

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.837 OF 2019

District : Mumbai

Smt. Disha Kesharao Pajai.)
Aged : 42 years, Working as Assistant)
Charity Commissioner being transferred)
to Dhule [Nashik Division] from)
Brihanmumbai in the office of belownamed)
Respondent No.2 and Residing at)
C/o. Dr. [Smt] Pratibha Bind, Flat No.1203,)
Siddhivinayak Mahima, Sector – 34,)
Kamothe, Panvel, Navi Mumbai.)..**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary and)
Law Advisor, Law & Judiciary)
Department, Mantralaya,)
Mumbai – 400 032.)
2. The Charity Commissioner.)
(M.S), Mumbai having office at)
Charity Commission Bhavan,)
3rd Floor, 83, Dr. Annie Beasant Road,)
Mumbai – 400 018.)...**Respondents**

Shri Bhushan A. Bandiwadekar, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 15.09.2020

J U D G M E N T

1. The Applicant has challenged the Communications dated 07.08.2018 and 15.06.2019 issued by the Respondent No.1 – the Government thereby withdrawing quasi-judicial work from her invoking jurisdiction u/s 19 of the Administrative Tribunal Act, 1985.

2. Briefly stated facts giving rise to the O.A. are as under:-

The Applicant is serving in the cadre of Assistant Charity Commissioner. She was appointed as Assistant Charity Commissioner, Amravati in terms of order dated 07.10.2015 by Respondent No.1 – Government. As a Assistant Charity Commissioner, she was to perform administrative as well as quasi-judicial functions arising out of Maharashtra Public Trust Act. While she was serving as Assistant Charity Commissioner, Mumbai, by communication dated 07.08.2018, Respondent No.1 has withdrawn her quasi-judicial powers attributing certain misconduct to her. Later, by order dated 15.06.2019, the Government informed her that quasi-judicial work should not be allotted to her till completion of D.E. initiated against her. This communications dated 07.08.2019 and 15.06.2019 are under challenge in the present O.A. contending that quasi-judicial work has been withdrawn arbitrarily without following the principle of natural justice. No opportunity of hearing or submitting explanation was given prior to issuance of impugned orders. Besides while attributing the charge of misconduct, no reasons or details of alleged misconduct are mentioned while withdrawing judicial functions in impugned orders. Though, the D.E. was initiated by issuance of charge sheet dated 07.08.2018, it is still pending though it was required to be completed within six months. She claims that her Confidential Report of preceding years are 'A+' and 'Good'. She contends that she is subjected to mental harassment, agony and humiliation by withdrawing her quasi-judicial work without following due process of law.

3. Respondent Nos.1 and 2 resisted the O.A. by filing Affidavit-in-Reply (Page Nos.52 to 69) *inter-alia* denying that the impugned communication suffers from any illegality. Respondents sought to justify the action of withdrawal of quasi-judicial work attributing certain misconduct to the Applicant. In this behalf, Respondent No.1-Government contends that in view of complaints and reports of Joint Charity Commissioner and Deputy Charity Commissioner received against the conduct and behavior of the Applicant, the Government had taken decision to withdraw her quasi-judicial work to maintain discipline in the department. The Respondents thus sought to attribute insubordination, arrogance, erratic behavior and judicial impropriety to the Applicant while functioning as Assistant Charity Commissioner and withdrawal of quasi-judicial work found necessitated to maintain discipline in the department. Thus, the Applicant allegedly abused her position as Assistant Charity Commissioner. As regard D.E., the Respondents contend that initiation of D.E. and withdrawal of quasi-judicial work are two different aspects and the D.E. has nothing to do with the withdrawal of quasi-judicial work. On these grounds, the Respondents sought to contend that the impugned orders being of purely administrative in nature it need not be interfered in judicial review and prayed to dismiss the O.A.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned orders mainly on the following grounds :-

- (i) The principles of natural justice are not followed by giving opportunity of hearing to the Applicant.
- (ii) The impugned orders are arbitrary, stigmatic and thereby the Applicant is subjected to humiliation and mental harassment.
- (iii) There is no specific Rule empowering the Respondents to withdraw the quasi-judicial work.

