



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3245 OF 2022

MUKHYADHIKARI THROUGH ZILLA PARISHAD, PARBHANI AND OTHERS
VERSUS
SMT. JYOTI PANDITRAO KACHVE

Mr. V. V. Bhavthankar, Advocate for the petitioners
Mr. S. T. Solanke, Advocate for the respondent

CORAM : R. M. JOSHI, J.
DATE : 25th JUNE, 2024

PER COURT :-

1. Petitioners being aggrieved by judgment dated 24/10/2018 passed by Labour Court, Nanded in Complaint (ULP) No.5/2017 and confirmation of the said order by the Industrial Court by order dated 06/01/2022 in Revision (ULP) Application No. 22/2019, have filed this Petition.

2. Parties are referred to as complainant and employer for the sake of convenience.

3. It is the case of the complainant that she was appointed as Block Facilitator under Asha Swayamsevika Yojana which is part of National Rural Health Project of Central Government. She claims to have been continuously working with the employer since 2009. It is alleged

that from time to time she was given letters of appointment. It is specific claimed that she has completed 240 days of continuous service in each year. According to the complaint, on 05/11/2016 she was issued letter calling upon her to vacate the Government quarters and on that count there was dispute between them. It is alleged that several allegations of misconduct were made against her and for the same she was terminated with effect from 03/01/2017. It is specifically claimed that before causing her termination no inquiry was conducted and principles of natural justice were not followed. This being unfair labour practices, complainant filed Complaint (ULP) No. 5/2017 challenging the order of termination of her services.

4. It is the case of the employer that the scheme is formed under the National Rural Health Project of Central Government and it requires appointment of the persons as per the guidelines laid down for the selection and appointment. It is contended that the complainant was never employed by following due process of law. It is specific case of the employer that her appointment is for 11 months and there was break in service as such she has not completed 240 days of service as claimed. It is further averred that she was entitled for traveling allowance of Rs.150/- per visit to the maximum of Rs.3,000/- monthly and that was not paid any wages like regular employee. It is further claimed that since

2015 the complainant committed serious irregularities in her work and also took possession of Government quarters without prior permission of the Medical Officer and failed to vacate the same in spite of repeated notices. Hence on these ground after issuing show cause notice she was terminated. It is claimed that for the purpose of termination of the complainant the conducting of any enquiry is not mandatory.

5. Learned counsel for the Petitioners-employer submits that since the complainant was not appointed against a vacant post by following statutory provisions, no inquiry is contemplated before termination of her services. To support his submission he placed reliance on the judgment in case of *Bharat Sanchar Nigam Ltd., Pune Vs. Balasaheb Maruti Poojari and another, 2006(5) Mh.L.J.* It is also submitted that the law on the point of the regularization / reinstatement is settled to say that the persons who are not appointed on clear vacant post and by following due process of law are not entitled for reinstatement and regularization. Thus, it is his contention that on this ground the order of passed by the Labour Court which is confirmed by the Industrial Court deserves interference.

7. Learned counsel for the complainant submits that irrespective of the status of the complainant, if her services are terminated for the

misconduct, then conducting of the departmental inquiry against her is must. It is his submission that once the termination is held to be illegal, the only consequences thereof would be her reinstatement in the service.

8. There is no dispute about the fact that the complainant was appointed as Block Facilitator under Asha Swayamsevika Yojana. She was appointed in the year 2009 and came to be terminated with effect from 03/01/2017. Even for the sake argument contention of the employer is accepted that she was not appointed on a vacant post or by following process of law, question arises as to whether it is open for the employer to terminate the services of any employee for the misconduct without following due process of law and without conducting departmental inquiry against her. Since the instant case the complainant is terminated for various alleged misconducts as such non performance of work, failure to take cognizance of the notices and to vacate the Government quarters, absence without leave, arrogant behaviour with superiors etc. termination of her services without proof of the same amounts to a blot as it is a punitive action. This is not case where termination of the complainant is effected for the reason that her performance is not up to the mark but the termination is clearly for the misconduct as mentioned above. In such circumstances it was not open for the respondent to terminate the services of the complainant without affording her

opportunity to defend such allegations and conducting an inquiry against her and without following due process of law. The termination in this case therefore contrary to the principles of natural justice. Perusal of the judgment in case of ***Bharat Sanchar Nigam Ltd., Pune*** (cited supra) shows that it is held by the Division Bench that when the workman as not being appointed against the vacant post by following statutory provisions, no notice is necessary and to follow provision of Section 25F of the Industrial Disputes Act. Facts of the said case do not indicate that the said workman was terminated for misconduct without following due process of law and without conducting inquiry. In the instant case, however, since the termination is for misconduct and without inquiry, the said judgment has no application to the case in hand.

9. A specific query was made by this Court to the learned counsel for the petitioner-employer as to whether any leave was sought from the Labour Court to prove the misconduct. Since no such prayers seems to have been made by the employer before the Labour Court question of permitting the employer to prove the misconduct does not arise as held in the judgment of the Hon'ble Supreme Court in case of ***KARNATAKA STATE ROAD TRANSPORT CORPN. Vs. LAKSHMIDEVAMMA & ORS, MANU/SC/0314/2001.***

10. Once it is held that the termination of the workman is illegal and by non compliance of the principles of natural justice and conducting inquiry, the same deserves to be set aside. As employer is found to have engaged in unfair labour practices, having regard to the provisions of MRTU & PULP Act, he is needs to be directed to desist the same. Consequence thereof would be to restore the status of the complainant in the service.

11. Such reinstatement in the service however, cannot be construed as a regularization. In fact the Labour Court has also not granted any regularization, however, by way of abundant caution it is clarified that the order of reinstatement shall not be treated as her regularization in service, though it may be open for us her to pursue the said claim with employer as per law. As far as the refusal of back wages to the complainant is concerned, since she has not challenged the said order, it has attained finality requiring no interference.

12. In view of the above discussion, Petition sans merit hence stands dismissed.

(R. M. JOSHI, J.)

ssp