

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1792 OF 2011

Kalyan - Dombivli Municipal Corporation,
Through its Commissioner, Having office at
Shankar Rao Chowk, Kalyan, Dist. Thane.

Petitioner
... (Orig. 1st Party)

Versus

Vijay Namdeo Jadhav,
Adult, Occu.: Service,
R/o. Sindigate Police Line, Murbad Road,
Room No.3, Kalyan, Dist. Thane.

Respondent
... (Orig. 2nd Party)

.....
Mr. A. S. Rao, Advocate for Petitioner.

Mr. Sumant Deshpande, Advocate for Respondent.

.....
CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 26, 2023

JUDGMENT :-

1. This Writ Petition is filed under the provisions of Articles 226 and 227 of the Constitution of India by the Petitioner employer to challenge the Award dated 11.03.2010 passed in Reference (IDA) No.76 of 2008 by the learned Labour Court, Thane. By the said Award, Petitioner - Kalyan Dombivli Municipal Corporation (for short “**Corporation**”) is directed to reinstate Respondent - workman in service with continuity of service with full back wages excluding the period of his absence from duty as an under-trial prisoner i.e. for the period 14.01.2005 to 15.02.2007.

2. Such of the relevant facts necessary for adjudication of the present Writ Petition are as under:-

2.1. Respondent was appointed on 17.07.1997 as 'Safai Kamgar' in the services of Petitioner Corporation. The appointment order is at Exh. "A" – page No. 20 of Petition. It states that Respondent is appointed as 'Safai Kamgar' on daily wages on temporary basis and his services will be continued until further orders.

2.2. On 06.10.1998 a further appointment letter was issued in favour of Respondent for extension of his appointment.

2.3. On 18.12.1998 a third appointment letter / order was issued in favour of Respondent extending his appointment.

2.4. On 05.04.1999 a fourth appointment letter / order was issued in favour of Respondent extending his appointment.

2.5. All four letters / orders are appended at Exh. "A" to Exh. "D" to the Petition.

2.6. All four appointment orders clearly state that services of Respondent shall be continued until further orders. Respondent was appointed as 'Safai Kamgar' and his duty timings were 6:30 a.m. to 11:00 a.m. and 3:00 p.m. to 6:00 p.m. daily. After 1999, Respondent continued to work as Safai Kamgar with the Corporation until October 2004 without any break.

2.7. Respondent remained absent from duty between 22.10.2004 and 25.10.2004 for 3 days. On 28.10.2004 he made an Application for availing sick leave since he was admitted to Ravi Kiran Hospital for treatment during the above period. Thereafter Respondent remained absent from duty and did not report to work.

2.8. In May 2004, Respondent had married his co-worker called Kalpana who was a widow and working as 'Sweeper' in the services of the Corporation. After their marriage they were residing together in a rented premises at Kulgaon. On 25.10.2004 at 12:30 p.m., Senior Inspector of Kulgaon Police Station received information about spotting of a dead body of a female in the forest near village Sonawala. The dead body was in a highly decomposed condition. It was taken to J.J. Hospital for autopsy and it was revealed that the deceased had injuries on her neck and cheek. FIR was registered on 28.10.2004. During investigation, Police Authorities found out that the dead body was of Kalpana, wife of the Respondent. Investigations further revealed that Kalpana had left the matrimonial house at about 2:30 p.m. on 22.10.2004 and did not return back thereafter. It was Respondent's case that on 22.10.2004, he was feeling unwell and therefore his wife accompanied him to Ravi Kiran Hospital where he was admitted for treatment upto 25.10.2004. After his admission in hospital, his wife Kalpana went back to home. This claim / say of

Respondent was disputed by the relatives of Kalpana who lodged FIR with Mahatma Phule Chowk Police Station against the Respondent which was transferred to Manpada Police Station and Respondent was arrested on 14.01.2005. Record reveals that Respondent was lodged as an undertrial prisoner from 14.01.2005 to 15.02.2007 and thereafter released since the Sessions Judge acquitted the Respondent and his mother of the alleged charges by judgment & order dated 15.02.2007. The charges levelled against Respondent were under Sections 364, 209 r/w Section 34 of IPC. The fact that Respondent was exonerated and acquitted is not in dispute.

2.9. In view of the above, in the interregnum, on 04.09.2006, Petitioner Corporation terminated the services of Respondent on having learnt that Petitioner was arrested and was lodged as an undertrial prisoner in Kalyan District Prison. It was stated in the termination order that Respondent was absent from duty from 22.10.2004 without permission and was issued a show-cause-notice dated 27.12.2004 to which no reply was received from him. Hence the termination order stated that since Respondent was absent from duty from 22.10.2004 and was facing trial for commission of serious offences and lodged in Kalyan District Prison in judicial custody, his services were terminated by Corporation. The termination order is at Exh. E – page No. 27 of Petition.

