

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 281/2015

Shri Ashish S/o Vasant Puram,
Aged about 32 years, Occu. Nil,
R/o 207, Suyog Nagar, Behind N.I.T. Garden,
Nagpur-440 015.

Applicant.

Versus

- 1) The State of Maharashtra,
Water Resources, Department Mantralaya,
Mumbai-32 through its Secretary.
- 2) The Executive Engineer Chandrapur
Medium Project Division No.1,
Chandrapur-442 401.
- 3) The Superintending Engineer Chandrapur
Pathbhandhare Prakash Mandal,
Chandrapur.
- 4) Chief Engineer, Water Resources,
Department, Civil Lines, Nagpur.
- 5) Sub Divisional Officer Echampalli
Budit Area, Sub-Division Office No.4,
Babupeth, Chandrapur- 442 403.

Respondents

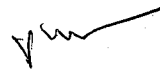
Shri G.G. Bade, P.P.Khparde, Advocates for the applicant.

Shri S.A. Sainis, P.O. for the respondent no. 1.

S/Shri V.G., A.V. & Mrs. N.A. Palshikar, K.D. Deshpande,
Advocates for Respondent nos. 2 to 5.

Coram :- Hon. Shri Rajiv Agarwal, Vice-Chairman (A) and
Hon. Shri J.D.Kulkarni, Vice-Chairman (J).

Dated :- 10/03/2017.

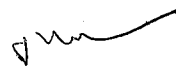


ORDER -**Per: Vice-Chairman (J)**

Heard Shri G.G. Bade, Id. counsel for the applicant, Shri S.A. Sainis, Id. P.O. for respondent no.1 and Shri K.D. Deshpande, Id. Counsel for R-2 to 5. The O.A. is heard finally at the admission stage with the consent of Id. counsel for parties.

2. The applicant has challenged the impugned order of his termination dated 26-05-2015 issued by respondent no.1. The applicant was appointed as Assistant Engineer Grade-II (Civil) vide appointment order dated 27-08-2010. The Initial probation period was for two years. The applicant was to pass the requisite departmental examination within two years or three chances. According to applicant, he took first chance to clear the examination in November,2012, but failed. In 2013 the applicant did not appear for the examination and for third chance he applied on 18-10-2014 to respondent no.5, but said chance was not given to him. It is further stated that since the applicant could not pass the examination within two years, his probation was also extended.

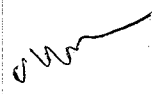
3. Vide impugned order dated 26-05-2015 the applicant came to be terminated. According to the applicant, said order of termination is illegal, malafide and contrary to the provisions of Article 14,15 & 16 of the Constitution and therefore he has prayed that the



said order be quashed and set aside and the applicant be allowed to join his duties.

4. The respondents have filed reply-affidavit. It is stated that as per the terms and conditions of the appointment order, the applicant has to clear the departmental / proficiency examination as per the Maharashtra Public Works Department Rules, 1984. Such examination was to be cleared. Thereafter he appeared for the examination in December,2012 but was absent for viva-voce and papers for General Engineering, Engineer Drawing and as such failed. Further examination was held in the year 2013, i.e., on 15-11-2013. The applicant was lethargic in submitting form. As per the circular dated 20-08-2013 issued by respondent no.3, the application was to be submitted on or before 10-09-2013 but the applicant submitted the form on 27-09-2013. In spite the chances given to him he failed to obtain form from the Deputy Engineer at Nashik, and the form was forwarded to him on 27-09-2013, the applicant returned the form on 30-09-2013. Because of the lethargic attitude on the part of the applicant he could not get hall ticket.

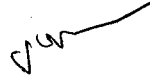
5. The respondents further submitted that the applicant was given one more chance to clear the examination in 2014, but again he failed to appear.



6. It is further stated that the C.Rs. of the applicant were communicated to him and he never challenged the said C.Rs. during his service tenure. The performance of the applicant was 'below average'. Repeated lapses were reported on the part of the applicant and number of warnings were also issued. On the basis of report submitted by the Deputy Engineer, Executive Engineer and considering the warnings issued to the applicant and his attitude, it was decided to terminate the applicant and hence the termination order is legal.