5. Per contra, the learned Chief Presenting Officer submits that the impugned orders are purely administrative orders of simple withdrawal of quasi-judicial work without touching other administrative work, which was necessitated on account of various complaints about insubordination arrogance and erratic behavior of the Applicant while performing quasi-judicial work. She has further pointed out that there is no reduction in other pay and perks of the Applicant and she is already doing other administrative work. She has further pointed out that regular D.E. is also initiated for the serious charges of misconduct and it is on the verge of completion. She, therefore, submits that the impugned orders need not be interfered with in limited jurisdiction of judicial review.

6. At the very outset, material to note that the Applicant was appointed as Assistant Charity Commissioner by order dated 7th October, 2014 and her appointment was on two years' probation. As per specific condition in appointment order (Page Nos.23 to 25 of Paper Book), her appointment was subject to confirmation of completion of probation period satisfactorily. Admittedly, till date, she is under probation and there are no orders of confirmation of probation. She was also subjected to departmental enquiry by issuance of Charge-sheet dated 07.08.2018 wherein also she is shown still under probation. Suffice to say, though the Applicant was appointed in 2014, she has not completed probation period satisfactorily. Needless to mention that there is no automatic confirmation of probation on completion of period of probation. The period of probation is a period of interim employment which is not permanent and the permanency of the employer depends upon various factors. During the period of probation, the employee has to show that he/she is able to carry the job/duties efficiently and satisfaction of the employer/department is *sine-qua-non* for completion of probation period. These aspects need to be borne in mind while appreciating the matter in issue in the present O.A.

7. Indisputably, only quasi-judicial work of the Applicant is withdrawn and not entire work. The Applicant being Assistant Charity Commissioner was to perform administrative as well as quasi-judicial functions arising out of the provisions of Maharashtra Public Trust Act. Furthermore, there is no reduction in pay and allowances or other service benefits. As such, it cannot be equated with the case of suspension.

8. Shri Bandiwadekar, learned Advocate for the Applicant sought to place reliance on the decision of Hon'ble Supreme Court in AIR 1970 SC 150 (A.K. Kraipak & Ors. Vs. Union of India), particularly Para No.20 which is as follows :-

“The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.-The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon there- after a third rule was envisaged and that is that quasi- judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi- judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala, Civil Appeal No.990 of 1968, D/- 15-7-1968 = (AIR 1969 SC 198) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether

the observance of that rule was necessary for a just decision on the facts of that case.”

9. Indeed, in the aforesaid Judgment, the Hon'ble Supreme Court makes it clear that “whenever a complaint is made before a Court that some principles of natural justice had not been contravened, the Court has to decide whether the observance of that Rule was necessary a just decision on the facts of that case and whether particular rule of natural justice should apply to a given case must depend upon to great extent on the facts and circumstances of that case”. As such, it cannot be said that there has to be observance of principles of natural justice in every matter. The Court/Tribunal is required to see whether it causes any prejudice to the employee. In the present case, as stated above, the Applicant is on probation and only quasi-judicial work is withdrawn without touching her administrative work and there is no reduction in pay and perks. In the facts and circumstances of the present case, the decision of withdrawal of quasi-judicial work was taken as an interim measure by administrative order till the completion of D.E. initiated against the Applicant. Therefore, this Judgment is hardly of any assistance to the Applicant.

10. True, no notice or memo was issued to the Applicant prior to withdrawal of quasi-judicial work. Shri Bandiwadekar, learned Advocate for the Applicant made much capital of breach of principles of natural justice. In my considered opinion, the Applicant being on probation, mere absence of prior notice or memo would not vitiate the order of withdrawal of quasi-judicial work if the same is justified in the facts and circumstances of the matter. The orders impugned in the present O.A. are interim administrative orders of withdrawal of quasi-judicial powers till the completion of D.E. initiated against the Applicant.

11. Material to note that quasi-judicial work was withdrawn by order dated 07.08.2018 and on the same day, Charge-sheet has been issued to

her for regular D.E. under Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity) (Charge-sheet is at Page Nos.27 to 35 of P.B.). On query raised by the Tribunal, the learned C.P.O. submits that the Enquiry Officer has completed the enquiry and submitted his report which is under consideration for further orders, which are likely to be passed soon. True, the Applicant has also challenged initiation of D.E. by filing O.A.No.883/2019 and the same is subjudice in the Tribunal. Indeed, there being no stay to the proceedings of D.E. in O.A.883/2019 and in view of withdrawal of quasi-judicial work, the Respondents ought to have expedited the proceeding of D.E, so as to take it to the logical conclusion. Obviously, there is delay in completion of D.E. However, fact remains that the D.E. is on the verge of completion.

