

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6254 OF 2021

Smt. Shobhana L. Rohit

.. Petitioner

Vs.

Union of India & Ors.

.. Respondents

Mr. Vicky A. Nagrani a/w Mr. Kimaya R. Godbole for
petitioner.

**CORAM: DIPANKAR DATTA, CJ. &
M. S. KARNIK, J.**

DATE : AUGUST 29, 2022

P.C.:

1. The petitioner by instituting this writ petition dated 13th September, 2021 challenges an "Order of Termination of Service" dated 18th November, 2020 of the Chief Officer, Silvassa Municipal Council, Silvassa. The order reads as follows: -

" In pursuance of the Proviso to sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965, I, Mohit Mishra, Chief Officer, Silvassa Municipal Council hereby terminate forthwith the services of Smt. Shobhana L. Rohit and direct that she shall be entitled to claim a sum equivalent to the amount of her pay *plus* allowances for the period of notice at the same rates at which she was drawing them immediately before the termination of her service, or, as the case may be, for the period by which such notice falls short of one month."

2. A two-pronged attack to the impugned order has been

launched by Mr. Nagrani, the learned advocate for the petitioner.

3. First, Mr. Nagrani contends that although the order of termination on the face of it appears to be innocuous, in reality, it is an order removing the petitioner from service as a measure of penalty.

4. To buttress his contention, Mr. Nagrani has invited our attention to a show-cause notice dated 17th October, 2020 issued by the Chief Officer, whereby the petitioner was called upon to respond to acts of omission/commission as referred to therein. It has also been brought to our notice that by a separate order of even date, the petitioner was placed under suspension with immediate effect. It is also contended that after the petitioner responded to the show-cause notice by her reply dated 19th October, 2020, an internal inquiry had been conducted which ultimately led to issuance of the impugned order dated 18th November, 2020. According to Mr. Nagrani, the impugned order does have civil consequences and, therefore, could not have been made without adhering to the principles of natural justice.

5. The impugned order is also challenged on another ground. Mr. Nagrani's contention is that the Chief Officer could not have issued the impugned order without the approval of the Director of Municipal Administration.

6. To substantiate this contention, Mr. Nagrani contends that the petitioner came to be appointed on work charge establishment on the post of lower division clerk, vide memorandum dated 17th October, 2014, pursuant to

approval granted by the said Municipal Council and, therefore, approval of the Director was a condition precedent for effecting termination of service.

7. He, thus, prays for admission of the writ petition.

8. Having heard Mr. Nagrani, we find no reason to even call upon the respondents to answer the contentions.

9. It is not in dispute that the petitioner has been serving the said Municipal Council as a lower division clerk in a temporary capacity. Her terms and conditions of service are governed by the Central Civil Service (Temporary Service) Rules, 1965 (hereafter "1965 Rules", for short). Rule 5 thereof empowers the appointing authority to terminate the service of a temporary employee with notice or without notice but subject to payment of monetary benefits as mentioned therein. It is not disputed by the petitioner that her appointment came to be made by the Chief Officer of said Municipal Council; therefore, the Chief Officer is her appointing authority.

10. Much has been argued by Mr. Nagrani referring to the facts that the petitioner's termination of service was preceded by an order placing her under suspension alleging negligence and inefficiency in work as well as failure to maintain absolute integrity and calling upon her to show-cause why action should not be taken. Once such show-cause notice was issued, to which the petitioner replied, and an internal inquiry followed and findings arrived at in course thereof formed the foundation of the order of termination, the petitioner was entitled to a right of hearing before the

adverse action of terminating her service was taken.

