

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

WRIT PETITION NO. 7096 OF 2024

Jayashri Amardeep Shinde	}	
Age : 48 years, Occ: Service,	}	
Residing at: Flat No. 303,	}	
Dharmeshi Signature, Kondwa,	}	
Pune - 48	}	Petitioner

Versus

1. MAHATRANSCO	}	
Director (HR), A Government	}	
Company, Maharashtra State	}	
Electricity Transmission Co. Ltd.	}	
Having office at: Prakashganga	}	
8 th Floor, Plot No. C-19, E Block,	}	
Bandra-Kurla Complex, Bandra	}	
(East), Mumbai – 400 051.	}	
2. Chief General Manager (HR)	}	
Having office at: Prakashganga	}	
7 th Floor, Plot No. C-19, E Block,	}	
Bandra-Kurla Complex, Bandra	}	
(East), Mumbai-400 051.	}	Respondents

Dr. Uday Warunjikar a/w Mr. Sumit Kate and Ms Priyanka Bhoite
i/b Mr. Vaibhav Gaikwad for the Petitioner.
Mr. Neel Halekar for the Respondents.
Ms D. S. Deshmukh, AGP for the Respondent – State.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.
DATE : 17th APRIL, 2025**

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner has approached this Court on account of her termination from service vide Order dated 05th April, 2024. In relation thereto, the Petitioner has put forth prayer clause (a) and (b), which read as under:

“a) Be please to call for record and proceeding of termination order dated 5th April 2024 issued by the respondent herein. After going through the legality, validity and propriety of the same be please to quash and set aside the same and restore the service of the petitioner herein in the establishment of the respondent herein.

b) Be please to direct the respondents herein to restore the service of the petitioner herein in the establishment of the respondent herein.”

3. We have conducted an extensive hearing in this matter on 02nd April, 2025 and today, we have gone through the Petition paper-book and the reports cited by the learned Advocates.

SUBMISSIONS OF THE PETITIONER

4. The Petitioner was subjected to a departmental inquiry by virtue of the charge-sheet dated 23rd March, 2022. Three allegations were levelled against her which are as under:

A) The experience certificates presented by the Petitioner at the time of her selection and appointment in 2006, do not inspire confidence to conclude that she had the three years work experience in the Personnel Department and, therefore, she has lied to the employer for securing employment.

B) Though the Petitioner was transferred to Mumbai on promotion vide Communication dated 18th April, 2018, she retained the official quarter at Pune on the ground of health conditions. She consistently kept on applying for continuation of the occupation of the said quarter.

C) The Petitioner was expected to disclose if her close relative received any contract with the same company to perform any ancillary work. Her husband got the gardening contract for one year and this was not disclosed.

5. Before we delve upon the charges levelled upon the Petitioner, the conclusions of the Enquiry Officer and the proportionality of the punishment awarded to her, it is relevant to record that the Petitioner had responded to an advertisement published in 2006. She was selected and appointed on 20th October, 2006 as a Senior Clerk. On 13th September, 2010 she was promoted as the Head Clerk. On 07th December, 2012 she was promoted as a Deputy Manager. On 19th April, 2018 she was promoted as Manager HR Department.

6. The charge-sheet has been issued after the Respondent-Company received an anonymous complaint. There was no name or signature on the complaint. On the envelope, since the Postal Authority requires some name to be mentioned, a name was mentioned as C. D. Raut, Near Ganpati Mandir, Mulshi, Pune 020-2621441. This anonymous letter was received by the Chairperson and Managing Director of the Respondent-Company. Based on such anonymous complaint, the Vigilance Department was directed to investigate against the Petitioner. The Vigilance Department

tendered an eighteen pages report. The sum and substance of the report is primarily on the following aspects:

- A) The appointment of the Petitioner was made in 2006 due to political pressure.
- B) The experience certificates tendered by the Petitioner were not in relation to her experience with the Personnel Department.
- C) Though she has a disability certificate dated 23rd December, 2002 indicating her permanent vision impairment at 40% and a fresh certificate dated 30th January, 2019 indicating permanent vision impairment of 60%, the Vigilance Cell noted an element of suspicion.
- D) The Vigilance Cell expressed a view that immediate action needs to be taken against the Petitioner under Rule 85(L) r/w Appendix KH, Clause 9 and Clause 22 of the Maharashtra Rajya Vidyut Pareshan Company Karmachari Sevaviniyam, 2012 (hereinafter referred to as “the 2012 Rules”), because there is a possibility of political pressure being exerted upon the Company.
- E) Her husband received the gardening contract for one year

due to political pressure.

F) The Petitioner continued to use the official accommodation at Pune though she was promoted and transferred to Mumbai.

