

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

WRIT PETITION NO.3179 OF 2022

Ashok s/o Suresh Kothari,
Aged about 41 years,
Occu: Nil, R/o C/o Pradeep Mundhada's
House, Khaparde Bagicha,
Amravati – 444601. **PETITIONER**

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

1. Commissioner, Health Services and
Mission Director, National Health Mission,
Mumbai, Off/at Public Health Department,
Aarogya Bhavan, Third Floor,
Sant Gorge Hospital Area, P. Demelo Road,
Near CST Fort, Mumbai-400001.
2. Joint Director (Non-Technical),
National Health Mission, Mumbai,
Off/at Public Health Department,
Aarogya Bhavan, Third Floor,
Sant Gorge Hospital Area, P. Demelo Road,
Near CST Fort, Mumbai-400001. **RESPONDENTS**

Mr. J. B. Kasat, Advocate for Petitioner.
Mrs. K. S. Joshi, Additional Government Pleader for
Respondents 1 & 2/State.

CORAM: **ROHIT B. DEO AND G. A. SANAP, JJ.**

DATE: **25th JANUARY, 2023.**

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

Heard. Rule. Rule made returnable forthwith by

consent of the learned counsel for the parties.

2. The petitioner is assailing the order dated 20.05.2022 issued by respondent 2 – Joint Director (Non-Technical), National Health Mission (NMH) whereby the petitioner is terminated from the contractual post of the District Account Manager on the ground of proven financial and administrative irregularities allegedly committed in discharge of duties.

3. NMH is the initiative of the Central Government which is implemented in the State of Maharashtra and respondents 1 and 2 are the Officers at the helm of affairs.

4. The petitioner was appointed as Accountant on contract basis by the District Health Officer, Zilla Parishad, Ahmadnagar vide order dated 31.10.2007. The contract of employment was renewed from time to time till 31.10.2014.

5. Vide order dated 01.11.2014 issued by respondent 1 petitioner was appointed as District Account Manager on the establishment of the Amravati Zilla Parishad and the contract of employment was executed on 16.01.2015.

6. The petitioner avers that his performance was excellent and to substantiate such assertion, the copy of the performance report for 08.12.2020 to 07.11.2021 is placed on record as an illustration.

7. According to the petitioner, a motivated complaint was submitted by one Minister of State on 18.08.2020 alleging irregularities and illegalities in the execution of the NHM in Amravati District.

8. The Additional Mission Director, NMH directed the Joint Director of Health Services, Akola Region, Akola to hold an inquiry into the complaint lodged by the Minister. An Inquiry Committee comprising six members was constituted. The petitioner asserts that no charge was framed against the petitioner nor was any explanation sought from the petitioner by the Inquiry Committee. It is further averred that while the Inquiry Committee did not specifically hold that commission of any irregularity or illegality in the discharge of duty by the petitioner is proved, the Inquiry Committee recommended that the petitioner be transferred to some other district. The inquiry report was forwarded by the Joint Director Health Services, Akola Region,

Akola to the Additional Mission Director, NMH.

9. The petitioner avers that acting on the preliminary inquiry report, and without following the principles of natural justice, respondent 1 issued communication dated 05.05.2021 imposing punishment of censure.

10. It is further averred that the Minister addressed another communication dated 05.03.2021 alleging that the In-charge District Programme Manager and the District Account Manager (petitioner) are harassing the employees including women employees. In response to the complaint dated 05.03.2021 lodged by the Minister, the Maharashtra State Commission for Woman (Commission) held an inquiry. The petitioner filed written submissions asserting that he was innocent.

11. It is averred that the Commission held perfunctory inquiry and submitted report dated 04.06.2021 to the Divisional Deputy Commissioner, Women and Child Development, Amravati Division, Amravati.

12. The petitioner asserts that on the basis of the

preliminary inquiry report submitted by the Six Member Inquiry Committee dated 31.12.2020 and the report of the Commission dated 04.06.2021 respondent 2 issued the termination order impugned.

13. The petitioner asserts that the order of termination is passed in gross violation of the principles of natural justice and is a colourable exercise of powers.

14. The petitioner asserts that no opportunity of hearing was granted before terminating the services of the petitioner vide order impugned.

15. It is averred that on the basis of the preliminary inquiry report of the Six Member Inquiry Committee, the petitioner was already inflicted the punishment of censure vide order dated 05.05.2021. The petitioner avers that the inquiry report of the Commission considers complaints of four women employees namely Ms. Kalpana Kalmegh, Ms. Shital Uke, Smt. Poonam Gawande and Ms. Tara Sharma, and while no action was recommended by the Commission against the petitioner in respect of the complaints lodged by Ms. Kalpana Kalmegh and

Ms. Shital Uke, the allegations in the complaints lodged by Smt. Poonam Gawande and Ms. Tara Sharma were essentially against Mr. Ridhore and not against the petitioner.

16. The petitioner further asserts that while the termination order dated 20.05.2022 refers to proven financial and administrative irregularities, such observation is not based on any material on record.