7. The learned counsel for the applicant submits that the impugned order has been issued without giving opportunity to the applicant and even show cause notice was not issued before termination. From the facts admitted on record it will be clear that the applicant was probationer and his probation period was not completed. Admittedly the applicant was to pass departmental examination within two years and three chances. The reason for termination has been given in the impugned order of termination dated 26-05-2015 which reads as under :-

“मुख्य अभियंता, जलसंपदा विभाग, सिंचन सेवा भवन, नागपूर यांना त्यांचे पत्र क्र. ३६/आस्था-३/स.अ.श्रे.२/परि. काला./२०१३, दिनांक ३.२.२०१४, क्र. २३४ आस्था (३)/आ. सअश्रे-२/परि.काला./१४ दि. २९.०८.२०१४ व क्र. २८/आस्था-३/स.अ.श्रे.२/परि.काला/२०१५, दिनांक २९.०९.२०१५ च्या अनुषंगाने असे कळविण्याचे मला निर्देश आहेत की, श्री.आशिष वसंत पुरम, सहायक अभियंता श्रेणी-२ (स्थापत्य), चंद्रपूर मध्यम प्रकल्प विभाग क्र.१, चंद्रपूर



यांनी परिविक्षाधीन कालावधीमध्ये विभागीय परिक्षा उत्तीर्ण केलेली नाही तसेच त्यांनी कामाचा अपेक्षित दर्जा प्राप्त केलेला नसल्याने शासन निर्णय क्र. नियुक्ती १०१०/(प्र.क्र.३३/२०१०)/आ.स.अ.श्रे.२, दिनांक २७.०८.२०१० मधील आदेशातील परिच्छेद क्र.१८ मधील तरतूदीनुसार श्री.आशिष वसंत पुरम, सहायक अभियंता श्रेणी-२ (स्थापत्य) यांची सेवा या आदेशाच्या दिनांकापासून समाप्त करण्यात येत आहे. ”

8. From the aforesaid order, it is clear that the applicant has been terminated on two grounds, i.e., (1) he has not passed requisite departmental examination and (2) his performance was not as expected.

9. The appointment order has been placed on record at Annex-A-2, dated 27-08-2010. In the said order it has been clearly mentioned that the applicant was appointed on probation and his probation was for two years. It is also clearly mentioned that the applicant will have to pass requisite departmental examination within two years and three chances. The clause 18 of the appointment order is very clear and specific and it reads as under :-

“सोबतच्या परिशिष्ट-१ व २ मधील उमेदवारांनी विहित विभागीय परीक्षा परिविक्षाधीन कालावधीमध्ये उत्तीर्ण होणे आवश्यक आहे. तसेच परिविक्षाधीन कालावधीमध्ये विभागीय परिक्षा उत्तीर्ण न झाल्यास किंवा कामाचा अपेक्षित दर्जा प्राप्त न केल्यास किंवा त्यांचे काम योग्य अथवा अनुरूप न आढळल्यास त्यांच्या सेवा कोणतीही पुर्वसूचना न देता रद्द करण्यात येतील. ”

10. From the aforesaid clause 18 it will be clear that passing of departmental examination and performance was the requisite qualification and in case the applicant did not clear the examination

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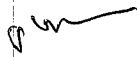
and did not keep the requisite standard of performance, his services can be terminated even without giving any notice.

11. The learned counsel for R-2 to 5 invited our attention to the various correspondence and the documents. The said documents have been filed separately in the form of a Brochure which is at paper book at page nos. 35 to 75 (both inclusive) and paper book at page nos. 133 to 154 (both inclusive) (Annex-R-1 and Annex-R-2 respectively). We have minutely perused the said correspondence. From the said correspondence it seems that the applicant was given number of chances to clear the departmental examination, but he did not clear the examination. The applicant had joined the services on 31-03-2011. He did not appear for the professional examination in the year 2011. In December, 2012 the applicant appeared for the examination but remained absent for viva-voce of General Engineering paper and paper of Engineering Drawing and as such he was declared failed. In the year 2013 the applicant did not appear and thereafter he was lethargic in not submitting the form within time and because of the applicant lethargic attitude he could not get hall ticket. The examination for the year, 2014 was held in between 26-11-2014 to 29-11-2014 and the applicant was given one more chance, but for that examination also the applicant failed to appear.



12. The correspondence placed on record by the respondent / authority clearly shows that the number of notices were issued to the applicant and chances were given to him to improve his work, however, the applicant never tried to improve his standard. He was given number of warnings. The C.Rs. of the applicant clearly shows that his work was most unsatisfactory and he was incompetent and he was having no desire to improve his work. The huge correspondence placed on record clearly shows that the work of the applicant was unsatisfactory and there was absolutely no desire on the part of applicant to improve.

13. Considering all the aforesaid aspects, it seems that the respondent / authority came to the conclusion to terminate the applicant. As already stated, the order of appointment of the applicant dated 27-08-2010 make it crystal clear that if the employees including applicant did not pass the requisite departmental examination within given time and did not keep expected standard of work, their services can be terminated without notice. The action has been taken as per this clause and we do not find any illegality in the impugned order passed by respondent no.1. We, therefore, do not find any merit in the O.A. Hence, the following order :-



ORDER

The O.A. stands dismissed, with no order as to costs.

sd/-

(J.D. Kulkarni)
Vice-Chairman (J).

sd/-

(Rajiv Agarwal)
Vice-Chairman (A).

dnk..