

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

WRIT PETITION NO.3655/2017

Ku. Manisha Vasantrya Khune,
aged about 28 years, Occ. Nil,
r/o Wadegaon Railway,
Taluka Arjuni Morgaon,
Dist. Gondia.

.....PETITIONER

...V E R S U S...

Zilla Parishad Bhandara through
its Chief Executive Officer.

...RESPONDENT

Mr. K. J. Tople, Advocate for petitioner.
Mr H. Verma, Advocate for respondent.

CORAM:- AMIT BORKAR, J.
DATED :- 20.06.2022

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. By this writ petition under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the order of cancellation of her appointment on the ground that the petitioner had obtained the appointment by suppressing the fact that other legal representatives of the deceased employee, in whose post the petitioner got the compassionate appointment, survive. The facts giving rise to the present petition are as under.

3. Father of the petitioner died on 06.11.2005. According to the employer, the father of the petitioner was survived by five legal representatives vide certificate dated 07.12.2005, issued by Tahsildar. Initially, the mother of the petitioner applied for her appointment on a compassionate basis on 20.12.2005. The petitioner also applied for her to be appointed on a compassionate basis after her father's death.

4. The petitioner's mother, on 06.12.2007, consented to the petitioner's appointment on a compassionate basis. Accordingly, the petitioner was appointed to the said post on 28.07.2014. However, clause (8) of the appointment order incorporates a condition that empowers the employer to cancel the appointment in case the candidate's information turns out incorrect. Therefore, in that case, the person is not eligible as per the Government Resolution.

5. The employer-Chief Executive Officer, Zilla Parishad, on 13.08.2014, issued a show-cause notice to the petitioner seeking an explanation regarding the non-disclosure of the fact that nine other legal representatives survived the deceased employee. The petitioner was given an opportunity of hearing on 05.09.2014. By order dated 08.09.2014, the petitioner's appointment was cancelled in the exercise of power under Rule 4 of Zilla Parishad

(Discipline and Appeal) Rules, 1964. The petitioner challenged the said order by filing the appeal. The appellate court, by order dated 17.11.2016, dismissed the appeal. The said order is the subject matter of challenge under the present petition.

6. Learned Advocate for the petitioner submitted that termination of her appointment amounts to a major penalty; the employer could not have terminated the services of the petitioner without holding a departmental inquiry against the petitioner; and the order of termination casts stigma on the petitioner and, therefore, also the disciplinary inquiry was necessary.

7. Learned Advocate for the petitioner, to fortify his contentions, relied on *Prakash Dabhade Vs. Zilla Parishad*; reported in *2000 (2) All MR 545*, *Shri Choudhari Mohammad Samiuddin Vs. The Zilla Parishad and Ors*; reported in *2000 (3) ALL MR 448*, *Narendra s/o Motiram Bodkhe Vs. The Additional Commissioner, Nagpur & Ors.*; reported in *2006 (5) All MR 183* and *Mukesh Kumar and anr. Vs. Union of India and Ors.*; reported in *2022 SCC Online SC 29*.

7. The Advocate for the employer invited my attention to clause (8) of the order of appointment, which empowers explicitly the employer to cancel an appointment in case information

supplied by the employee is found to be incorrect. Learned Advocate for the employer also invited my attention to the Government Resolution dated 23.08.1996, which contains a clause that in case of legal representatives seeking appointment on a compassionate basis, he has to secure no objection from other legal representatives. He also invited my attention to a communication dated 10.03.2014, which also states that all the family members of the deceased employee should suggest the name of one legal representative for being appointed on a compassionate basis. According to the Advocate for the employer, this is not "termination" of the employee's services, but this is "cancellation of appointment" for suppression of material facts.

8. The appointment order specifically incorporates clause (8), which empowers the employer to terminate the services of the employee in case it is found that the information supplied by them was incorrect. The documents on record, i.e. photocopy of succession certificate, show that the petitioner was aware of the other legal representatives of the deceased employee. The Government Resolution dated 23.08.1996 contains a specific clause which requires a candidate to get no objection from legal representatives of the deceased employee. The exercise of power under Rule 4 of the said Rules, in my opinion, amounts to cancellation of appointment and not the termination of services

having the effect of the penalty. If, at the time of appointment, the employee fails to disclose material facts to the employer and the appointment order incorporates a clause empowering the employer to cancel the appointment, in my opinion, the cancellation of services would not amount to a penalty.

9. In *Prakash Dabhade (supra)*, the services of the petitioner, an employee appointed temporarily, were terminated. A preliminary inquiry was conducted against the petitioner for alleged misbehaviour with a female employee. However, without holding a departmental inquiry, his services were terminated.

Shri Choudhari Mohammad Samiuddin (supra), again, is a case of termination of services of the petitioner due to complaints of indecent behaviour and quarrelsome attitude of the petitioner, without holding the full-fledged departmental inquiry.

Narendra s/o Motiram Bodkhe (supra) is a case concerning *minor* and *major* penalties. Withholding of two increments is a major penalty, and it cannot be awarded without conducting a departmental inquiry.

In *Mukesh Kumar and anr. (supra)*, the compassionate appointment was denied to the child born to the second wife of the deceased employee. It has been held that such an opportunity cannot be denied to the children born from the second of a deceased.

A bare perusal of the judgments *supra* reveals that they are clearly distinguishable on facts. The issue involved in the present petition is altogether different. Learned Advocate for the petitioner relied on the judgments wherein termination is on the grounds of misconduct, withholding of increments and right of second wife's children. The issue involved in the present petition is the suppression of material facts which ought to have been declared by the petitioner at the very inception. Further, there are guidelines laid down by the Government to deal with such cases wherein material information is concealed. Lastly, in the present case, this Court has concluded that the services of the petitioner are "not terminated", but his appointment is "cancelled" for non-disclosure of material facts on the appointment date.

10. Therefore, in my opinion, there is no substance in the petitioner's submission that the departmental inquiry was necessary before cancelling the appointment. There is no merit in the petition. The petition is, therefore, dismissed.

Rule is discharged. No order as to costs.

JUDGE