

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3623 OF 2021

Krutika Madhukar Patil]
An Adult, Occu : Service.]
Flat No. 302, 17-A,]
Near Jain Mandir, Bhiwandi]
Tal. Bhiwandi, Dist. Thane.] ...Petitioner.

Versus

1. State of Maharashtra.]
2. The Collector, Thane,]
Having office at Thane.]
3. Smt. Ujwala Suraj Sawant,]
5/203, Triveni Park,]
Vayle Nagar, Khadak Pada,]
Kalyan West, Thane.] ..Respondents.

Mr. Sanjay Patil for the Petitioner.
Ms. M. S. Bane, AGP for the Respondent-State.
Mr. Vaibhav Sugdare i/b Ms. Prachi Takate for Respondent No. 3.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

Date : November 26, 2021.

Judgment [Per Prasanna B. Varale, J.] :

1. Heard learned counsel for the Petitioner, learned AGP for the Respondent-State and learned counsel for Respondent No.3. Since a limited issue is involved in the petition, the petition is taken up for final disposal with the consent of learned counsel appearing for the respective parties.

2. Brief facts giving rise to the petition are as follows :

The Petitioner being duly qualified candidate and possessing the basic degree of graduation and also of a law graduate, was selected for the post of Law Officer in the services of State of Maharashtra in general and the office of Collector and District Magistrate, Thane. The appointment order of Petitioner is placed on record at Exhibit-A, page no.15, whereby Petitioner was appointed to discharge her duties from 11th May 2017 as a contractual employee for the period of 11 months on certain conditions. The Petitioner was entitled for a consolidated honorarium to the tune of Rs.20,000/- per month plus additional emoluments in the nature of reimbursement of the expenses for telephone and travelling. It may not be necessary for us to refer to the other conditions. The Petitioner was to perform duties as a Law Officer handling the legal matters, providing her comments, pursuing the government pleader for filing affidavits-in-reply, submit the draft affidavits, etc. Needless to state that as the working of Petitioner was satisfactory, Petitioner got extension in service from time to time. These extension orders are placed on record at Exhibit-B collectively and the last extension granted to the Petitioner is vide an order dated 11th May 2020 (page No.21), wherein the service period of Petitioner was extended from 4th May 2020 to 30th April 2021. It is useful to state that

the said order dated 11th May 2020 in clear words states that the performance of Petitioner is satisfactory, there was a consistency in her effective working and she was regular in her attendance. Thus, it can safely be said that there was nothing adverse insofar as the performance of Petitioner is concerned.

3. It is the common knowledge that in the year 2020, the entire world suffered the unforeseen attack of a virus known as Covid-19 pandemic. To deal with this unforeseen situation, the State Government issued various directions in the nature of standard operation procedure (SOPs), one of such circulars is placed at page-21, dated 19th March 2021. By this circular, an attempt was made by the State Government so as to avoid majority gathering in the public places, as well as in the government offices. The circular states that those employees who are desirous of availing leave in these extraordinary circumstances, the leave be granted to them even without insisting for a medical certificate.

4. It seems that the petitioner sought for leave in view of certain difficulties faced by her. An application, copy of which is placed on record at page-34, the petitioner submitted that she is working in the office of collector, Thane, regularly in spite of various difficulties and the

pandemic situation and considering her satisfactory work, leave be granted to her and the salary to which she is entitled to her. Then, by way of communication of February 2021, copy of which is placed on record at Exhibit-"E" (page 34), the petitioner submitted that she was performing her duties as Law Officer regularly since last 4 years in the office of Collector, Thane and she is in her advanced stage of pregnancy. The Doctor had also issued a certificate showing the probable date of delivery, namely, 11th March 2021 and considering these facts the petitioner would be physically unable to attend the duties; that in such circumstances, to attend the duty would not only physically affect the petitioner but the same would also adversely affect the issue.

