

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12803 of 2024

Kamal Keshav Kamble

....Petitioner

: Versus :

The Chairman, D.S. Shikshan
Sanstha, Panchgani & Ors.

....Respondents

Mr. Aditya S. Raktade, *for the Petitioner.*

Mr. Pandit Kasar, *for Respondent Nos.1 and 2.*

Ms. Iqra Qureshi *i/by. Mr. Vikram N. Walawalkar, for Respondent No.3.*

Mr. Y.D. Yadav, *AGP for Respondent No.4-State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 12 March 2025.

P.C. :

1) The petition challenges the judgment and order dated 5 April 2024 passed by the Presiding Officer, Savitribai Phule, Pune, Shivaji and Solapur University and College Tribunal (Pune) (*College Tribunal*) dismissing Appeal No.2/2018 filed by the Petitioner. The Appeal was filed by the Petitioner challenging termination order dated 15 June 2018.

2) I have heard Mr. Raktade, learned counsel appearing for the Petitioner, Mr. Kasar, the learned counsel appearing for Respondent

Nos.1 and 2-Management, Ms. Qureshi, the learned counsel appearing for Respondent No.3 and Mr. Yadav, the learned AGP appearing for Respondent No.4-State. I have also gone through the findings recorded by the College Tribunal while dismissing Petitioner's Appeal. I have gone through the records of the case filed alongwith the petition.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the Petitioner came to be appointed on the post of Assistant Professor in Marathi subject vide appointment order dated 16 October 2017. Her services were placed on probation. It appears that under the University Statute No.198 of the Statutes framed by the Shivaji University, the probation is to be for a period of 24 months. Before completion of the period of probation, services of the Petitioner came to be terminated vide order dated 15 June 2018.

4) Perusal of the termination order dated 15 June 2018 would indicate that the same is a mere discharge order without recording any reasons for terminating the services of the Petitioner. The Petitioner was a probationer and the employer decided to relieve her from services on account of failure to satisfactorily complete the period of probation.

5) Mr. Raktade would contend that the termination is founded on misconduct as complaints made against the Petitioner by other teachers and students have formed the basis for her termination. He would accordingly submit that opportunity of hearing ought to have been granted to the Petitioner before terminating her services. He would rely upon University Statutes in support of his contention that the Principal is required to maintain assessment reports of teachers on probation in the proforma prescribed by the University for every six

months. That there is nothing on record to indicate that any assessment reports were maintained. That Petitioner ought to have been given copy of any assessment made by the Respondent-Management. He would rely upon judgment of this Court in Senapati Prataprao Gujra Education Society, Kanadewadi & Anr. Versus. Shri. Keshav Pandharinath Deshmukh and Ors.¹ in support of his contention that termination without holding enquiry is *ab-initio void*.

6) However, the termination order dated 15 June 2018 does not indicate that any complaint filed against the Petitioner was the basis for terminating her services. It therefore cannot be held that the termination is founded on allegations of misconduct.

7) As observed above, Petitioner was a mere probationer. A choice is available to the employer either to pass an innocuous order of discharge if the probationer's performance is found satisfactory or to conduct enquiry and dismiss the probationer from service if he/she is found to have committed any misconduct. A simple order of discharge does not come in the way of an employee seeking another employment, whereas, a dismissal order passed against an employee may come in his way of securing alternate employment. Ordinarily, when the performance of a probationer is not found to be satisfactory, there is no need of conducting any enquiry and the services of the probationer can be discharged simpliciter by passing an innocuous order. It appears that Petitioner's short stint of service for about 8 months was riddled with complaints of misbehaviour. Petitioner herself has placed on record copies of various complaints received against her. The Management in the present case has decided not to conduct any enquiry into the truth of the allegations made in the complaint. Instead,

¹ *Writ Petition No.3668/2017 decided on 5 September 2018*

it has decided to discharge the services of the Petitioner without recording any stigmatic reason. This, in my view, is permissible for the employer when it comes to the services of a probationer. In every case, an employer cannot be forced to conduct an enquiry when a probationer is found to be not working upto the standard expected by the employer. In a situation where the performance is found unsatisfactory after taking into consideration the overall circumstances of the case, the right of the employer to pass a simple order of discharge must be recognised. It cannot be contended that in every case, enquiry needs to be conducted even against the probationer where complaints are received against him. An employer can discharge a probationer by taking note of his performance involving filing of complaints and issuance of memos.

8) Mr. Raktade would contend that three employees were terminated, out of which two are directed to be reinstated. However, admittedly said two employees had attained the status of permanent employees and therefore their termination was set aside on account of failure on the part of the Petitioner-Management to conduct enquiry. However, so far as Petitioner is concerned, she admittedly did not complete the period of probation nor any order confirming her services was passed. In such circumstances, the Petitioner cannot elevate herself to the status of a permanent employee.

9) Perusal of various documents produced alongwith the petition would indicate that there were numerous complaints against the Petitioner, both from teachers as well as by the students. In the light of several complaints being filed against her, the Management has taken a decision that the Petitioner is unable to satisfactorily complete the period of probation. In that view of the matter, termination of services

of the Petitioner by passing an innocuous order on 15 June 2018 cannot be found fault with. The College Tribunal has correctly appreciated the above position and has dismissed the Appeal preferred by the Petitioner. No grave error is noticed in the approach of the College Tribunal.

10) Reliance by Mr. Raktade on judgment of this Court on *Senpati Prataprao Gujar Education Society* does not cut any ice. In that case, specific ground of misconduct was mentioned in the letter terminating the services of the Respondent-employee. In the present case, no specific reason for termination of services of the Respondent is indicated in the discharge order. The judgment in *Senpati Prataprao Gujar Education Society* would accordingly have no application to the facts of the present case.

11) On the other hand, reliance by Mr. Kasar on the judgment of this Court in *The Principal, Rizvi College of Arts, Science and Commerce & Anr. Versus. (Dr.) Mrs. Reshmi Tyagi & Anr.*² appears to be apposite. This Court held in para-33 as under :

33. The above discussion would lead me to conclude that the respondent no.1 being a probationary appointee, could not have claimed any legal right to the post. The petitioners, taking into consideration the performance of respondent no.1, have issued an order of discharge simplicitor or a simplicitor termination without casting a stigma, in such an event the respondent no.1 cannot question the order of termination so as to label such an action as punitive, requiring an inquiry to be conducted before initiating such an action. It is well settled that in case of a probationary appointment, the employer has every right to bring cessation of the employment of a probationary without assigning any reason. This is also borne out by Statute 418 as in the present case. As regards the probationary appointment, employer would be

² 2017 (6) ALL MR 547

justified not to extend the period of probation or confirm the probationary and / or terminate the services of the probationary on or before the expiry of the period of probation. These are the complete prerogatives of an employer in case of a termination which is without any stigma and when it is not a punitive action as per the test as laid down by the Supreme Court in the case of Abhijeet Gupta (supra). The suitability of the probationary was a matter in the absolute discretionary domain of the petitioners in the present case. There was sufficient material available with the petitioners to take a decision discharging the services of respondent no.1 and not continuing the probation. No reason for such termination was required to be given. Such right to discharge the services of respondent no.1 cannot be curtailed in the absence of any material to show that the order of discharge simplicitor was ostensible and in reality what was meant was a punishment to be awarded to respondent no.1.

12) After considering the overall conspectus of the case, I am of the view that the order passed by the School Tribunal does not suffer from any patent illegality or perversity. No ground is therefore made out for entertaining the present petition. The petition is accordingly **dismissed.**

[SANDEEP V. MARNE, J.]

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