

(1)

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

902 WRIT PETITION NO.3237 OF 2020

Mr Jagtrao s/o Prataprao Patil,
Age: 54 years, Occu: Peon,
National Urban Livelihood Mission,
Corporation Jalgaon,
R/o. At Post Ningone, Bk, Post Taskheda,
Tq. Amalner, District Jalgaon

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through it's Secretary
Urban Development Department,
Mantralaya, Mumbai-32
2. The Jalgaon Municipal Corporation,
Jalgaon, District Jalgaon,
Thr. It's Commissioner
3. The Commissioner,
Jalgaon Municipal Corporation,
Jalgaon, District Jalgaon

...RESPONDENTS

...

Mr S. R. Sapkal, Advocate for petitioner;
Mr S. G. Sangle, A.G.P. for respondent No.1;
Mr V. B. Patil, Advocate for respondent Nos.2 & 3

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

DATE : 22nd December, 2021

ORAL JUDGMENT (Per : Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by
the consent of the parties.

(2)

2. By this petition, the petitioner has put forth prayer clauses (B) and (C), which read as under :-

“B) To quash and set aside termination order dated 12.10.2017 passed by the commissioner municipal corporation Jalgaon and order dated 12.04.2018 passed by the Deputy commissioner of General Administration Municipal Corporation Jalgaon, by issuing appropriate writ or order or directions in the nature of writ.

C) The respondents may kindly be directed to reinstate the petitioner in service with all consequential benefits like continuity of service and back wages.”

3. We have considered the extensive submissions of the learned Counsel for the respective sides. With their assistance, we have perused the petition paper-book.

4. Shri. Patil, the learned Advocate representing respondent Nos.2 and 3 – Corporation, has vehemently opposed this petition contending that the petitioner was a ‘Watchman’ appointed on 16/10/1991. He is a workman under Section 2(s) of the Industrial Disputes Act, 1947. The Corporation is an industry under Section 2(j) of the Industrial Disputes Act. The petitioner should have approached the Labour Court. Instead, he has approached this

(3)

Court. Moreover, for challenging the order dated 12/10/2017, vide which he was dismissed from service, he was before the Standing Committee of the Corporation, which rejected his appeal on 09/03/2018. He has approached this Court on 21/02/2020, after a delay of almost two years.

5. The undisputed factors before us are crystal clear. The petitioner had joined as a 'Watchman' on 16/10/1991. He was promoted as a 'Peon' on 03/04/2010. On 12/10/2017, the Commissioner, Municipal Corporation issued him an order of termination. His appeal was rejected by the Standing Committee on 09/03/2018.

6. A single glance at the order of termination, dated 12/10/2017, indicates that the petitioner has been levelled with several allegations, none of which have been proved by conducting a departmental enquiry. The two paragraphs below Clause-7 in the impugned order would indicate that there is a long list of allegations, which have been levelled upon him. He was issued with a simple show cause notice, as to why his service should not be dismissed, vide communication dated 04/09/2017. It requires no debate in the light of the crystallized position of law

(4)

that a permanent employee cannot be terminated or dismissed without conducting a departmental/domestic enquiry and without charges being proved against him. As such, the impugned termination order is unsustainable.

7. Had the petitioner approached the Labour Court, the things would have been different in the light of the law laid down by the Hon'ble Apex Court (Five Judges Bench) in case of **Karnataka State Road Transport Corporation Vs. Laxmidevamma (Smt) & another, 2001 5 Supreme Court Cases 433.**

8. We have heard the learned Counsel for the respective sides on the grant of backwages. The learned Advocate for the Corporation submits on instructions, that the petitioner has caused an undue delay in approaching this Court. From 09/03/2018, when his appeal was rejected by the Standing Committee, he should have approached before this Court immediately. He has filed the petition on 21/02/2020. He, therefore, submits that no backwages should be granted to the petitioner.

9. We are of the view that had the petitioner approached the Labour Court, he would have been entitled to a limitation period of 90 days from 09/03/2018. As such, his request for backwages

(5)

could be considered from 12/10/2017 to 09/06/2018. Having approached this Court on 21/02/2020, his request for backwages could be denied from 09/06/2018 till 21/02/2020.

10. On the quantum of backwages, the petitioner prays for 100% backwages.

11. Having considered the facts and circumstances of the case and having noted that the Corporation is always in financial stringency, we find that equities would be balanced if we grant 50% backwages, except for the period from 09/06/2018 till 21/02/2020.

12. Before parting with this judgment, we deem it appropriate to record that as the termination order of the petitioner is being set aside on account of no enquiry having been conducted, we cannot fetter the rights of the employer in initiating an enquiry as is prescribed in law. We would, therefore, leave it to the Corporation to initiate such enquiry by issuance of a proper charge-sheet, as is permissible in law, provided such action is initiated within three three months from today.

(6)

13. In view of the above, this petition is allowed in terms of prayer clause (B). The petitioner shall be entitled for 50% backwages from 12/10/2017 till 09/03/2018 and from 21/02/2020 till the date of his reinstatement, which shall occur, on or before the 10th day of January 2022. After the petitioner is reinstated in service on or before 10/01/2022, the respondent–Corporation would be at liberty to initiate the disciplinary proceedings against him, if so advised, subject to the condition set out hereinabove.

14. Rule is made absolute in the above terms.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

sjk