

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

WRIT PETITION NO.1185 OF 2003

- 1 The Maharashtra Krishna Valley
 Development Corporation
 (Incorporated under the MKVDC Act, 1996)
 Through its Executive Engineer,
 Kukadi Distribution Construction
 Division, Kolwadi, Tq.Karjat,
 District Ahmednagar.

- 2 The Sub Divisional Officer,
 Kukadi Left Canal,
 Sub Division No.21 Adhalgaon,
 Tq.Shrigonda, District Ahmednagar.

...PETITIONERS

-VERSUS-

Pandurang s/o Maruti Khamkar,
Age : 43 years, Occupation : Labourer,
R/o Ghargaon, Tq.Shrigonda,
District Ahmednagar.

...RESPONDENT

...

Shri G.B.Rajale, Advocate for the petitioners.
Shri A.V.Hon, Advocate for the respondent.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st June, 2019

Oral Judgment :

- 1 The petitioner corporation is aggrieved by the judgment of
the Labour Court dated 08.05.2002 vide which, Complaint (ULP)

No.95/1994 has been allowed and he has been granted reinstatement with continuity and 50% back wages. The petitioner is also aggrieved by the judgment and order dated 06.02.2003 delivered by the Industrial Court vide which, Revision (ULP) No.44/2002 filed by the petitioner, has been dismissed.

2 I have considered the strenuous submissions of the learned advocates for the respective sides and have gone through the record available. This Court has stayed the impugned judgments by the order dated 05.01.2004 and since then, the respondent is not in employment. The Industrial Court had also stayed the judgment of the Labour Court during the pendency of the revision petition.

3 It is undisputed that the respondent workman was appointed as a watchman by the petitioner corporation for the periods of 60 days at a time followed with minor breaks and reinstatement for similar periods, in between 15.04.1988 till 1993. On 02.06.1993, when the respondent was deployed in the night shift at Ghargaon, a theft occurred at the government godown and few articles including 14 cement bags were stolen by thieves. Next morning i.e. on 03.06.1993, the workman lodged the report with the police station. On the basis of the suspicion expressed by the petitioner, the complainant/ workman was arrested. He was placed under suspension by order dated 18.06.1993 with retrospective effect from 03.06.1993. This was followed by the order dated 03.06.1994 vide

which the respondent/ workman was treated to be temporarily terminated from service from 03.06.1993, admittedly with retrospective effect.

4 It is thus, obvious that the petitioner corporation has acted against settled law. On the one hand, the petitioner placed the respondent under suspension and on the other hand, subsequently he was temporarily terminated by order dated 03.06.1994 with retrospective effect from 03.06.1993. It requires no debate that the order of termination with retrospective effect is illegal in the light of the judgment delivered by the learned Division Bench of this Court in the matter of *Assaram Raibhah Dhage vs. Executive Engineer, Sub Divisional, Mula, 1988 (4) Bom. C.R. 158 : 1987 (2) CLR 231*.

5 The learned advocate for the petitioner has strenuously submitted that though the order of termination was issued with retrospective effect, a preliminary enquiry was conducted. As the petitioner management found that the charges are proved in the preliminary enquiry, a regular departmental enquiry was initiated. It is, however, conceded that the order of termination with retrospective effect is not a result of the full-fledged departmental enquiry and is founded on the preliminary enquiry.

6 It is settled law that the preliminary/ superficial enquiry cannot be a ground for termination or dismissal. So also, irrespective of whether such preliminary enquiry was conducted or not, an order of

termination with retrospective effect is unsustainable, in view of the observations of the learned Division Bench in paragraphs 1 to 6 in

