

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.904 OF 2024

1. The State of Maharashtra,	]
Through Higher & Technical Education	]
Department, Mantralaya, Mumbai	]
2. The Director,	]
Directorate of Technical Education, M.S., Mumbai	]
3. The Maharashtra State Board for Technical	]
Education (MSBTE), Bandra, Mumbai	] .. Petitioners
<i>Versus</i>	
Smt. Taramati Santosh Taji,	]
R/of Bandra, Mumbai	] .. Respondent

Mr. L.M. Acharya, Special Counsel, with Mr. N.C. Walimbe, Additional Government Pleader and Mr. A.R. Deolekar, Assistant Government Pleader, for the Petitioners.

Mr. Nitin Gaware Patil with Mr. Sahil Choudhari, Advocates for the Respondent.

CORAM : A.S. CHANDURKAR & JITENDRA JAIN, JJ

The date on which arguments were heard : 15TH APRIL, 2024.

The date on which judgment is pronounced : 10TH MAY, 2024.

JUDGEMENT : { Per A.S. Chandurkar, J. }

1. Rule. Rule made returnable forthwith. By consent of the parties, the petition is heard finally.

2. The challenge raised in this writ petition is to the judgment of the Maharashtra Administrative Tribunal in Original Application No.678 of 2023 dated 7th December 2023. By the said judgment, the Tribunal has set aside the order of termination dated 19th May 2023 issued to the

respondent and has directed reinstatement in service along with back-wages.

3. Facts relevant for considering the aforesaid challenge are that the respondent came to be appointed on the post of Assistant Secretary (Technical) at the Maharashtra State Board for Technical Education – MSBTE on 7th January 2021 for a period of two years on probation. The appointment is governed by the Maharashtra Engineering Administrative Service (Recruitment) Rules, 2017 (for short, the Rules of 2017). According to the petitioners, during the period of probation, she was issued five memorandums as her services were not found satisfactory. On 7th December 2022, a proposal was moved by the MSBTE to discharge the respondent from services. The matter was considered by the petitioner no.2. On 19th May 2023, the Higher and Technical Education Department resolved to discontinue the services of the respondent by stating the same to be unsatisfactory. Accordingly, on the same day, the Secretary, MSBTE issued an order terminating the services of the respondent. This order was the subject matter of challenge before the Tribunal and by the impugned judgment, the same has been set aside holding it to be unsustainable in law.

4. Mr. L.M. Acharya, learned Special Counsel appearing for the petitioners submitted that considering the manner in which the

respondent rendered her services during the period of probation, it was found that her work and conduct was unsatisfactory. An order of termination simplicitor came to be issued to her. Referring to the said order of termination dated 19th May 2023 issued by the Secretary, MSBTE, it was submitted that it could not be said to be stigmatic order. The Tribunal was not justified in interfering with the said order. The right to discontinue services during the period of probation vested with the petitioners and they had exercised that right. To substantiate his contentions in this regard, the learned counsel placed reliance on the decision in *Wainganga Bahuuddeshiya Vikas Sanstha and Ors. Vs. Jaya and Ors. (2019) 20 SCC 288* and submitted that the decision taken while arriving at the conclusion that the services were unsatisfactory was the motive and not the foundation of the termination of service. He, therefore, submitted that the judgment passed by the Tribunal ought to be set aside and the order of termination be upheld.

5. On the other hand Mr. Nitin Gaware Patil, learned counsel for the respondent supported the order passed by the Tribunal. According to him, in the order of termination dated 19th May 2023, there was a reference to the Government Order of the same day. In that order, it was clearly stated that the respondent was found guilty of serious acts of misconduct and hence it was proposed to terminate her services. Perusal of that Government Order issued by the Department of Higher and Technical

Education clearly revealed that the same was punitive in nature and that the services of the respondent had been done away with in absence of any enquiry. Considering the nature of statements made in the said Order, an enquiry ought to have been held against the respondent. The impugned order was stigmatic in nature considering the statements made therein. In that regard, the learned counsel placed reliance on the decisions in *Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Ors.*, (1999) 3 SCC 60; *State of Punjab and Anr. Vs. Sukh Raj Bahadur*, AIR 1968 SC 1089 and *Anoop Jaiswal Vs. Government of India and Anr.*, (1984) 2 SCC 369. It was thus submitted that there was no case made out to interfere in exercise of writ jurisdiction.

6. We have heard the learned counsel for the parties and we have perused the documents on record. Before considering the challenge as raised, it would be gainful to first refer to the decision of the Supreme Court in *Dipti Prakash Banerjee (supra)*. While considering whether an order of termination is stigmatic or not, the further issue as to whether stigmatic material, even if not stated in the order of termination but contained in some other documents referred to in the order of termination, could be looked into was examined. It was held that the material amounting to “stigma” need not be contained in the order of termination but may also be contained in an order or proceeding referred

to in the order of termination or in an annexure thereto. This would vitiate the order of termination since a prospective employer would seek all material/documents referred to in the order of termination. In *Anoop Jaiswal (supra)* it was held that if any report or recommendation of a superior authority is the basis or foundation for the order of discharge, it would have to be read along with such report or recommendation for determining its true character.

