

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 372 OF 2021**

**DISTRICT : LATUR**

**Sanjay S/o Nandkumar Deshpande,** )  
Age : 49 years, Occu. : Service as Additional )  
Accountant in Vilasrao Deshmukh, Government )  
Institute of Medical Science, Latur, )  
R/o : Ram Nagar, AUSA Road, )  
Tq. & Dist. Latur-413531. )

.. **APPLICANT**

**V E R S U S**

1. **The Commissioner,** )  
Health Service Department, National )  
Health Campaign, Mumbai. )
2. **The Additional Campaign Director of** )  
National Health Campaign, Mumbai. )
3. **The Chief Executive Officer,** )  
Zilla Parishad, Latur. )
4. **The Dean of Vilasrao Deshmukh,** )  
**Government Institute of Medical Sciences,** )  
Latur. )
5. **The District Civil Surgeon,** Latur )  
In front of Grand Hotel, Behind Health )  
Department, Latur. )

.. **RESPONDENTS**

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**APPEARANCE** : Shri V.G. Kodale, Advocate for the  
Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate, P.O. for  
the Respondent authorities.

: Shri Sachin Deshmukh, Advocate for  
respondent Nos. 3 & 5 (Absent).  
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**CORAM** : **Shri V.D. Dongre, Member (J)**  
**and**  
**Shri Bijay Kumar, Member (A)**  
**Reserved on** : **21.12.2022**  
**Pronounced on** : **11.01.2023**  
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**O R D E R**

**(Per : Shri V.D. Dongre, Member (J))**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed challenging the impugned order of termination dated 24.06.2021 (part of Annexure A-5 collectively) issued by the respondent No. 5 i.e. the District Civil Surgeon, Latur.

2. The facts in brief giving rise to this application can be stated as follows :-

(a) The applicant was initially appointed as Additional Accountant in the office of respondent No. 5 by first appointment order dated 18.10.2010 (part of Annexure A-1 collectively) on contract basis for 11 months. Thereafter, he has been continued on the same post from 2010 onwards till 2021 by issuing the orders from time to time produced at Annexure A-1 collectively. Hence, the applicant

has completed more than 11 years of service tenure. He has rendered unblemished service.

(b) It is submitted that the applicant was appointed initially after following due procedure as law. He has worked during Covid-19 pandemic situation sincerely, for which he received testimonial certificate on 13.10.2020. He is handicapped person having permanent disability of 62% as reflected in disability certificate (Annexure A-3). Neither memo nor show cause notice nor any adverse remarks was received by the applicant in entire service tenure. However, HOD of Physiology department of respondent No. 4 issued order dated 01.06.2021 (Annexure A-4) directing the applicant to remain present in his office on 01.06.2021 at 11.30 am in Physiology Department for enquiry in respect of complaint received by the Dean against the applicant. The applicant on the given date and time remained present, but no enquiry was conducted as per the provisions of law on that day. Thereafter, the applicant received show cause notice dated 17.06.2021 (part of Annexure A-5 collectively) issued by the respondent No. 5 mentioning that the applicant was found guilty in enquiry and to show cause and to explain as to why action should not be taken against

him as per the enquiry report. No enquiry report was served upon the applicant. The applicant submitted his written explanation dated 19.06.2021 (part of Annexure A-5 collectively). However, without considering the same, the impugned termination order dated 24.06.2021 (part of Annexure A-5 collectively) is issued by the respondent No. 5.

(c) It is submitted that the said impugned termination order dated 24.06.2021 (part of Annexure A-5 collectively) issued by the respondent No. 5 is not in accordance with law. The services of the applicant were terminated without following the due procedure of law and without giving any copy of enquiry report to the applicant. The applicant therefore, made application dated 05.06.2021 to the respondent No. 5 and application dated 01.07.2021 to the respondent No. 4 (both of part of Annexure A-6 collectively) seeking copy of enquiry report. The respondent No. 4 by issuing the letter dated 08.07.2021 (part of Annexure A-6 collectively) informed the applicant that the copy of enquiry report is forwarded to the Department, which gave him posting and he can collect it from the said department. The respondents have not served the copy of enquiry report

upon the applicant. The applicant, therefore, made representation dated 12.07.2021 (Annexure A-7) to the Chief Executive Officer, Zilla Parishad, Latur i.e. the respondent No. 3 seeking recalling of termination order, but in vain. Hence, the present Original Application.

