

BEFORE THE JUDGE, LABOUR COURT, AMRAVATI.

Complaint (ULP) No. 10 of 2021

CNR No.MHLC270000612021

Prafull Madhukarrao Ridhore

Age about 43 Years, Occ.Service,

R/o Abhiyanta colony,VMV

Amravati, Tah.and Distt. Amravati.

... **COMPLAINANT**

Versus

1] Commissioner of Health/ Mission Director
Bombay, St. George Hospital Premises,
Arogya Bhavan CST, Mumbai.

2] Joint Director (Non-Technical)
National Health Mission,
St.George Hospital Premises,
Agogya Bhavan CST Mumbai.

3] Chief Executive Officer,
Zilla Parishad, Amravati.

4] District Health Officer,
Zilla Parishad, Amravati.

... **RESPONDENTS**

ORDER BELOW EXH.U-2

(Passed on 26.06.2021)

The complainant has filed present application for granting stay to the effect and operation of the order dt. 05-05-2021 and to direct the respondents to continue him in service by reinstating him.

2] According to complainant, the respondents are engaged in unfair labour practice due to issuance of order dt. 05-05-2021, by which services of complainant are terminated. It is submitted that since 2007 the complainant is working with the respondents. His service record is clean. He is posted by the respondent no.1 under the respondent no.2. The complainant is 'workman' and the respondents an 'industry'. Though the work performed by the complainant is of regular and permanent nature, the respondents used to give break of one or two days to the complainant in every year. He claims that he has completed 15 years services with the respondents. He was fighting for the grievance of employees with the respondents. Therefore, false complaints were lodged against him. The respondents have not extended benefit of permanent employee to the complainant. The complainant had not committed any illegality in the work. Since initial appointment remarks in respect of his work are excellent. He has not committed any misconduct. Perusal of termination order reveals that it is stigmatic and passed by way of punishment. It was obligatory on the part of respondents to conduct

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enquiry against him by issuing chargesheet and giving opportunity of hearing.

3] It is further submitted by the complainant that the respondents have violated the principles of natural justice. The respondents have awarded major punishment without conducting enquiry. In the impugned order the respondents have claimed that enquiry was conducted. The complainant had applied for enquiry report, which is not supplied to him. Second show cause notice prior to dismissal was not issued to him. As such his termination is illegal. The punishment is shockingly disproportionate. On these grounds, the complainant claims that he has prima facie case and balance of convenience lies in his favour. Therefore, he has prayed to stay the effect and operation of the termination order dt. 05-05-2021 and to direct the respondents to reinstate him.

4] The application is strongly opposed by the respondent no. 03 and 04 by filing say vide Exh.C-8 and written statement vide Exh.C-9. The respondent nos.1 and 2 have adopted it for themselves vide pursis Exh.C-8. According to respondents National Health Mission is providing medical help to the poor people, free of charges. Said mission is not profit making body and not earning anything. Therefore, it is not an industry. There is no relationship of employer and employee between the complainant and the respondent nos. 2 and 3. The complainant is appointed as monitoring and evaluation

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officer. The designation itself shows that the working of the complainant is of supervisory nature, hence he is not workman. Therefore, the complaint is liable to be dismissed. It is submitted that enquiry was conducted against the complainant and opportunity was given to him to submit reply in the enquiry. The departmental enquiry made by the respondent no.2 is according to rules, regulation and principles of natural justice. It is denied that the respondents have engaged in unfair labour practice. The complainant has executed agreement with the respondent no.1 for 11 months as temporary contractual employee. He has executed agreement for 11 months after completion of each agreement. The complainant committed breach of contract and, therefore, his agreement is terminated which resulted in termination of his services after detail departmental enquiry and by giving opportunity to the complainant to participate in it. It is denied that service record of the complainant is unblemished. It is submitted that there are many complaints of other employees against the complainant. Earlier enquiry was made against him and warning was given to him. It is denied that the complainant is workman. All the workers appointed in National Health Mission is under policy of Central Government for specific period and not as regular or permanent nature. The workers are on contractual agreement. In the employment agreement it is clearly stated that appointment is made for specific period and employee will not claim regular employment. The respondents have stated the conditions of employment and termination also. It is submitted that as per the condition it was not necessary to issue notices. The

termination of agreement cannot be construed as a stigma on the working of the complainant. The enquiry committee had been appointed. Notices were issued to the complainant and witnesses. Statements were recorded before the committee. Thus, full opportunity was given to the complainant. As such there is no violation of principles of natural justice. It was not necessary to issue chargesheet and second show cause notice. The appointment of the complainant was temporary contractual. He cannot be considered as employee of the Government as per the condition of the employment agreement. Considering gravity and charges against the complainant he is terminated. It is denied that the complainant has prima facie case and balance of convenience lies in his favour. On these grounds, it is prayed that application be rejected with costs.

5] The points for determination alongwith findings thereon are as under :

	<u>POINTS</u>	<u>FINDINGS</u>
1]	Whether complainant has shown prima facie case ?	... No.
2]	Whether the balance of convenience lies in favour of complainant ?	... No.
3]	Whether complainant will suffer irreparable loss, if relief of injunction as prayed is not granted ?	... No.

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4] What order ? ... Application is rejected.

REASONS

6] As to point Nos. 1 to 4 : Heard the learned Advocates for the parties. Admittedly, the complainant is working with the respondents since long. It is seen that on 05-05-2021 the complainant is terminated from the service. Present complaint is filed with the prayer to set aside termination order dt. 05-05-2021 and direct the respondents to reinstate the complainant with continuity of service and full back-wages. The complaint is strongly opposed by the respondents by filing their written statement. Impliedly the complainant has admitted that he is dismissed from the service. It is seen that the status of complainant itself is disputed by the respondents.