2.10. After his acquittal and release from prison, Respondent approached the Petitioner Corporation and made two applications dated 13.03.2006 and 16.07.2006 seeking to resume duty. This was followed by resolution passed by the General Body of the Petitioner Corporation dated 14.11.2006 approving dismissal order of the Respondent.

3. Mr. Rao, learned Advocate for the Petitioner Corporation would submit that the impugned award is erroneous and incorrectly passed in the facts and circumstances of the present case. He would submit that Respondent workman was admittedly appointed on temporary / adhoc basis and therefore termination of his services without following the due process of law was completely justified and permissible. He would submit that Respondent was arrested and lodged as an undertrial prisoner i.e. he was in judicial custody for offences punishable under Sections 302, 364, 201 and 34 of IPC which were very serious offences. He would submit that involvement of Petitioner in such serious nature of offences indicting him for murder of his wife was a serious issue and therefore under the provisions of the Maharashtra Civil Services Rules (for short '**MCSR**'), it rendered the Respondent unfit for continuation in government service. He would submit that if a government servant is involved in a criminal offence and is placed under judicial custody, then his services deserve

to be terminated without giving him any opportunity whatsoever. He would submit that Petitioner is a Municipal Corporation established by the State Government of Maharashtra under the provisions of the Maharashtra Provincial Municipal Corporations Act w.e.f. 01.10.1983 and is a government body. He would submit that the action of terminating the services of Respondent was fully justified in view of the fact that Respondent remained unauthorizedly absent from duty without intimation and did not inform the Petitioner Corporation that he was arrested and imprisoned and placed under judicial custody during the period from 14.01.2005 to 15.02.2007. On the contrary, Respondent had falsely claimed that he was suffering from ill-health and had applied for leave but that was merely for three days i.e. from 22.10.2004 to 25.10.2004. According to him, Respondent remained unauthorizedly absent from duty for a little more than two years and therefore the impugned action taken against the Respondent of termination of his services was fully justified. He would submit that Petitioner Corporation had not indulged in any unfair labour practices as alleged and the Reference ought to have been rejected. Finally Mr. Rao would submit that the learned Labour Court does not have jurisdiction to decide the issue of status of permanency of Respondent which it has done by the impugned award.

3.1. In support of the above submissions and propositions, he has

sought to place reliance on the decision in the case of **The State of Rajasthan & Ors. Vs. Phool Singh**¹ and would submit that acquittal of Respondent was not an honourable acquittal and therefore it has to weigh with the Court as to whether in such a case like the present one, does the Respondent deserve to be reinstated once he was terminated by the Petitioner Corporation. According to him, in the case of the present Respondent, he was acquitted on technicality and preponderance of probabilities because of the benefit of doubt given to him.

3.2. Next he has referred to and relied on the decision in the case of **Imtiyaz Ahmad Malla Vs. The State of Jammu and Kashmir & Ors**². to contend that once again the debate as to whether a person has been honourably acquitted or otherwise is required to be considered by the Court. He would submit that admittedly in the present case, Respondent did not get an honourable acquittal in the criminal case filed against him and he was acquitted on the ground of benefit of doubt and chain of circumstances not being completed.

3.3. In support of the proposition that Respondent was temporarily employed and therefore his services were rightly terminated without issuing any notice or assigning any reason for termination, he has relied on the decision of the Supreme Court in the

¹ Judgment dated 02.09.2022 passed in Civil Appeal No. 5930 of 2022

² Judgment dated 28.02.2023 passed in Special Leave Petition (c) No. 678 of 2021

case of **Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd Vs. Devendra Kumar Jain & Ors**³. and would submit that in the case of appointment on temporary basis a servant who is so appointed does not acquire any substantive right to the post, even though the post itself may be permanent and it is an implied term of such appointment that it may be terminable at any time and without notice. He has laid emphasis on the proposition that a temporary government servant does not become a permanent government servant unless he acquires that capacity by force of any rule or he is declared or appointed as a permanent servant. Hence according to him, all along Respondent continued to be a temporary worker according to the terms of the order of his appointment, and therefore his services could be terminated at any time by the Petitioner without any notice or assigning any reason.