7. The learned Advocate for the Petitioner has relied upon the provisions of the Rights of Persons with Disabilities Act, 2016, more particularly, Section 2(r), 2(s), 2(y) and the specified disability of visual impairment under Clause B(b)(ii) of the Schedule under Clause (zc) of Section 2. He then submits that the Petitioner is held guilty of alleged misconducts with regard to lack of qualifications and non-disclosure of the husband's one year gardening contract and based on such conclusion, the Petitioner has been terminated from service by Order dated 05th April, 2024.

8. He submits that though the employer may assume, for the sake of assumption, that the certificate indicating 60% visual impairment is suspicious, there is no dispute that the Petitioner was issued with the disability certificate in 2002 indicating a permanent visual impairment of 40%, prior to her appointment. Merely because

the Respondent suspects the certificate issued in 2018 indicating the visual impairment having progressed to 60%, it cannot be ignored that she has an undisputed visual impairment disability of 40%.

9. The learned Advocate for the Petitioner further submits that though the charge-sheet speaks of a wrongful act committed by the Petitioner of tendering experience certificates which do not satisfy the requirement under the advertisement, there is no evidence led by the Respondent, nor is there any conclusion by the Enquiry Officer that the Petitioner had manipulated the records, or had indulged in interpolations or had doctored documents to mislead the employer. The only conclusion drawn by the employer is, that the experience certificates tendered by the Petitioner do not satisfy the requirement of three years work experience of the Personnel Department.

10. Though it has been canvassed by the learned Advocate for the Respondent Company on instructions, that the Petitioner is guilty of relying upon documents which do not indicate her experience of three years in the Personnel Department, there is no

evidence and conclusion in the Enquiry Officer's report that she had resorted to interpolations or manipulations of the documents. She had merely tendered three documents, like, (a) the certificate of the Pune University Revaluation Division indicating that the Petitioner had worked as a Clerk for six months, (b) the certificate issued by an Educational Trust indicating that she was working as a Teacher for one year and (c) a certificate from another Education Society of having worked as a Rector for three months. These were different from the certificates that she had produced before the Respondent Company indicating her experience in Administration with the Pune University, Public Relations Office of 1 year and 10 months and the experience of being a Teacher on clock hour basis for 11 months and 15 days, and with the Education Society at Loni as a Rector for 2 months and 15 days.

11. He, therefore, submits that whatever documents she had with her, at the time of her selection, were tendered before the Respondent Company. A Departmental Enquiry was conducted by the Respondent on the basis of an anonymous complaint. The Respondent did not even care to verify the anonymous complaint by

calling upon the person whose name was mentioned only on the covering envelope in order to assess whether such anonymous letter is mischievously sent by any person. All the documents tendered by the Petitioner were verified by the Respondent at the time of her first appointment on 20th October, 2006. Thereafter, she was promoted to the post of Head Clerk on 13th September, 2010 followed by a promotion to the post of Deputy Manager on 17th December, 2012 and then the last promotion as a Manager in the HR Department on 19th April, 2018.

12. It is further canvassed that, the fact that the Petitioner suffered a disability of 40% visual impairment before her selection and appointment, has not been disputed or disproved. The fact of continuing to occupy the accommodation at Pune without any evidence that she was allocated a company residential quarter at Mumbai, led to the conclusion by the Enquiry Officer that the said charge is not proved. Since she continued to occupy the quarter at Pune, as there was no quarter allocated to her at Mumbai, her HRA was also deducted for continuing to occupy the Pune residence.

13. Insofar as the husband receiving a gardening contract for one year, the Enquiry Officer has concluded that neither any loss has been caused to the Company, nor is there any evidence to indicate that the Petitioner was involved in any manipulation for securing such contract for her. It was a case of irregularity.

SUBMISSIONS OF THE COMPANY

14. The learned Advocate for the Company has vehemently opposed this Petition on the basis of the Affidavit-in-Reply filed by Shri Mangesh Madhukar Shinde, Chief General Manager (HR) dated 28th May, 2024. He also refers to Rule 12 of the MSETCL Employees Service Regulations, 2012, which reads as under:

*“12. Wherever it is found that an employee, who was not qualified or eligible in terms of the Recruitment Regulations etc., for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he shall not be retained in service. Before terminating the services of such employee, a Show Cause Notice shall be served on him by giving 7 days time to submit the reply. If no reply is submitted within given time or if reply is submitted within given time by the employee, after considering the same, his services should be terminated and he should be relieved from the services of the Company. The **Format-3 & Format-4** of Show Cause Notice and Service termination order, respectively may be referred to for guidance.”*

15. He, therefore, contends that false information furnished by the Petitioner would result to the cancellation of her appointment and her termination. It is canvassed by the Respondent that it is immaterial as to whether the documents were true or false. The fact that the Petitioner tendered those documents in response to the advertisement, is an act of fraud. Though she may be having the certificates which were produced before the Authority at the time of her selection, if they do not satisfy the prerequisite qualification of work experience, the appointment is bad in. Insofar as the husband receiving a gardening contract for one year, the Respondent contends that the Petitioner should have disclosed this fact to the employer after her husband got the said contract in 2018.

