

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2868 OF 2006

Smt. Narsabai W/o Balaji Shinde
Age : 35 years, Occ : Anganwadi Karyakarti,
Dist. Parbhani

.. Petitioner

Versus

1. The Chief Executive Officer,
Zilla Parishad, Parbhani, Dist. Parbhani
2. The Child Development Project Officer,
Ekatmik Balvikas Seva Yojna,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani
3. The Block Development Officer,
Panchayat Samiti, Gangakhed

.. Respondents

WITH
WRIT PETITION NO. 2882 OF 2006

Smt. Dropadi W/o Prabhakar Chaudhari
Age : 30 years, Occ : Anganwadi Madatnis,
R/o Borda, Tq. Gangakhed,
Dist. Parbhani

.. Petitioner

Versus

1. The Chief Executive Officer,
Zilla Parishad, Parbhani, Dist. Parbhani
2. The Child Development Project Officer,
Ekatmik Balvikas Seva Yojna,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani
3. The Block Development Officer,
Panchayat Samiti, Gangakhed

.. Respondents

AND
WRIT PETITION NO. 3036 OF 2006

Rekhabai @ Muktabai W/o Bhagwan Choudhari,
Age: 28 years, Occu. Household,
R/o. Village Borda, Tq. Gangakhed
Dist. Parbhani

.. Petitioner

Versus

1. The State of Maharashtra
through the Secretary
Integrated Child Development
Department Mantralaya, Mumbai
2. The Project Director
Integrated Child Development
Scheme, Parbhani, Tq. Gangakhed
Dist. Parbhani
3. The Chief Executive Officer,
Zilla Parishad, Parbhani

.. Respondents

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Mr. N.P. Patil (Jamalpurkar), Advocate for petitioner (WP/2868/2006
and WP/2882/2006)
Mr. J.M. Murkute, Advocate for petitioner (WP/3036/2006)
Mr. G.G. Suryawanshi, Advocate for respondent no. 4
(WP/3036/2006)
Mr. A.R. Nikam, Advocate for respondents no. 2 and 3
(WP/3036/2006), for respondents no. 1 and 2 (WP/2868/2006 and
WP/2882/2006)
Mr. S.N. Kendre, AGP for respondent – State

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CORAM : SUNIL P. DESHMUKH &
B.U. DEBADWAR, JJ.
DATE : 06-02-2020

ORAL JUDGMENT (PER – SUNIL P. DESHMUKH, J.) :

1. Heard learned counsel for appearing parties at length.

2. The petitioners are similarly affected persons whose services are sought to be terminated under the impugned orders passed on the same date i.e. 18-02-2006, purportingly dismissing the petitioners from working as *Anganwadi Madatnis* (Helper), *Anganwadi Karyakarti*, (Supervisor). There is no factual dispute on that the petitioners had been working for over 10 years on honorarium. There is no dispute about qualification of petitioners to hold on to the posts they are working on.

3. After hearing learned counsel for the parties, it transpires that the petitioners were issued show cause notices dated 20/24-01-2006, calling upon explanation in respect of the complaints against them by some villagers that they were caught red-handed by some of them on 27-12-2005 committing theft of foodgrains and purportedly the villagers had kept the looted material in the office of *grampanchat*. In respect of the same, purportedly an enquiry is sought to have been carried out on 06-01-2006, referring to that *panchanama* had been drawn in respect of the theft and about 12 kg material had been found. The incident had been communicated to Integrated Child Development Project Officer, Zilla Parishad. Show cause notice had been issued by the Chief Executive Officer, calling upon explanation in respect of incident dated 27-12-2005 and *panchanama* dated 06-01-2006.

4. To the show-cause notice, petitioners had replied that they had been working for over 10 years and no irregularity had ever been found in performance of their duty, However, few villagers had been entertaining certain grudge against them and they have mischievously communicated alleging theft. The material of which purportedly *panchanama* has been drawn, is not the material of *Anganwadi* and as a matter of fact that material does not belong to the *Anganwadi* at all.

5. Termination order refers to complaint by villagers dated 27-12-2005, letter of Integrated Child Development Project Officer dated 01-01-2005 explanation of petitioners dated 30-01-2006.

6. Considering letter dated 01-01-2005 of the Integrated Child Development Project Officer of the incident and explanation tendered by petitioners to the show cause notice being unsatisfactory, their services were brought to end by the impugned orders.

