

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

WRIT PETITION NO.9766 OF 2021

Machindra Ganpat Gate }
Age : 53 years, Occupation : Advocate, }
Residing at A-5, Second Floor, }
Janta Sahakari Bank Building, Opp. S.T. Depot, }
Station Chowk, Talegaon Dabhade, Taluka Maval, }
District Pune. 410507 }
..Petitioner

Versus

1. The State of Maharashtra }
Through the Principal Secretary, }
Law and Judiciary Department }
Mantralay, Mumbai 400032. }
 2. The District Government Pleader }
and Public Prosecutor }
Pune District and Sessions Court, }
Pune -411005 }
- ..Respondents

...
Mr. Veerdhaval Kakade for the Petitioner.
Mr. R.P. Kadam, AGP for the Respondent-State.
...

**CORAM : A.S. CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ**

DATE : 30TH NOVEMBER, 2023.

ORAL JUDGMENT : (PER : A.S. CHANDURKAR, J)

1. Heard. The Petitioner is aggrieved by the communication dated 15/02/2021 that has been issued by the Department of Law and Judiciary, State Government, as a result of which the

Petitioner's engagement as Assistant Public Prosecutor, Pune District, has been terminated by relying upon Rule 30(5) of the Rules for the Conduct of Legal Affairs of Government, 1984 (for short, the Rules of 1984).

2. The Petitioner was initially appointed as an Additional Public Prosecutor and Assistant Government Pleader for a period of 2 years on 07/07/2014. The Petitioner was re-appointed for a further period of 2 years on 29/04/2017. On 26/04/2019, a fresh order was issued extending his engagement for a period of 1 year from 29/04/2019. On the ground that the Petitioner had moved an application for cancellation of bail without giving instructions, the impugned communication dated 15/02/2021 has been issued and the Petitioner's engagement as Additional Public Prosecutor and Assistant Government Pleader has been put to an end.

3. Mr. Veerdhawal Kakade, the learned counsel for the Petitioner submits that considering the seriousness of the matter by which bail was granted to an accused in Sessions Case No.62 of 2018 notwithstanding the fact that bail had been refused by this Court to a similarly placed accused, the Petitioner had moved an application for cancellation of bail. This application

was duly signed by the Investigating Officer. Alongwith the said application dated 17/12/2020, various documents were annexed, which included the order passed by this Court on 17/01/2019 in Criminal Bail Application No.147 of 2019. By the said order, this Court had refused to grant bail to other accused with the observation that the case of the said accused was similar to the case of the accused to whom bail was refused. He thus submitted that such application was bonafide moved by the Petitioner and that the same did not amount to any act or conduct incompatible with his duties, as provided under Rule 30(5) of the Rules of 1984. The Petitioner's removal was thus stigmatic. It was urged that by virtue of the order dated 28/04/2020, the Petitioner was entitled to continue with his engagement until further orders. The impugned communication was liable to be set aside and the Petitioner ought to be restored on the post of Assistant Public Prosecutor and Assistant Government Pleader.

4. Mr. R.P. Kadam, the learned Assistant Government Pleader for the Respondents opposed the aforesaid submissions and relied upon the Affidavit-in-Reply filed on behalf of the Deputy Legal Advisor-cum-Deputy Secretary, Law and Judiciary Department, State of Maharashtra. He submitted that an

explanation was sought from the Petitioner as to whether the application for cancellation of bail was filed on the basis of instructions. It was admitted by the Petitioner that no such instructions were received. He, therefore, submitted that in the light of such conduct, the Petitioner's discontinuation by relying upon Rule 30 (5) of the Rules of 1984 did not call for any interference. In any event, the Petitioner's engagement was only for a period of one year from 28/04/2019 and hence, the Petitioner had no right to continue thereafter. Thus, it is submitted that the Petitioner was not entitled for any relief.

5. We have heard the learned counsel for the parties at length and with their assistance, we have also perused the documents on record. It is to be noted that the appointment of the Petitioner as an Additional Public Prosecutor and Assistant Government Pleader was initially made on 07/07/2014 for a period of two years. His engagement was thereafter extended for specified periods and the last order dated 29/04/2020 indicates his continuation until further orders in terms of the notification dated 26/04/2019 that was to operate for a period of one year. This would indicate that till the Petitioner's appointment came to be terminated on 15/02/2021, he had been continuing on the said post by virtue of such continuation

orders. His appointment was for a specified period which period had come to an end.

