

(2015) 06 BOM CK 0154

In the Bombay High Court

Case No : Writ Petition No. 421 of 2014 and Civil Application No. 8562 of 2014

Barkunbai Dadarao Shinde

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(j), 2(s)

Citation : (2015) 06 BOM CK 0154

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : Rodge Pratap G., for the Appellant; Shelke S.D., AGP, Advocates for the Respondent

Judgement

R.V. Ghuge, J.—Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The issue raised by the petitioner is as regards termination of her services without compliance of the principles of natural justice and by way of punishment.

5. Shri Rodge, learned Advocate straight away points out at the show cause notice issued to the petitioner, dated 8.7.2013. Allegations have been set out in the said notice against the petitioner and she has been called upon to explain within 24 hours, as to why her services should not be terminated.

6. Shri Rodge then points out the order of termination dated 10.7.2013 which sets out a list of mis-conducts alleged to have been committed by the petitioner and for which she has been terminated with immediate effect.

7. The petitioner raised a grievance before the Chief Executive Officer, Zilla Parishad, Latur by preferring an appeal, contending therein that the petitioner has been terminated after having put in 16 years in service on the basis of such

allegations which have not been committed, much less proved.

8. By the impugned order dated 18.11.2013, the appeal of the petitioner has been rejected. Shri Rodge, points out that the impugned order is about a page or so and the reason adduced by the CEO for rejecting the appeal is of one sentence, which is, "The conduct of the appellant has not improved despite oral and written communications and, therefore, her services are terminated in the light of Government Resolution dated 12.4.2007. Appeal stands rejected."

9. Shri Rodge, therefore, submits that the impugned order is without reasons and without considering the fact that the petitioner is a "workman" and the ICDS Scheme under which she has been working with the respondent has been declared to be an "industry" in the light of the Division Bench judgment of this Court in the case of *Sau. Vidya Vanare Vs. The State of Maharashtra and The Zilla Parishad Buldhana*, (2011) 2 ALLMR 627 : (2011) 129 FLR 556 : (2011) 2 MhLj 221 : (2012) 2 SLJ 421 . He, therefore, submits that the principles of natural justice have been violated and the petitioner could not have been terminated in such a fashion.

10. Shri Tandale, learned Advocate for respondent Nos.2 to 4 -Zilla Parishad authorities submits that the Government Resolution referred in the impugned order empowers the Zilla Parishad to terminate the services of an Anganwadi Sevika with immediate effect if her conduct does not improve. He further submits that the Government Resolution dated 5.8.2010 enables the petitioner to avail of the remedy of approaching the Divisional Commissioner (Revenue) for the redressal of his grievance.

11. He submits that the charges levelled upon the petitioner are of grave and serious nature. She cannot be pardoned. She deserves to be terminated as her working is not proper and her conduct does not seem to improve. He, therefore, submits that the petitioner may withdraw her petition and approach the Divisional Commissioner (Revenue) or else the petition be dismissed.

12. I have considered the submissions of the learned Advocates for the respective sides, along with the learned AGP on behalf of the State. There is no dispute that the petitioner has been terminated after putting in 21 years" of service for allegedly committing several mis-conducts.

13. The learned Division Bench of this Court in paragraph Nos.8 to 11 of the *Vidya Vishnu Case* (supra) has held that an Anganwadi Sevika / Madatnis / Helper is a "workman" as the Zilla Parishad operating the ICDS Scheme is an "industry". Paragraph Nos. 8 to 11 of the said judgment read as under:-

"8.Looking to the above functions of these Anganwadi Sevikas and workers, prescribed by the Government and the very scheme which is in vogue since 1975 and the activities under the said scheme, we are of the view that the Anganwadi Sevikas and Anganwadi helpers and in particular the present Petitioner are "workman" within the meaning of Section 2(s) of the Industrial Disputes Act,