Assaram Raibhah Dhage (supra), which read as under :-

- “(1) The services of an employee, be he permanent or temporary, cannot be terminated with retrospective effect. Such is the ratio of this judgment.
- (2) On June 7, 1980 the petitioner, a project displaced person, was appointed as a Mustering Assistant in the Work Charge Establishment at a monthly salary of Rs.200/-. Thereafter he worked continuously without break in service till March, 1986, when by a letter of termination dated March 11, 1986 his services were retrospectively terminated with effect from March 1, 1986. Hence this writ petition.
- (3) The petitioner's learned counsel Miss Purohit is perfectly justified in making a grievance that it is unthinkable that an employee's services can be terminated with retrospective effect, as done in the present case. We join learned Counsel in her astonishment. For that matter, one of the conditions in the letter of appointment is that if the petitioner desired to resign he was liable to pay one months salary or give one months notice. It is therefore, ironical that on the other hand, the petitioner's services were terminated with retrospective effect.
- (4) However, the respondents' learned Counsel Mr.Bhatkar ventures that the date of termination, namely March 1, 1986 in the letter of termination must be typographical error. This is an ipse dixit, it is purely conjecture and speculative reasoning. Significantly enough, in the affidavit in reply, no such case of a typographical error is even faintly suggested. For that matter, despite the fact that in the petition it has been categorically stated in no uncertain terms that by this letter of termination, the petitioner's services were terminated with retrospective effect from March 1, 1986 not even the whisper of a denial is to be found in the affidavit in reply. Thus, the myth of a typographical error stated across the Bar can safely

be ruled out.

- (5) *Mr.Bhatkar now takes refuge that the petitioner's appointment was merely temporary. However, he is unable to say under what provisions of law the petitioner's employment, even if temporary, could be terminated with retrospective effect.*
- (6) *In the result, the termination order dated March 11, 1986 is set aside. The petitioner shall be paid his salary as if he had continued to be in employment. The Rule is made absolute accordingly with costs."*

7 The petitioner concedes that on the basis of the final report of the full-fledged departmental enquiry, no action has still been initiated though the charges have been proved against the respondent.

8 The learned advocate for the respondent submits that he had preferred Complaint (ULP) No.167/1994 before the Industrial Court praying for suspension allowance, which was never paid to him. It appears that on the one hand, the petitioner avoided paying the suspension allowance and on the other hand, issued the order of temporary termination with retrospective effect.

9 In the light of the above recorded facts and circumstances, the Labour Court allowed the complaint vide judgment dated 08.05.2002. I do not find that the Labour Court has committed any error, notwithstanding the fact that the termination with retrospective effect was neither noticed by the Labour Court, nor was it canvassed by the workman before the Labour Court. In any case, considering the slipshod manner in

which, the petitioner has acted in passing the orders of suspension, preliminary enquiry, termination, temporary termination with retrospective effect and not acting on the basis of the final enquiry report, the judgment of the Labour Court cannot be faulted. For similar reasons, the Industrial Court has not committed any error in dismissing the revision petition filed by the petitioner corporation.

10 In view of the above, this Writ Petition fails and stands dismissed. Rule is discharged.

11 At this juncture, the learned advocate for the petitioner submits that the petitioner has not initiated any action against the respondent on the basis of the final enquiry report, which is an outcome of the full-fledged departmental enquiry only because they were involved in litigation and this petition was pending before this court. The petitioner, therefore, seeks liberty to act in accordance with the law in pursuance to the enquiry report dated 22.07.1997.

12 The learned advocate for the respondent has strongly opposed this request.

13 In my view, when an employer has conducted a regular departmental enquiry and has not acted upon the report of the enquiry officer on account of being involved in pending litigation, it is necessary that the departmental enquiry and the disciplinary proceedings have to be taken to a logical end. The petitioner, therefore, can neither be precluded,

nor can there be an estoppel in law to do so. However, while making these observations, it is necessary to record, in order to pass a just and equitable order, that the petitioner can be permitted to proceed on the basis of the final enquiry report provided they comply with the judgment of the Labour Court with promptitude. As the respondent has passed the age of superannuation, the petitioner would have to pay him the back wages till his superannuation.

kps

(RAVINDRA V. GHUGE, J.)