

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1310 OF 2020

**RAMESHWAR BENISINGH GULHOT ALIAS THAKUR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Advocate for the Petitioner : Shri A.N.Nagargoje h/f Shri Tapse
Ashok R.

AGP for Respondent 1 : Shri S.B. Yawalkar
Advocate for Respondent 2 : Shri B.N.Gadegaonkar

...
**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

DATE :- 31st August, 2021

Per Court :-

1. We have extensively heard the learned advocate for the petitioner, the learned AGP on behalf of the State authorities and the learned advocate on behalf of the contesting respondent No.2/ Corporation, on 30.08.2021 and today.

2. The petitioner was appointed on compassionate basis as a Watchman vide order dated 18.03.1993. In 1997, it is alleged that he has resorted to unauthorized absenteeism from 09.03.2007 till 05.06.2007, approximately 88 days. Prior thereto, he has been awarded minor punishments on five occasions for acts of unauthorized absenteeism. On 05.06.2007, a show cause

notice was issued by the Corporation and the petitioner replied on 12.07.2007. On 18.03.2008, after a span of about 8 months and without conducting the departmental enquiry, the petitioner was terminated from service, which is apparently a stigmatic termination. The Corporation has relied upon Section 56(2)(h) of the Maharashtra Municipal Corporations Act, 1949 for dismissing the petitioner from service.

3. Considering that the Standing Committee had resolved to dismiss the petitioner, the order of punishment dated 18.03.2008 was issued by the Commissioner of the Municipal Corporation. The petitioner was a Jakat Jawan at the time of his dismissal.

4. The petitioner slept over his dismissal for almost 5 years and 5 months and preferred an appeal before the Mayor on 26.08.2013. As the Mayor did not pass any order and never conducted a hearing on the appeal, the said appeal was lying in a dormant state for about four years. The petitioner, being frustrated, approached the Standing Committee by appeal dated 18.02.2017. In less than 10 days, the Standing Committee passed a resolution No.143 on 28.02.2017 thereby cancelling the order of dismissal of the petitioner dated 18.03.2018 and reinstated the

petitioner.

5. The Municipal Commissioner, who had dismissed the petitioner, noticed the resolution No.143 and referred the matter to respondent No.1 vide communication dated 29.03.2017. By invoking his powers under Section 451 of the Maharashtra Municipal Corporations Act, he suspended the resolution. Vide communication dated 18.04.2019, the Desk Officer, State of Maharashtra called upon the Commissioner to tender his views on two aspects. Firstly, whether the petitioner was subjected to a disciplinary proceedings and secondly, whether the Standing Committee could have entertained the appeal when it itself had passed the order of dismissal from service which was effected by the Commissioner. It is stated that the Commissioner did not reply to this letter.

6. In this backdrop, respondent No.1 issued the impugned order dated 01.08.2019 thereby setting aside the resolution No.143 vide which the dismissal of the petitioner was set aside and he was granted reinstatement without back wages.

7. We find from the contentions of the parties and the record available, as follows:-

(a) It is apparent that the Corporation has not conducted

a departmental enquiry while awarding the punishment for dismissal from service.

- (b) The Standing Committee did not verify as to whether the petitioner, who was a permanent employee, could be dismissed from service on the grounds of purported misconducts without any enquiry.
- (c) The Commissioner of the Municipal Corporation mechanically issued the order of dismissal.
- (d) The petitioner had rightly filed his appeal before Mayor and as it was pending, he directly approached the Standing Committee which was impermissible in law.
- (e) The Standing Committee issued resolution No.143 which is honest and therefore, *void-ab-initio*.

8. The learned advocate for the petitioner submits on specific instructions that as the petitioner was 58 years of age when he preferred this petition on 13.01.2020, he is willing to waive the entire back wages, but prays for notional continuity of service. The learned advocate for the Corporation submits, on instructions, that the age of superannuation of the petitioner is 60 years.