16. It is further canvassed on the basis of the pleadings in the Affidavit that the Respondent required the work experience of 3 years in Administration. What was tendered by the Petitioner was an experience of 1 year and 10 months as an Administrator in the PRO Office of the Pune University, experience of 11 months and 15 days as an Assistant Teacher and the experience of 3 months and 15 days

as a Rector. This would not satisfy the requirement of 3 years work experience in an Administrative Department. In the above backdrop, the Respondent justifies the order of termination from service.

ANALYSIS AND CONCLUSIONS

A] Anonymous Complaint

17. Insofar as entertaining of an anonymous complaint or complaints by strangers or passer-by, this Court has passed an Order in Writ Petition No. 5973 of 2020 (***Hemraj Jagannath Fegade V/s. The State of Maharashtra and Others***), on 23rd June, 2021 and the Order dated 23rd October, 2024 in Writ Petition No. 2492 of 2024 (***Nishant Namdeorao Gatkhal and Another V/s. The State of Maharashtra and Others***). This Court has directed the State Instrumentalities and Statutory Authorities to refrain from entertaining anonymous complaints/ complaints by bystanders/ complaints by strangers etc. Hence, the State Government issued a G.R. dated 18th February, 2025 through it's Higher and Technical Education Department, thereby prohibiting State Instrumentalities from entertaining such complaints. A reference has also been made

in the G.R., to the Judgment dated 12th December, 2018 delivered by this Court in Writ Petition No. 8987 of 2018 (***Balasaheb Vitthalrao Tidke V/s. The State and Another***), wherein this Court had directed the State Authorities not to entertain letters or recommendations or attempts made by bureaucrats or highly placed persons, which were to be treated as interference in the day to day administration of the instrumentalities.

18. In the above referred orders of this Court which led to the issuance of the G.R. dated 18th February, 2025, it is quite clear that there are certain elements in the society who send anonymous complaints or under fictitious names or who are bystanders or strangers to the institution, claiming to be leaders of self-styled organizations. They lodge complaints by targeting select few employees and the employers buckle under pressure of such outfits and initiate enquiries against their employees who have settled in employment for decades.

19. In our view, the Respondent should not have entertained such a complaint purely for the reason that this would

embolden strangers and so called self proclaimed leaders from chasing or persecuting employees. In view of the above, we record our displeasure as regards the conduct of the Respondent Company in entertaining an anonymous complaint and initiating action against the Petitioner, who is a person with disability (PwD), who had settled in employment for 16 years and was granted three promotions during the course of her employment.

B] Charges levelled on the Petitioner

20. Insofar as the first charge levelled upon the Petitioner is concerned, it is contended that the Petitioner has misled the employer by tendering such certificates (which have been referred to herein above), which do not satisfy the work experience requirement of the Respondent. We find from the record of the enquiry, as adverted to by the learned Advocates, that the Respondent does not allege that the Petitioner had indulged in interpolation or manipulation/manufacturing of the certificates. What is canvassed is, that the certificates tendered by the Petitioner do not satisfy the work experience criteria.

21. Naturally, a question crops up and to which the Respondent does not have any answer, that, had not the Respondent selected the Petitioner after perusing and scrutinizing her experience documents, with eyes wide open, she would not have been appointed. The Judgment relied upon by the Respondent in ***Khub Ram V/s. Dalbir Singh and Others*** {(2015) 8 SCC 368}, is distinguishable on facts. In the said case, the Appellant did not have the essential experience qualification and produced unreliable documents containing unauthorized corrections, meaning interpolations. The courts below noticed a fraud played by the Appellant, and it was concluded that he had indulged in fraudulent means and had carried out interpolations by making fraudulent entries in the service record. An attempt to play a fraud was proved. Hence, the Appellant was denied equity.

22. In the case in hands, we find that there is no such allegation against the Petitioner. Without evidence, a charge cannot be proved. Without a charge, there cannot be a conclusion of guilt. In the instant case, there is neither such charge of manipulation of

documents, making fraudulent entries in the documents or making unauthorized corrections, nor is there any such conclusion in the Enquiry Report. The Petitioner has merely tendered her documents to the Respondent Company indicating the work that she had done in three different establishments. She desired to seek better opportunities and in her endeavour to acquire new employment, she tendered the documents which were verified by the Respondent, and after completion of such verification exercise, she was appointed.

