

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISCELLANEOUS APPLICATION NO.564 OF 2023 IN
ORIGINAL APPLICATION NO.678 OF 2023
WITH
ORIGINAL APPLICATION NO.678 OF 2023**

Smt. Taramati Santosh Taji)
At/Post : 1104, Sarvodaya Apartment)
A Wing, 11th floor, Kher Nagar off)
Western Express Highway, Bandra (E))
Mumbai 400 051) **....APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through Secretary, Higher and)
Technical Education Department,)
Mantralaya, Madam Cama Marg,)
Hutatma Rajguru Chowk,)
Mumbai 400 032)
2. The Director,)
Directorate of Technical Education,)
Maharashtra State, 3, Mahapalika Marg)
Patra Peti No.1967, Mumbai 400 001)
3. The Maharashtra State Board of)
Technical Education, through its)
Secretary, having office at Shaskiya)
Tantraniketan Bldg, 4th floor,)
49, Kherwadi, Bandra (E),)
Mumbai 400 051) **..RESPONDENTS**

Mr. R.G. Panchal, learned Counsel for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondent No.3

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents No.1 and 2.

CORAM : **Justice Mridula Bhatkar, Chairperson**
Ms. Medha Gadgil, Member (A)

RESERVED ON : **04.12.2023**

PRONOUNCED ON : **07.12.2023**

J U D G M E N T

1. M.A.No.564/2023 is filed seeking direction to expedite hearing of O.A.No.678/2023 and thereby requesting stay to termination order dated 19.05.2023.

2. The impugned order of termination dated 19.05.2023 was not stayed because it was already implemented and O.A. is now heard finally.

3. In view of the above, M.A.No.564/2023 stands disposed of.

4. Applicant, by order dated 07.01.2021, was appointed to the post of Assistant Secretary (Technical) on the establishment of Respondent No.2 i.e. Directorate of Technical Education. Applicant was undergoing her probation period. Her service was terminated by order dated 19.05.2023 before the completion of her probation period. Hence, order dated 19.05.2023 is challenged by the Applicant.

5. Learned Counsel Mr. Panchal has submitted that the order dated 19.05.2023 is illegal, bad in law and it is issued out of vengeance. He has submitted that the Applicant was upright and straight forward person. Applicant was harassed by her seniors and colleagues on number of issues and therefore the authority did not pass the order of completion of her probation period, but terminated her service without issuing show cause notice. Learned Counsel Mr. Panchal has pointed out that the impugned order passed by the Respondents is stigmatic and therefore, the same is required to be quashed and set aside. It was necessary for the Respondents to give show cause notice and opportunity of hearing to the Applicant. Assuming it is termination order under Article 311(2) of the Constitution, yet she should have been given the opportunity by way of show cause notice. Thus, it is in violation of principles of natural justice and so also provisions of Government Resolution (G.R.) dated 29.02.2016.

6. Learned C.P.O. and learned P.O. for the Respondents has relied on the affidavit-in-reply dated 06.11.2023 filed on behalf of Respondents No.1 and 2 through Mr. Mahendra Keshaw Dawane, Deputy Director in the office of Director, Directorate of Technical Education, Mumbai. Learned C.P.O. has submitted that the Applicant was on probation and her probation period was not completed at the time of appointment. It was made clear to the Applicant that if her service is not found satisfactory

it can be terminated at any time. Learned C.P.O. has submitted that the Applicant did not accept her mistake, her performance was not satisfactory and the bills were not properly prepared and she has submitted the bills to the wrong Department. There are number of instances of her unsatisfactory performance for which the Applicant was given warning time to time and was given opportunity to improve which she failed to do.

7. We have gone through the impugned order. It is settled position of law that the person who is on probation can be removed from service and the service of such person need not be continued, if found unsatisfactory. Under such circumstances, a plain order of termination or discontinuation of service can be issued. The G.R. dated 29.02.2016 pertains to probation period of the Government servant. Clauses 6 and 7 of the said G.R. is reproduced below :

