



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

WRIT PETITION NO. 1788/2021

Rekha Jagguji Mundle,  
(Sau. Rekha Ravindra Tighare)  
Aged about 30 yrs., Occ. Service,  
R/o. Walni, Tah. Paoni, Dist. Bhandara.

...PETITIONER

VERSUS

1. The Principal District and Sessions Judge,  
Bhandara through Registrar, District  
and Sessions Court, Bhandara.

Amended as per  
Court's order dated  
04.05.2021

2. ~~Shri S.P. Bhosale,~~  
~~Inquiry Officer (D)/2<sup>nd</sup> Jt. Civil~~  
~~Judge, Senior Division & Additional~~  
~~Chief Judicial Magistrate, Bhandara.~~

Deleted as per Court's  
order dated 04.05.2021

3. ~~Smt. P.d. Mendhe,~~

2. Registrar General, High Court of  
Judicature at Bombay Mumbai.

Amended as per Court's  
order dated 08.12.2021

....RESPONDENTS

Mr. S.P. Giratkar (Giripunje), Advocate for petitioner.  
Mr. Anand Jaiswal, Sr. Advocate assisted by Ambhay Sambre,  
Advocate for respondent Nos.1 and 2.

CORAM : VINAY JOSHI AND  
SMT. M. S. JAWALKAR, JJ..

JUDGMENT RESERVED ON : 20.06.2024

JUDGMENT PRONOUNCED ON : 19.07.2024

JUDGMENT : (PER: VINAY JOSHI, J.)

**Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.

2. By way of this petition under Article 226 of the Constitution of India, petitioner is seeking to quash termination order dated 31.03.2021 passed by respondent No.1 Principal District and Sessions Judge, Bhandara, whereby her temporary services on the post of “Sweeper” has been terminated. The facts of the case may be briefly noted as below:-

3. The petitioner was temporarily appointed on probation for the period of two years from the date of her joining to the post of “Sweeper” and posted on the establishment of Civil Judge, Junior Division, Sakoli. The petitioner was transferred on the establishment of Civil Judge, Paoni. As per Clauses 3 to 5 of the appointment order, the appointment was purely on temporary basis and liable to be

terminated at any time without notice. The petitioner made a complaint against Civil Judge, Junior Division posted at Paoni about sexual harassment. The said complaint was referred to the Committee duly constituted under the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013. The committee has inquired into the matter and held the delinquent guilty.

4. The petitioner requested for transfer to Sakoli vide application dated 18.09.2021, on which on the very day, she has been transferred to Sakoli on the establishment of Civil Judge Junior Division, Sakoli. While the petitioner was working at Paoni, Assistant Superintendent, two Special Assistant Public Prosecutors and three peons working on the establishment of Civil Court, Paoni made complaint against the petitioner. In turn, the Principal District Judge/ Disciplinary Authority initiated preliminary inquiry, in which prima facie substance was found. Accordingly, the Disciplinary Authority has initiated Departmental Inquiry (No. 3/2021). Memorandum and articles of charge were supplied to the petitioner delinquent. She has also submitted statement of defence and on denial of charges, full-

fledge Departmental Inquiry was proceeded. Precisely, the inquiry pertains to three different charges which reads as below:-

First Charge

*(a) That on 07.09.2019 the Delinquent threatened, the Assistant Superintendent of Civil Court Pawani, to commit suicide in the Court by hanging.*

Second Charge

*(b) Secondly that the delinquent acted unseemly and has demanded money to Ld. APP working in Pawani Court, to clean their office.*

Third Charge

*(c) Thirdly that she shirked the work such as keeping the pipe valve off, opening the lock of Court building, switching on the water pump and other official minor works by tossing responsibility on each other.*

*Hence, the charges against the Delinquent are of misconduct falling under Rule 3 of the Maharashtra Civil Services (Conduct) Rules.*

5. The Inquiry Officer concluded that the charges against the delinquent (petitioner) amounting to the misconduct under Rule 3(1) (ii) and (iii) of the Maharashtra Civil Services (Conduct) Rules, 1979 are proved which reads as below:-

*“(a) Threatening the Assistant Superintendent Shri S.M. Ninave working at Civil and Criminal Court Pawani, to commit suicide in the Court.*

*(b) Demanding amount of Rs. 100/- per month to Ld. APP working at Pawani Court to get cleaned their office.”*

6. Likewise one another Departmental Inquiry (No. 7/2021) was initiated against the petitioner under the allegation that while she was serving on the establishment of Civil Judge, Sakoli, she has broken computer set, thereby causing loss to the government property worth Rs.43,250/-. The said inquiry was concluded by the Inquiry Officer holding that the charges levelled against the petitioner were proved vide report dated 24.03.2021. In the wake of said position, the petitioner was terminated during probation period vide order dated 31.03.2021 which reads below:-