17. An affidavit in response dated 18.08.2022 is filed on behalf of the respondents in which it is reiterated that the services of the petitioner came to be terminated in view of proven misconduct. The affidavit makes an endeavour to demonstrate that the petitioner failed to spend the amount received under the maternal mortality and malnutrition scheme. It is emphasized that since the petitioner was a contractual employee, he is rightly terminated. The affidavit in response asserts that the petitioner's termination is founded on proven dishonesty, gross misconduct and dereliction of duty and that he was heard by the two inquiry committees. The affidavit in response however, does not rebut the specific contention of the petitioner that the order of termination is issued without extending opportunity of hearing. The hearing

which the affidavit in response is emphasizing, is presumably the hearing granted by the Commission.

18. The petitioner filed rejoinder dated 04.09.2022 and referred to the disciplinary procedure which is required to be followed for initiating disciplinary action against contractual officers and employees working with NMH. Paragraph 3 of the rejoinder reads thus:

3. That, the respondent 1 Commissioner by communication dated 17/7/2019 has framed the procedure which is to be followed for taking any action of disciplinary nature in relation to the employment of the contractual employees / officers under the National Health Mission Program and as per the same the impugned action of termination of the petitioner should be preceded by first issuing the one month notice to the employee for the improvement of the work and thereafter if there is no improvement in the working then such employee should be served with the show cause notice / charge sheet and to seek his explanation thereon. Thereafter if the explanation submitted by the employee is not satisfactory then such employee be provided with opportunity of oral hearing and thus the impugned termination order dated 20/5/2021 at Annexure-I to the petition is passed by the respondents in breach of the framed policy / procedure by the respondents so also in gross contravention of the principles of natural justice.

The true copy of the policy / procedure framed by the respondent no. 1 Commissioner vide communication dated 17/7/2019 is annexed herewith as ANNEXURE-J to the rejoinder affidavit.

19. It is further relevant to extract the rebuttal of the petitioner of the general statements in the affidavit in response to the effect that the petitioner was heard and we may extract paragraphs 5 and 6 of the rejoinder which read thus:

5. That, by order dated 5/5/2021 at Annexure-E the petitioner was imposed with the punishment of censure on the basis of the enquiry report submitted by the Deputy Director of Health Services, Akola along with communication dated 5/1/2021 at Annexure-D to the petition, however, it is out of place to state here that in the said enquiry only the statement of the petitioner was recorded, however neither the enquiry report was supplied to the petitioner nor any explanation was sought from the petitioner before imposing the punishment of censure and thus the said action of the respondents is also in gross contravention of the principles of natural justice.

6. That, it is factually incorrect and specifically denied that, the petitioner was given an opportunity to explain his stand and the reply of the petitioner was sought before passing the impugned order of termination as such the impugned order at Annexure-I de hors the principles of natural justice and therefore the

prayers of the petitioner are just, legal and proper and same may kindly be granted in the interest of justice.

20. In response to the rejoinder an additional affidavit dated 06.10.2022 is filed on behalf of respondents. In paragraph 4 of the affidavit, the averment is that the contention of the petitioner that he was not served with show cause notice nor was granted opportunity of hearing, is incorrect. However, no material is placed on record to suggest that the order of termination was preceded by show cause notice much less hearing. The text and tenor of the additional affidavit would suggest that according to the petitioner the concerned committees (Six Member Inquiry Committee and the Commission) did grant opportunity of hearing to the petitioner, and therefore, the order of termination impugned in the petition is rightly passed notwithstanding that the petitioner was not issued show cause notice nor was he heard before the termination of employment. In the additional affidavit, there is no denial of the assertion that the order of termination dated 20.05.2022 is passed in gross violation of the principles of natural justice. The entire focus is on the purported opportunity available to the petitioner in the inquiry conducted by the Six Member Inquiry Committee and the Commission.

21. We have heard the learned counsel Mr. A. A. Dhawas for the petitioner and Mrs. K. S. Joshi, the Additional Government Pleader for respondents 1 and 2 /State, and having scrutinized the record in the context of the submissions canvassed, which are on the lines of the respective pleadings, we are satisfied that the order of termination is grossly illegal.

22. We may consider, at the very outset the internal procedure evolved by the office of the Commissioner, Health Services and Project Director, National Health Mission as regards the disciplinary action against the contractual officers and employees engaged under the National Health Mission, which is annexed (as Annexure J) to the petition. The procedure envisages that if there is an allegation of financial irregularities, show cause notice shall be issued and if the explanation is found unsatisfactory, after giving due opportunity of hearing the proposal of termination of service be forwarded to the State office. Slightly different procedure is envisaged for irregularities other than financial irregularities and what is provided is that the employee must be given a month to improve the performance failing which the action may be initiated after following the principles of natural justice.

23. Even *de hors* the internal procedure evolved by the respondents, even a contractual employee is entitled to the protective umbrella of the principles of natural justice if the termination is founded on allegation of dishonesty and serious financial and administrative irregularities. In the present case, we have no hesitation in holding that the petitioner is condemned unheard.

