
(2006) 03 BOM CK 0073
In the Bombay High Court
Case No : Writ Petition No. 575 of 2003

Pralhad (Dr.)

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-03-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 342

Citation : (2006) 4 ALLMR 293 : (2006) 3 MhLj 541

Hon'ble Judges : R.C. Chavan, J;D.D. Sinha, J

Bench : Division Bench

Advocate : P.C. Marpakwar, for the Appellant; Wandile, A.G.P. for Respondent Nos. 1 to 3 and Munshi, for the Respondent

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—Heard Mr. P. C. Marpakwar, learned Counsel for the petitioner, Mrs. Wandile, learned AGP, for respondent Nos. 1 to 3 and Mrs. Munshi, learned Counsel for respondent No. 4.

2. The writ petition is directed against the order dated 4th October, 2002, passed by Maharashtra Administrative Tribunal whereby the Transfer Application No. 661/1992 came to be dismissed. Mr. Marpakwar, learned Counsel for the petitioner has submitted that the petitioner was appointed on the post of Medical Officer in the Maharashtra Medical and Health Services Class-II on the basis of the recommendations of the Maharashtra Public Service Commission vide order dated 9-7-1982 on probation for a period of two years. It is contended that the respondent vide order dated 18th August, 1982, cancelled the order of appointment dated 9th July, 1982 and vide order dated 26-3-1984 issued by the State Government, services of the petitioner came to be terminated. It is contended that the order of termination was challenged by the petitioner by filing Writ Petition No. 205/84 in this Court. However, during the pendency of the petition, the Maharashtra Administrative Tribunal came to be constituted and the above referred writ petition of the petitioner was transferred to the Tribunal and

the Tribunal thereof passed the impugned order and dismissed the transfer application of the petitioner. Hence the present petition.

3. Mr. Marpakwar, learned Counsel for the petitioner has contended that the impugned order is challenged on the following ground. That the order of termination is punitive in nature and without conducting regular departmental inquiry and without following the rules of natural justice, the impugned order cannot be sustained in law. It is contended that the order of termination is based on the involvement of the petitioner in a criminal case and therefore, it is punitive in character and could not have been passed without proper departmental inquiry. It is further contended that the petitioner was not at all involved in any criminal case and therefore, the very basis for passing the order of termination is misconceived, hence the order impugned cannot be sustained in law. In order to substantiate the contention, reliance is placed on the judgment of the Supreme Court reported in V.P. Ahuja Vs. State of Punjab and Others, .

4. Mr. Marpakwar, learned Counsel for the petitioner, further contended that the respondent No. 2 in fact has issued the charge-sheet to the petitioner in the year 1987, though the said charge-sheet has not been received by the petitioner. However, the fact remains that if the charge-sheet was issued by the respondent No. 2 to the petitioner, then it was incumbent on the respondent No. 2 to conduct proper departmental inquiry as per procedure applicable in this regard by following principles of natural justice and it is only thereafter if the Inquiry Officer concluded the inquiry by holding that the charges levelled against the petitioner were proved, it was open for the respondent to terminate the services of the petitioner. However, in the instant case, without following this procedure, the services of the petitioner came to be terminated and therefore, the order of termination cannot be sustained in law.

5. Learned Counsel for the petitioner lastly contended that during pendency of the Writ Petition No. 1205/84, the petitioner was continued in service by virtue of interim order passed by this Court and even after the matter is transferred to the Tribunal, the petitioner was continued in service by virtue of the order passed by the Tribunal and retired from service on attaining the age of 58 years in the year 2002 i.e. on 31st May, 2002. The petitioner was also given provisional pension by the respondents, however, at the later point of time the respondents discontinued the said pension. It is further contended that during the pendency of the proceedings before this Court as well as before the Tribunal, the respondents permitted the petitioner to cross the efficiency bar, which means that the petitioner had satisfactory record of service and therefore, was permitted to cross the efficiency bar and if that is so, then the reason given by the respondents for terminating the services of the petitioner cannot be sustained in law.

6-7. Mr. Marpakwar, learned Counsel for the petitioner, therefore, has submitted that all these aspects were not considered properly by the Tribunal which has resulted in miscarriage of justice and therefore, the order impugned passed by

the Tribunal cannot be sustained in law.

8. Mrs. Wandile, learned AGP, for respondent Nos. 1, 2 and 3 on the other hand supported the order impugned and has contended that the order of termination is not punitive in nature and it is a termination simpliciter. It is contended that during the probation period the record of service of the petitioner was not satisfactory and therefore, the order of termination came to be issued. It is further contended that the petitioner was also involved in the criminal case and Crime No. 56/72 was registered against the petitioner for the offence punishable u/s 342 of Indian Penal Code and the petitioner was also served with the charge-sheet in the said crime. The learned AGP further submitted that the termination is a termination simpliciter. Mrs. Wandile, further contended that the contention canvassed by the learned Counsel for the petitioner that the petitioner was served with the charge-sheet is incorrect, in fact no charge-sheet was ever served to the petitioner prior to the issuance of order of termination and question of serving charge-sheet after termination does not arise. It is, therefore, contended that the order impugned is just and proper and is sustainable in law.

9. We have given our anxious thoughts to the above referred contentions canvassed by the respective counsel and also perused the judgment of the Apex Court cited by the learned Counsel for the petitioner. In the instant case, the petitioner was appointed on probation for a period of 2 years and it is well settled that during this period of probation if the performance of the candidate is not satisfactory, the employer has an absolute right to terminate the services of such employees who is on probation and whose performance during the said period is not satisfactory. In the instant case, the order of termination is issued by the department since the performance of the petitioner during probation was not satisfactory. It is, therefore, evident that it is the termination simpliciter and not the punitive one.

10. It is no doubt true that during the said period the petitioner was also involved in the criminal case. However, the involvement of the petitioner in a criminal case was not the basis for issuance of the order of termination, and therefore, the contention canvassed by the learned Counsel for the petitioner in this regard is misconceived and devoid of substance. It is well settled that if the order of termination is punitive, in that case, even if it is issued in case of temporary or an employee who is on probation, the rules of natural justice are required to be followed by conducting summary inquiry. However, in the backdrop of the above referred fact, the order of termination dated 26-3-1984 is an order of termination simpliciter and not punitive one. The law laid down by the Apex Court in the abovereferred judgment, in our considered view, in view of the facts and circumstances of the present case, is of no help to the petitioner. The contention canvassed by the learned Counsel for the petitioner that in the year 1987 the respondents have issued some charge-sheet to the petitioner is absolutely without any basis. Even otherwise, after terminating the services of the petitioner vide order dated 26-3-1984, there is no propriety in issuing the

charge-sheet to the petitioner, who already ceased to be the employee of the department, and in the circumstances, the contentions canvassed by the learned Counsel for the petitioner in this regard, in our view, are misconceived.

11. In the instant case, it is not in dispute that after the order of termination dated 26-3-1984 issued by the department, the petitioner continued to work in the department only by virtue of the interim order passed by this Court during the pendency of Writ Petition No. 1205/1984 and continued to do so during the pendency of the transfer application before the Tribunal, which, in our view, does not create any legal right whatsoever either to get regularization, nor entitles the petitioner to claim any pensionary benefits. Merely because for reasons best known to the department, the petitioner was permitted to cross the efficiency bar, that does not create any equity in favour of the petitioner nor entitles him for pensionary benefits nor the order of termination becomes invalid.

12. The writ petition suffers from lack of merit and therefore is dismissed. Interim relief, if any, stands vacated. No order as to cost.