



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.21711 OF 2023
WITH
INTERIM APPLICATION (L) No.8024 OF 2024
IN
WRIT PETITION (L) NO.21711 OF 2023

Sushil Kumar Srivastava)
(Ex-Airport Director, Shirdi Airport),)
Aged about 51 years,)
R/o. Flat No.204 A, Aryan Block,)
Sai Chintan Apartment, Behind Sai Palki)
Niwara, Post Office : Kopargaon, District :)
Ahmednagar, Maharashtra – 423 107)Petitioner

V/s.

1. State of Maharashtra,)
Through Chief Secretary, General)
Administration Department (Government)
of Maharashtra), Room No.553, 5th Floor,)
Extension Building, Madame Cama Road,)
Nariman Point, Mumbai – 400 032)
2. Vice Chairman & Managing Director,)
Maharashtra Airport Development)
Company Limited (MADC), Registered)
Office at 8th Floor, World Trade Centre,)
Cuffe Parade, Mumbai – 400 005)
3. Chairman, GMR Group,)
Registered office at Naman Centre,)
7th Floor, Opposite Dena Bank,)
Plot No.C-31, G Block, Bandra Kurla)
Complex, Bandra East, Mumbai – 400 051)Respondents

Mr. Shailendra Kumar Singh (through video conferencing) a/w.
Mr. Devakinandan R. Singh for the Petitioner.
Mr. Himanshu Takke, AGP for Respondent No.1.
Mr. Nitin Deshpande for Respondent No.2.
Mr. Tushar Matkar, GM, HRD, MIDC a/w. Mr. Sharad Achare, AO,
MIDC and Mr. Ramesh Dande, MIDC Officers present.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.
DATE : 28th FEBRUARY, 2025**

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.) :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. On 1st September, 2023, this Court [Coram : Sunil B. Shukre and Firdosh P. Pooniwalla, JJ.] passed the following order :

1. At the request of the learned Counsel for the Respondent no.2 further time is granted to file reply.

2. The learned Counsel for the Respondent no.3 submits on instructions that no prayer has been made whatsoever against Respondent no.3 and Respondent no.3 has got nothing to do with this petition and therefore, she makes a prayer for deleting the name of Respondent no.3 from the array of Respondents.

3. On going through the memo of the petition, however, we find that there is some reference to the complaint of alleged misbehaviour with the wife of Chairman of GMR Group, which probably was the reason for unpleasant action which has been taken against the Petitioner and which is impugned in this petition. Had that been so, it would be necessary for Respondent no.3 to make things clear as to whether or not any complaint of misbehaviour whatsoever has been made by or on behalf of GMR Group against the Petitioner. The Respondent no.3 is at liberty to file its reply in the matter clarifying the position.

4. Stand over to 29th September 2023 High on Board.

3. On an Interim Application (L) No.8024 of 2024, this Court [Coram : Nitin Jamdar (as His Lordship then was) and M.M. Sathaye, JJ.], had passed an order on 22nd March, 2024, as under :

The petition is filed challenging the order of termination issued to the Petitioner and for a direction to reinstate the Petitioner in service as Airport Director. This interim application is taken out in this petition seeking a prayer to restrain the Respondents from filling the vacancy of the Airport Director. The learned counsel for Respondent No.2 states that there is no warrant to issue any restraint order at present because due to the declaration of Code of Conduct the Respondents are not filling up this vacancy till the next date. The statement is accepted.

2. Stand over to 12 June 2024 under the caption "For Directions".

4. On 29th January, 2025, this Court had recorded the submission of the learned Advocate representing Respondent No.3, on instructions that no complaint was lodged against the Petitioner by Respondent No.3, on behalf of the GMR Group. The learned Advocate has further submitted, on instructions that Respondent No.3 does not desire to file any affidavit in reply since it only desires to make a statement to be recorded by this Court that no

complaint has been lodged by Respondent No.3 against the Petitioner.

