

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3067 OF 2005

WITH

NOTICE OF MOTION NO. 109 OF 2005

WITH

CHAMBER SUMMONS NO. 105 OF 2007

IN

WRIT PETITION NO. 3067 OF 2005

Bhagwan Shivram Gupte
Residing at Shivneri Rahiwasi Sangh,
M. G. Road, Room No.712 New
Municipal High School, Dharavi,
Mumbai – 400 017.

...Petitioner

Versus

- 1 The Union of India, through the
(a) Ministry of Defence, North Block,
New Delhi – 110 011.
(b) Ministry of Health and Family
Welfare, Having their office at Nirman
Bhavan, New Delhi – 110 011.
- 2 The Chief of Naval Staff, having his
office at Naval Headquarters,
New Delhi – 110 011
- 3 Director General having his office at
Coast Guard Headquarters, National
Stadium Complex, New Delhi 110 011
- 4 The Commander, Coast Guard Region
(West), having his office at Coast
Guard District Headquarters – 2
Golfadevi Temple Road, Worli village,
Mumbai – 400 025.
- 5 The Commanding Officer, INHS Asvini
having his office at INHS Asvini,
Colaba, Mumbai 400 005.
- 6 National AIDS Control Organisation
having their office at 9th floor,
Chandralok Building, Opp. Imperial
Hotel, New Delhi.
- 7 Mumbai District AIDS Control Society
having their office at Acworth Complex

R.A. Kidwai Marg, Wadala (W),
Mumbai – 400 031.

...Respondents

Ms. Devyani Kulkarni, a/w Mr. Swaraj Jadhav, for the
Petitioner/Applicant.

Mr. Ramchandra S. Apte, Senior Advocate a/w Mr. N. R.
Prajapati, for Respondent nos.1 to 5.

**CORAM: B. R. GAVAI &
N. J. JAMADAR, JJ
DATED: 8th March, 2019**

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

1. Rule.
2. Rule made returnable forthwith. By consent of the
Counsels for the parties heard finally.
3. The Petitioner has approached this Court being
aggrieved by the order of his termination
4. Vide order dated 20th July, 2017 passed by the Division
Bench of this Court (A. A. Sayed and M. S. Karnik, JJ) had
directed Respondent no.5 to forthwith take steps to
constitute a Medical Board at INS Asvini Hospital. The
Petitioner was directed to make himself available for medical
examination by the Board or for tests/investigations, along
with all previous Medical Reports on such date/s as conveyed
to him by Respondent no.5. The matter was, thereafter,
adjourned from time to time at the request of the learned
Counsel for the Respondents to place on record the medical

report. Finally, the report was submitted before this Court on 6th February, 2018. We have perused the report. The perusal of the report would reveal that the Medical Board consisting of various experts came to the following opinion:

“Case of Immunesurveillance on first line ART with good Immunological & Virological response and no features of opportunistic infection. He is considered fit.”

5. Upon perusal of the report dated 16th September, 2017, which was placed before the Division Bench, the Court could have very well directed reinstatement of the Petitioner on the very same day. However, it appears that, unfortunately, for one reason or another, the matter was adjourned from time to time. Finally, when the matter was listed before us on the last date, we had asked the learned Senior Counsel for the Respondents, that since the experts board itself has found the Petitioner to be fit for the services, what was the impediment in reinstating him.

6. The learned Counsel for the Petitioner has placed on record the communication dated 7th March, 2019. It would be relevant to refer to the following part of the said communication:

“3. Thereby, the Petition may be disposed of with direction to Respondents to conduct Medical Board first and if found fit, to reinstate the Petitioner within a period of 04 weeks without backwages, ante date seniority/promotion

and subject to as per rules, depositing service gratuity & any other monetary benefits received on discharge. If not deposited, he will forfeits his past services & his pay will be fixed as if he is a new entry; and if deposited, his pay may be fixed in accordance with his last pay drawn amount.”

It could, thus, be seen that in the aforesaid communication, it is stated that the Respondents have again sought liberty to constitute Medical Board first and re-examine the Petitioner, and if the Petitioner is found fit to continue with the duties, reinstate him without backwages with ante date seniority and promotion subject to rules, and further subject to the condition that he will deposit the service gratuity and any other monetary benefits received on discharge.

7. We fail to understand the propriety of the request to constitute a Medical Board again to examine as to whether the Petitioner is fit or not. The Medical Board itself after thorough examination has given opinion on 16th September, 2017 that the Petitioner is medically fit to discharge his duties. Not only that but the perusal of Column 8 of the Medical Board report would also reveal that the Board had further opined that there is possibility of further improvement of the Petitioner due to availability of newer Antiretrovinal Drugs (ART). It could, thus, be seen that the report itself states that apart from the Petitioner being fit on the date of examination there is also possibility of further

improvement in the health of the Petitioner. The said report has already been approved by the Director General of Indian Coast Guard.

8. Merely because there has been delay on the part of this Court in considering the said report and pass the orders forthwith, we find that the Petitioner should not be made to undergo further examination. The Petitioner is personally present in the Court and we find him to be physically fit to discharge his duties, taking into consideration that he has to work as unskilled labour and discharge the duties of sweeping etc.

9. In that view of the matter the petition is allowed.

10. The Respondents are directed to forthwith reinstate the Petitioner on the post from which he was terminated, however, without backwages. The Petitioner would be entitled to continuity in service and all promotional benefits treating the termination to be void.

11. The Petitioner shall deposit the amount of service gratuity and any other monetary benefits, he has received on the date of his discharge, within four weeks from today. However, it is clarified that any pensionary benefit which the

Petitioner has received during the intervening period shall not be disturbed.

12. Needless to state that the Petitioner would be required to undergo the periodical physical test as per rules so as to find his fitness to continue in the job.

13. In the facts and circumstances, the rule is made absolute in aforesaid terms. In the circumstances, there shall be no order as to costs.

14. Needless to state that we are passing the aforesaid order in the peculiar facts and circumstances of the case and the same shall not be treated as precedent.

15. In view of disposal of the Petition, Notice of Motion No.109 of 2005 and Chamber of Summons No.105 of 2007, do not survive and are disposed of accordingly.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]