

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

WRIT PETITION NO.4340 OF 2017

Shri. Raju Dinkar Patil,]
Age 23 years, Occu: Nil,]
Assistant Engineer (Civil) No.34530,]
CIDCO Sector-32, Kamothe,]
Navi Mumbai,]
R/o-1159-B, Plot No.6, Gajanan Colony,]
Ring Road, Phulewadi, Kolhapur]..Petitioner

Versus

1] The State of Maharashtra,]
Through Secretary,]
Mantralaya, Mumbai.]

2] The Chairman and Managing Director,]
CIDCO Ltd., CIDCO Bhavan,]
CBD-Belapur, Navi Mumbai 400 614.]

3] Manager (Personnel),]
Regd. Office,]
'NIRMAL' 2nd Floor,]
Nariman Point, Mumbai 400 021]..Respondents

Mr. S. M. Koregave, Advocate for the Petitioner.

Mr. P. G. Sawant, AGP for Respondent No.1.

Mr. Roop Basu I/by The Law Point for Respondent Nos.2 & 3.

**CORAM : B. R. GAVAI &
N. J. JAMADAR, JJ.
DATE : 18th JANUARY, 2019**

ORAL JUDGMENT (Per B. R. Gavai, J)

1] Rule. Rule made returnable forthwith. Heard by consent of the parties.

2] By way of present Petition, the Petitioner impugns the order dated 18th November 2016, vide which the Respondent No.3 has terminated the services of the Petitioner.

3] The Petitioner came to be appointed as Assistant Engineer (Civil) on the establishment of Respondent No.2 vide order dated 7th October 2016. The appointment of the Petitioner was on probation. In pursuance to the said order, the Petitioner joined his services on 18th October 2016.

4] It appears that on the date on which the Petitioner joined the services, the Kolhapur Municipal Corporation had also issued an advertisement for filling up certain posts. The Petitioner had applied for the said post and also informed about the same to the Respondent No.2 by his communication dated 4th November 2016. In the said communication, it is stated that the last date of making an application was 10th November 2016 and if the BGP.

Respondent No.2 had any objection with regard to Petitioner's appearing for the examination, the Respondent No.2 should intimate within 15 days to the Commissioner, Kolhapur Municipal Corporation.

5] After receipt of the same, a show-cause notice was issued to the Petitioner on 16th November 2016. The only ground stated is that the permission sought by the Petitioner was not through the head of the department, but directly from the Managing Director and as such, it was contrary to the office discipline.

6] The Petitioner submitted his reply to the show-cause notice on 22nd November 2016, thereby giving the reason as to why he had sought such a permission. The Petitioner had also stated in the said reply that since he had recently joined the services, he was unaware about the official niceties and had also tendered his apology. He assured that herein-after he would not make such a mistake. However, by the impugned order the services of the Petitioner have been terminated.

7] Learned counsel for the Respondent No.2 submits that

the Petitioner's appointment was on probation and as such, the Respondents were justified in terminating the services. He submits that while terminating services during probation, no reasons are necessary.

8] We have considered the rival submissions. No doubt that an employer is entitled to terminate the services on probation prior to completion of probation period, if services of the employee are found to be not satisfactory. However, in a given case, it is always open for the Court to unveil the curtain to find out as to whether the termination is really on account of performance not being satisfactory in nature. In the present case, it is not necessary to unveil the curtain. Perusal of the impugned order would clearly reveal that the only ground on which the Petitioner's services are terminated is that he had directly addressed the communication seeking permission to the Managing Director. Another ground given is that the language used by the Petitioner is in the nature of being contemptuous to the higher ups.

9] We find that the impugned order is not at all sustainable in law. The Petitioner had recently joined the services and it was

only within fortnight the Petitioner had made an application to the Respondent No.2 informing him about his application made to the Kolhapur Municipal Corporation. It could thus be seen that the Petitioner had acted in a bonafide manner. It was up to the Respondent No.2 either to grant the permission or to refuse it. However, it appears that the Superintending Engineer in the office of the Respondent No.2 was hurt by the Petitioner's directly making a representation to the Managing Director. It is pertinent to note that the Petitioner has already in reply to the show-cause notice tendered his unconditional apology and assured that he will not indulge into such things hereinafter.

10] We are therefore of the considered view that the impugned termination is punitive in nature. The only ground that the Petitioner had directly sought permission from the Managing Director i.e. Respondent No.2 would not be sufficient to terminate his services. We are therefore of the considered view that for such a trivial mistake, the Respondents ought not to have terminated the services of the Petitioner.

11] We find that the Respondents have indulged into the

practice of hire and fire. We find and hold that the action of the Respondent No.2 is highly irrational, unreasonable and arbitrary. Applying the principle of Wednesbury reasonableness, no prudent person with an ordinary intelligence could have acted in the manner, in the facts of the case, as has been done by the Respondent No.3.

12] In the result, the impugned order is quashed and set aside. The rule is accordingly made absolute. The Petitioner is directed to be reinstated within a period of 15 days with continuity in service.

13] Though we hold that the Petitioner would be entitled for continuity in service for all the benefits including promotion, pensionary benefits etc. he would not be entitled to back-wages.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]