“६) परिवीक्षाधीन कालावधितील शिस्तभंगविषयक प्रकरणे :-

- १) शासन सेवेतील परिवीक्षाधीन अधिकारी / कर्मचारी हा सुध्दा शासकीय कर्मचारी म्हणून गणला जावा आणि त्याच्या विरुद्ध कोणत्याही प्रकारची गैरवर्तणुकीची तक्रार असल्यास, तक्रारीचे गांभीर्य लक्षात घेऊन, त्या अनुषंगाने कारवाई करण्यापूर्वी योग्य ती चौकशी करण्यात यावी.
- २) प्रारंभिक चौकशी अंती असा कर्मचारी महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ मधील नियम ५ च्या तरतुदीनुसार सेवेतून काढून टाकणे किंवा बडतर्फ करणे अशा जबर शिक्केस पात्र ठरण्याची शक्यता असल्याचे आढळून आल्यास, त्याच्या विरुद्ध सदर नियमातील नियम ८ खाली विभागीय चौकशी सुरु करावी. विभागीय चौकशीची कार्यवाही पूर्ण होईपर्यन्त अशा कर्मचा-याच्या सेवा समाप्त करण्यात येऊ नयेत. परिवीक्षा कालावधि मर्यादित स्वरूपाचा असल्याने चौकशी पूर्ण होण्यास अधिक कालावधि लागत असेल तर अशा परिस्थितीत संबंधित परिवीक्षाधीन अधिकारी/ कर्मचारी यांचा परिवीक्षा कालावधि शासनाच्या मान्यतेने चौकशी पूर्ण होईपर्यन्तच्या कालावधिपर्यन्त वाढविण्यात यावा. चौकशीचा निष्कर्ष प्राप्त झाल्यावर त्या निष्कर्षानुसार तातडीने कार्यवाही करावी.
(शासन परिपत्रक, दिनांक २१ मार्च, २०००)

७) सेवेतून कमी करणे :-

- अ) जर परिवीक्षाधीन अधिका-याने कामाचा अपेक्षित दर्जा प्राप्त न केल्यास आणि / किंवा विहित विभागीय परीक्षा, जर काही असल्यास, परिवीक्षावधीमध्ये उ-तीर्ण न केल्यास आणि

अशा त-हेने त्याचे काम किंवा वर्तणूक अयोग्य अथवा अननुरूप आढळल्यास, तो सेवतून कमी करण्यास पात्र ठरेल. (शासन परिपत्रक, दिनांक ७ मार्च, १९८३)
 ब) परीक्षाधीन अधिकारी / कर्मचारी कामाचा अपेक्षित दर्जा प्राप्त करित नसल्यात आणि / किंवा विभागीय परीक्षा, भाषा परीक्षा परीक्षा कालावधिमध्ये उ-तीर्ण न झाल्यास, त्याची सेवा समाप्त करावयाची असल्यास परीक्षा कालावधि उ-तीर्ण (नियमानुसार अनुज्ञेय वाढीव कालावधिसह) संपल्यानंतर सेवा समाप्त करण्यात यावी. (शासन परिपत्रक, दिनांक २१ मार्च, २०००)”

Thus, sub Clause (1) of Clause (6) states that if at all there is any complaint against a Government servant who is undergoing probation period and if at all that Government servant may be liable to major punishment the proceeding under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 is to be initiated.

8. Let us advert to the impugned order. The Applicant is blamed for disobedience towards her subordinate, arrogant behaviour with colleagues, committing mistakes in the work and for which holding the office responsible, pressurize the higher officers, even instances of her misconduct etc., the order undoubtedly is stigmatic. The power vests with any Government to remove the employee from the service on the ground of misconduct. However, misconduct is required to be proved and also opportunity is to be given to the delinquent officer by following the principles of natural justice. Hence, order dated 19.05.2023 is not sustainable in law.

9. Learned Counsel has also prayed for reinstatement with back-wages. He has submitted that it is illegal termination and therefore she is entitled to back wages. On this point learned

Counsel has relied on the judgment of Hon'ble Supreme Court in the case of **Deepali Gundu Surwase Versus Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and Ors. reported in (2013) 10 SCC 324.**

10. Learned P.O. opposed this point stating that since the Applicant has not worked so she is not entitled to any pay and allowance on the principle of 'No Work No Pay' policy.

11. Applicant was terminated from service in May, 2023. Since then till today she has not worked. However, in this matter 'No Work No Pay' will not be applicable in view of the ratio laid down by the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase (supra)** wherein the Hon'ble Supreme Court has considered the word 'reinstatement' as it means to place again in a former position. It is also held that if the employer wants to deny back wages to the employee, then it is up to the employer to prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The Hon'ble Supreme Court has held that,

“22. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

The Hon'ble Supreme Court while discussing this issue has relied on the ratio laid down in the case of **Hindustan Tin Works**

(P) Ltd. Versus Employees reported in (1979) 2SCC 80

wherein, it is mentioned that there cannot be a strait-jacket formula for awarding relief of back wages for relevant considerations which is to be taken into account. However, full back wages would be a normal rule and the party objecting to it must establish other opposite consideration. The discretion can be used but it is to be used in judicious manner.

12. In the present case by payment of back wages to the Applicant no financial burden is imposed on the Respondents and hence we order reinstatement of the Applicant with back wages.

O R D E R

- (A) O.A. is allowed.
- (B) The impugned order dated 19.05.2023 is found illegal and bad in law. Hence, the same is quashed and set aside. Applicant is entitled to back wages.
- (C) Applicant be reinstated in service within three weeks from the date of this order.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

prk