5. This is a peculiar case. The Petitioner was enrolled in the Indian Air Force on 1st February, 1990 and he served as a combatant member in the trade of Air Field Safety Operator. He was selected as an Assistant ATCO. After completing 20 years on 31st January, 2010, he expressed his inability to continue in service.

6. The Petitioner was appointed as Officer-in-charge Airport Operations and Safety at Baldota Koppal Aerodrome in Karnataka, between 1st May, 2011 to 28th January, 2019. By order dated 28th July, 2021, he was appointed as Airport Director of Shirdi Airport after being interviewed. This was a fresh appointment with the Maharashtra Airport Development Company Limited. He was placed on probation for a period of one year. He joined duties on 2nd August, 2021.

7. On 4th February, 2022, he was served with a show cause notice wherein, it was mentioned that a serious complaint, dated 3rd February, 2022 has been received by Respondent No.2 and the administration has taken the said issue extremely serious. The

Petitioner was directed to submit “*self -explanatory reply as per evidence on each and every issue raised in the complaint to the headquarters by 5 p.m. on Monday 7th February 2022*”.

8. In this context, the complaint lodged by a person, Ms. Deepali Bhosale was served upon the Petitioner. According to such complaint, serious allegations were made against the Petitioner. The said complaint, which is via email, dated 3rd February, 2022 is placed on record at page 71. What is relevant for deciding this case is that the show cause notice dated 4th February, 2022 makes clear mention of this complaint dated 3rd February, 2022 and further indicates that Respondent No.2 has taken the said complaint extremely seriously and grave and serious charges are leveled upon the Petitioner. There is no dispute that as on 3rd February, 2022 and 4th February, 2022, he was on probation.

9. On 7th February, 2022, the Petitioner has tendered his explanation and while denying the allegations made in the complaint dated 3rd February, 2022, he pointed out that the Complainant is the proprietor of two counters, which were being operated at the same Airport at Shirdi, and since there were serious deficiencies and violations (as regards non compliances), which

were pointed out by the Petitioner, that the complaint has been lodged by the lady proprietor of the two counters, Ms. Bhosale.

10. The Petitioner's probation period was extended four times, for terms of two months each, from 1st August, 2022. After he completed his probation from 2nd August, 2021 till 31st March, 2023, Respondent No.2 did not issue any order, either of extension of probation or of removal from service. It is an admitted position that the Petitioner continued in employment thereafter until the order of termination, dated 2nd June, 2023.

11. In the light of the above, the Petitioner has raised two grounds. **Firstly**, that he is deemed permanent after 31st March, 2023 and **secondly**, right from the issuance of the show cause notice till the order of termination dated 2nd June, 2023, all along Respondent No.2 has been leveling allegations against the Petitioner and even the termination order indicates a host of allegations set out therein.

12. The learned Advocate representing Respondent No.2 submits that the performance of the Petitioner was extremely blemished during the previous period, his work was not satisfactory and there were several allegations against him. Considering his bad

behaviour and the frequency of misdemeanours and complaints being received from various quarters, that it was decided to terminate the services of the Petitioner forthwith.

Status of the Petitioner in service

13. We would first deal with the status of the Petitioner in service. The Petitioner was appointed on probation and he joined on 2nd August, 2021. The show cause notice dated 4th February, 2022 indicates grave and serious allegations against him. Yet, his probation period was extended by 4 terms of two months each, with effect from 1st August, 2022 until 31st March, 2023. Thereafter, neither was he issued with an order of disengagement, nor was his probation extended and he was continued in employment.

14. Clause 2 of his appointment order, dated 28th July, 2021 reads as “*Your appointment will be on probation for a period of one year and likely to be confirmed on satisfactory completion of the probation period*”. Clause 4 of the appointment order reads as “*If your work is found unsatisfactory during the probation period your services will be discontinued immediately without any notice period*”.

15. This clearly indicates that there was no Clause in the appointment order as an Airport Director, that the Petitioner's probation could be extended. It is an inherent power of an Employer to test the competency of a candidate and assess whether he is suitable for the Employer. The probation was extended for a period of two months on 4 occasions, after the completion of the probation period of 1 year. The Employer could have issued a plain and simple order of bringing the probation period to an end, meaning, with an innocuous order in terms of Clause 4 of the appointment order. This was not done by Respondent No.2.

