

(2011) 08 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 7407 of 2010

Dharmaraj and Others

APPELLANT

Vs

Maharashtra State Warehousing Corporation and Others

RESPONDENT

Date of Decision : 22-08-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2012) 134 FLR 664

Hon'ble Judges : S.V. Gangapurwala, J

Bench : Single Bench

Advocate : Y.N. Thengre and A.A. Joshi, for the Appellant; V.N. Dankh and S.V. Dankh, for the Respondent

Final Decision : Dismissed

Judgement

S.V. Gangapurwala, J.—Heard.

The petitioner was employed with the present respondents vide appointment order dated 14.10.1988 on probation for a period of two (2) years. During the period of probation the petitioner's services were terminated by the respondent vide termination order dated 4.6.1999. The said termination order was preceded by a show-cause notice. The petitioner is also paid one month's salary. The petitioner assailed the said order of termination before the Labour Court. The Labour Court dismissed the complaint. Aggrieved thereby, the petitioner filed Revision before the Industrial Court. The Industrial Court dismissed the revision. The petitioner has assailed the said judgments in the " present petition.

The learned Counsel for the petitioner strenuously contended that the respondent has not followed Rule 16 of the Maharashtra State Warehousing Corporation (Staff) Service Regulations which mandates notice of one month or payment of seven days or one month as the case may be in lieu thereof. As the said provision is not at all followed, the termination is bad in law. The learned Counsel further contended that the respondent has also not complied the

mandate laid down u/s 25-F of the Industrial Disputes Act, According to the learned Counsel, the termination order is stigmatic and the petitioner could not have been terminated without holding an inquiry. For the said purpose, the learned Counsel relies on the judgment of the Apex Court in a case of *v. P. Ahuja v. State of Punjab and others* 2000 (85) FLR 197 (SC). The learned Counsel also relies on the judgment of the learned Single judge of the Madras High Court in a case of *Management of Kodumudi Growers Cooperative Bank Ltd. Kodumudi v. Presiding Officer, Labour Court, Coimbatore and another*, 1999 Lab. I.C. 771. to contend that payment is a condition precedent for retrenchment. According to the learned Counsel, the Courts below have failed to consider all these aspects and thereby have arrived at an erroneous conclusion.

2. Mr. Dankh, learned Counsel for, the respondents supports the order and submits that the petitioner was on probation. The petitioner is not retrenched as such provisions of section 25-F of the Industrial Disputes Act, would not be applicable. The learned Counsel submits that the termination is not stigmatic and the same is in tune with the terms of the appointment order and the Service Regulations.

3. With the assistance of the learned Counsels, I have gone through the "judgments. The factual matrix that the petitioner was appointed on 14.10.1998 on probation vide appointment order of the even date is not disputed. Show cause notice was issued against the petitioner alleging acts of misconduct but subsequently while issuing the order of termination, the said charges were not pressed and simpliciter termination order was issued on the ground of unsatisfactory work. In the case of *V.P. Ahuja v. State of Punjab and others* referred supra, the Apex Court in the facts of the said case had held that the termination of the service of an employee on the ground of unsatisfactory work was stigmatic.

4. The Apex Court in a case of *Mathew P. Thomas v. Kerala State Civil Supply Corpn. Ltd. and others*,¹ has held that appointing authority abandoning the charges of misconduct and the order terminating the services for unsatisfactory performance is not stigmatic. The facts in the present case are much akin to the facts in the case of "*Mathew P. Thomas v. Kerala State Civil Supply Corpn. Ltd., and others*" referred supra. The petitioner is paid one month's salary which is also accepted by the petitioner though under protest. Moreover, the petitioner i.e. the employee is dead. He died during the pendency of the complaint before the Labour Court. In view of the above conspectus, I do not see any error committed by the authority while passing the impugned order. The writ petition is accordingly dismissed. However, there shall be no order as to costs.