7. In the light of the aforesaid, if the order of termination dated 19th May 2023 issued by the Secretary, MSBTE is perused, it is seen that reference therein has been made to the Government Order dated 19th May 2023 issued by the Department of Higher and Technical Education. The order of termination further states that in view of this Government Order, the respondent was being removed from services as the same were found to be unsatisfactory. To consider whether the Government Order referred to in the order of termination contains any stigmatic material, it would be necessary to peruse that Government Order. It has been stated therein that while rendering services, the respondent was not obeying the orders of her superiors, her behaviour with her colleagues in the office as well as seniors was rude, the respondent used to blame her superiors for the mistakes committed and also used to pressurise her superiors. These were serious acts of misconduct. Though instructions were given to the respondent to improve her behaviour as well as conduct of work, there was no

improvement therein. Hence, on that basis, her services were proposed to be terminated being unsatisfactory. It is on the basis of this Government Order that the Secretary, MSBTE proceeded to terminate the services of the respondent.

. It is thus clear from the aforesaid that on reading the order of termination dated 19th May 2023 along with the Government Order issued on the same day, the order of termination cannot be treated as an order of termination simplicitor but a stigmatic termination order. No enquiry was held against the respondent. As observed in *Dipti Prakash Banerjee (supra)*, if an employee whose services have been terminated seeks employment with some other employer, that employer is bound to consider the earlier order of termination of such employee along with the material referred to therein. Hence, the Government Order dated 19th May 2023 issued by the Higher and Technical Education Department will have to be treated as forming a part of the order of termination issued by the Secretary, MSBTE.

8. The Government Order dated 19th May 2023 clearly records the conclusion that serious instances of misconduct were found against the respondent. The nature of such misconduct has also been indicated therein. It is thus clear that the foundation in the order of termination is the said misconduct observed when the respondent was rendering

services. It therefore cannot be said that the order of termination issued by the Secretary of the MSBTE is a simplicitor order of termination as sought to be contended by the petitioners.

9. The Tribunal in the impugned judgment has found that though the petitioners had the power to do away with the services of a probationer, if such power was being exercised on the ground of misconduct, then the misconduct alleged was required to be proved after giving an opportunity to the respondent. The same was however not done. It has referred to the Government Resolution dated 29th February 2016 and especially Clauses 6 and 7 therein. Under Clause 6, it has been stated that if, during the period of probation, it is found that there is an instance of misconduct, then an enquiry can be held against such employee. Under Clause 7, the services of a probationer can be dispensed with simplicitor if the discharge of duties is not satisfactory. The Tribunal has therefore recorded a finding that if it was alleged that the respondent was guilty of misconduct, then the enquiry, as contemplated by Clause 6 of the said Government Resolution ought to have been held. Since the same was not done, the order of termination was held to be unsustainable in law.

10. We find that the Tribunal has rightly considered the issue in hand. It is clear that the Government Order dated 19th May 2023, which formed the basis of the order terminating the services of the respondent was stigmatic in nature. Despite alleging misconduct on the part of the

respondent, no enquiry was held and it was sought to be shown that the power vested in view of Clause 7 of the Government Resolution dated 29th February 2016 was being exercised. We do not find that any other view from the one taken by the Tribunal is possible. The ratio of the decision in *Wainganga Bahuuddeshiya Vikas Sanstha (supra)* is distinguishable in these facts.

11. It may be stated that during pendency of the present proceedings, a statement was made on behalf of the petitioners that it was willing to withdraw the order dated 19th May 2023 issued to the respondent and thereafter issue a fresh order of termination without referring to the Government Order of the same day. We, however, do not find as to how this would salvage the case of the petitioners when the reason for dispensing with the respondent's services has been clearly indicated in the Government Order dated 19th May 2023 and the same is a foundation for the same.

12. Hence, for aforesaid reasons, we do not find that the Tribunal committed any error in setting aside the order of termination dated 19th May 2023. We, however, find that the initial appointment of the respondent was on probation for a period of two years under Rule 7 of the Rules of 2017. The probation period can be extended by a period of one year. It is informed that the respondent was continued on probation as the proposal in that regard was pending consideration after which the

impugned order was issued on 19th May 2023. Since the period of probation of the respondent stands extended for a period of one year after expiry of two years service from her initial appointment, after reinstating her, the respondent would be required to complete the remainder period of probation. The order of reinstatement as passed by the Tribunal cannot be understood to mean that without completing the extended period of probation of three years, her services stand confirmed. It is clarified that on her reinstatement, the respondent would be entitled to discharge duties as probationer so as to complete the remaining period of probation. This adjudication shall not be construed as an affirmation by the Court that the services rendered by the respondent till 19th May 2023 were satisfactory. That aspect is kept expressly open for both sides.

13. The writ petition stands dismissed. Rule is discharged. There shall be no order as to costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]

At this stage the learned Additional Government Pleader prays that the effect of the judgment be stayed for a period of eight weeks. In the facts of the case, the judgment shall operate on expiry of period of four weeks from the date it is uploaded.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]