1947 and the scheme under which they are performing their work, nature of which has already been given by us above is nothing but an "industry" within the meaning of definition of "industry" as per Section 2(j) of the Industrial Disputes Act, 1947. We have no doubt that ICDS Scheme is systematic activity in which there is cooperation between employer and employee. We also find that the said function under the ICDS Scheme does not fall within the meaning of the term "sovereign function" as explained by the Hon"ble Supreme Court in the case of Surinder Mohan Vikal Vs. Ascharaj Lal Chopra, AIR 1978 SC 986 : (1978) CriLJ 764 : (1978) 2 SCC 403 : (1978) SCC(Cri) 215 : (1978) 3 SCR 434 . In the said decision in the case of Bangalore Water Supply and Sewerage Board (Supra) the case of The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, AIR 1960 SC 610 : (1960) 1 LLJ 251 : (1960) 2 SCR 866 was considered. We have therefore no doubt that the Petitioner is a "workman" and the establishment in which she has been working under Respondent No. 2 -Zilla Parishad, namely, ICDS Scheme is an "industry".

9. In the case of State of Karnataka and Others Vs. Ameerbi and Others, (2007) 1 JT 279 : (2007) 1 LLJ 996 : (2006) 13 SCALE 319 : (2007) 11 SCC 681 : (2006) SCR 329 Supp , the Hon"ble Supreme Court has held that Anganwadi workers under the said ICDS Scheme are not the holders of any civil posts and it is in that background the Hon"ble Supreme Court held that the Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 will not have jurisdiction to entertain application under the said Act. Thus, from this judgment, it is clear that the Administrative Tribunal has no Administrative Tribunals Act for any relief.

10. We are aware that the State of Maharashtra has established Labor and Industrial Courts in each District in the State, pursuant to its policy to reach the justice at the door steps of the litigants with the object of saving the expenditure of the poor litigants coming to the High Court directly. As earlier stated by us, honorarium received by Anganwadi workers or Anganwadi helpers is hardly ranging from Rs. 1,000/-to Rs. 1200/-and therefore, there is no reason why such poor workmen should rush to this Court instead of availing effective alternate remedy which is available more speedily under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Practices Act, 1971. We also would like to add that the pendency of the cases in the Labor and Industrial Courts in the State of Maharashtra and in particular in the areas other than Mumbai and Greater Mumbai has considerably reduced in the recent point of time and therefore, there is every hope of getting expeditious disposal of the cases. In view of the aforesaid alternate remedy and in view of the fact that the Petitioner alike Anganwadi Sevikas and Anganwadi helpers get honorarium ranging from Rs. 1,000/-to Rs. 1200/-per month, we hold that the Petitioner has a remedy to approach the Industrial Court in her District for implementation of the said Government Resolution dated 12.3.2008. We also hold that the remedy of approaching the Labor Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 in case of termination

being available, this Court would not entertain the writ petition in its extraordinary jurisdiction particularly when the said effective alternate remedy is available.

11. With the above observations, writ petition is disposed of leaving the Petitioner to take up alternate remedy. Rule accordingly. No order as to costs."

14. It is thus settled that the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act ") and Industrial Disputes Act, 1947 Act applies to the petitioner.

15. This Court has also considered the said aspect in the case of Arjun Singh Vs. Municipal Corporation of Delhi, (2007) 140 DLT 53 : (2007) 5 AD Delhi 407 , and has concluded that until specific Discipline and Appeal Rules are not formulated for the employees functioning under the ICDS Scheme, the Model Standing Orders would apply to them. Relevant observations of Court in paragraph Nos.11, 18, 19, 23, 24, 26, 29 and 30 are as under:-

"11.In the instant case, it is not in dispute that the termination meted out to the respondent was stigmatic and was on account of misconducts. It is also not in dispute that the petitioners are under a firm belief that the misconducts committed by the respondent have been proved and she deserves to be terminated from employment by virtue of Clause II of the Government Resolution dated 12-4-2007. The petitioners have, therefore, not shied away from this stand taken and continue to hold that the respondent is an employee, who does not deserve to be kept in employment on account of the misconducts committed and in view of the fact that the petitioners have lost confidence in her services.

"18.Needless to state, a disciplinary proceeding, which is capable of culminating into an order of dismissal from service, thereby resulting in civil death of an employee, is an extremely serious aspect of service jurisprudence Neither can charges be held to be proved by mere inference without there being any evidence on record, nor can the employer's conscience be said to be satisfied purely on the basis of calling an explanation from an employee. Holding statements of villagers to her prejudice without an opportunity to contradict them, has resulted in a gross violation of principles of natural justice.