16. So also, in terms of Clause 2 of the appointment order, assuming that the Employer had the power to extend the probation period after 1 year, on completion of such extended probation on 31st March, 2023 (18 months of probation), the Employer could have issued a communication to the Petitioner, either confirming his service or disengaging him. Neither of this was done and the Petitioner was continued in employment without any order. Keeping in view the law laid down by this Court in *Raymond UCO Denim Pvt Ltd. Yavatmal v/s. Praful Warade and Others*¹, the act of the Employer can be faulted.

¹ 2010 (6) Mh. L.J. 178

Stigmatic order of termination

17. Even if the issue of probation is kept aside for a moment, the Employer had the power under Clause 11 of the appointment order, to terminate the services of the Petitioner, only if he was found guilty of insubordination or misdemeanour. For clarity, Clause 11 of the appointment order is reproduced hereunder :

11. Notwithstanding anything contained herein above, your services may be terminated at any time by the competent authority of the company, if.

a) You are found to be guilty of any insubordination, intemperance or other misconduct or of any breach or non-performance.

b) It is proved beyond doubt that Company has incurred loss/damage due to your willful act by way of theft, pilferage, damage etc. of any of the movable or immovable property of the Company.

2) You are incapable of discharging the duties upto the desired level assigned to the post for which he bound to do according to the job demand.

18. Factually, what has been done by the Employer is that neither the Employer acted in terms of Clause 2 or Clause 4 of the appointment order, nor was any action taken under Clause 11 of the appointment order, which empowers the Employer to terminate the

Petitioner only after he was found guilty of any misdemeanour mentioned in the three Clauses below Clause 11 reproduced above. The Employer straightaway terminated the Petitioner on the ground that his behaviour was disastrous for the Employer in the light of a grave and serious complaint lodged by a lady, Ms Bhosale.

19. It is nobody's case that after the complaint of Ms. Bhosale, Respondent No.2, upon receiving the lengthy explanation of the Petitioner, had decided to initiate any disciplinary action or drop the charges leveled upon him. For almost 12 months, after the Petitioner tendered the explanation on 7th February, 2022, the whole issue may have been kept in cold storage. This could indicate that the Employer gave a tacit quietus to the matter.

20. Further, with reference to an unscheduled flight landing of GMR at the Shirdi Airport on 19th May, 2023, an issue cropped up as to whether the Petitioner had not performed his duty appropriately as an Airport Director. It is in this context that this Court had passed an order on 1st September, 2023 calling for a reply from the GMR Group as to whether any complaint was lodged against the Petitioner. This order dated 1st September, 2023 is reproduced herein above.

21. It is in the context of the said order that the GMR made a statement before this Court that it had not lodged any complaint against the Petitioner and this statement was recorded by this Court vide order dated 29th January, 2025. As such, this issue was also given a quietus. However, on 22nd May, 2023, the Employer passed a single sentence order, which reads as under :

This is to inform you that, as a disciplinary action Rs.30,000/- (Rupees Thirty Thousand) shall be deducted from your May-2023 Salary.

As such, the Petitioner was penalized with deduction of Rs.30,000/- from his May, 2023 salary, admittedly because of his purported inappropriate treatment meted out to the GMR officials. Pitted against the statement of the GMR made before us that no complaint has been lodged by the GMR against the present Petitioner, the order of punishment appears to be unjustified. But this is not an issue addressed to us.

22. In the above backdrop, the Petitioner having been continued even after the completion of the probation period and without any order of either confirmation or removal from service, has led to the contention of the Petitioner that he is deemed to be

permanent in service with the Employer.

23. The second issue is as to whether the termination of the Petitioner from service, after completion of the probation period on 31st March, 2023 and after having put in 22 months in employment, would amount to a stigmatic termination from service.