4. PER CONTRA, Mr. Deshpande, learned Advocate for Respondent would submit that it is an admitted position in the present case that crime was registered against Respondent and he was arrested and thereafter imprisoned during the period 14.01.2005 to 15.02.2007. However Respondent was exonerated and acquitted from the charges by the Sessions Court by judgment dated 15.02.2007. He would submit that in so far as the tenure of service of Respondent with Petitioner Corporation is concerned, it is an undisputed fact that he

³ (1995) 1 SCC 638

worked with the Corporation for 7 years and 4 months continuously without any break and was therefore entitled to get the status of permanency. He would next submit that in that view of the matter, it cannot lie in the mouth of the Corporation to suggest that though Respondent's continuation in service was on temporary basis, his termination could be effected without giving him any opportunity to show-cause, without holding any enquiry and without following the due process of law. He would submit that the contention of Petitioner to state that Petitioner Corporation was not required to follow the due process of law in the facts and circumstances of the present case is bad in law and should not be countenanced. He would submit that the impugned Award gives valid and cogent reasons for adjudicating the issues framed by the learned Labour Court which cannot be faulted with.

4.1. In support of his submissions, he has relied upon the decision of the Supreme Court in the case of **Mohan Lal Vs. Management of M/s. Bharat Electronics Ltd**⁴. He has drawn my attention to paragraph No. 5 of the said decision wherein the facts of the case are more or less identical to the facts of the present case. He would submit that from the terms of appointment of the Respondent and the continuous nature of his services for 7 years and 4 months, it is clear that though initially appointment of Respondent was

⁴ (1981) 3 SCC 225

temporary but it was likely to be made permanent and there is no denial of the fact that Respondent had fulfilled all eligibility criteria for entitlement of the status of a permanent worker. In that view of the matter, he would submit that termination by the employer of services of such a workman for any reason whatsoever would otherwise be construed as retrenchment except in the cases excepted under Section 2(oo). He would submit that if that be so, pre-requisites for valid retrenchment as laid down under Section 25-F have not been complied with and therefore such termination would even otherwise render the order of termination *void ab initio*. In other words, he would submit that it does not bring about the cessation of services of the workman and the workman continues to be in service. Applying the ratio and the decision of the above case to the facts of the present case, he would submit that admittedly in the present case Respondent had completed 7 years and 4 months of continuous service with the Corporation and was therefore entitled to the status of permanency. In that view of the matter, he would submit that the high handed and arbitrary action on behalf of the Corporation to terminate Respondent's services without following the due process of law and ordering his termination order followed by ratification by the General Body merely because Respondent was arrested and in custody is contrary to the statutory provisions and arbitrary in nature. He would therefore submit that the reasons given in the impugned Award are

cogent and deserve to be accepted by this Court and the Award be upheld.

5. I have heard Mr. Rao, learned Advocate for Petitioner Corporation and Mr. Deshpande, learned Advocate for Respondent worker and with their able assistance perused the record and proceedings of the case. Submissions made by learned Advocates have received due consideration of the Court.

6. At the outset, there is no dispute that the Respondent-workman worked for the Petitioner - Corporation for more than 7 years and completed 240 days in every year. Therefore, the findings returned by the learned Labour Court regarding the same are correct and need no interference of this Court. Furthermore, the termination order was passed by the Petitioner - Corporation whilst the Respondent - workman was in custody and he was not afforded an opportunity to defend himself and the same is against the established principles of natural justice. Though Mr. Rao has sought to argue that mere acquittal shall not entitle the Respondent - workman for reinstatement and placed reliance on the decisions of the Supreme Court mentioned above, however it is necessary to discern and distinguish the facts of the present case with the facts of the cases in the said decisions. In the case of *Phool Singh (first supra)*, the delinquent employee was convicted by the learned Trial Court and his conviction

was subsequently set aside by the Appellate Court and he was also found guilty in the departmental proceedings conducted by the employer. In the present case, the Respondent - workman was acquitted by the Sessions Court after due consideration on the merits of his case and the Petitioner did not give him any opportunity to defend his case before termination. Hence, the proposition laid down by the Supreme Court in the case of *Phool Singh (first supra)* is clearly distinguishable on facts and cannot be *ipso facto* be applied to the present case.

7. In the case of *Imtiyaz Ali Malla (second supra)*, the question before the Supreme Court was to determine whether the decision of the employer who after examining the record of the employee had arrived at the conclusion that he was not a fit person to hold the post in the police force in view of his criminal background could be compelled to reinstate the employee pursuant to his acquittal in a criminal case. However in the present case, the Petitioner - Corporation at the time of passing the termination order as well as General Body Resolution No.91 has failed to take into consideration the period of service rendered by the Respondent - workman and also the honorary acquittal granted by the Sessions Court in connection with the said crime. Hence the facts of this decision are distinguishable and cannot be applied to the facts of the present case.