"19.I find that in the instant case, in light of the admissions given by the witness of the petitioners before the Labour Court, not a single statement of any complainant villager was shown to the respondent. Statements recorded by the witness were not supplied to her. Documents, which form the basis and the foundation of the report of the witness, were also not offered to her. The witness admitted that he was never appointed as an Enquiry Officer and has confessed that his report led to the termination of the services of the respondent. These are damaging features so far as the case of the petitioners, is concerned.

"23.In the case of Amar Chakravarty and Others Vs. Maruti Suzuki India Ltd.,

(2011) 128 FLR 564 : (2010) 12 SCALE 536 : (2011) 1 SLR 1 , the Apex Court has reiterated that an employee need not prove his innocence in a domestic inquiry. The employer, who levels charges against an employee is under an obligation to prove the said charges.

"24.The petitioners have contended that full backwages granted to the respondent were unjustified. The petitioner is a State Instrumentality and cannot be equated with any public sector or private sector undertaking. Unless it is conclusively proved that the respondent had made a strenuous effort to seek employment and could not succeed in her efforts to gain employment, she would not be entitled to the backwages. In the absence of the same, the backwages ought not to be granted, is the contention.

"26.In the instant case, making a statement that the respondent was not gainfully employed despite attempts to seek an employment, may not be sufficient to sustain the conclusion of the grant of full backwages in favour of the respondent.

"29.In my view, for such ignorance on the part of the petitioners, it would be unusual to prevent the petitioners from not proceeding in accordance with Law against the respondent in the facts of this case. The petitioners have lost confidence in the Respondent. I am, therefore, of the view that the petitioners should be given an opportunity, to issue a charge-sheet in accordance with the Model Standing Orders against the respondent and proceed to conduct a domestic inquiry in accordance with the procedure laid down thereunder within a period of two months from today.

"30.The issue of "doctrine of relation back", in my view, will have its application in the facts of this case. If the petitioners conduct a domestic inquiry against the respondent, the ultimate result of proving the charges shall be related back to the date of termination of the respondent. The amount awarded to the respondent, is to reduce the rigours of unemployment and litigation as she cannot be faulted for the incorrect procedure adopted by the petitioners."

16. A stigmatic termination from service, without following the due procedure is an anathema. The Apex Court in the cases of Radhey Sham Gupta Vs. U.P. State [(1992) 2 SCC 21 , Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, AIR 1999 SC 983 : (1999) 81 FLR 687 : (1999) 1 JT 396 : (1999) 1 SCALE 421 : (1999) 3 SCC 60 : (1999) SCC(L&S) 596 : (1999) 1 SCR 532 : (1999) AIRSCW 605 : (1999) 2 Supreme 34 and Chandra Prakash Shahi Vs. State of U.P. and Others, AIR 2000 SC 1706 : (2000) 5 JT 181 : (2000) 4 SCALE 209 : (2000) 5 SCC 152 : (2000) SCC(L&S) 613 : (2000) 2 UPLBEC 1661 : (2000) AIRSCW 1816 : (2000) 4 Supreme 510 , have concluded that an employer may opt for a golden handshake by issuing an innocuous order of termination to a probationer. However, if the termination without departmental enquiry is founded on charges of mis-conduct and if the order of termination indicates the charges and reasons for termination, it shall

amount to a stigmatic termination which is impermissible.

17. In so far as the issue of alternate remedy is concerned, the submissions of Shri Tandale are unsustainable. Clause 5 of the Government Resolution dated 5.8.2010 provides for the redressal of any grievance regarding selections and appointments of Anganwadi Sevika / Madatnis. It does not provide for challenging the Order of the Chief Executive Officer, Zilla Parishad, terminating an employee.

18. In the light of the above, the impugned order, dated 18.11.2013, which is not only cryptic, but skeletal in nature, is quashed and set aside. The termination order dated 10.7.2013 is also set aside. The petitioner is reinstated in service w.e.f. 10.7.2013 with continuity and with 50% back wages. In the event, the respondent No.2 Zilla Parishad desires to follow the due procedure for proving the charges against the petitioner, they are at liberty to do so, provided the charges are not too stale to be raked up at this stage.

19. The Writ Petition is accordingly, allowed. Rule is made absolute.

20. Pending Civil Application, if any, stands disposed off.