

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 887 OF 2016

SHRI. SHASHIKANT S. KANDOLKAR., ... Petitioner
Versus
STATE OF GOA, THR. THE CHIEF
SECRETARY AND 2 ORS., ... Respondents

Mr. Shivan Desai and Mr. Prasheen Lotlikar, Advocates for the
Petitioner.
Mr. Pravin N. Faldessai, Addl. Government Advocate for the
Respondent nos. 1, 2 and 3.

Coram:- F. M. REIS &
PRITHVIRAJ K. CHAVAN, JJ.

Date:- 21st June, 2017

ORAL ORDER

Heard Mr. Shivan Desai, learned Counsel appearing for the
Petitioner and Mr. Pravin Faldessai, learned Addl. Government
Advocate appearing for the Respondents.

2. The challenge in the above Petition is to an Order dated
26.10.2015 whereby an Appeal preferred by the Petitioner
challenging his termination came to be dismissed by the
Respondent no. 2.

3. Shri Shivan Desai, learned Counsel appearing for the
Petitioner, pointed out that the Petitioner has been terminated
from his services in breach of the principles of natural justice as,

according to him, no hearing was given to the Petitioner before issuing such Order of termination. Learned Counsel further submits that the Respondent no. 3 on the basis of a complaint received with regard to the mark sheet submitted by the Petitioner, sought for information from the Goa Board and on the basis of the communication by the Board, that as the number shown in the Certificate does not tally with the records of the Board, proceeded to pass the Order of termination in terms of Rule 5(1) of the CCS (Temporary Service) Rules 1965. Learned Counsel further pointed out that there were criminal proceedings initiated on such count before the JMFC, Vasco, wherein the Petitioner was initially convicted and left on probation by the learned JMFC but, however, the Appeal preferred by the Petitioner came to be allowed and consequently the Petitioner was discharged of the offences levelled against him. Learned Counsel further pointed out that the impugned Order of termination is a nullity, as the principles of natural justice have not been complied with, the Respondent no. 2 was not justified to pass the impugned Order. Learned Counsel further submits that though the Petitioner was on probation, nevertheless, the allegation against the Petitioner would have a stigma in his future career and, as such, the Respondent no. 3 was not justified to pass such Order without giving a hearing to the Petitioner. Learned Counsel further pointed out that it is well settled that an Order of termination passed without complying with the

principles of natural justice stands vitiated and is null and void and, as such, according to him, the Respondent no. 2 was not justified to dismiss the Appeal preferred by the Petitioner.

4. On the other hand, Shri Pravin Faldessai, learned Addl. Government Advocate appearing for the Respondents, has pointed out that the Petitioner admittedly was on probation and in terms of Rule 5(1) of the said Rules, it clearly provides that the Respondents are entitled to terminate the services without any notice provided one month's salary is paid to the Petitioner. Learned Addl. Government Advocate further pointed out that the Petitioner has duly accepted his salary and in fact did not raise any grievance since the year 2001 and only filed the Appeal in the year 2011. Learned Addl. Government Advocate further submits that mere acquittal in a criminal proceedings on a technical ground does not exonerate the Petitioner from the allegations on which the Petitioner has been terminated. Learned Counsel further pointed out that in any event, as the Petitioner was terminated in exercise of powers under Rule 5(1) of the said Rules, the contention of the learned Counsel appearing for the Petitioner that principles of natural justice have not been followed, does not at all survive. It is further pointed out that on plain reading of the impugned Order of termination, there is no stigma attached to the Petitioner as there is nothing stated in such Order of termination. Learned Addl Government Advocate

further submitted that the roll number in the Certificate was not even allotted to any candidate in that particular year. Learned Addl. Government Advocate further submits that there is gross delay in raising the grievance before the Appellate Authority and, as such, there is no justification for this Court to exercise extraordinary jurisdiction under Article 226 of the Constitution of India.

5. We have duly considered the submissions of the learned Counsel. We have also gone through the records. Rule 5(1) of the said Rules, reads thus :

"5. Termination of temporary service.

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month.

Provided that the services of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount

of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.

6. On plain reading of the said Rules, it clearly provides that when a Government servant is working on probation, he can be terminated without any notice, provided one month's salary is paid to such employee. No doubt, cases in which any stigma is attached to such termination, the Rules of natural justice would follow.

7. In the present case, on perusal of the impugned Order dated 26.10.2015, we find that there is nothing which can show therein that there is any stigma attached to the Petitioner with regard to his termination in terms of Rule 5(1) of the said Rules. Apart from that, the records reveal that the impugned termination took place in the year 2001 and the Petitioner chose to challenge such termination only in the year 2011. The gross delay on this count can also be a ground for refusing to exercise extraordinary jurisdiction under Article 226 of the Constitution of India. In the present case, as stated herein above, as submitted by the learned Addl. Government Advocate, there is no stigma attached to the Petitioner with regard to the subject termination. In such

circumstances, there is no reason or justification for the Appellate Authorities to examine the reasons which led to such termination in terms of Rule 5(1) of the said Rules.

8. For the aforesaid reasons, there is no case made out for any interference in the impugned Order dated 26.10.2015. The Petition stands rejected accordingly.

PRITHVIRAJ K. CHAVAN, J.

F. M. REIS, J.

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