

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11832 OF 2014

Yogesh Balkrishna Gethe,
Age: 34 Years, Occu.: Nil,
R/o.: Sai Chintan, B3/03,
Sai Nagar, Shirdi,
Taluka – Rahata,
District – Ahmednagar .. **Petitioner**

Versus

Shri Sai Baba Sansthan Vishwastha
Vyavastha, Shirdi, Taluka – Rahata,
District – Ahmednagar,
Through its Chief Executive Officer
.. **Respondent**

Mr. Parag Vijay Barde, Advocate for the
Petitioner.
Mr. Nitin R. Bhavar, Advocate for Respondent /
Sole.

CORAM: S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.

DATE: 12th September, 2018

ORAL JUDGMENT (Per: S. V. Gangapurwala, J.):

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

2. The petitioner was appointed as E.N.T.

Surgeon by the respondent under appointment order dated 05.08.2008. The petitioner was granted permanency on 01.04.2010.

3. Mr. Barde, learned counsel for the petitioner submits that the preliminary inquiry was conducted. In the said preliminary inquiry it was suggested that the serious charges are alleged against the petitioner and upon conducting the inquiry action be taken against him. On the basis of the said report show cause notice was issued to the petitioner. The petitioner thereafter was terminated from service under order dated 04.12.2010. Initially the petitioner assailed the said order by filing Complaint [ULP] No. 74 of 2010 before the Labour Court. However it was withdrawn, as the petitioner is not a Workman. The same is assailed in the present writ petition.

4. Mr. Barde, the learned Advocate for the petitioner submits that the petitioner was a permanent employee of the respondent. A permanent

employee cannot be removed without conducting departmental inquiry. Only preliminary inquiry was conducted. On the basis of preliminary inquiry the show cause notice is issued and the petitioner is terminated. The learned Advocate submits that such a procedure is not countenance in law. The learned Advocate to substantiate his contention relies on the judgment of the Apex Court in a case of Champaklal Chimanlal Shah Vs. The Union of India reported in AIR 1964 Supreme Court 1854 and another judgment of the Apex Court in a case of Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others reported in 2015 ALL SCR 3681.

5. Mr. Barde, the learned counsel further submits that the petitioner may be granted back wages and continuity in service.

6. Mr. Bhavar, learned Advocate for the respondent submits that the petitioner was appointed initially on contractual basis under

appointment order dated 05.08.2008. Clause No. 9 of the appointment order permitted the respondent to terminate the services of the petitioner any time with one month's notice or on payment of one month's salary in lieu thereof. The petitioner was made permanent and all the terms and conditions of the initial order of appointment dated 05.08.2008 were made applicable. In view of that, the respondent had right to terminate the services of the petitioner without inquiry. The learned Advocate submits that even otherwise the preliminary inquiry was conducted and the decision was taken. Show cause notice was issued to the petitioner. Opportunity was given to the petitioner to file his say and thereafter the decision has been taken. The petitioner did not participate or cooperate in the preliminary inquiry.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. The fact that the petitioner is advanced permanency by the respondent on 01.04.2010 is not disputed. The petitioner was appointed after following selection process as an E.N.T. Surgeon by the respondent. It is also not disputed that no departmental inquiry has been conducted against the petitioner. A preliminary inquiry was initiated and after conducting preliminary inquiry straightway show cause notice was issued to the petitioner as to why the petitioner should not be terminated from service, and subsequently the petitioner is terminated.

9. A permanent employee cannot be removed without conducting departmental inquiry, more particularly, when it is a case of stigmatic termination. The preliminary inquiry is only a fact finding inquiry to enable the disciplinary authority to conclude that a disciplinary inquiry is required to be initiated against the employee. The report of the preliminary inquiry cannot be considered at the time of departmental inquiry.

The preliminary inquiry and the report therein would not have any legal status qua taking penal action against the employee.

10. Clause No. 9 relied by the respondent in the appointment order to the effect that the services of the petitioner may be terminated any time with one month's notice or on payment of one month's salary in lieu thereof would not apply to the case of stigmatic termination. The termination is stigmatic termination.

11. There is nothing on record to show that at the relevant time the petitioner was not gainfully employed elsewhere. In view of that, we are not inclined to grant back wages, however, the petitioner would be entitled for continuity in service.

12. The respondent – employer, if it so chooses, is entitled to initiate proceedings including departmental proceedings as may be permissible in law.

13. In the light of above, the impugned order terminating the services of the petitioner is quashed and set aside. With the aforesaid observations, Rule is made absolute in terms of prayer clause 'A'.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

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