

(2000) 02 BOM CK 0033
In the Bombay High Court
Case No : Writ Petition No. 314 of 1987

Prakash Khushalrao Dabhade

APPELLANT

Vs

Zilla Parishad, Aurangabad and Others

RESPONDENT

Date of Decision : 22-02-2000

Acts Referred:

Maharashtra Zilla Parishad Panchayat Samitis (Removal of Difficulties) Rules, 1983 — Rule 6
Maharashtra Zilla Parishad, District Services (Discipline and Appeal) Rules, 1964 — Rule 4, 6

Citation : (2000) 2 ALLMR 545 : (2001) 1 BOMLR 339 : (2000) 4 MhLj 609

Hon'ble Judges : V.K. Barde, J;A.S. Bagga, J

Bench : Division Bench

Advocate : S.B. Talekar, for the Appellant; M.D. Joshi, for the Respondent

Judgement

V. K. Barde, J.—The case of the petitioner is as follows.

2. He was appointed as Driver in Zilla Parishad, Aurangabad, as per the appointment letter dated 28.8.1984 after conducting interview and other formalities. Along with him, other 24 candidates were appointed as Drivers. He resumed duty on 31.8.1984 at Primary Health Centre, Shivoor, taluka Vaijapur. The appointment was for the period of one year and it stood terminated after the expiry of the period. But, then again, he was appointed for one more year with effect from 1.9.1985.

3. A circular was issued by the District Health Officer - respondent No. 3 - on 23/27.1.1986 and all the officers and other employees of the Zilla Parishad were prohibited from driving the vehicles of Zilla Parishad either in the absence of the drivers or in the presence of the drivers. The drivers were also directed that they should not allow any officer or any other employee of the Zilla Parishad to drive the vehicle without prior permission; and it was further directed that, if it was noticed that the driver had allowed any officer or employee to drive the vehicle, action would be taken against the driver.

4. Shri Phadnis was in charge Primary Health Centre, Shivoor. He always wanted to take the vehicle for his private work and to drive the vehicle personally. The petitioner did not allow him to do so because of the circular. So, Shri Phadnis had a grudge against him. The nurses working at the Primary Health Centre, Shivoor. Miss Patil, Miss Choudhari, Mrs. Wagh and Mrs. Tamboli, at the instance of Shri Phadnis, lodged a false complaint against the petitioner on 7.4.1986. The petitioner has contended that Mrs. Tamboli and Mrs. Chavan wanted to visit Aurangabad along with the President of the Mahila Mandal, taluka Vaijapur and Smt. Bidait. They asked the petitioner to take them to Aurangabad by the vehicle of the Primary Health Centre, but the petitioner refused to take the vehicle for their personal work and also told them that there was shortage of diesel. So, all these lady employees had a grudge against the petitioner and because of that, the complaint dated 7.4.1986 was made against him. It was altogether false complaint. The petitioner had taken many of the employees and other persons to Shri Deshpande, Assistant District Health Officer, to record their statements with respect to the complaint. The members of the staff, as well as the Presidents of Mahila Mandals, Parola and Limbgaon, had given statements in writing that the petitioner did not misbehave with the nurses. The petitioner had requested Shri Deshpande that, if any enquiry was to be held, then he be heard. However, Shri Deshpande did not record the petitioner's statement.

5. No charge sheet was served on the petitioner. His explanation was not called for. No proper departmental enquiry was held against him. However, on 12.5.1986, notice of termination of his service was served upon him, informing him that his services were being terminated with effect from 5.6.1986.

6. The petitioner thereafter approached the Chief Executive Officer, Zilla Parishad, Aurangabad and requested him to reinstate him in the service. However, he was not reinstated. He, therefore, preferred an appeal before the Divisional Commissioner, Aurangabad: and in the beginning, an order was passed staying the operation of the notice of termination of service till 18.6.1986. However, thereafter, his services stood terminated. He was paid the salary of 20 days. The Additional Commissioner heard the appeal and dismissed the same by his order dated 28.1.1987. The petitioner received that order on 6.2.1987. Hence, the petitioner has filed this Writ Petition challenging the order of dismissal and the decision in appeal.

