

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

WRIT PETITION NO. 1803 OF 2016

Pushpabai d/o Govindsinha Bais
alias Sau. Pushpatai w/o Bhagwansing
Thakur, Age 50 years, occ. Service
as Anganwadi Sevika (now terminated),
R/o Sayal, Tq. Loha, Dist. Nanded.

...Petitioner

VERSUS

- 1] The State of Maharashtra,
through its Secretary,
Women & Child Development
Department, Mantralaya,
Mumbai-32,
- 2] The Chief Executive Officer,
Zilla Parishad, Nanded,
- 3] Deputy Chief Executive Officer,
(Child Welfare),
Zilla Parishad, Nanded,
- 4] The Child Development Project Officer,
Integrated Child Development
Service Scheme, Loha,
Tq. Loha, Dist. Nanded,
- 5] Atmaram s/o Bapurao Pawar,
age 50 years, occ. Agriculture,
- 6] Sambhaji s/o Madhavrao Ambode,
age 44 years, occ. Agriculture,
- 7] Bhagwan s/o Maroti Dhage,
age 50 years, occ. Agriculture,
- 8] Annasaheb s/o Dattatraya Pawar,
age 40 years, occ. Agriculture,

- 9] Premsing Bhimsing Thakur,
age 40 years, occ. Agriculture,
- 10] Sudam Vishwas Pawar,
age 46 years, occ. Agriculture,
- 11] Sahebrao Dhondiba Pawar,
age 46 years, occ. Agriculture,
- 12] Baliram Vyankati Pawar,
age 42 years, occ. Agriculture,
- 13] Eknath s/o Narayan Martale,
age 36 years, occ. Agriculture,
- 14] Mokind Bholaji Pawar,
age 58 years, occ. Agriculture,
- 15] Dashrath Umaji Pawar,
age 55 years, occ. Agriculture,
- 16] Sopan Champatrao Dhage,
age 32 years, occ. Agriculture,
- 17] Tukaram s/o Madhavrao Pawar,
age 45 years, occ. Agriculture,
- 18] Madhavrao Vyankatrao Dhage,
age 40 years, occ. Agriculture,

All R/o Sayal, Post Koregaon,
Tq. Loha, Dist. Nanded

...Respondents

Mr. S.R.Chaukidar h/f Mr. V.S.Panpatte, adv. For
petitioner

Mr. K.N.Lokhande, AGP for respondent no.1

Mr. S.G.Kawade, adv. For respondent no.3

Mrs. Yogita M. Kshirsagar, adv. for respondent nos. 2 and

4

**CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.**

DATE OF RESERVING JUDGMENT : 04.07.2018

DATE OF PRONONCEMENT OF JUDGMENT : 16.07.2018

JUDGMENT : (Per Sunil K. Kotwal, J.)

Rule. Rule returnable forthwith. With the consent of the learned counsel for the respective parties the petition is taken up for final hearing.

2. By filling this Writ Petition under Article 226 of the Constitution of India, the petitioner has sought quashment of her termination order, dated 2.2.2016, issued by respondent no.2 Chief Executive Officer, Zilla Parishad, Nanded with consequential relief of reinstatement, continuity of service and back wages.

3. Initially petitioner worked as Balak Tai in Balwadi of Zilla Parishad School from 11.8.1992 to

30.4.1993. When new Anganwadi centers were started in the place of Balwadi, in the year 1993 petitioner submitted application, dated 13.5.1993 to Block Education Officer, Kandhar for appointment on the post of Balwadi Sevika. In that application, she specifically mentioned that she was educated upto 7th standard. Petitioner also made second application on 25.6.1993. After undergoing through the process of interview she was appointed as Anganwadi Sevika of village Tayal, Taluka Kandhar (now Taluka Loha) and she joined her service on 17.12.1993. Thereafter, petitioner was in continuous service as Anganwadi Sevika till 2.2.2016.

4. One Atmaram Pawar and other villagers from village Sayal made complaint to Collector, Nanded, making allegations regarding filing of bogus documents by petitioner at the time of her appointment as Anganwadi Sevika.