11. We are afraid, we cannot agree with Mr. Nagrani. On the last occasion when this writ petition was considered, we had referred him to the decision of the Supreme Court reported in (1999) 3 SCC 60 (**Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors.**). The said decision, after noting the several precedents in the field, held that that there is no difference between cases where services of a temporary employee are terminated and where a probationer is discharged. The Court, however, has to make a detailed examination of the facts to arrive at a finding as to whether the innocuous order is based on motive or foundation. We need to quote hereinbelow paragraph 20 of the said decision which is relevant for a decision on the issue raised in this writ petition. It reads as follows: -

"20. This Court in that connection referred to the principles laid down by Krishna Iyer, J. in Gujarat Steel Tube Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha [1980 (2) SCC 593]. As to 'foundation', it was said by Krishna Iyer, J. as follows: (SCC p. 617, para 53)

'.....[A] termination effected because the master is *satisfied* of the misconduct and of the desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being *satisfied* of the guilt, the master abandons the inquiry and proceeds to terminate. Given an alleged misconduct and a live *nexus* between it and the termination of service,

the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.'

(emphasis supplied in original)

and as to motive: (SCC pp. 617-18, para 54)

'54. On the contrary, even if there is suspicion of misconduct, the master may say that he *does not wish to bother about it and may not go into his guilt but may feel like not keeping* a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge.'

(emphasis supplied in original)

As to motive, one other example is the case of State of Punjab vs. Sukh Raj Bahadur [1968(3) SCR 234] where a charge memo for a regular inquiry was served, reply given and at that stage itself the proceedings were dropped and a simple termination order was issued. It was held, the order of simple termination was not founded on any findings as to misconduct. In that case, this Court referred to A. G. Benjamin vs. Union of India [(1967) 1 LLJ 718 (SC)] where a charge memo was issued, explanation was received, an inquiry officer was also appointed but before the inquiry could be completed, the proceedings were dropped and a simple order of termination was passed, the reason for dropping the proceedings was that 'departmental proceedings will take a much longer time and we are not sure whether after going through all the foundation, we will be able to deal with the accused in the way he deserves'. The termination was upheld."

12. It would appear from the aforesaid extract that even in cases where disciplinary proceedings are initiated by issuance of a charge-sheet and after response thereto of the delinquent is received, the employer has the discretion not to proceed with the inquiry and to simpliciter terminate services of a temporary

employee or a probationer. That would amount to the motive for termination and not the foundation unless, of course, it can be shown with sufficient degree of clarity based on admissible evidence that an inquiry followed pursuant to the response to the show-cause notice where the terminated employee was not given any opportunity to raise effective defence in respect of the allegations levelled in the charge-sheet/show-cause notice but the finding recorded in the report of inquiry formed the foundation of the apparently innocuous order of termination/discharge. No such material is available on record and, therefore, we find no ground to accept the first contention raised by Mr. Nagrani.

13. Insofar as the second contention is concerned, Mr. Nagrani has invited our attention to Chapter V of the Dadra and Nagar Haveli and Daman and Diu Municipal Regulations, 2004. Referring to regulation 74 thereof, it is the contention of Mr. Nagrani that officers and employees of the said Municipal Council can be appointed by such Council with the sanction of the Director. Inference has also been sought to be drawn from the appointment of the petitioner as a temporary lower division clerk, vide memorandum dated 17th October, 2014, that such appointment could not have been made except without the approval of the Director.

14. Having read regulation 74, we are of the considered opinion that the same pertains to appointment on substantive posts and not appointment on temporary basis. It would appear from such memorandum dated 17th October, 2014 that 21 employees, including the petitioner, who were working on contract of 89 days after two days break in the said Municipal Council were appointed on work charge establishment on the post and scale of pay + grade pay shown against their names as

per recommendation of the Municipal Engineer. We do not find that either the Director or the said Municipal Council were in any involved or had any role to play in the matter of appointment of the petitioner along with others. Such appointment, on temporary basis, was made by the Chief Officer on the recommendation of the Municipal Engineer. Having regard to the terms of rule 5 of the 1965 Rules, we find that the Chief Officer has exercised the power as the appointing authority of the petitioner. This contention equally lacks merit and accordingly, stands rejected.

15. For the reasons aforesaid, we find no reason to entertain the writ petition. The same stands dismissed. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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signed by
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