8. In so far as the decision in case of ***M.P. Hasta Shilpa Vikas Nikam Ltd. (third supra)*** is concerned, the issue before the Supreme Court in that case was to decide the question of permanency of service of employees appointed on ad-hoc temporary basis. However, the same is not the case in the present matter as neither Respondent - workman has claimed permanency in services nor the learned Labour Court has decided on the said issue. The Petitioner - Corporation has also relied on the judgment of this Court in case of **Executive Engineer, Rehabilitation Division, Pune Zilla Parishad, Pune⁵**, however even the said decision is on the similar lines as that of **M.P. Hasta Shilpa Vikas Nikam Ltd. (third supra)** and hence it cannot be applied to the facts of the present case. Furthermore, Mr. Rao has relied on the decision of the Supreme Court in the case of **Banshi Dhar Vs. State of Rajasthan & Anr.⁶** which concerned determination of the issue of awarding back wages; however that is not the question for consideration before me. Hence the ratio in the case of **Banshi Dhar (sixth supra)** is not relevant.

9. In the present case, Respondent's case was that his services was terminated without following the due process of law and therefore he has entitled to full backwages. Against this Petitioner – Corporation's defence was that Respondent had remained absent for 2 years since he was police custody / judicial custody for alleged

⁵ 2006(4) Mh.L.J. 517

⁶ (2007)1 SCC 324

criminal offences and due to his long absenteeism, work of the Corporation suffered and therefore his services were terminated. The learned Labour Court considered the orders of appointment of the Respondent and concluded that from 1997 till the date of termination the Respondent was in continuous service with the Corporation without any break. Thus he had worked for 7 years and 4 months continuously. Therefore, the learned Labour Court returned a categorical finding that it cannot be overlooked that Respondent – workman had completed 240 days in each calendar year and had therefore acquired the status of a permanent employee i.e. he ought to be considered as a deemed permanent employee for the purpose of considering the legality and validity of the action of termination against him. The learned Labour Court was clearly aware of the fact that it has no jurisdiction to decide the issue of status of permanency of the Respondent – worker and it was within the sole domain of the Industrial Court.

10. However, on the basis of the evidence placed before the Labour Court it was crystal clear that Respondent – worker had worked for 7 years 4 months at a stretch without any break with the Corporation. The Labour Court held that after the Respondent's acquittal in the criminal case it was the duty of the Petitioner – Corporation to reconsider the action of termination in view of his

acquittal. The learned Labour Court held that in view of the applicability of the MCSR to the employees, if an employee is suspended or terminated on the reason of his involvement in a criminal case and thereafter acquitted from the said case, then the employer has to reinstate him with continuity of service. However the same has not been done by the Petitioner – Corporation in the case of Respondent. The learned Labour Court noted the 3 Applications dated 13.03.2007, 09.07.2007 and 23.11.2007 filed by the Respondent for reinstatement with the Petitioner – Corporation and the complete inaction of the Corporation thereon. The learned Labour Court further returned a finding that if it came to the knowledge of the Petitioner – Corporation that Respondent was involved in a criminal case and was in judicial custody, it was the duty of the Corporation to place him under suspension and not to terminate his services. Even this was not done by the Petitioner – Corporation.

11. The learned Labour Court had noted that in the present case instead of placing the Respondent under suspension, the Petitioner – Corporation has struck off his name from the muster roll and terminated his services which is contrary to the statutory provisions. The learned Labour Court has noted that without giving any opportunity to the Respondent, without giving any show cause notice to him and without considering his exoneration and acquittal from the

criminal case, Respondent's services have been terminated without following the due process of law. It has also been noted that no departmental enquiry has been initiated and held against the Respondent - worker by following the provisions of the MCSR.

12. There is one more aspect which requires consideration and which has been adequately dealt with by the learned Labour Court. This is with regard to the justifiable absence of the Respondent for the period of 2 years when he was in judicial custody. The Respondent has placed on record Exhibit-22 before the learned Labour Court which he has procured under the Right to Information Act. This information namely Exhibit-22 contains details of employees working with the Petitioner – Corporation who are all involved and indicted in criminal cases. The information pertains to 14 such employees who were working with the Petitioner – Corporation at the then time against whom criminal cases were lodged. It is seen that service of none of these 14 employees was terminated by the Petitioner – Corporation. Therefore on the question of parity a clear case of discrimination has been meted out to the Respondent. The learned Labour Court has considered this document at Exhibit-22 and returned the finding that in the case of the Respondent, once he was acquitted from the charges, the Petitioner – Corporation was duty bound to reconsider its decision of termination of service of the Respondent –

employee.

13. On perusal of the findings given in paragraph Nos.10, 11, 12 and 14 of the Award, I find that they are well reasoned findings which do not call for any interference by this Court. The findings returned by the learned Labour Court are upheld and confirmed. The Award dated 11.03.2010 passed in Reference (IDA) No.76 of 2008 by the learned Judge, 4th Labour Court, Thane is sustained. Resultantly, the Writ Petition fails.

14. Writ Petition is dismissed. No costs.

[MILIND N. JADHAV, J.]

Amberkar

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