6. The reason for terminating the Petitioner's appointment under Rule 30(5) of the Rules of 1984 is stated to be his act of filing an application for cancellation of bail without obtaining prior approval and without following the procedure prescribed. It is not in dispute that the application for cancellation of bail came to be filed by the Petitioner without obtaining prior approval of the competent authority. This aspect is clear from the communication dated 05/02/2021 issued by the Petitioner admitting the aforesaid fact. In the reply filed on behalf of the Respondent no.1, it has been stated in clear terms that the approval sought by the Petitioner for filing the said proceedings was after the application for cancellation of bail was filed. Such approval was in fact sought after the order dated 08/02/2021 was passed in Bail Application No.681 of 2020. It is thus clear that the Petitioner filed the said proceedings without following the prescribed procedure and ignoring the requisite protocol.

7. It is to be noted that the issue pertains to engagement of an Assistant Government Pleader/Additional Public Prosecutor and the matter is governed by the Rules of 1984. Under Rule

30(5) of Rules of 1984, a Law Officer can be removed from his office if he is guilty of any act or conduct which in the opinion of the Government in its Law and Judiciary Department is incompatible with his duties. Rule 30(5) of the Rules of 1984 reads as under :-

Rule 30 :

(5). A Law Officer shall be liable to be removed from his office at any time, if he is guilty of any act or conduct which, in the opinion of Government in the Law and Judiciary Department, is incompatible with his duties as such Law Officer. The decision of Government in the Law and Judiciary Department in such cases shall be final.

8. In the present proceedings, the Court would be concerned with the decision making process of the Department of Law and Justice rather than the correctness of such decision since the matter pertains to engagement of a Law Officer. If it is found that the decision making process preceding removal of the Petitioner has been fairly followed and there is no arbitrariness in the same, the same would be sufficient to sustain the decision notwithstanding the fact that another view of the matter could

be possible. In this regard reference can be made to the observations in paragraph 39 of the decision in ***Kumari Shrilekha Vidyarthi etc... V/s State of U.P. & Ors.***,¹ wherein it is observed as under :

39. No doubt, it is for the person alleging arbitrariness who has to prove it. This can be done by showing in the first instance that the impugned State action is unformed by reason inasmuch as there is no discernible principle on which it is based or it is contrary to the prescribed mode of exercise of the power or is unreasonable. If this is shown, then the burden is shifted to the State to repeal the attack by disclosing the material and reasons which led to the action being taken in order to show that it was an informed decision which was reasonable. If after a prima facie case of arbitrariness is made out, the State is unable to show that the decision is an informed action which is reasonable, the State action must perish as arbitrary.

1 WP No.706 of 1990 AIR 1991 SC 537

9. As stated above, it is not in dispute that the Petitioner preferred the application for cancellation of bail without seeking prior approval of the competent Authority. This act of the Petitioner has not found favour with the Law and Judiciary Department on the premise that said act is not in consonance with the Rules of 1984. The Rules require obtaining prior approval for doing so. The Petitioner's communication dated 29/01/2021 is clear in that regard. It is also to be noted that this Court in its order dated 20/01/2021 passed in Criminal Bail Application No.681 of 2020 with Interim Application no.1 2020 had expressed dissatisfaction with regard to the manner of conduct of said proceedings by filing the application for cancellation of bail. In this background, therefore, the Law and Judiciary Department found it fit to put an end to the Petitioner's engagement as Law Officer. This decision cannot be stated to be arbitrary, irrational or one that no reasonable person could ever arrive at. It could be possible that another authority required to take the same decision would have considered issuing a warning to the Petitioner instead of terminating his engagement. It would however not be permissible for this Court to go into that aspect and substitute its view in place of the view taken by the concerned Authority.

10. Since we are satisfied that the decision making process leading to issuance of the impugned communication does not suffer from any illegality or arbitrariness, we do not find any reason to interfere with the same. We may only observe that considering the facts of the case where an application for cancellation of bail was filed by the Petitioner, albeit without prior approval, his removal shall not be treated as stigmatic so as to preclude him from exploring other avenues and seeking any fresh engagement.

11. For the aforesaid reasons, there is no case made out to interfere in writ jurisdiction. The Writ Petition stands dismissed with no order as to costs.

[FIRDOSH P. POONIWALLA, J] [A.S. CHANDURKAR, J.]