3. The present Original Application is resisted by filing affidavit in reply on behalf of respondent No. 4 by one Dr. Sudhir s/o Bhaskarrao Deshmukh, working as the Dean, Govt. Medical College, Latur, joint affidavit in reply on behalf of respondent Nos. 1, 2 & 5 by one Shri Laxman Sarjerao Deshmukh, working as Civil Surgeon, Latur and separate affidavit in reply on behalf of respondent No. 3 by one Shri Abhinav Goel, working as Chief Executive Officer, Zilla Parishad, Latur. Thereby they denied all the adverse contentions raised in the Original Application and specifically contended that the services of the applicant are terminated in view of stipulation No. 5 of the appointment letter, as the services of the applicant were not found satisfactory. As per the said stipulation, the services of the applicant were liable to be terminated without even issuing show cause notice. After termination of the contractual services, the same cannot be continued. It is further submitted that the enquiry report would show that the applicant was found misbehaving at work place

and more particularly harassing women employees at work place. Hence, the impugned termination order is legal and proper. There is no merit in the present Original Application and the same is liable to be dismissed.

4. We have heard the arguments advanced by Shri V.G. Kodale, learned Advocate for the applicant on one hand and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for respondent authorities on the other hand. Shri Sachin Deshmukh, learned Advocate for respondent Nos. 3 & 5, **absent**.

5. Learned Advocate for the applicant strenuously urged before us that the impugned order of termination of the applicant is stigmatic one and it is not sustainable in the eyes of law, when it is issued without holding Departmental Enquiry. To support the said submissions, he placed reliance on the case law of the Hon'ble High Court of Bombay, Bench at Aurangabad reported in **2001(2) Mh.L.J. 366** in the matter of **Ramnath Govind Sonawane Vs. Secretary, Janata Shikshan Prasarak Mandal, Chandanpuri and Others**, in W.P. No. 3285 of 1989 decided on 11.04.2000, wherein it is observed as follows :-

*“ The petitioner was first appointed as Assistant Teacher in the school run by respondent No. 2 as per the order dated 29.08.1979 on temporary basis. His services were discontinued after the expiry of one year. However,*

again, by order dated 17.06.1980, he was appointed as Assistant Teacher in the school of respondent No. 2 and his services stood terminated again as per the order dated 01.04.1982. The petitioner was again appointed as Assistant Teacher as per the order dated 9.6.1982 on temporary basis. However, he was relieved from service with effect from 29.04.1983, because the Secretary of Respondent No. 2-Society issued the orders of termination of his service. On 5.8.1982, a show cause notice was served on the petitioner alleging that he had committed certain misconduct. His explanation was sought and he was further informed that on receiving his explanation, the Institute will take proper decision in the matter. Thereafter, even though the petitioner submitted his explanation, no charge sheet was served on him, no departmental enquiry was held as contemplated under the said Rules and his services were terminated treating him as a temporary employee. The petitioner filed appeal before the School Tribunal, wherein it was held that the order relieving the petitioner from service dated 29.04.1983 was illegal and invalid. However, considering that the petitioner was a temporary employee, the Presiding Officer directed the Management to pay one month's salary to the petitioner referring to rule 28 (1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. In writ petition challenging the said order,

Held, that the petitioner was called upon to give his explanation regarding the alleged misconduct. However, no further steps were taken to hold enquiry against the petitioner as per the provisions of rules 36 and 37 of the Rules. When the institute was really aggrieved because of the conduct of the petitioner, then, in ordinary course, the enquiry ought to have been held and then proper orders could have been passed regarding termination of the services of the petitioner if he was found guilty. It appeared that to avoid the procedure of holding enquiry, the respondent institute resorted to this method of terminating his service. There was definitely live connection between the show cause notice issued and the order relief of the petitioner from services. The show cause notice was served on him and thereafter, the services of the petitioner stood terminated. The principles of natural justice were not followed. The petitioner may be temporary, or, may be in the service of the respondent institute for a

*fixed period, but, when such a show cause notice is issued, then definitely there is stigma on his career and he has every right to get wiped off that stigma by facing the departmental enquiry and putting up his case. Such opportunity was not given to him. Therefore, respondent Nos. 1 to 4 cannot hide behind the appointment order to claim that the termination was innocuous. So, from every angle, it was very clear that the petitioner was relieved from his services by way of punitive action and by casting a stigma on his career. In such circumstances, the provisions of rule 28(1) of the said Rules could not be resorted to. There was no question of paying only one month's salary to let the respondent Institute off the hook. The order of relief of the petitioner from service was illegal and void. However, as the petitioner had received alternative service, the direction for reinstatement of the petitioner in the service of the Respondent Institute was not given. The petitioner was to be paid full back wages for the period from June 1983 to June 1984 and thereafter the petitioner to be paid salary as per the pay scale to which he was entitled during the period of July, 1984 to May 1989."*