*“सौ. रेखा रविंद्र तिघरे, सफाईगार, दिवाणी न्यायालय, कनिष्ठ स्तर, साकोली यांची सेवा असमाधानकारक आढळून आल्यामुळे त्यांची सेवा तात्काळ प्रभावाने दिनांक 31/03/2021 च्या मध्यान्हानंतर पासून समाप्त करण्यात येत आहे.”*

7. It is petitioner's contention that without verifying the allegations levelled against her by the Court Staff, Disciplinary

Authority has initiated the Departmental Inquiry, in which opportunity was not given. The petitioner would submit that though the Departmental Inquiry has been conducted against her, she was not informed about the decision taken by the authority. It is petitioner's contention that the action of abrupt termination is actuated with malafides. According to the petitioner, since she has been terminated after Departmental Inquiry, it amounts to stigma. The Disciplinary Authority has not followed Rule 8(25) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. It is submitted that the action of Disciplinary Authority is simpliciter of punitive nature. It is emphasised that termination order though does not specify the reason, however it was on the background of fully dressed Departmental Inquiry. According to the petitioner, since she made complaint against the Judicial Officer, she has been victimized.

8. On the other hand, respondents, justified the action of termination. The respondent No.1 Disciplinary Authority has contended that petitioner has threatened to the Assistant Superintendent, Paoni to commit suicide for which complaint was received. The Assistant Public Prosecutor has also complained that the

petitioner was raising monetary demand to clean the premises. Third complaint was filed by staff members that the petitioner is shirking the responsibilities of Sweeper. It is specifically stated that on the basis of preliminary inquiry report, full-fledge Departmental Inquiry was initiated against the petitioner, in which charges were proved.

9. The Disciplinary Authority further stated that a complaint was received that the petitioner has damaged the computer unit for which another inquiry was initiated in which also charge was proved. It is stated that on 02.03.2021, the petitioner wrote a letter to the Civil Judge, Sakoli informing that she has lost mental balance and is likely to commit suicide. The petitioner has circulated video clips on WhatsApp containing allegation against the Judicial Department. The petitioner's explanation was called, in which she admitted about preparation of video clip, but denied its circulation. The finding of both inquiry reports was communicated to the petitioner, however she refused to accept the same. Lastly, it is contended that the petitioner being on probation the termination is well justified on account of unsatisfactory work.

10. The Respondent No. 2 High Court Administration submitted that the petitioner was on probation for the period of two years. As per appointment order, her services were purely on temporary basis liable to be terminated at any time. It is stated that no inquiry is required to terminate the services of probationary employee, if his/her services are not found satisfactory during the period of probation. It is stated that the termination order merely states that the services are unsatisfactory and thus, it does not put stigma on the petitioner. It is contended that the foundation for termination can be the conduct that the petitioner threatened to commit suicide and demanded money to clean the office of the Public Prosecutor amounting to misconduct. It is reiterated that passing of simple order of termination during probation does not suffer any stigma and therefore, the impugned order cannot be held to be illegal.

11. The petitioner's appointment on the post of Sweeper on probation for the period of two years is not in dispute. The record itself indicates that on the charge of misconduct two full-fledged inquiries have been conducted, in which charges were proved. In such a background, the petitioner has been terminated on 31.03.2021

during probation for simple reason that her services are not found satisfactory.

12. The question before us is whether the order of termination dated 31.03.2021 can be recorded as an order of termination simpliciter or is *ex-facie* stigmatic. The learned Counsel for the petitioner primely canvassed that while the petitioner was serving as a Sweeper on the establishment of the Civil Judge, Junior Division and Judicial Magistrate First Class, Paoni, she made a complaint against the Judicial Officer (Judicial Magistrate First Class) to the District Court Gender Sensitization and Sexual Harassment of Women and Internal Complaints Committee. On the basis of said complaint, the Committee has conducted enquiry in which substance was found against the delinquent. It is the petitioner's contention that since she raised the grievance about sexual harassment, she was victimized by filing various complaints by staff members.

13. It is her contention that the action of termination was actuated with *mala fides* as only because she made a complaint of sexual harassment. Departmental Enquiries was initiated against her

on false allegations. According to the petitioner, considering the said background, the order of termination is illegal. Learned Counsel for the petitioner relied on the decision in case of ***Vishaka and ors. vs. State of Rajasthan and ors. (1997) 6 SCC 241*** to contend that the Supreme Court has prescribed guidelines and norms to safeguard the women at working place against the sexual harassment. The petitioner would submit that those guidelines have not been followed. Our attention has been invited to paragraph 17 of the judgment wherein duty of the Employer in working places and preventive steps have been incorporated. In that light, it is submitted that the Employer is obliged to ensure that there is no hostile environment towards women at work place. Undisputedly, by virtue of those guidelines, internal Committees have been constituted at work place to ensure safety of women and to prevent sexual harassment at work place.

14. In case at hand, the Internal Committee has enquired the grievance of the petitioner and also filed a report, which would take its own course. However, as regards to the petitioner's termination during probation period is concerned, it has different features. The termination order *per se* is not based on the ground that the petitioner

made a grievance of sexual harassment. Rather two fact finding enquiries have been conducted against the petitioner about misconduct. In the circumstances, it requires to be assessed whether the termination amounts to a stigma or simpliciter one.

