

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 427 of 2022 (D.B.)

Anil Vasantao Bhalerao,
aged about 58 years,
R/o 104, Prathamesh Apartment,
Manewada Road, Nagpur, 440024.

Applicant.

Versus

1. State of Maharashtra,
through its Secretary,
Department of Agricultural and Animal Husbandry,
Dairy Development and Fisheries 15-A, Manralaya,
Mumbai-32
2. The Commissioner of Agricultural
Office of Agricultural Commissioner,
Central Building, Shivaji Nagar, Pune -05.
3. The Divisional Joint Director of Agricultural,
Nagpur Division, 7th Floor, Administrative Building No. 2,
Civil Lines, Nagpur.

Respondents.

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.
Shri A.M. Ghogre, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 13/07/2023.

JUDGMENT

The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023,dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final

disposal, then regular matter pending before the Division Bench can be disposed off finally.

2. Heard Shri G.K. Bhusari, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents. The learned counsel for both the parties have consented for final disposal and argued the matter finally.

3. The case of the applicant in short is as under –

The applicant was selected in the cadre of Maharashtra State Agricultural Services Group- A against the reserved post for Scheduled Tribe (S.T.) candidate. On 26/03/1992, he was appointed on the post of Agricultural Development Officer. The probation period of applicant was for a period of two years. The respondents have not confirmed the applicant in service and continued him on probation. On 02/02/2019, the applicant was suspended by respondent no.1. On the same date, charge sheet was served by respondent no.1. Caste Validity Certificate was not issued by the Caste Scrutiny Committee. It was pending for a long time before the Caste Scrutiny Committee. After the direction by the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.3254/1998, the caste validity of the applicant was decided on 19/07/2019. The caste of the applicant "Thakur" is validated by the Caste Scrutiny Committee. The departmental inquiry was started, but it is not completed. The

departmental inquiry was initiated by the respondents on the ground that the applicant has not submitted the Caste Validity Certificate. Now the caste of applicant is validated. As per the charge sheet, the second charge is of absenteeism.

4. It is the case of applicant that without completing the departmental inquiry, the applicant was terminated as per the order dated 29/11/2021 on the ground that the applicant had not completed the probation period and the applicant has not passed the departmental examination.

5. The O.A. is replied by the respondents and submitted that there is no merit in the O.A. and liable to be dismissed.

6. The learned counsel for the applicant has pointed out the order dated 29/11/2021. From the perusal of this order, it appears that the applicant is terminated from the service on the ground that he has not passed the departmental examination. It also appears that the applicant has not completed probation period satisfactorily. There is nothing on record to show that the applicant was issued any notice before the order dated 29/11/2021.

7. The M.A.T., Principal Bench, Mumbai in O.A.No.114/2022 with connected matters, decided on 06/02/2023 has held that without issuing any notice before the termination on the ground of non

completion of probation period is held to be violative of Article 311 (1) of the Constitution of India. The para nos.6 and 7 of the Judgment are reproduced as below –

“6. The case of the applicant stands on merit. The facts unfolded before us disclose that the Respondent-Government has allowed the applicant to work even after 3 years of the stipulated period given for passing the departmental examination. Once the applicant is allowed to continue on the same post and thereafter promoted to the higher post, the Respondent-State loses the right to take any action against the applicant on this ground. It is not the case of that the Respondent-State was kept in dark by the applicant about passing of the departmental examination. His service record was before the Respondent-State and yet he was given promotion. Thereafter, he was allowed to continue for 12 years.

7. We are surprised to know the fact that the Respondent-State terminated the services of the applicant without giving notice to the Applicant which is violative of Article 311 (1) of the Constitution of India. We do not accept the submissions made by the learned P.O. and so also the averments made in the affidavit in reply dated 03.06.2022. We make it clear that the principle of ‘No Work No Pay’ will not come in the way of the applicant as the applicant was illegally terminated by the Respondent-State.”