5. Without holding departmental inquiry against the petitioner, respondent no.2 terminated her services by passing order dated 2.2.2016. Therefore this Writ Petition.

6. Heard strenuous arguments submitted by learned counsel for petitioner and learned counsel for respondents. Learned counsel for the petitioner submits that the impugned order was passed with retrospective effect which is not permissible in law.

7. Learned counsel for the petitioner submits that at the time of submitting first application for appointment as Anganwadi Sevika, the petitioner did not mislead. But under the political pressure of the complainant, without affording proper opportunity of hearing to the petitioner, respondent nos. 3 and 4 prepared adverse report against the petitioner and relying on that report respondent no.2 illegally terminated services of the petitioner, without

holding regular departmental inquiry and without issuing show cause notice to the petitioner about the proposed major penalty.

8. Last submission of learned counsel for the petitioner is that as petitioner had put in more than 22 years service as Anganwadi Sevika, without any complaint against her, respondent no.2 is not justified while terminating the service of the petitioner with retrospective effect. He placed reliance on (1) **ABL International Limited vs Export Credit Guarantee Corporation of India Limited** reported in 2004 (3) SCC 553, (2) **Whirlpool Corporation vs Registrar of Trade Mark** reported in 1998 (8) SCC 1, (3) **Asaram Dhage vs Executive Engineer, Sub-Division, Mula** reported in 1988 (4) BOM.C.R. 158 and (4) **Chandra Prakash Shahi vs State of U.P.** reported in 2000 (5) SCC 152.

9. In reply, learned counsel for the respondent nos. 1 to 3 submits that alternate remedy is available to the petitioner against the order passed by respondent no.2 before the Labour Court under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. In support of his contention, he placed reliance on judgment of Division Bench of this Court in **Vidya Vishnu Vanare vs State of Maharashtra and another** reported in **2011 (2) Mh.L.J. 221**.

10. Next submission of learned counsel for respondents is that at the time of submitting application for appointment to the post of Anganwadi Sevika, the petitioner submitted false documents to show that she was educated upto 8th standard. He further submits that even in the application the petitioner falsely mentioned her educational qualification as 8th standard pass and thereby misled the appointing authority. Therefore the termination

order passed by respondent no.2 after holding necessary inquiry, and after giving opportunity of hearing to the petitioner, cannot be termed as illegal order, which calls for interference by this Court.

11. With the help of learned counsel for both the parties, we have gone through the papers placed on record. Even the original papers were called for perusal. In the case at hand undisputedly the minimum educational qualification for the post of Anganwadi Sevika is upto 8th standard and on the date of submitting application on 13.5.1993 petitioner was educated only upto 7th standard. But the xerox copy of T.C. certificate issued by Zilla Parishad School, Dapka shows that at the time of submitting application for the post of Anganwadi Sevika the petitioner annexed false certificate that she was educated upto 8th standard. However, it cannot be ignored that in the first application, dated

13.5.1993 the petitioner had specifically mentioned that her educational qualification was upto 7th standard and not 8th standard. No doubt, in the second application, dated 25.6.1993 initially the petitioner had mentioned her educational qualification as 7th standard pass. However, subsequently the word "7th" appears to be erased and in altogether different hand writing word "8th" standard is substituted. According to the petitioner, the complainant Atmaram being politically influential person has made these changes in the original application, dated 25.6.1993 by erasing the word "7th" and substituting the word "8th". On the other hand, respondents denied these allegations. No doubt, after careful examination of second application, dated 25.6.1993, it reveals that the substitution of word "8th" instead of previously written 7th is altogether in different hand writing and no initial is made at the place of this correction. However, while exercising writ

jurisdiction, this Court cannot hold inquiry as to who made the above said changes in the original application of the petitioner.

12. Thus, if the second application, dated 25.6.1993 is ignored, the fact remained on record that in the very first application, dated 13.5.1993, the petitioner had fairly written her educational qualification as 7th standard. Thus, it can be said that at the time of submitting application to the post of Anganwadi Sevika, the petitioner did not try to mislead respondent no.2 for getting appointment on the post of Anganwadi Sevika. It was the duty of appointing authority to verify from the original T.C. certificate what was the correct educational qualification of petitioner, in view of above referred difference in two applications of the petitioner. When petitioner had fairly mentioned her correct educational qualification in her first application, she had no reason to fabricate her

school leaving certificate. In the circumstances, the school leaving certificate showing incorrect educational qualification of petitioner deserves to be ignored.