5. It is submitted that since the petitioner is a contractual employee, she is not entitled for the service benefits as a regular employees, namely, the paid leave or special leave, etc. In the application, the petitioner further requested for permitting her to undertake travel from Bhiwandi to Thane and for permitting her to exercise the option of working from home. This application was submitted by petitioner even before the extension period of her service was to expire. At the cost of repetition we state that her last extension was to expire on 30th April 2021 and this application was submitted in February 2021 and when the petitioner was expecting a sympathetic

consideration of her application on the grounds of peculiar circumstances, termination order was issued to her as a bolt in blue.

7. Copy of the said order is placed on record at Exhibit-“F”, page number 37. The order firstly refers to the application of petitioner and then it is stated that as the petitioner was a contractual employee, she was not entitled to any leave benefits, her proposal for permitting her to exercise the option of work from home was not acceptable as there is no such decision of the State Government. Resultantly, the request of petitioner was turned down and the services of petitioner were terminated.

8. Reply filed to petition on behalf of respondent no.2 through the Collector, Thane refers to the appointment of petitioner and the extensions awarded to petitioner from time to time. It is admitted in the affidavit-in-reply that petitioner was granted extension on three occasions and her last extension was to expire on 30th April 2021. It is then stated that in meantime, i.e., on 17th March 2021, respondent no.2 had issued a fresh advertisement for the purpose of appointment of Law Officers and In response to the said advertisement, the authority had received 29 applications; the petitioner did not submit her claim by way of an application in response to the said advertisement. It seems that

after the selection process, respondent no.3 was appointed as a Law Officer.

9. Even Respondent No. 3 – the newly appointed law officer has filed an affidavit-in-reply and opposed the petition on several grounds. She has justified the termination of Petitioner on one hand and her selection on the other hand. On the point of scope for interference by the Court in the appointments on contractual basis, she relied upon the judgment in the case of *State of Maharashtra v. Anita [(2016) 8 SCC 293]*.

10. On the backdrop of these facts, the petitioner has made following prayers, :

- a) the petitioner be granted extension and be permitted to work as a Law Officer by quashing and setting aside the select list dated 5th August 2021 published by the respondents; and
- b) directions be issued to respondent Nos.1 and 2 to pay the due salary to petitioner for the months of January and February 2021 and other incidental benefits for which the petitioner is entitled.

11. On reading the judgment in the case of Anita's case (supra) as referred to above, we may find that the issue about regularisation of law officers appointed on contractual basis had come up initially before the Maharashtra Administrative Tribunal and then before this Court. This

Court granted the reliefs to those contractual employees, however, the Hon'ble Supreme Court has interfered with the said decision on two grounds; firstly it was the policy decision of the State and hence scope for judicial interference is minimum and; second is creation of post by the Government does not amount to giving the status of permanency to those contractual employees. It has been held that approval is granted only for the administrative purpose for sanction of the amount towards the expenditure and simply on that basis, these posts cannot be held to be permanent in nature. (paragraph 15.) The ratio laid down in the above-mentioned case is perfectly applicable to the facts before this Court.

12. On the backdrop of above-referred facts, we are of the opinion that the petitioner has made out a case for allowing the petition partly. The documents placed on record as well as the reply filed on behalf of respondent no.2 clearly show that the petitioner got extensions on appreciation of her work and even in her last extension order it was specifically observed that the work of petitioner was satisfactory. It is also not in dispute that considering the Covid-19 or pandemic situation, the State Government itself had issued various circulars. In view of these facts, the prayer of petitioner for quashing and setting aside the termination order is allowed and consequential prayer

that the Respondent be directed to pay salary to the petitioner for the months of January and February 2021 along with other incidental dues is also allowed. Insofar as the other prayers, namely, quashing and setting aside the select list dated 5th August 2021 published by respondent No. 2 is concerned, we see no reason to allow the said prayer in view of the fact that the petitioner was not prevented to participate in this process and it was her choice not to participate in this process. The process then concluded in selection of the candidate on merits and accordingly respondent no.3 is selected for the post. We are unable to see any reason to unseat respondent no.3, who is selected by carrying out a due process. The petition is partly allowed and disposal of.

[S. M. Modak, J.]

[Prasanna B. Varale, J.]