7. The basic contention of the petitioner is that no enquiry was held against him as per rules 4 and 6 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 (hereinafter referred to as "the 1964 Rules"). No proper charge sheet was served upon him. His explanation was not obtained. So, the termination is illegal. The order of termination, though mentions that his services are terminated as per sub-clause (a) of clause (vii) of Explanation to Rule 4 of the 1964 Rules, the termination is by way of punishment. There were serious allegations of misconduct against him and proper enquiry ought to have been held before passing the order of termination. The order of termination is directly

connected to the false complaint made against him. He has, therefore, prayed that the order of termination and the decision in appeal given by the Additional Commissioner, Aurangabad, be set aside and he be reinstated in service with full back wages and other service benefits.

8. The respondents have filed affidavit of respondent No. 3 and have contended that in the year 1984, some posts of drivers were vacant and at that time Selection Board was not in existence. The Chief Executive Officer was empowered to appoint drivers on such posts after calling the list of eligible candidates from the Employment Exchange. The appointment was for a short period of one year. Accordingly, the Chief Executive Officer appointed the petitioner and other drivers on temporary basis for a period of one year. After completion of one year service, technical break was given to him and fresh appointment order was issued on 15.9.1985 again for one year. It is further contended that, while on duty, the petitioner has misbehaved with female employees as well as with the President of Mahila Mandal, taluka Vaijapur. They had submitted a written complaint against the petitioner. Assistant District Health Officer, Shri Deshpande, was appointed to hold enquiry. He inquired into the complaint and found that the conduct of the petitioner was unbecoming. He also found that the petitioner was guilty of grave misconduct in behaviour with female workers. As the petitioner's services were purely of temporary nature, on receiving the report of the Assistant District Health Officer, the services of the petitioner were terminated.

9. It is the contention of the respondents that the services of the petitioner are terminated as per sub-clause (a) of clause (vii) of Explanation to rule 4 of the 1964 Rules. A temporary servant can be terminated without conducting a departmental enquiry and, therefore, the action taken by the Zilla Parishad is quite proper and legal. It is, therefore, prayed that the writ petition be dismissed.

10. The petitioner has filed rejoinder to this affidavit in reply of the respondents, wherein he has again contended that the affidavit of the respondents fully makes out his case. He has also stated that he was out of service till 25.4.1989. On that date, he got a job in Municipal Corporation, Aurangabad. However, he lost the continuity of service and other service benefits, which were given to the other drivers, who were confirmed afterwards in service in the Zilla Parishad as per the Government orders. Therefore, he has prayed that he be reinstated in service with full back wages and all other service benefits.

11. On going through the contentions raised in the Petition and the Affidavit in Reply, it is very clear that the petitioner was first appointed as a temporary servant for one year as per the order dated 28.8.1984. On expiry of that period, again fresh order was issued on 15.10.1985 and he was given further appointment for one year. So, there is no doubt that the petitioner was a temporary employee of Zilla Parishad, Aurangabad.

12. It is also very clear that a complaint was made against the petitioner and an

enquiry was held by the Assistant District Health Officer. He submitted his report and then the services of the petitioner were terminated, as per the order dated 12.5.1986. No departmental enquiry, as contemplated by rules 4 and 6 of the 1964 Rules, was held against the petitioner. The stand taken by the respondents is that, as the petitioner was temporary employee, it was not necessary to hold any departmental enquiry against him before terminating his services.

13. It is also very clear that the services of the petitioner are terminated because of the complaint lodged against him and a preliminary enquiry held by the Assistant District Health Officer. This was not a termination merely because he was a temporary servant and his services were no more required by the Zilla Parishad. The foundation of the order dated 12.5.1986 is the complaint made against the petitioner and the preliminary enquiry report by the Assistant District Health Officer.

14. Now, it is well settled law that even a temporary Government servant cannot be removed from service without holding departmental enquiry, if the complaint is there regarding misbehaviour or misconduct, and without giving him an opportunity to defend himself as per the rules prescribed for the departmental enquiries.