9. We, therefore, have a peculiar case with the above recorded facts. No doubt the petitioner slept over his rights and kept silent for almost 5 years and 5 months notwithstanding the

fact that the said order is *void-ab-initio*. In these circumstances, we could either remand the matter back to the Mayor to deal with the appeal of the petitioner filed on 26.08.2013, which was unnecessarily kept pending OR we can render a quietus to the matter by accepting the statement of the petitioner that he is waiving the entire back wages provided, he is granted notional continuity in service so that he would acquire his retiral benefits.

10. Now that the petitioner is a senior citizen and in view of the fact that he could not have been dismissed from service without a departmental enquiry, which has attained finality in view of his acceptance sub silentio over a period of 5 years and 5 months, that we are attempting to balance the equities.

11. The learned advocate for the respondent/ Municipal Corporation submits, on the basis of the record, that though there are 07 instances of awarding minor punishments to the petitioner for his acts of unauthorized absenteeism, with reference to the case in hand, the show cause notice was issued on 05.06.2007 and the explanation of the petitioner was received on 12.07.2007. Thereafter, no enquiry was conducted. The petitioner was a permanent employee. The charges of absenteeism pursuant to the

allegations in the show cause notice were not proved by conducting a departmental enquiry. The second show cause notice proposing the quantum of punishment was also not issued. The Standing Committee resolved to dismiss the petitioner from service and thereafter, the resolution was placed before the Commissioner so as to issue the order of dismissal. Consequentially, on 18.03.2008, the Commissioner issued the order of dismissal from service under Section 56(3)(b) of the Maharashtra Municipal Corporations Act. A reference was made to Section 56(2)(h) while dismissing the petitioner and as a consequence of which, such dismissal from municipal service would ordinarily disqualify the petitioner from future employment. In this backdrop, he submits that the petitioner should have approached the General Body chaired by the Mayor for challenging his order of dismissal under sub-section (4) of Section 56.

12. In the above backdrop, it is an admitted position and calls for no debate that the petitioner was a permanent employee and was dismissed from service on allegations without conducting a departmental enquiry. The order of dismissal dated 18.03.2008 is apparently a stigmatic dismissal by invoking

Section 56(2)(h).

13. The order of dismissal, termination and removal from service, is a deemed industrial dispute and a reference has to be made to the Labour Court. If the petitioner is relegated to this remedy, it is likely to consume many years until the award is delivered subject to further litigation upto this Court or may be even upto the Honourable Supreme Court. The second option available before us is to render a quietus to the matter keeping in view that the petitioner has volunteered to waive the entire backwages from March, 2008 till his reinstatement in service. So also, it being an admitted position that he was dismissed from service without proving the charges and without conducting a departmental enquiry, would leave no purpose in allowing him to approach the industrial disputes machinery and spend a decade or more in further litigation. As the petitioner has been out of employment from 18.03.2008 for a period of almost 13 years and he having agreed to waive his backwages, we are of the view that further rigours of tardy litigation could be avoided and further sufferings of the petitioner could be prevented by accepting his statement of waiver of backwages, which would also amount to a sort of a punishment to him.

14. As such, this Writ Petition is partly allowed. Considering the various factors recorded as above, we deem it appropriate to accept the statement of the petitioner of waiving entire back wages from 18.03.2008 till the date he is reinstated. He is, therefore, granted notional continuity in service so that he would be eligible for pensionary benefits and retiral benefits like gratuity for the period 18.03.1993 till his superannuation.

15. The petitioner would be entitled to such salary scale which his co-employees, who are equally placed and are comparable to him, are drawing as on date. He will not be entitled to any increment during the period he was out of employment.

16. It is informed that the date of birth of the petitioner is 15.04.1964 as per the records of the Corporation. The retirement age of Class-IV employees is 60 years. The petitioner, therefore, would retire in April 2024. As such, the petitioner would stand reinstated in service with notional continuity and without back wages in the light of his statement, with effect from 15.09.2021.