



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

WRIT PETITION NO.4101 OF 2019

Shri Kailash Bhagwan Nagrale .Vs. State of Mah. and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.D. Borkute, Advocate for petitioner.

Shri A.M. Kadukar, A.G.P. for respondents/State.

Shri A.P. Thakare, Advocate for respondent Nos.4 and 5.

CORAM : ANIL L. PANSARE, J.

DATED : 26/11/2024

1. On 11.11.2024, the following order has been passed:

“Argument is that service conditions of the petitioner will be either governed by order of appointment or Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964. If the appointment is to be governed by the conditions of appointment order, the power to remove petitioner lies with the Joint Director, Non Contagious Diseases, Health Services, Mumbai. The petitioner, however, has been removed by Chief Executive Executive Officer, Zilla Parishad, Chandrapur. If, the appointment is governed by Rules of 1964, the petitioner ought to have been afforded an opportunity of hearing before passing order of removal in terms of judgment passed by this Court in Prakash Khushalrao Dabhade Vs. Zilla Parishad, Aurangabad and Ors., 2000(4) Mh.L.J. 609.

The order impugned does not delve upon these two issues.

Counsel appearing for Zilla Parishad as well as learned A.G.P. who appears for Joint Director, Mumbai and Additional Commissioner, Nagpur shall take instructions and justify the impugned orders.

Stand over to 19.11.2024.”

2. The learned counsel for respondent No.5 has tendered across bar the submissions of respondent No.5 which is taken on record.

3. I have gone through the submissions to find that except answering the issue raised in the order, the respondent No.5 has said all other things. The respondent No.5 has stated that the petitioner's behavior and working was not proper. He was avoiding work given to him and misguiding the superior officers and therefore, he was relieved from the service vide order dated 17.12.2018 and the matter was referred to the Joint Director, Health Department, Mumbai for further action. The learned counsel for the respondent No.5 submits that the petitioner ought to have approached the Joint Director, Health Department, Mumbai for redressal of his grievance.

4. I do not find substance in the aforesaid submissions inasmuch as the petitioner has been relieved from the service by the respondent No.5. In the appointment order dated 11.04.2018, the condition No.3 empowers the Joint Director, Health Department, Mumbai to relieve the petitioner from the service. Thus, the Chief Executive Officer could not have relieved the petitioner. There is yet another condition i.e. condition No.6 which permits the Chief Executive Officer to terminate the services where the work of the employee is not satisfaction and the report to that effect is made by the Controlling

Officer. It appears that respondent No.5 has terminated the service in terms of condition No.6 of the appointment order.

5. The learned counsel for the petitioner has relied upon the judgment passed by the Division Bench of this Court in the case of ***Prakash Khushalrao Dabhade Vs. Zilla Parishad, Aurangabad and Ors., 2000(4) Mh.L.J. 609*** to content that in such circumstances, the respondent No.5 ought to have given opportunity of hearing to the petitioner before relieving him from service. The Division Bench was dealing with the appointment of a driver who was appointed on yearly basis which is a technical breach of one day. The appointment was found to be temporary. The petitioner was relieved from the service on the ground of misbehavior and misconduct but without holding departmental inquiry. The Division Bench, in this context has made the following observations ;

“11. On going through the contentions raised in the Petition and the Affidavit in Reply, it is very clear that the petitioner was first appointed as a temporary servant for one year as per the order dated 28.8.1984. On expiry of that period, again fresh order was issued on 15.10.1985 and he was given further appointment for one year. So, there is no doubt that the petitioner was a temporary employee of Zilla Parishad, Aurangabad.

12. It is also very clear that a complaint was made against the petitioner and an enquiry was held by the Assistant District Health Officer. He submitted his report and then the services of the petitioner were terminated, as per the order dated 12.5.1986. No departmental enquiry, as contemplated by rules 4 and 6 of the 1964 Rules, was held against the petitioner.

The stand taken by the respondents is that, as the petitioner was temporary employee, it was not necessary to hold any departmental enquiry against him before terminating his services.

13. It is also very clear that the services of the petitioner are terminated because of the complaint lodged against him and a preliminary enquiry held by the Assistant District Health Officer. This was not a termination merely because he was a temporary servant and his services were no more required by the Zilla Parishad. The foundation of the order dated 12.5.1986 is the complaint made against the petitioner and the preliminary enquiry report by the Assistant District Health Officer.

14. Now, it is well settled law that even a temporary Government servant cannot be removed from service without holding departmental enquiry, if the complaint is there regarding misbehaviour or misconduct, and without giving him an opportunity to defend himself as per the rules prescribed for the departmental enquiries.”

6. Thus, the Division Bench has held that even a temporary government servant cannot be removed from the service without holding departmental inquiry, if the complaint is regarding misbehavior or misconduct. The Court further held that such employee cannot be removed without giving an opportunity to defend himself as per the rules prescribed for the department inquiry.

7. The issue involved in the present case is thus, covered by the aforesaid judgment. The order impugned is unsustainable.

8. Though the petitioner had prayed for reinstatement, the learned counsel for the petitioner submits that the purpose will be served if the petitioner is

compensated for the period from 07.12.2018 to 11.03.2019. The request being reasonable, is accepted. Hence, the following order :

- a The Writ Petition is **partly allowed**.
- b. The impugned order dated 07.12.2018 passed by the Chief Executive Officer, Zilla Parishad, Chandrapur and the impugned order dated 29.04.2019 passed by the Additional Commissioner, Nagpur Division, Nagpur in Z.P. Appeal No.62/2018-19, are hereby quashed and set aside.
- c. The respondent No.5 shall compensate the petitioner by giving salary from the period from 07.12.2018 to 11.03.2019 which the respondent No.5 shall pay within twelve weeks from today.

Writ petition is **disposed of** in above terms.

(ANIL L. PANSARE, J.)