24. The English translation of the impugned order dated 2nd June, 2023 is placed on record. It is set out in the impugned order that Clause 4 of the appointment order is said to be invoked for disengaging the Petitioner. However, several allegations have been leveled upon him in the same order of termination. In the light of such allegations in the order of termination, which is issued after the Petitioner was continued without extension of probation, as if he was deemed to be permanent, would fall within the law laid down by the Hon'ble Supreme Court in *Dipti Prakash Banerjee v/s. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Ors.*²

25. The relevant observations in *Dipti Prakash Banerjee* (Supra) read thus :

² (1999) 3 SCC 60

35. The above decision is, in our view, clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its Annexures. Obviously such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular inquiry was conducted. We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma.

36. It was in this context argued for the Respondent that the employer in the present case had given ample opportunity to the employee by giving him warnings, asking him to improve and even extended his probation twice and this was not a case of unfairness and this Court should not interfere. It is true that where the employee had been given suitable warnings, requested to improve, or where he was given a long rope by way of extension of probation, this Court has said that the termination orders cannot be held to be punitive. [See in this connection Hindustan Paper Corporation vs. Purendu Chakraborty [1996 (11) SCC 404] See in this connection, Oil & Natural Gas Commission vs. Md. S. Iskender Ali [1980 (3) SCC 428], Unit Trust of India vs. T. Bijaya Kumar [1992 (5) S.L.R. 855 (SC)], Principal, Institute of Postgraduate Medical Education & Research, Pondicherry vs. S. Andel & others [1995 Suppl. (4) SCC 609] and a labour case Oswal Pressure Die Carting Industry vs. Presiding Officer [1998 (3) SCC 225]. But in all these cases, the orders were simple orders of termination which did not contain any words amounting to stigma. In case we come to the conclusion that there is stigma in the impugned order, we cannot ignore the effect it will have on the probationer's future whatever be earlier opportunities granted by the respondent-

Organisation to the appellant to improve.

37. On this point, therefore, we hold that the words amounting to “stigma” need not be contained in the order of termination but may also be contained in an order or proceeding referred to in the order of termination or in an annexure thereto and would vitiate the order of termination. Point 3 is decided accordingly.

38. Under this point, two aspects of the case fall for consideration, firstly whether the impugned order is founded on any conclusions arrived at by the employer as to his misconduct or whether the termination was passed because the employer did not want to continue an employee against whom there were some complaints. The second aspect is whether there is any stigma in the order of termination or in the documents referred to in the termination order.

39. Taking up the first aspect, we have noticed that during the first one year of probation, a letter dated 11.12.1995 was served on the appellant. That letter stated, among other things, that the appellant “prepared false bills” and that he “misbehaved with women academic staff members”. The appellant sent a reply denying the allegation and he also sought for a copy of the complaint said to have been given by the lady academic staff member. It is true that subsequently, there were two orders of extension of probation each for six months. But in the impugned order dated 30.04.1997, it was stated in para 8 that the order of termination was being passed because of the “conduct”, performance, ability and capacity of the appellant during the “whole period”. This would clearly take in the facts stated in the letter dated 11.12.1995. It is obvious that findings of preparation of false bills or of misbehaviour with women which ought to be arrived at only in a regular departmental inquiry, were referred to in this letter without any enquiry.

It will be noticed that the letter dated 11.12.1995 does not merely say that there are such complaints against the appellant but it says conclusively that the appellant had "prepared false" bills and "misbehaved" with women academic staff members.

40. The above language in the letter dated 11.12.1995 would clearly imply that this was not a case of any preliminary findings. If these were referred to as mere allegations, it would have been a case of motive. But as these definitive conclusions of misconduct are evident on the face of this letter dated 11.12.1995 and this letter falls within the "whole period", the conclusion is inescapable that these findings were part of the foundation of the impugned order and it is not a case of mere motive. On this ground, the order requires to be set aside.

