

(2000) 07 BOM CK 0095

In the Bombay High Court

Case No : Writ Petition No. 1577 of 1987

Balkishan Kapure

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 10-07-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 226

Citation : (2000) 3 ALLMR 711 : (2001) 1 BomCR 243

Hon'ble Judges : V.K. Barde, J; R.J. Kochar, J

Bench : Division Bench

Advocate : N.N. Shinde, for the Appellant; S.S.B. Gosawi, A.G.P. for respondent No. 1 and M.K. Pisolkar, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The petitioner has prayed for a writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, to quash and set aside the order dated 23-7-1987 passed by the respondents Nos. 2 and 3 to terminate his service as a Senior Assistant (Accounts). We have carefully gone through the proceedings and we have also heard Shri Shinde, the learned advocate for the petitioner. The petitioner has also prayed for reinstatement with full backwages and all other consequential benefits such as promotion etc.

2. In this petition the petitioner has averred that he belongs to scheduled caste category and he possesses Master's degree in Commerce. In a hope to get employment he had enrolled himself with the Divisional Employment Exchange at Nanded. He has narrated in detail how he had undergone the whole rigmarole of the procedure and formalities to succeed in getting an appointment order. The petitioner has set out in unnecessary minute details regarding his interview and select list etc. The net result of the whole story is that by an order dated 5-3-1987 he came to be appointed in a vacant post of Senior Assistance (Accounts) in Works Department of Zilla Parishad. It appears that in giving all

minute particulars the petitioner wants to impress upon us that it was a permanent employment which he joined with great hopes, which appear to have been completely shattered when he got an order of termination dated 12-8-87, whereby the respondents Nos. 2 and 3 appear to have discontinued him from service. The petitioner is challenging this order before us in this petition. The petitioner has also made allegations of mala fides and the action being vindictive against him. The petitioner has further tried to evoke our sympathies by narrating his miseries in life and the harsh fact that inspite of his being fully qualified he was thrown out of employment unceremoniously, without any rhyme or reason and in contravention of the principles of natural justice.

3 . We are in between the law and the life. We certainly have sympathies for the petitioner but we are also bound by the law. We cannot give life content to the harsh law. We have to consider the strict legal position in the light of the two documents i.e. the appointment order dated 5-3-87 and the order of termination dated 12-8-87 to decide the question of legality and validity of the latter, we will have to consider the former i.e. the appointment order which is very clear in itself. According to this order of appointment the petitioner was appointed as Senior Assistant (Account) for a temporary period of one year in a vacant post in the Building Department (South). In the appointment order the respondents have stipulated 10 conditions of appointment. The first condition is that the appointment was of a temporary nature and was only for one year or until the list of the candidates selected by the Selection Board is received, whichever would be earlier in the point of time. By this condition it was made very clear to the petitioner that his appointment would come to an end if any of the two contingencies takes place. It was made dependent on the Selection Board's list for appointment in his place. It was further made clear to him that his services could be discontinued without any reason and at any time and that he will not have any right or lien on appointment. There are other terms and conditions but the last one is the condition No. 10 which is rather serious and it proved to be fatal in nature. It is stated that his appointment was from the lapsed selection list of 1984 and it would be treated as valid only if the Government approves the same and if the same is not approved, the petitioner would be discontinued without any reason. Though, it is a fact that by order dated 4-8-1987 he was assigned certain duties and soon thereafter, he received a shock of his life in the order dated 12-8-1987 terminating him from employment. This termination order makes it very clear that the initial appointment was only for a temporary period and subject to the condition No. 10 stipulated in the order of appointment that his appointment was from the selection list of 1984 which had lapsed and that if the Government did not approve the same, his services would be discontinued without any reason. It is further stated in the said order of termination that the Government had directed by its order dated 23-7-87 to cancel all such appointments which were made from the selection list which had lapsed.

4. In the aforesaid circumstances, we are not able to help the petitioner

howsoever, we might have sympathies for him and his miserable position in which he landed. The order of appointment is clear. It was only for a temporary period. There were specific terms and conditions to which the appointment was subjected. It appears that he was appointed from the selection list of 1984 which had lapsed and which did not receive approval from the State Government. It is possible that the respondents Nos. 2 and 3 might have anticipated approval and they might have felt a need to fill up a vacant post. From the appointment order it is very clear that the petitioner was not kept in dark about the conditions under which he was appointed. They have made it very clear that his appointment was till the selection list was received from the Selection Board and also only if the State Government approved the lapsed selection list of 1984. We therefore, cannot find any fault with the order of termination issued by the respondents Nos. 2 and 3 under the orders from the State Government to cancel all such appointments made by them from the lapsed selection list of 1984. We do not find any illegality or infirmity in the order of termination of the petitioner from employment. It is strictly in accordance with the contract of service stipulated in the appointment order. We fail to agree with Shri Shinde, to hold that the action of the respondents was vindictive and mala fide. It was for the State Government to approve or not to approve the selection list of 1984. Generally the life of a selection list does not exceed two years. The State Government appears to have taken a decision not to approve the selection list of 1984 and therefore, directed the respondents Nos. 2 and 3 to cancel all such appointments made from such list. Respondents Nos. 2 and 3 have acted under the dictates or orders of the State Government. We therefore, cannot find any fault with them and we cannot impute any motives on them. We therefore, do not find any substance in the challenge of the petitioner to his termination order dated 12-8-87. In the order it is mentioned that the appointments were cancelled with retrospective effect i.e. from 10-8-1987. There cannot be any termination of employment with retrospective effect if the servant is in employment on the date of the termination order. In the present case the termination order is dated 12-8-1987 and therefore, he could not have been terminated with retrospective effect from 10-8-87. The petitioner will be entitled to get two days salary if he is not paid so. The respondents Nos. 2 and 3 are hereby directed to pay to the petitioner his unpaid legal dues including the two days salary forthwith.

5. The writ petition stands dismissed. Rule is discharged. No order as to costs.