15. The petitioner further relied on the decision of Calcutta High Court in case of *Rina Mukerjee @ Rina Jameshedji vs. The State of West Bengal and ors. (Writ Petition No. 24935(W) of 2013) with one another passed on 14.08.2014*, wherein a temporary employee of a Private Limited Company was terminated during her probation period. In said case it was found that the Employer did not constitute a Committee in terms of the decision of the Supreme Court in case of *Vishaka and ors. vs. State of Rajasthan and ors. (supra)*. Moreover, on facts, it has been held that there was no material to show unsatisfactory performance of the employee and in said context, the termination was set aside. The said decision was in the context of different facts which would not assist.

16. The petitioner further relied on the decision of the Gauhati High Court in case of *Smt. Sarita Das vs. The Union of India and ors.*

*(Writ Petition @ No.6403 of 2011) passed on 03.04.2014.* The said decision is distinguishable on facts. In said case a full fledged departmental enquiry was conducted against the permanent employee, which resulted into dismissal.

17. Learned Senior Counsel appearing for the respondent heavily relied on the decision of the Supreme Court in case of *Pavanendra Narayan Verma vs. Sanjay Gandhi PGI Of Medical Sciences and anr. (2002) 1 SCC 520* to contend that whenever a probationer challenges his termination, the first task will be to apply the test of stigma or the 'form' test. It is argued that in said decision, a full-scale departmental enquiry has been conducted, wherein the Enquiry Officer has submitted a report followed by termination. It is argued that merely on account of unsatisfactory work, the petitioner was terminated. Our attention is invited to the observations (paragraph 29) holding that, in order to attract a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job. It is argued that the termination is punitive only if a full-scale enquiry was conducted on the allegations involving moral turpitude or misconduct culminated in a finding of guilt. In this

regard, it is argued that though Enquiry Officer has submitted a report that charges are proved however Disciplinary Authority has not acted upon the report. Always Disciplinary Authority can accept the report or direct for further enquiry or may not act upon. In substance, it is submitted that unless and until the Disciplinary Authority accepts the report, the requirement as laid down in above decision does not fulfill to term the termination as stigmatic.

18. We have also gone through the decision cited by the respondent in case of *Dr. Vijayakumaran C.P.V. vs. Central University of Kerala and ors. (2020) 12 SCC 426*, wherein the Supreme Court has reiterated the principle as ruled in case of *Pavanendra Narayan Verma vs. Sanjay Gandhi PGI Of Medical Sciences and anr. (supra)*. In said decision, it has been expressed that in order to ascertain whether the termination is stigmatic the material need not be contained in the order of termination of the probationer, but might be contained in any document referred to in the termination order.

19. During probation period an employee has no right to seek continuation. The only question is to see whether the order is

simpliciter termination or a stigmatic. Undisputedly, the impugned order dated 31.03.2021 merely conveys that the work of the employee is unsatisfactory. There is no reference of any of the earlier enquiries held against the employee. During the course of probation period the employer has received various complaints regarding discharge of the duties and in order to ascertain the allegation the Disciplinary Authority has ordered the enquiries. Undisputedly on the basis of three set of complaints, one enquiry was conducted through the Enquiry Officer, who held that charges are proved. Likewise, on the complaint of causing damage to public property, one another enquiry was held, wherein, similarly, the Enquiry Officer opined that charges are proved.

20. We are in agreement with the submission made by the learned senior counsel appearing for the respondent that, those enquiries were not concluded since the Disciplinary Authority has not acted upon the enquiry reports. In terms of Rule 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, the Disciplinary Authority, when he himself is not enquiry authority, has an option to agree the report or direct further enquiry or to take further steps in the

shape of serving enquiry report with his reasons and call the written representation of the government servant. Admittedly, the Disciplinary Authority has not acted on the enquiry reports hence it cannot be said that the enquiry reports have been accepted. Moreover, there is no reference of these enquiries in the action of termination.

21. A temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he/she may be retained. In the case of probationer who has no right to post termination of his services, finding him/her unsuitable for the post is valid and does not attract Article 311 of the Constitution of India. Even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influenced the employer to terminate the services. Under the terms of appointment, power flows which cannot be said as penalty or punishment. Dropping of departmental enquiry was inconsequential. As observed in *Ajit Singh v. State of Punjab* [(1983) 2 SCC 217 : 1983 SCC (L&S) 303 : AIR 1983 SC 494] the period of probation gives time and opportunity to the employer to watch the work, ability, efficiency,

sincerity and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation.

22. The Employer found the services of the government servant unsatisfactory on certain material. Therefore, in terms of the conditions of appointment services have been terminated. There is no material to hold that the action either was actuated with *mala fides* or amounts to stigma, therefore the impugned action cannot be faulted with.

23. In view of that petition stands dismissed.

(SMT. M. S. JAWALKAR., J.)

(VINAY JOSHI, J.)