15. In this respect, the learned counsel for the petitioner has relied upon the ruling of Division Bench of this Court in the matter of Malti Dadaji Mahajan v. Chief Executive Officer, Zilla Parishad, Wardha. Considering the observations made in the said judgment, we hold that it was not at all proper on the part of Zilla Parishad to terminate the services of the petitioner, without holding departmental enquiry.

16. The contention of the respondents is that the provisions of sub-clause (a) of clause (vii) of Explanation to rule 4 of the 1964 Rules is applicable to the matter. That provisions reads as follows :

"4. Nature of Penalties --

Explanation .-The following shall not amount to a penalty within the meaning of this rule, namely :-

(vii) termination of services -

(a) of a Parishad servant appointed on probation during or at the end of the period of probation, in accordance with the terms of his appointment or the rules and orders governing probation, or"

17. It appears that the Additional Commissioner, Aurangabad, in his order has held that the petitioner was a probationer, because he was appointed by nomination and the services of the petitioner were terminated during the period of probation; and, therefore, the departmental enquiry is not necessary.

18. The law, which is applicable to a temporary servant regarding holding a departmental enquiry in case of allegations of misconduct or misbehaviour before

terminating his services, is equally applicable even to a probationer. So, the stand taken by the respondents that the petitioner was a probationer and, therefore, his services could be terminated as per sub-clause (a) of clause (vii) of Explanation to rule 4 of the 1964 Rules is not at all sustainable the probationer is entitled to the same protection, which is given to the temporary servant; or, for that matter, permanent servant, when there are allegations of misbehaviour and misconduct. If the order of termination is founded on such allegations, then such an order is bad.

19. There is also no substance in the contention of the respondents that the petitioner was probationer. The appointment of the petitioner was purely on temporary basis for a period of one year in the beginning and again fresh appointment was given to him after giving technical break in service for a period of one year. So, at the end of the expiry of one year, his services could have been terminated. He, in such circumstances, cannot be considered as a person appointed, to be continued in service on completion of period of probation. It may be that the Chief Executive Officer, Zilla Parishad, within the powers vested in him, had appointed the petitioner by way of nomination, but this appointment was not as per the Maharashtra Zilla Parishad District Services Recruitment Rules, 1967. The order of appointment indicates that the petitioner was appointed under the Maharashtra Zilla Parishads and Panchayat Samitis (Removal of Difficulties] Rules, 1983. The respondents have not produced on record the 1983 Rules to show that any such appointment would be an appointment on probation. The very wording of the appointment order indicates that the appointment was for the period of one year, just to overcome the temporary difficulties. So. the petitioner was not appointed as a substantive employee, to be considered as a probationer, and, therefore, clause (vi) of Rule 6 of the 1967 Rules cannot be made applicable to his services.

20. The stand taken by the respondent Zilla Parishad, as well as the Additional Commissioner, that, the petitioner was a probationer because his appointment was by nomination is not at all sustainable and, therefore sub-clause (a) of clause (vii) of Explanation to rule 4 of the 1964 Rules cannot be made applicable for termination of services of the petitioner, as done by the respondents in the order dated 12.5.1986. So, from this point of view also, the order of termination is not legal and proper.

21. Considering all these circumstances, the order of termination issued by the respondents on 12.5.1986 terminating the services of the petitioner has to be set aside. So also, the order passed by the Additional Commissioner, Aurangabad, on 28.1.1987 in appeal, has to be set aside.

22. The petitioner has prayed for reinstatement and full back wages. However, the petitioner is in service of the Municipal Corporation. Aurangabad, since 25.4.1989 and there he has become permanent employee. In such circumstances, now to reinstate him in the services of the Zilla Parishad would be a futile exercise. At the most, the petitioner would be entitled to compensation

for the loss of service during the period from 18-6.1986 to 24.4.1989. Therefore, it is being directed to the respondents that the petitioner be paid salary and allowances for the said period from 18.6.1986 to 24.4.1989, as would be due to him like other drivers then working in the Zilla Parishad in the same capacity. The said amount of salary and allowances be calculated and paid to the petitioner within the period of three months from this date.

23. With these directions. Rule is made absolute. No order as to costs.