

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.2359/2004

Shri Leeladhar s/o. Raju Godhare,
R/o. Mahagaon Ujruk, Post Mahagaon Bujruk,
Tahsil-Aheri, Distt. Gadchiroli. ...Petitioner

Versus

- 1) Secretary, Agricultural Produce Market Committee,
Aheri (APMC) Tq. Aheri, District Gadchiroli.
- 2) Divisional Joint Registrar, Co-operative Societies, ...Respondents
Nagpur.

Smt. R.S.Sirpurkar, Advocate for the Petitioner.

Shri S.S.Ghate, Advocate and Shri R.J.Kankale, Advocate for the
Respondent No.1.

Smt. K. R. Deshpande, AGP for the Respondent - State

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 21 JANUARY 2021

ORAL JUDGMENT (PER : NITIN JAMDAR, J.)

The Petitioner who was working as a peon with Respondent Agricultural Produce Market Committee filed this petition challenging the order of termination issued by the Respondent- Agricultural Produce Market Committee on 2 August 2000 and the order passed by the Divisional Joint Registrar dismissing the Appeal No. 252 of 2003 filed by the Petitioner by order dated 16 March 2004.

2. The Petitioner was appointed on a temporary basis with Respondent-Agricultural Produce Market Committee in the year 1988. Thereafter the Petitioner was confirmed in service in October 1992. In January 2000 the Petitioner applied for leave and on 12 July 2000, the Respondent-Agricultural Produce Market Committee sought explanation regarding his absence. The Petitioner was called upon to produce a medical certificate. By order dated 2 August 2000, the Petitioner was terminated from service. The Petitioner filed an appeal before the Respondent-Divisional Commissioner under Rule 104 of the *Maharashtra Agricultural Produce Marketing Rules, 1967* (for short “the Rules of 1967”). The appeal was dismissed by order dated 16 March 2004. The Petitioner has challenged these orders by way of this Writ Petition.

3. By order dated 17 September 2012 considering that there was a challenge of quasi-judicial order passed by the Appellate Authority, the Registry was directed to place the matter before the learned Single Judge. The petition was placed before the learned Single Judge.

4. The learned Single Judge noted that the Divisional Joint Registrar rejected the appeal on the ground of delay. The learned Single Judge noted that there was no merger of the appeal with the order of termination as the appeal was dismissed only on the ground of delay. The learned Single Judge accordingly opined that the order of termination dated 2 August 2000 would have to be examined by the Division Bench and accordingly the matter has come before us for adjudication.

5. We have heard Smt. R.S.Sirpurkar, learned Counsel for the Petitioner, Shri S.S.Ghate, learned Counsel and Shri R.J.Kankale, learned Counsel for the Respondent No.1 and also Smt. K. R. Deshpande learned Assistant Government Pleader for the Respondent – State.

6. The main ground of the challenge by the Petitioner is that the Petitioner was terminated from service without holding any inquiry. The order dated 2 August 2000 had not only terminated the Petitioner from service but also held that the period between January 2000 to July 2000 would be treated as leave without pay. The order dated 2 August 2000 does not refer to any disciplinary inquiry. It only proceeds because since the Petitioner did not reply to the notice given to him, it is presumed that the Petitioner has accepted the guilt. It is not in dispute that the Petitioner was a permanent employee of the Respondent- Agricultural Produce Market Committee and is governed by the Rules of 1967. Rule 102 of the Rules of 1967 prescribes for the Penalty to be imposed on the employees of the Market Committee. Rule 103 lays down a procedure for passing order of dismissal, removal or reduction in rank. Under this Rule, a full-fledged inquiry is contemplated wherein the charge sheet has to be issued, and an opportunity of hearing is to be provided. Rule 103 mandates that no person in service of Agricultural Produce Market Committee shall be dismissed, removed or reduced in rank except on an inquiry wherein the employee is informed in writing of the charges after giving an opportunity and considering the evidence. Rule 103 (2) of the Rules of 1967 mandates, subject to the decision of the Director in appeal

to dispense with an inquiry if not reasonably practicable. Before us, it is an admitted position that no inquiry was held nor Rule 103 (2) was reported to. The termination of the Petitioner is contrary to Rules is illegal. Even the order treating the Petitioner's leave without pay is not preceded by any opportunity.

7. The contention of the Respondent through the affidavit in reply filed is that the Petitioner had given up his challenge since the Petitioner had accepted the benefits by making representations. For which reliance is placed on the communications dated 19 June 2006 and 19 May 2007 and that Petitioner has been paid the gratuity. Based on this position, the theory of waiver is put forth. We have perused these communications. The learned Counsel for the Petitioner is right in contending that none of these communications can be treated as a waiver. The application has been made during the pendency of the Petition, in the re-joinder, the Petitioner has placed on record that the Petitioner needed money for the education of his children and in these circumstances, the Petitioner was driven to make an application. The Petitioner had filed an appeal which would demonstrate that the Petitioner was pursuing the challenge, and thereafter the present Writ Petition is filed. If the Petitioner is to be non suited on the ground of waiver to challenge the wholly illegal termination, the communications would have to be in unequivocal terms. No such clear waiver of Petitioner's right to challenge the impugned order can be inferred from the documents placed on record by the Respondent-Agricultural Produce Market Committee. Thus, the

contention of the Respondent-Agricultural Produce Market Committee therefore will have to be rejected. At the most, if the Petitioner has received any amount, it can be adjusted towards monetary benefit that the Petitioner will receive upon the setting aside the impugned order of termination.

8. We note that as far back as 4 April 2006 the Division Bench had recorded the statement of Respondent No.1 that possibility of reinstatement of the Petitioner without back wages would be considered, but no such statement came to be made. Nothing had stopped the Respondent-Agricultural Produce Market Committee from withdrawing the order to appoint a fresh inquiry during the pendency of Petition by making a statement to that effect.

9. The Writ Petition deserves to be allowed and is allowed. Rule is made absolute by quashing the impugned order dated 2 August 2000. In the circumstances, the order dated 16 March 2004 does not survive.

10. Respondent-Agricultural Produce Market Committee is directed to re-instate the Petitioner on full back wages subject to adjustment of the amount received by the Petitioner post-termination. No order as to costs.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]