7. This court while issuing Rule in the matter, has observed that the alleged offence of theft has been committed on 27-12-2005 and *panchanama* of theft of material had been drawn on 06-01-2006. Reply filed by petitioners had been worth consideration that petitioners were working under the scheme for over 10 years and

that nothing is placed on record to show their past conduct being blameworthy and that they are working on meager honorarium of ₹ 800/- to ₹ 900/- per month.

8. In the face of aforesaid situation, it would be worthwhile to take into account a division bench decision of this court relied on by petitioners in the case of *Renuka D/o Sitaram Dhoke Vs. Chief Executive Officer, Zilla Parishad* reported in 2007 (5) *Mh.L.J.* 182 : 2008 (3) *Bom.C.R.* 392, wherein it was found that no enquiry of any sort has been conducted in respect of allegations hurled against the petitioners. While serious allegations casting stigma have been made against the petitioner, the court in paragraphs no. 8 and 9 had found thus,

“ 8. After having heard learned Advocate for the respondents and having gone through the record made available by learned Advocate for our perusal, we find that serious allegations casting stigma on the petitioner were the cause of termination of petitioner's employment. Whether any Service Rules warranting a full-fledged enquiry into the allegations exists or not, principles of natural justice demand that the petitioner should have been given an opportunity to meet the allegations made against her before putting an end to her engagement with respondents, which has resulted in stigmatising her after having put in 10 years of work as Kindergarten Worker. It should have been seen by respondents that the material collected against the petitioner, particularly the material casting aspersions on her personal character, should have been made available to the petitioner, and, if necessary the petitioner should have been permitted to rebut the same. Therefore, in our view, the action taken does not fulfill the requirement of compliance to the principles of natural justice and, therefore, cannot be sustained.

9. Learned Advocate Shri Walthare, appearing for the petitioner placed reliance on various judgments. The first judgment relied upon is, Smt. Chozhulu Kikhi and Ors. v. State of Nagaland and Ors. reported in 1992 Lab. I.C. 926. This judgment is relied upon to demonstrate that the persons employed under the Integrated Child Development Scheme which is entirely financed by Central Government and, therefore, rights of such employees are justiciable in writ jurisdiction. Other judgments relied upon by learned Advocate Mr. Walthare are on the point of right of employee on part-time basis or casual or temporary and observance of principles of natural justice in the matter of termination of their services. These judgments are as follows:

(1) Gurdarshan Grewal v. State of Punjab (1984)1 Serv. L.R. 570; (2) Basudevpur (R and B) N.M.R. Employees Association and Ors. v. State of Orissa and Ors. 1992 Lab. I.C. 970; (3) Changunabai Paslkar v. Kahau Makanji Mills Ltd. And Ors. 1992 Lab. I.C. 138; (4) Glaxo Laboratories (P) Ltd. v. Presiding Officer, Labour Court, Meerut; (5) Managing Director U.P. Warehousing Corporation and Ors. v. Vijay Narayan Vajpayee.

In view of what this Court has found and recorded herein-before, admittedly, no departmental enquiry was conducted nor show cause notice was given and, thus, principles of natural justice are violated. In this background, this Court finds and it would not be necessary to discuss the precedents cited at Bar, at length.”

9. Present situation is closely similar to the relevant situation prevailing in aforesaid decision. Although it is being contended on behalf of respondents that there would be alternate remedy available to the petitioners in the form of civil court or for that matter, appeal before Divisional Commissioner, we are disinclined to drive and relegate petitioners to the so-called remedy in the face of obvious position, wherein no proper full fledged enquiry has been conducted nor the documents in this respect have been placed on record before this court.

10. There is no record, as we have stated about any enquiry being conducted nor it is a case pleaded by respondents. No evidence has been examined and the dismissal order depicts only cursory approach and it has been revealed that reply to the show cause notice had not been taken into consideration except stating that the same is not satisfactory.

11. A case was pleaded on behalf of respondents that based on report by Integrated Child Development Project Officer, show cause notice had ensued and reply had been given. Without there being any evidence worth credence save and except the allegations and so-called *panchanama* dated 06-01-2006, it is not a case wherein petitioners who are working for over 25 years, and while there are no further complaints against them, their services should be allowed to be terminated.

12. In view of aforesaid, we deem it appropriate to allow the writ petitions. The writ petitions, thus, stand allowed in terms of prayer clause (B) and are disposed of.

13. Rule is made absolute accordingly.

[B.U. DEBADWAR]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/