered by

this Court in the light of Rule 8 of the Discipline and Appeal Rules as well as in view of non-observance of the principles of natural justice, more particularly when the status quo order passed by this Court was in force. According to him, this is an error apparent on the face of the record since the grounds of objections raised by the petitioner against her termination have not been considered by this Court. He, therefore, prays that the judgment and order passed by this Court may be reviewed by setting them aside and the Writ Petition may be restored for further hearing.

4. The learned A.G.P. filed reply on behalf of respondent Nos. 1 to 3 and resisted the review application. According to him, the petitioner submitted false information for seeking the service and when the said fact was noticed by the Department, a show-cause notice dated 31st August, 2013 for her termination was given to her. After considering her reply, she was terminated from the service. He submits that there is no justifiable ground to review the judgment and order passed by this Court. He, therefore, prays for rejection of the application.

5. Perused the judgment passed by this Court on 2nd May, 2016. Indeed, the points raised by and on behalf of the petitioner about the legality and correctness of termination of her services with reference to non-compliance of the provisions of Rule 8 of the Discipline and Appeal Rules as well as the effect of non-observance of the principles of natural justice and that of operation of the status quo order when termination was effected, have remained to be considered in the said judgment. These are prima facie very valid points which would have considerable effect on the merits of the claim of the petitioner. The petitioner needs to be given an opportunity to agitate her grievance on these points against her termination order. So far as the finding of this Court confirming the order passed by the Tribunal in respect of the validity and legality of the show-cause notice dated 31st August, 2013 is concerned, we do not find any reason to disturb our judgment and order sought to be reviewed. However, we are inclined to set aside the order passed by us rejecting the Writ Petition and to restore it for hearing on the objections raised by the petitioner against her termination. The Review Application deserves to be allowed. Hence, we

pass the following order:

O R D E R

- (i) The order dated 2nd May, 2016, passed by this Court, rejecting Writ Petition No. 11576/2014, is quashed and set aside.
- (ii) Writ Petition No. 11576/2014 is restored for hearing in respect of the grounds of objection against termination of the petitioner's services.
- (iii) The Review Application is accordingly allowed and disposed of in the above terms.
- (iv) No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.S. SHINDE**]
JUDGE

npj/ra236-2016