

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14575 OF 2019

Ayesha Mansoor Danwade,
Age : 38 years, Occu : Service,
R/o : Opposite Kupwad Janta Nagri Patsanstha,
Old Madhav Nagar Road, Ulhas Nagar,
Kupwad, Sangli Tq : Miraj, Dist. : Sangli .. Petitioner

Versus

- 1] The State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai – 32
- 2] The Additional Director General of Police
& Inspector General of Prisons
and Correctional Services,
State of Maharashtra, Pune 411 001
- 3] The Superintendent of Jail,
Aurangabad Central Jail,
Harsool, Aurangabad,
Tq. and Dist. : Aurangabad .. Respondents

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Advocate for petitioner : Mr. G.R. Syed
AGP for the respondents no. 1 to 3 – State : Mr. A.S. Shinde

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**CORAM : MANGESH S. PATIL &
S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 15 JUNE 2023
PRONOUNCED ON : 05 JULY 2023**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. Learned AGP
waives service for all the respondents.

3. At the joint request, the matter is heard finally at the stage of admission.

4. According to the petitioner, in a project that was being run by the State of Maharashtra in collaboration with Tata trust, social workers were appointed to look after the welfare and rehabilitation of the prisoners in the 5 central jails. The petitioner was appointed on a contract basis for a period of 11 months initially pursuant to an advertisement dated 10-11-2016. She was continued in succession for next tenure of 11 months each, last of which was to end on 09-12-2019. However, abruptly without assigning any reason and without extending any opportunity of being heard a stigmatic and illegal decision was taken to terminate her services by the communication / order dated 03-08-2019. Hence, this petition.

5. The learned advocate Mr. Syed for the petitioner would take us through the papers and would demonstrate that the petitioner was discharging her duties and had taken initiative while interacting with the prisoners. Her work was appreciated. However, in the latter part she was being singled out by the other officers and employees of the jail. She was being mentally harassed. She had put up several grievances with the superiors and instead of enquiring into her allegations her employment was brought to an end. The decision is

arbitrary and capricious and suffers from the vice of lack of principles of natural justice.

6. The learned AGP referring to the affidavit in reply filed by the Jayant Sega Naik, Superintendent of Jail, Aurangabad Central Jail submitted that the project was a collaboration between the State government and the Tata trust by virtue of agreement dated 31-03-2019. It was for a period of 3 years and it has already come to an end. Therefore, for this reason alone, the petitioner's grievance cannot be addressed.

7. He would further submit that the petitioner's employment was purely on a contract basis. She had no right to continue. There were reasons to terminate the employment. It was noticed that there was indiscipline and breach of prison rules and having considered all these aspects she was discharged by the impugned communication.

8. Learned advocate Mr. Syed would then refer to the affidavit in rejoinder and would submit that the affidavit in reply is absolutely silent as to if the project has continued subsequently after completion of first tenure of 3 years. Though the affidavit in reply contains some additional reasons and the reply is annexed with certain documents reflecting on the alleged conduct of the petitioner, when the impugned communication / order does not contain any such ground,

the respondents are not entitled to add to the grounds which prevailed and were expressly communicated to the petitioner while terminating her employment.

9. We have considered the rival submissions and perused the papers.

10. Admittedly, the petitioner was appointed pursuant to a project that was undertaken and was to continue for a period of 3 years, between the State Government and the Tata trust. It has been specifically mentioned in the affidavit in reply that the project was a pilot project for a period of 3 years and has lived its life to the fullest. Though the petitioner has filed a rejoinder and has expected the State to emphatically state that the project is closed, there cannot be a negative proof. If according to the petitioner the project still continues she ought to have taken pains to prove this fact by leading cogent material. That being not the case, for this reason alone, the grievance of the petitioner cannot be entertained.

11. So far as the impugned communication is concerned, petitioner's services have been terminated by the impugned communication which reads that her performance was not satisfactory. At the outset, it is necessary to note that the impugned communication merely informs the petitioner that her performance was not satisfactory. We are emphasizing this aspect only because according to the

averments in the petition, the order is stigmatic when she has not been stated to be guilty of anything.

12. True it is that contrary to the decision in the matter of ***Mohinder Singh Gill and another Vs. Chief Election Commissioner, New Delhi and others; 1978(1) SCC 405***, the affidavit in reply contains same reasons and grounds which had led to the termination of the employment. Obviously, none of these find place in the impugned communication and no such grounds can be permitted to be supplemented.

13. However, when admittedly the petitioner's employment was purely on temporary and *ad-hoc* basis, even if the impugned communication only refers to unsatisfactory performance the papers annexed to the affidavit in reply, to our mind, clearly demonstrate that there were allegations and counter allegations between the petitioner on the one hand and the other employees of the jail on the other hand. She had put up several grievances by quoting different incidents to demonstrate as to how she was being harassed. However, simultaneously, there are copies of the e-mails which are apparently the internal communications of the employees of the Tata trust who were superior to the petitioner which clearly indicate that even these officers had found the petitioner's continuing in the employment to be improper.

14. We do not intend to go into all those communications but we simply refer to them to ascertain as to if there were circumstances which would indicate that the authorities could have possibly and reasonably decided to put an end to the employment. When the employees of the Tata trust themselves had found her continuing in the employment and her behaviour at the workplace being improper, we do not find any illegality in the authorities deciding to bring the contractual employment to an end.

15. It being a purely an employment of temporary and contractual nature, the petitioner does not have any inherent right to continue with the employment if the respondents are of the view that her services are no longer necessary.

16. True it is that in the affidavit in rejoinder the petitioner has denied all such correspondence produced with the affidavit in reply. However, such a denial is clearly evasive and does not seek to offer any response to the contents thereof. It is not her version that those are fabricated or forged documents. Consequently, we are merely referring to these documents to ascertain as to if there were sufficient and cogent reasons for the respondent – authorities to terminate the employment or was the decision arbitrary and capricious. To our mind the impugned order is preceded by the objective scrutiny of petitioner's

performance and takes a plausible view that her service was not necessary.

17. There is no merit in the writ petition. It is dismissed.

18. Rule is discharged.

[S.G. CHAPALGAONKAR]
JUDGE

arp/

[MANGESH S. PATIL]
JUDGE