7] It is submitted on behalf of respondents that the complainant was not appointed by the respondent nos. 3 and 4. There was no relationship of employer and employee. The complainant was appointed only on temporary basis. Further, it is submitted that the complainant is not workman and the respondents are not industry. As against this, the Learned Advocate for the complainant submitted that the respondent no.1 had appointed the complainant under the respondent no.2. His salary is paid by the respondent no.3 and 4. He was warned by the respondent no.3 and 4

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in writing. It shows that relationship of employer and employee is existing between the parties. Further, he submitted that the complainant has no authority to sanction leave, he has no power of drawing and disbursing, appointment of any employee etc. As such the complainant comes under the definition of workman.

8] After going through the pleading and documents on record prima facie it is seen that the complainant was working with the respondents. The learned Advocate for the complainant has relied on the decisions in the case of *A.D.Inamdar v/s M/s Bajaj Tempo Ltd. 2000(86) FLR 345* wherein it is held that a clerk working in accounts department of company having no supervisory or managerial work would be a workman. In *Sunita B Vatsaraj v/s Karnataka Bank Ltd and another 1999 I CLR 1156* where the petitioner was, though designated as an officer and entrusted with various powers as per the Power of Attorney, was in fact left to the situation of carrying out the work of clerical nature, including the checking up of work done by the other workers in her own section. Hence held as a workman. The Issue of workman and industry requires detail evidence and hearing. It can be decided after allowing the parties to lead evidence. In this application said issue cannot be decided.

9] In support of his submission that the complainant is not contractual employee and the termination is illegal, the learned

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Advocate for the complainant relied on the decision in the case of *Tata Consulting Engineers V/s Valsala K Nair(Ms.) & Ors., [1997 II CLR 1099]* wherein it is held that though initial appointment was for a period of two months it was extended from time to time and on facts as they are it cannot be said that the case was covered under the clause (bb) of section 2 (oo) and it cannot be said that workmen's termination was not retrenchment. In *State of West Bengal & Ors. V/s Nani Gopal Jana & Ors.[1998 LLJ 116]* it is observed that when work is of perennial nature and not for completion of a project or scheme - statutory requirements as to retrenchment have to be complied with. In the case of *S. M. Nilajkar and Ors. V/s Telecom District Manager, Karnataka, [(2003) 4 Supreme Court Cases 271]* it is held that "13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of Sub-clause (bb) subject to the following conditions being satisfied:-

- (i) *that the workman was employed in a project or scheme of temporary duration;*
- (ii) *the employment was on a contract, and not as a daily-wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and*
- (iii) *the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.*

(iv) *the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.”*

10] The learned Advocate for the complainant submitted that the work with Respondents is available and the post is not abolished and hence section 2(oo)(bb) of the Industrial Disputes Act is not attracted. In that respect he relied on the decision in the case of *Saudi Arabian Air Lines V/s Ashok Margovind Panchal and Anr., [2003(1) Mh.L.J.]*. In this case it is held that if the post continues and the work continues clause (bb) of section 2 (oo) cannot apply.

11] It is submitted on behalf of complainant that no show cause notice was issued to him. He was not issued with the chargesheet, no enquiry was held against him and without giving opportunity of hearing he is terminated. On the other hand it is submitted by the Respondents that detailed enquiry of complainant was conducted, Statement of complainant and witnesses were recorded. The complainant being contractual employee it was not necessary to issue show cause notice prior to termination. Even then, full opportunity was given to the complainant. As such his termination is valid. The complainant relied on the decision in the case of *Union of India V/s Mohd. Ramzan Khan, [1990 CJ (SC) 731]* wherein it is held that the offending employee must be

submitted an enquiry report by enquiry officer so as to proceed against the charges against him, otherwise the principles of natural justice and the final decision would be rendered invalid.

12] The respondents have produced copies of documents vide list Exh.C-7. It shows that enquiry committee was appointed to conduct preliminary enquiry. The committee had recorded statements of witnesses and considered documents of the department also. However, it is seen that no specific chargesheet was issued against the complainant. At this stage, it is seen that the status of complainant itself is in dispute. He is not appointed as regular employee. The complainant was appointed by way of employment contract under NRHM scheme for the period of 11 months only. His service period is extended from time to time. The Respondents have produced copy of employment contract vide Exh.C-11. It shows that the complainant was appointed for 11 months initially since 05-03-2013 to 04-02-2014. Lateron his service period is extended from time to time. The Learned Advocate for the complainant referred the performance of complainant and submitted that his work is reported as excellent. Prima facie it is seen that the complainant was appointed under employment contract. Therefore, he is not regular or permanent employee of the respondents. Therefore it is necessary to decide as to whether he is entitled for equal benefits with compared to regular employee. Without that prima facie it cannot be

said that the complainant was also entitled for all benefits like regular employee.

13] The complainant has prayed to grant stay to the effect and operation of termination order dt. 05-05-2021. In main complaint, no such prayer is made by him. In complaint he has prayed to reinstate him by setting aside the termination order. Thus, it is seen that by this application relief has been sought by the complainant which is not claimed in main complaint itself. Such relief cannot be granted by way of interim relief. Further, in respect of relief of reinstatement in service it is seen that if at this stage said prayer is allowed then it would amount to allowing the complaint itself without conducting any trial. The complainant has not shown strong Prima facie case. The application is therefore liable to be rejected with costs. Hence point nos. 1 to 3 are answered in the negative and in answer to point no 4 following order is passed.

ORDER

The application is rejected.

Amravati.

Date : 26.06.2021.

UWB/-

(M.M.Shaikh)

Judge,

Labour Court, Amravati.

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