24. We may now consider the submission of the respondents that the petitioner was granted sufficient opportunity to defend himself during the preliminary inquiry conducted by the Six Member Inquiry Committee and thereafter during the inquiry conducted by the commission which looked into the complaints lodged by four women employees.

25. We have perused the preliminary report submitted by the Six Member Inquiry Committee which records that at 11:00 a.m. on 15.12.2020 the petitioner and Mr. Prafulla Ridhore were summoned and the recorded conversation obtained from one Mr. Dharpawar was played in their presence. The preliminary report makes no further reference to the recorded conversation nor is there any further observation throwing light on the

relevance or significance of the recorded conversation in so far as the petitioner is concerned. The reference to the recorded conversation between Mr. Dharpawar, who submitted his resignation, and Mr. Ridhore is indeed found at a later stage in the report, but the reference is only in the context of certain abusive language used by Mr. Ridhore. The other reference to the recorded conversation is in the conclusions recorded by the Six Member Committee. Conclusion 11 is that it is discernible from the recorded conversation that Mr. Dharpawar was improperly treated by Mr. Ridhore and Mr. Kothari. We fail to appreciate on the basis of which material did the Six Member Committee conclude that the recorded conversation is incriminatory, in so far as the petitioner is concerned. Be that as it may, while the conclusions recorded no specific administrative irregularity, it is observed that since Mr. Ridhore and the petitioner are working in the same post since long, they may be transferred.

26. It is clear from the material placed on record, that the preliminary inquiry was neither a formal nor a structured inquiry. The preliminary inquiry was not a participative inquiry. The petitioner was apparently summoned for the limited purpose of playing the recorded conversation. It does not appear that he

was issued any formal charge-sheet or statement of allegations. It further does not appear from record that the petitioner was supplied copies of the statements recorded or of any incriminatory material or for that matter the report of the preliminary inquiry committee. Moreover, acting on the preliminary report of the inquiry committee punishment of censure was already imposed vide order dated 05.05.2021.

27. In so far as the proceedings before the Commission, the petitioner was indeed afforded an opportunity of submitting written response to the complaints lodged by the four women employees named *supra* and the explanation was submitted vide communication dated 27.05.2021. We find from the inquiry report of the Commission that in so far as the complaint lodged by Smt. Poonam Gawande, the allegations are by and large against Mr. Prafulla Ridhore and there is a general observation that the petitioner assists Mr. Praffula Ridhore in consuming liquor etc. within the premises of the District General Hospital, Amravati. The complaint lodged by Ms. Kalpana Kalmegh does not attribute any wrong doing to the petitioner. Similarly the complaint lodged by Ms. Tara Sharma also does not allege any irregularity or misconduct or wrong doing against the petitioner. However, the

Commission observes, after noting that the allegations levelled by Ms. Tara Sharma are against Mr. Prafulla Ridhore and one Mr. Aurangpure, that administrative action be initiated against Mr. Prafulla Ridhore and the petitioner. It is difficult to comprehend as to why and how did the Commission recommend an administrative action in the matter of complaint lodged by Ms. Tara Sharma, against the petitioner, in as much as there is absolutely no wrong doing attributed by Ms. Tara Sharma to the petitioner. The allegation levelled by Ms. Shital Uke pertains to the recruitment procedure to the post of Dialysis Technician. The grievance of Ms. Shital Uke was that her rightful claim to selection and appointment was illegally ignored. The Commission noted the contention of the petitioner that he is not connected any manner with the process of recruitment.

28. Surprisingly, without issuing any notice to the petitioner, the order of termination is issued which refers to the preliminary report of the Six Member Inquiry Committee and the report of the Commission. The punitive order also refers to the complaint lodged by the Guardian Minister with the Chief Executive Officer, Zilla Parishad, Amravati. It is not even argued on behalf of the respondents that the order impugned is not

stigmatic. Indeed, the order of termination records that the termination is founded on serious financial and administrative irregularities in discharge of duty.

29. In our considered view, the least which was expected of the respondents was a show cause notice calling upon the petitioner to explain the incriminatory material, and an opportunity of hearing. A contractual officer or employee may, or may not be entitled to the rights available to a permanent employee. However, while there cannot be a straitjacket formula, even a contractual officer or employee cannot be condemned unheard. The nature and extent, the contours and the shades, of the principles of natural justice may differ depending on the nature of employment. However, in the present case, the order of punishment is issued without any show cause notice much less grant of hearing and serious allegations are levelled against the petitioner officer, and irrefutably the order is stigmatic. The punishment order impugned cannot sustain legal scrutiny even for a moment.

30. We quash and set aside the termination order dated 20.05.2022 (Annexure I) and direct that the petitioner be

reinstated in service with every consequential benefit including arrears of salary.

31. We clarify that the respondents are free to initiate disciplinary action, in accordance with law, if so advised.

32. The petition is disposed of.

(G. A. SANAP, J.)

(ROHIT B. DEO, J.)

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