12. When there is a challenge to the administrative action, the judicial review is permissible when action suffers from vice of arbitrariness, unfairness or malice. The *mala fide* or arbitrariness have to be shown to be patent.

13. In so far as breach of principles of natural justice is concerned, even if no notice or memo was issued to the Applicant prior to issuance of impugned orders, that itself could not vitiate innocuous order of withdrawal of quasi-judicial work, if the withdrawal of quasi-judicial work found necessitated because of alleged imputation.

14. The matter in issue can be examined from the angle of law relating to probationary employee. The law with regard to termination of services of a probationer is well established and it has been repeatedly held that such power lies with the appointing authority which is at liberty to discharge or terminate the services of a probationer, if it finds the performance of the probationer to be unsatisfactory. Unless stigma is attached to the termination order, the probationer is called upon to show cause for any shortcomings which may subsequently can be the cause

for termination of the probationer's service, the employer or appointing authority is not required to give any explanation or reason for terminating the services of the probationer. As such, suffice to say, legally speaking, the services of a probationer can be terminated or he can be discharged from service on the ground of unsatisfactory services. It is not mandatory for appointing authority to follow the principles of natural justice when the probationer is discharged during the period of probation on the ground of unsatisfactory service. This legal position also needs to be borne in mind while deciding the legality of the impugned orders which are mere withdrawal of quasi-judicial work without affecting the status of the Applicant. Thus, in law, it does not require issuance of notice to the probationer where his/her services are to be terminated on the ground of unsatisfactory service. This being the position, it is incomprehensible to contend that the show cause notice was required to be given before withdrawal of quasi-judicial work. The impugned orders, in my considered opinion, are innocuous orders which does not affect the Applicant being on probation, and therefore, in such situation, the question of breach of principles of natural justice does not survive.

15. Apart, as stated above, only quasi-judicial work is withdrawn and other administrative work of the Applicant is left untouched. The Applicant is enjoying pay and allowances and other perks in the same manner. This being the position, I see no prejudice to have been caused to the Applicant by withdrawal of quasi-judicial work.

16. Indeed, regular D.E. has been already initiated and it is on the verge of completion in which the Applicant would get full opportunity of hearing in accordance to law. Significant to note that the perusal of charges framed in D.E. reveals that the alleged misconduct attributed to the Applicant occurred much prior to the issuance of impugned orders. In D.E, six charges are framed against the Applicant, the substance of which is as follows :-

- (a) On 05.12.2016 while Applicant was working as Assistant Charity Commissioner, Amravati, she misbehaved with Ex-M.L.A. Shri Vasant Maldhure when he visited the office for enquiry of his matter.
- (b) While Applicant was working as Assistant Charity Commissioner, Amravati, she pronounced the orders in case Nos.85/2010 and 216/2009 on 06.06.2016 without dictating complete Judgment/Order though long period was over and thereby committed judicial impropriety.
- (c) While Applicant was working as Assistant Charity Commissioner, Mumbai, a complaint was received from Satish Hattangadi, Secretary, Anandashram Trust, Khar, Mumbai dated 16.01.2018 that she is in habit of misbehaving with members of Bar and litigants and the same was confirmed in Preliminary Enquiry.
- (d) While Applicant was working as Assistant Charity Commissioner, Mumbai and case No.2867/2014 was for hearing on 11.12.2017, the litigant and Advocate were out of Chamber, but Applicant did not take any hearing and hastily closed the matter.
- (e) She passed order hastily in the proceedings under Section 22 of Maharashtra Public Trust Act, 1950 in case No.951/2012 without observing judicial norms.
- (f) The Applicant suddenly visited Shri Markandeshwar Temple, Worli, Mumbai on 27.01.2018 accompanying staff not related to her office and thereby committed breach of Section 37(d) of Maharashtra Public Trust Act, 1950.