13. Another important aspect to be noted is that since 1993 till her termination in the year 2016, the petitioner served with the respondent for the period of about 22 years. Admittedly, her performance was good and no complaints were received during her service span of 22 years. Considering this long unblemished span of service rendered by petitioner and her bona fides mentioning her correct educational qualification in her first application, respondent no.2 ought not to have terminated the services of the petitioner only on the ground that false school leaving certificate was filed by petitioner along with her application.

14. Even Apex Court in some what similar situation in the case of **Dr. M.S.Mudhol and another vs Shri S.D.Halegkar and others** reported in 1993 II CLR 389 observed that :

"6. Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, inspite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequities to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same."

15. In view of this set position of law considering unblemished 22 years service of petitioner as Anganwadi Sevika, she cannot be terminated when she did not mislead while submitting her first application, dated 13.5.1993 for appointment to the post of Anganwadi Sevika.

16. Another important aspect is that after going through the impugned order, dated 2.2.2016, it emerges that the service of the petitioner is terminated with retrospective effect i.e. from the date of her first appointment in the year 1993.

17. However, in **Asaram Raibhah Dhage vs Executive Engineer, Sub-Division, Mula** (supra), Division Bench of this Court held that employee even if temporary could not be terminated with retrospective effect. Thus, obviously the impugned termination order giving retrospective effect deserves to be set aside.

18. One more objection raised by petitioner is that she was terminated without holding departmental inquiry and without issuing show cause notice to her by respondent nos. 3 and 4.

19. On perusal of inquiry report submitted by respondent no.4 Child Development Project Officer, it becomes clear that procedure prescribed for holding regular departmental inquiry is not followed by respondent no.4. Only notice was issued to the petitioner on 21.9.2015 to produce necessary documents at the time of inquiry. However, it cannot be ignored that the appointment of petitioner on the post of Anganwadi Sevika was on payment of honorarium basis and she was not in regular service of Zilla Parishad. Therefore, the procedure required to be followed while holding inquiry against regular Zilla Parishad employee need not be followed in the present case. However, before terminating service of the petitioner, respondent no.2 ought to have furnished

copy of report submitted by respondent no.4 and ought to have given opportunity of hearing to the petitioner. Thus, obviously there is violation of principles of natural justice. On this count also, the impugned order of termination needs to be set aside.

20. Regarding the objection raised by the respondents about availability of alternate remedy before Labour Court, it is suffice to say that in appropriate cases despite availability of alternate remedy this Court can exercise writ jurisdiction under Article 226 of the Constitution of India. In **Whirlpool Corporation vs Registrar of Trade Marks** (cited supra) Apex Court ruled that *"In an appropriate case, in spite of availability of alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii)*

where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged." As observed above, in the case at hand, there is violation of principles of natural justice. So also the petition is pending since the year 2016 and we have heard the matter on merits. Therefore, extra ordinary jurisdiction under Article 226 of the Constitution of India can be invoked, despite availability of alternate remedy before the Labour Court.

21. In view of above discussion, our conclusions are that while getting appointment on the post of Anganwadi Sevika the petitioner did not mislead the appointing authority regarding her educational qualification. So also considering her unblemished 22 years service rendered to respondent nos. 1 to 4 and violation of principles of natural justice, the impugned order needs to be set aside and petitioner

deserves to be reinstated without back wages, but with continuity of service.

22. Hence following order.

O R D E R

- (i) Writ Petition is allowed.
- (ii) Impugned order, dated 2.2.2016, passed by respondent no.2 is quashed and set aside.
- (iii) Respondent no.2 is directed to reinstate the petitioner within one month from the date of passing of this order, with continuity of service, but without arrears of honorarium from the date of termination till the date of reinstatement.
- (iv) Rule is made absolute in the above terms. No order as to costs.

[**SUNIL K.KOTWAL, J.**]

[**S.V.GANGAPURWALA, J.**]