

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11229 OF 2018

MANGALA UTTAMRAO DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner :
Mr. R. J. Godbole h/f Mr. G. N. Chincholkar
AGP for Respondents No. 1 to 4 : Mr. S. B. Pulkundwar
Advocate for Respondents No. 5 & 6 :
Mr. V. S. Panpatte

...

WITH

WRIT PETITION NO.12478 OF 2018

MANGALA UTTAMRAO DESHMUKH THROUGH GPA UTTAMRAO
BHAGWANRAO DESHMUKH
VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner :
Mr. Jadhavar Santosh S.
AGP for Respondents No. 1 to 3 : Mr. S. B. Pulkundwar
Advocate for Respondents No. 4 & 5 :
Mr. V. S. Panpatte

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CORAM: S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.

DATE: 04th APRIL, 2019

PER COURT :

1. Writ Petition No. 11229 of 2018 is filed seeking directions against respondents no. 5 and 6 therein to grant the benefit of special leave to

the petitioner from 07.11.2017 on the ground that the petitioner had a stroke of Paralysis and was incapacitated.

2. Writ Petition No. 12478 of 2018 was initially filed seeking directions against the respondents therein to grant benefit to the petitioner of the Rights of Persons with Disabilities Act, 2016. By way of an amendment, the order terminating the services of the petitioner is assailed.

3. We have heard Mr. Godbole and Mr. Jadhavar, learned counsel appearing for the petitioner in the respective writ petitions. Mr. Panpatte, learned counsel appearing for the institution and the learned Assistant Government Pleader.

4. It is the contention of the petitioner that on or about 07.11.2017 the petitioner could not attend the institution as she had suffered an attack of Paralysis and was undergoing treatment. The petitioner also produced the certificate to that effect with the institution. The certificate

was given of the treatment taken by the petitioner with Ruby Hall Clinic and thereafter had given a disability certificate issued by the Medical Board in Form-4 of Dr. Shankarrao Chavan Government Medical College and Hospital, Nanded. The certificate is dated 15.09.2018. The said certificate is also not considered. According to the learned counsel, provisions of Rule 79 of the Maharashtra Civil Services (Leave) Rules, 1981 would apply to the petitioner. According to the said rules, Paralysis is covered and the rules incorporated in Appendix III of Rule 79 of the Maharashtra Civil Services (Leave) Rules, 1981 would apply and the petitioner would be entitled for the benefit of special leave on account of Paralysis for a period of one year on full pay and thereafter on half pay. According to the learned counsel for the petitioner, the respondents have not considered the said aspect. It is further contended that under the provisions of the Rights of Persons with Disabilities Act, 2016 the

institution is required to allot the work to the petitioner which the petitioner is fit to perform. Instead of allotting the work which the petitioner would be in a position to perform, the respondent institution terminated the services of the petitioner illegally.

5. The learned counsel for the institution submits that the record of the petitioner is not good. Since beginning the petitioner used to go on leave. According to the learned counsel, petitioner was unauthorisedly absent, as such, the action was taken. The certificate submitted earlier was not of the Medical Board. The petitioner cannot seek remedy before this Court challenging the termination. The special leave on account of Paralysis has to be considered by the School Committee. It is only on the basis of the report of the Medical Board the leave can be considered and sanctioned.

6. We have considered the submissions canvassed

by the learned counsel for respective parties.

7. As the management is disputing the certificates produced by the petitioner we had directed the petitioner under our order dated 22.02.2019 to appear before the Medical Board Government Medical College, Nanded. The Board was directed to examine the petitioner and issue certificate - (i) about the extent of disability and (ii) whether the petitioner is fit to do any sort of work ? Pursuant to our orders the petitioner appeared before the Medical Board, Dr. Shankarrao Chavan Government Medical College and Hospital, Nanded. The certificate has been issued by the Medical Board to the effect that the disability of the petitioner is 51 to 60%. She is not fit to work as a teacher but is fit for office work.

8. In the present case, we are concerned with claim of the petitioner about special leave. Appendix III of Rule 79 of the Maharashtra Civil

Services (Leave) Rules, 1981 deals with special leave. Rule 3 (3) reads thus -

"Rule 3 - Confirmation of the disease and grant of leave -

(1) ...

(2) ...

(3) A Government servant irrespective of the pay drawn, after the expiry of all leave due and admissible to him on full pay be granted T.B. leave on full pay and the leave salary for such T.B. leave should be regulated under normal rules. The total T.B. leave should not exceed one year. After the expiry of this leave, leave on half pay, if due, should be granted in case it is found that a further period of leave is necessary for his recovery. After the expiry of leave on half pay, the Government servant should be placed before the Medical Board for his examination as to his physical fitness for further service and should be granted extraordinary leave recommended by the Medical Board subject to the condition that all leave granted under these rules does not exceed three years. The T.B. leave on full pay should not be debited to the leave account of Government servant."

9. It is also accepted by all the counsel that it is the School Committee that has the power to consider sanction of leave on the basis of the certificate of the Medical Board.

10. The certificate of the Medical Board is placed on record. The copies of the same are given

to all the learned counsel for the parties. The said certificate also provides that special leave can be recommended on medical grounds. It appears from the Medical Board Report and the earlier certificates that the petitioner did suffer from Paralysis. In view of that, Sub-rule 3 of Rule 3 of Appendix III of Rule 79 to the Maharashtra Civil Services (Leave) Rules, 1981 can be invoked. There is no reason to doubt the genuineness of the certificate issued by the Medical Board, Dr. Shankarrao Chavan Government Medical College and Hospital, Nanded.

11. In the light of above, we direct the School Committee of the respondent institution to sanction special leave from 07.11.2017 to the petitioner in consonance with Sub-rule 3 of Rule 3 of Appendix III of Rule 79 of the Maharashtra Civil Services (Leave) Rules, 1981. The same shall be sanctioned expeditiously and preferably within a period of two (02) months from today.

12. As far as the order challenging the termination is concerned, the petitioner has multifarious remedies including remedy under the Rights of Persons with Disabilities Act, 2016. The learned counsel for the petitioner also placed reliance on the judgment of the Apex Court in a case of **Bhagwan Dass and another Vs. Punjab State Electricity Board** reported in **2008 AIR SCW 534**.

13. In view of that the petitioner may avail remedy as available under law including remedy under the Rights of Persons with Disabilities Act, 2016.

14. Writ Petitions stand disposed of accordingly.
No costs.

[A. M. DHAVAL, J.] [S. V. GANGAPURWALA, J.]

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