17. Thus, while issuing Charge-sheet dated 07.08.2018 for the aforesaid charges by impugned order passed on same day, the

Government has withdrawn quasi-judicial work of the Applicant. True, the charges framed in D.E. and the grounds relied by the Respondents to withdraw the quasi-judicial work are different and there is no nexus in it. In this behalf, the perusal of reply reveals that the Government had received some additional complaint about the conduct and behavior of the Applicant. In reply, it is stated that after Preliminary Enquiry, the Joint Charity Commissioner submitted report dated 12.06.2018 stating that the behavior of the Applicant with clients, advocates and trustees was arrogant and not befitting to the post of Assistant Charity Commissioner. It appears that one Smt. Sujata Sonawane had filed complaint alleging arrogant behavior of the Applicant and one employee namely Shri Vikas Sathe. The Applicant allegedly misbehaved with Sujata Sonawane. Secondly, in Discreet Enquiry conducted by Deputy Charity Commissioner, Mumbai, it was found that one Shri Vijay B. Naik had filed complaint on 21.11.2017 alleging that the Applicant insisted Shri Naik to withdraw complaint against Shri Vikas Sathe. In Discreet Enquiry, it was found that though Shri Sathe was on Medical Leave, he used to sit in the office of Applicant for long time keeping clients waiting. Thirdly, the Applicant had issued notice on 19.05.2018 to the then Additional Chief Secretary attached to the office of Hon'ble Chief Minister calling upon him to submit audit and statement of accounts of Chief Minister Relief Fund without verifying that by virtue of Notification dated 12.05.1967, Chief Minister Relief Fund is exempted from certain proceedings of Maharashtra Public Trust Act, 1950. In addition to it, one more complain dated 30.07.2018 was received by Respondent No.2 – Charity Commissioner from Association of Advocates practicing in Charity Association that the Applicant is not behaving judicial principles and norms while transacting judicial business. The Applicant used to issue notices to the Trustees for initiating contempt proceedings for their non-appearance before her.

18. Thus, it appears that in view of all these complaints, the Government felt it appropriate to withdraw quasi-judicial work of the

Applicant till completion of D.E. initiated in terms of Charge-sheet dated 07.08.2018. True, the charges levelled in D.E. are quite different than the alleged misconduct attributed to the Applicant as a cause for withdrawing quasi-judicial work. Thus, in totality, the Government has taken administrative decision to withdraw quasi-judicial work so that litigant should not suffer.

19. Needless to mention that while exercising quasi-judicial functions, a person holding the public office must function maintaining high standard of judicial performance and propriety, so that the faith of the litigant and public in general is kept intact. While discharging quasi-judicial work, the Applicant is equated to the role of Judge. A Judge is not judged by the Judgments only but also by his or her whole conduct while transacting quasi-judicial function. However, in the present case, in view of various complaints received if Government is *prima-facie* convinced and withdrawal of quasi-judicial work was necessitated as a temporary measure till the conclusion of Preliminary Enquiry, then such orders of withdrawal of quasi-judicial work of probationary officer cannot be said arbitrary or malicious.

20. True, the learned C.P.O. could not point out any specific provision empowering the Government for withdrawal of quasi-judicial work. In absence of any such provision, the order passed by Government for withdrawal of quasi-judicial work needs to be examined in its totality and if such order is found necessitated to maintain discipline and judicial propriety, then such orders can hardly be termed illegal. It is more so where the concerned person was on probation and no prejudice is shown to have been caused to him.

21. It would not be out of place to mention here that even in the matter of suspension which is serious one, there is no requirement of law to issue show cause notice before suspending the employee where D.E. is contemplated against him/her. Whereas, in the present matter, it is not

a case of suspension and it relates to innocuous order of withdrawal of quasi-judicial work.

22. In view of the above, I find no merits in the grounds raised by the Applicant and O.A. deserves to be dismissed.

23. Since there is no stay to the D.E, it would be expedient to direct Respondent No.1 to pass final order in D.E. within two months from today which would be subject to final decision of O.A.No.883/2019 filed by the Applicant challenging initiation of D.E. It is further clarified that whatever observations are made in this Judgment about the status of probationary employee are restricted for the decision of this O.A. and it cannot be construed for any other purpose and this Tribunal has not made any observation on the merit for completion of probation or otherwise.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER-J

Mumbai
Date : 15.09.2020
Dictation taken by :
S.K. Wamanse.