

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10226 OF 2018

Agricultural Produce Market Committee,
Pandharpur, District Solapur
Through its authorized
Officer Shri K. N. Ghodake
Age 49 years, Occu. Service
R/at. Shashkiy Vasahat
Behind KBP College, Pandharpur

... **Petitioner**

V/s.

1. Vishnu Narayan Taralgatti
Age – Adult,
R/at. House No.1048, Nath Chowk,
Pandharpur, District Solapur.
2. Director of Marketing
Maharashtra State,
Central Administrative Building,
Pune – 411 001.
3. The Hon'ble Minister
For Co-operation, Marketing and Textile,
Maharashtra State,
Mantralaya, Mumbai.
Through the Secretary,
For Co-operation, Marketing and Textile,
Maharashtra State,
Mantralaya, Mumbai.

... **Respondents**

Mr.A.B. Tajane for Petitioner.
Mr.P.A. Pol i/b. Pol Legal Juris for Respondent No.1.
Ms.Geeta Sonawane, AGP for Respondent Nos.2 and 3-State.

CORAM : A.S. GADKARI, J.

DATE : 26th June 2019.

P.C. :-

1] By the present petition under Article 227 of the Constitution of India, the petitioner has taken exception to the Order dated 01/03/2018 passed by the Hon'ble Minister for Cooperation, Marketing and Textile, Government of Maharashtra (Respondent No.3), in Appeal Application No. 27 of 2017 thereby rejecting the said appeal and confirming the order passed by the Director of Marketing, Maharashtra State, Mumbai (Respondent No.2), dated 03/04/2017.

2] Heard Mr.Tajane, the learned counsel for the petitioner, Mr.Pol, the learned counsel for the respondent No.1 and the learned AGP for the respondent Nos.2 and 3. Perused the record annexed to the petition.

3] Brief facts giving rise to the present petition are as follows :

The respondent No.1 was in the service of the petitioner and was appointed as 'Supervisor'. The petitioner had terminated the services of the respondent No.1 by its Office Order dated 20/10/2015 for the reasons stated therein.

The respondent No.1 therefore preferred an Appeal under Section 52-B of *The Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963* [for short, “MAPM Act”] before the District Deputy Registrar Co-operative Societies, Solapur. The District Deputy Registrar came to the conclusion that before terminating the services of the respondent No.1, the principles of natural justice have not been followed and while conducting the enquiry, the procedure established under the law was also not followed and therefore, the termination of services of the respondent No.1 was not proper. The District Deputy Registrar, Solapur by its Order dated 31/05/2016 allowed the said appeal.

The petitioner feeling aggrieved by the said Order dated 31/05/2016 passed by the District Deputy Registrar preferred an appeal under Section 43 of the MAPM Act before the Director of Marketing i.e. Respondent No.2 herein. The respondent No.2 herein came to the conclusion that the powers under Section 52-B of the said Act are not delegated to the District Deputy Registrar, Co-operative Societies and therefore, the impugned order dated 31/05/2016 passed by the said authority was without jurisdiction. The respondent No.2 therefore set-

aside the Order dated 31/05/2016 passed by the District Deputy Registrar, Co-operative Societies, Solapur and granted liberty to the respondent No.1 to seek remedy before appropriate forum.

The respondent No.1 thereafter preferred an appeal bearing No. 60 of 2016 before the respondent No.2 under Section 52-B of the MAPM Act against the Order of termination by the petitioner dated 20/10/2015. The respondent No.2 after hearing the parties and after scrutinizing the entire record came to the conclusion that the order of termination dated 20/10/2015 passed by the petitioner was in contravention of the principles of natural justice and while terminating the services of the respondent No.1, the provisions of Rule No. 103 of MAPM Rules 1967 are not complied with. The respondent No.2 also held that the reasons given for termination of the respondent No.1 were not sufficient to terminate his services permanently. The respondent No.2, therefore, allowed the said Appeal No. 60 of 2016 and set-aside the Order dated 20/10/2015 passed by the petitioner by its order dated 03/04/2017.

The petitioner feeling aggrieved by the said order dated 03/04/2017 passed by the respondent No.2 preferred further appeal

before the respondent No.3 bearing Appeal No. 27 of 2017. The respondent No.3 after scrutinizing the record and after re-appreciating the evidence on record came to the conclusion that before terminating the services of the respondent No.1, he would have been afforded an opportunity to have his say in the matter. That an opportunity as contemplated under the provisions of law was not afforded to the respondent No.1 before terminating his services. That the principles of natural justice have also been violated while following the process of termination of the respondent No.1. In view thereof, the respondent No.3 rejected the appeal preferred by the petitioner by its order dated 01/03/2018.

4] It is thus apparent from the record that there is concurrent findings recorded by both the authorities below.

The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or

courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

5] The Constitution Bench of the Supreme Court in the case of *Syed Yakoob Vs. K.S. Radhakrishnan & Ors., reported in AIR 1964 SC 477*, while enumerating the nature and limits of the jurisdiction of the High Court in issuing a writ of certiorari has held that, the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that the findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. That, an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.

In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence

which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding.

6] After perusing the entire record, it clearly appears that the petitioner without complying with the principles of natural justice and without complying with the provisions of Rule 103 of the MAPM Rules 1967 framed under the MAPM Act 1963 has terminated the services of the respondent No.1.

7] The pleadings in the petition and the arguments of the petitioner would amount to re-appreciation of evidence on record. In view of the ratio laid down by the Hon'ble Supreme Court in the aforesaid decisions and after perusing the entire record made available, this Court is of the view that both the authorities below have not committed any error either in law or on facts while passing the impugned orders.

8] The Petition being devoid of merits is, accordingly, rejected.

[A.S. GADKARI, J.]