6. Learned Presenting Officer per contra submitted that the applicant was contractual employee and his services were terminable as per the clause No. 5 of the appointment order, if his work was being found unsatisfactory. In the circumstances as above, according to him the case law relied upon by the applicant is not applicable to the present case.

7. In the background of the case law as above, if the facts of the present case are considered, it is seen that the applicant is contractual employee and the clause No. 5 of the appointment

letter dated 18.10.2010 (part of Annexure A-1 collectively) is as follows :-

“५. आपले काम समाधान कारक नसल्यास पुर्व सुचना देवून दिलेली नेमणूक समाप्त करण्यात येईल.”

8. It is sought to be contended on behalf of the respondents that the impugned order of termination of the applicant is innocuous one. In that regard if the order dated 01.06.2021 (Annexure A-4) issued by the HOD of Physiology Department of respondent No. 4 is perused, it is seen that the applicant was called for enquiry on 01.06.2021 at 11.30 am in respect of complaint received against the applicant. The nature of complaint is not disclosed in the said order. Thereafter, according to the respondents D.E. said to have been conducted and the enquiry report was received. The applicant, however, denied any enquiry being conducted. Admittedly, copy of enquiry report is not served upon the applicant. Without serving the said enquiry report, show cause notice dated 17.06.2021 (part of Annexure A-5 collectively) was issued by the respondent No. 5 to the applicant. In that, there is reference to enquiry report observing that the charges were proved against the applicant. However, charges were not specified. The applicant filed his written explanation dated 19.06.2021 (part of Annexure A-5

collectively), thereby stating that in the enquiry he denied of having committed any misconduct. It is also submitted that if inadvertently anything has happened, he tenders apology.

9. Perusal of the affidavit in reply and more particularly documents annexed thereof and more particularly enquiry report dated 02.06.2021 (page No. 56A of the paper book) would show that the applicant alleged to have taken photographs of lady Medical Officer surreptitiously and sent photograph with good night messages to another lady Medical Officer. After having considered the said enquiry report, show cause notice dated 17.06.2021 (part of Annexure A-5 collectively) said to have been served upon the applicant and after receipt of written explanation dated 19.06.2021 (part of Annexure A-5 collectively), impugned termination order of the applicant dated 24.06.2021 (part of Annexure A-5 collectively) was issued to the applicant. This chronology of events would show that the serious allegations were made against the applicant. However, the impugned termination order is issued without serving such copy of enquiry report. The impugned order of termination is definitely stigmatic one. No doubt, the services of the applicant were contractual. However, the impugned order of termination of the applicant is not innocuous one. It is stigmatic order. It is issued without

following the principles of natural justice and without holding the Departmental Enquiry against the applicant. In view of the same, the impugned order of termination of the applicant is not sustainable in the eyes of law as per the ratio laid down in the above-said citation relied upon by the learned Advocate for the applicant in the matter of **Ramnath Govind Sonawane Vs. Secretary, Janata Shikshan Prasarak Mandal, Chandanpuri and Others** (cited supra). Facts of the present case are of similar nature as that of the facts of the citation case. Hence, the ratio laid down in the above-said citation is aptly applicable in the instant case. In the circumstances, the impugned order of termination is liable to be quashed and set aside and the applicant shall be entitled for the consequential relief thereof. We therefore, proceed to pass the following order :-

**ORDER**

The Original Application No. 372 of 2021 is allowed in following terms :-

- (A) The impugned order of termination of the applicant dated 24.06.2021 (part of Annexure A-5 collectively) issued by the respondent No. 5 i.e. the District Civil Surgeon, Latur is hereby quashed and set aside.

- (B) The respondents are directed to reinstate the applicant with continuity and to grant all the benefits including back wages.
- (C) The respondents to comply the order within a period of two months from the date of this order.
- (D) There shall be no order as to costs.

**MEMBER (A)**

**MEMBER (J)**

**Kpb**/D.B. O.A. No. 372/2021 VDD & BK 2023 Termination