8. During the course of submission, learned counsel for the applicant has pointed out the Judgment of Hon’ble Supreme Court in the case of **Karnataka State Road Transport Corporation and Another Vs. S. Manjunath** with connected matters. The Hon’ble Supreme Court has held that “termination of services of probationer--extension of automatic extension of probation period--maximum period of probation is as prescribed in the rules or in the appointment

order including the extendable period--mere non-extension of probation where it can be extended does not imply automatic confirmation. Rather the presumption is of automatic extension of probation in the absence of any confirmation order. However, on expiry of maximum period prescribed for probation, if the employee is allowed to continue it carries presumption of automatic confirmation and after that the employee cannot be discharged as probationer for his unsatisfactory work and conduct-- For that purpose, he will have to be given a proper charge-sheet and opportunity to rebut the same--"

9. In the present case, the applicant was continued by the respondents for a period of 30 years. After completion of 30 years without recording any reason, the applicant is discharged from the service. As per the submission of learned counsel for the applicant no any departmental inquiry is pending in respect of probation period.

10. As per the submission of learned P.O., the departmental inquiry is pending in respect of misconduct. Whatever it may be, but it is clear from the order dated 29/11/2021 that the service of the applicant is terminated without issuance of any notice to him. No any opportunity was given to the applicant. There is no finding of Inquiry Officer about the misconduct. Nothing is on record to show that the charges against the applicant are proved. The applicant was continued in service for a long period of 30 years.

11. The Hon'ble Rajasthan High Court in the case of ***Rajendra Kumar Versus The Chairman, Rajasthan State Road Transport Corporation and others*** has held that “*termination of service of a probationer, if the services of a probationer are terminated on the charges of misconduct, though without holding an enquiry, such a termination order cannot be termed an order simplicitor which is otherwise punitive in nature - Even a probationer is entitled to protection against such imputations - It is obligatory and compulsory for the authority to comply with the principles of natural justice before taking any such action and has to pass a well reasoned speaking order.*”

12. In the present matter, there is nothing on record to show that in the departmental inquiry charges are proved against the applicant. Nothing is on record to show that misconducts are proved before the Inquiry Officer. The order dated 29/11/2021 shows that the applicant has not passed the departmental examination. Without issuing any notice to the applicant, his services are terminated on the ground that he is a probationer. The applicant has completed 30 years of service.

13. In view of above Judgments, the applicant is entitled for all the benefits though he was on probation. It was obligatory and

compulsory for the respondents to comply the principles of natural justice before taking any such action.

14. In view of the Judgment of Hon'ble Supreme Court in the case of **Karnataka State Road Transport Corporation and Another Vs. S. Manjunath**, after expiry of maximum period of prescribed for probation, if the employee is allowed to continue it carries presumption of automatic confirmation. The applicant was allowed for 30 years. Therefore, he is presumed to have completed probation.

15. The Hon'ble Punjab and Hariyana High Court in the case of ***Anil Kumar Chauhan Versus State of Haryana and Another*** has held that "*Completion of maximum period of probation Legal effect Employee allowed to continue in the post on completion of maximum period of probation is deemed to have been confirmed by implication - Such employee cannot be thrown out of employment after 5 years as if he is a probationer. Hence, petitioner is entitled for all benefits.*"

16. In the present matter, the applicant is continued in service for a period of 30 years. His services are terminated on the ground that he has not completed the probation period satisfactorily.

17. Continuation of service for a long period of 30 years deemed to be confirmed. Hence, the termination order dated 29/11/2021 appears to be not legal and proper.

18. In view of the above cited Judgments, it is clear that even the probation is continued for a long time that does not mean that he can be thrown out from the service without issuing notice. As per the above cited Judgments, it appears that if the probation is not completed within a stipulated time or within an extended period, then it is deemed to be confirmed / completed. The applicant was in the service for about 30 years. There is no any finding against the applicant in respect of his misconduct.

19. In view of the above cited Judgments, the termination order dated 29/11/2021 appears to be illegal and liable to be quashed and set aside. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned termination order dated 29/11/2021 is hereby quashed and set aside. The respondents are directed to grant all service benefits to the applicant within a period of three months after the date of receipt of this order.
- (iii) No order as to costs.

Dated :- 13/07/2023.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 13/07/2023.