41. We shall next take up the second aspect relating to stigma. We shall assume that the words used in the impugned order do not contain any stigma. We shall then refer to the three other letters to which the order makes a reference. In the first letter dated 30.04.1996, we do not find anything objectionable. Coming to the next letter, we however find that para (iii) refers to the scuffle between the appellant and one P. Chakraborty regarding which the appellant made a complaint on 28.05.1996. An Enquiry Committee is said to have been appointed and it gave a Report. The extract from the report of the Committee dated 15.7.1996 is found in the Counter of the respondents. The Enquiry Committee found the appellant's "behaviour reprehensible", and it confirmed that the appellant was "involved in a scuffle and did misdeeds like obtaining false signatures", and said that the appellant was "guilty of inefficient performance or duty, irregular attendance without permission, rude and disorderly behaviour and wilful insubordination". Whatever may be said about the

other words, the words used in connection with the finding of the Enquiry Committee about the scuffle and about the appellant obtaining false signatures, are, in our opinion, clearly in the nature of a stigma. Further, the Enquiry Committee said he must be “punished”. It did not say that proceedings for disciplinary action were to be initiated. Thus on the ground of “stigma” also, the impugned order is liable to be set aside.

42. It was argued that the appellant was given notice of the above enquiry by the Committee but he was “not cooperative”. In our view findings arrived at by such an informal Committee against the appellant, which Committee was, in fact, constituted on a complaint by the appellant against Mr. Chakraborty, cannot be used for terminating the appellant's probation, without a proper departmental inquiry. The said findings, in our view, were the foundation for the impugned order among other facts. Such findings must, in law, be arrived at only in a regular departmental inquiry.

[Emphasis supplied]

26. Even if this case is viewed from an angle of the Petitioner having been presumably continued on probation until the order of termination dated 2nd June, 2023, allegations leveled upon him in the order of termination render the order stigmatic. The law laid down in *Dipti Prakash Banerjee* (Supra), would mandate the Employer to conduct a Departmental Enquiry for proving such charges, since a stigma has been attached to the Petitioner in the termination order in the backdrop of a host of allegations. The

termination order, therefore, amounts to being a stigmatic termination. Without conducting a Departmental Enquiry, such order could not have been passed in the light of the law laid down in *Dipti Prakash Banerjee* (Supra).

27. If it is assumed that the Petitioner is deemed permanent in service, the law as it applies to the case of a probationer in the backdrop of grave allegations being the actual reasons for termination, would mandate that the Petitioner should have been subjected to a Departmental Enquiry since several allegations have been leveled against him while issuing the stigmatic termination order.

28. In view of the above, **this Writ Petition is allowed**. The impugned order of termination is quashed and set aside and the Petitioner is granted reinstatement in service with continuity.

Quantum of Back wages

29. The learned Advocate for the Management submits that after termination, the Petitioner has not rendered any service to the organisation and, therefore, the principle of “no work - no wages” would be applicable.

30. We find that the submissions of Respondent No.2 are not supported, either by law or by reason. The principle of “no work - no wages” is applicable when an Employee does not offer himself for work, though the Employer is willing to offer work (*Bank of India v/s. T.S. Kelawala and Ors.*³). Had the Employer offered work and the Petitioner declined to work, he would have been deprived of wages. When the Petitioner was foisted with involuntary unemployment and was kept out of employment by the Employer when he was willing to work, the principle of “no work - no wages” would not be applicable.

31. Insofar as quantum of backwages is concerned, the Petitioner prays for 100% back wages. Considering the above and the fact that a stigmatic termination was inflicted upon the Petitioner and he was made to suffer involuntary unemployment and at the same time, since Respondent No.2 is a company, which is a Government of Maharashtra authorised undertaking, we find that equities would be balanced by granting 60% back wages to the Petitioner inclusive of allowances. Let the Petitioner be reinstated in service with continuity and 60% back wages, within a period of

³ 1990 SCC (4) 744

30 days from today.

32. Needless to state, the right of an Employer to prove the charges against an employee cannot be curtailed. After reinstatement of the Petitioner, Respondent No.2 is at liberty to follow the due procedure laid down in law and arrive at an appropriate decision as may be legally permissible.

33. **Rule is made absolute** in the above terms.

34. In view of the above, **the pending Interim Application** would not survive and **stands disposed off**.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)