23. A remark was purportedly made on her documents in 2006, that indicates that someone from the office of the Respondent had made a mention, that the experience criteria is not met by the Petitioner. Keeping in view that the Petitioner is a person with disabilities (40% visual impairment), though the record does not specifically so indicate, it appears that the Respondent overlooked the deficiency in experience. This does not attribute oblique motives or a fraudulent act, to the conduct of the Petitioner.

24. In view of the above, we are required to consider as to whether the Petitioner can be faulted after 18 years of employment,

if the Respondent employer had either misread the documents indicating her experience or had overlooked the same in the light of the Petitioner being a person with disability.

25. In ***Dr. M.S. Mudhol and Another V/s. S.D. Halegkar and Others {(1993) 3 SCC 591}***, the Hon'ble Supreme Court has concluded, that when the employee continued to hold the post for 12 years, although he did not have the requisite academic qualifications, it would be inadvisable to disturb him from the post at this late stage, particularly when he is not at fault when the selection was made. It was recorded that the employee had not projected at the time of his selection, his qualifications other than what he possessed. In short, if the employee is not guilty of misrepresentation or interpolation or manufacturing of documents or indulging in a behaviour which otherwise would amount to a fraudulent act, it would be unfair, inappropriate and harsh to punish an employee for a mistake committed by the employer. It is on this count that we do not approve the order of termination by way of punishment to the Petitioner for such a conduct which is not tainted oblique motives or a fraudulent behaviour.

26. Insofar as the second allegation of occupying an official quarter made available to her at her earlier posting, even after being posted at Mumbai, the Enquiry Officer has concluded that the said charge is not proved. Nevertheless, we called upon the learned Advocate for the Petitioner to express, in fairness, as to whether she would agree to pay the rental charges. We were under the impression that the Petitioner has been granted an official accommodation at Mumbai. Though she has stated that the employer may consider recovery of rent from the Petitioner, we find that the Petitioner's HRA has already being deducted towards the occupation of the said quarter. So also, the Petitioner is not allotted any quarter at Mumbai. Hence, we may only say that if the Petitioner's HRA is being deducted for occupying the quarter at Pune, we would not indulge in making any observation.

27. Insofar as the third charge that the husband of the Petitioner had succeeded in a tender process and had received the gardening contract for one year, the Enquiry Officer has held the Petitioner guilty of not conveying this development to the employer. The Enquiry Officer has recorded that no loss or harm has been

caused to the establishment by such non-disclosure.

28. In view of the above discussion on all the charges, the evidence recorded and the findings of the Enquiry Officer, we find that the Petitioner has been blamed on the basis of an assumption that she had attempted to mislead the employer 18 years ago and secured an employment. We have elaborately dealt with this aspect and we find that the Petitioner cannot be held guilty of misrepresentation. At best, it was the Respondent who either took a conscious decision to appoint the Petitioner, being a person with disability, or was convinced that the experience supports her candidature. Whatever be the situation, the fact remains that the Petitioner cannot be disturbed after 18 years of her employment in view of ***Dr. M.S. Mudhol (supra)*** and in view of the law laid down in ***Bhagwati Prasad V/s. Delhi State Mineral Development Corporation, AIR 1990 SC 371.***

29. We, therefore, conclude that insofar as the first charge is concerned, the Petitioner not being guilty, could not have been punished. Insofar as charge No. 3, which is held to be proved,

pertains to the non-disclosure of her husband receiving a contract, which could be a minor blemish. Therefore, the punishment awarded to the Petitioner, is shockingly disproportionate to the gravity and the seriousness of the minor misconduct. So also, her past service record of 18 years, is unblemished, which is a mitigating factory. Hence, we deem it appropriate to substitute the punishment by imposing a lesser punishment of stoppage of one increment, temporarily, for a period of two years.

30. In view of the above conclusions, this **Writ Petition is allowed in terms of Prayer Clause (a)**. The Petitioner would stand reinstated in service with the Respondent Company. By way of punishment with reference to charge No.3, the stoppage of increment as noted above, shall be made effective from 01st May, 2025.

31. In the event, the HRA of the Petitioner has not been deducted, despite occupying the quarter after her transfer to Mumbai, the employer would be at liberty to deduct the said HRA in view of the Rules.

32. Insofar as back-wages are concerned, it is undisputed that there is no prayer. However, the learned Advocate for the Petitioner submits that when the Petition was filed, immediately on her termination, could she have pleaded that she is not in gainful employment and she is continuously unemployed. The learned Advocate for the Respondent has vehemently opposed the prayer and submits that the Petitioner should not be granted even a penny towards the back-wages.

33. The Petitioner has been imposed with involuntary unemployment by the illegal termination order, which we have set aside. To balance the equities and since the Petitioner is a lady employee with disabilities (PwD), we direct the Respondent to pay 50% back-wages to the Petitioner, without interest, if the said amount is paid to her within 60 days.

34. **Rule is made partly absolute** in the above terms.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)

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