



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

WRIT PETITION NO. 1312 OF 2012
WITH
CHAMBER SUMMONS NO. 99 OF 2012
IN
WRIT PETITION NO. 1312 OF 2012
WITH
NOTICE OF MOTION NO. 277 OF 2016
IN
WRIT PETITION NO. 1312 OF 2012

Mohan Dhotre
Indian Inhabitants having their address
Residing at flat no. 1402, Challenger no.2,
Thakur Village, Near Thakur Cinema
Kandivili (East) Mumbai 400101 ...Petitioner

Versus

1. State of Maharashtra & Ors.
Through Industries, Energy and Labour
Department, Mantralaya, Mumbai-32
2. The Principal Secretary,
Labour Department, Mantralaya,
Mumbai-32
3. The Maharashtra labour Welfare Board
Hutatma Babu Genu
Mumbai Girni Kamgar Kreeda Kendra
Senapati Bapat Marg Elphinstone Mumbai-13 ...Respondents

Mr. P. K. Dhakephalkar, Senior Advocate a/w Vishal Ghosalkar, Vaibhav Jagdale,
Pandurang Andhak, Shubham Dhoble for Petitioner.

Mr. Himanshu Takke, AGP for Respondent State.

Mr. Shrishailya Deshmukh for Respondent No.3-Board.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

RESERVED ON: 10th OCTOBER 2025
PRONOUNCED ON: 17th OCTOBER 2025

JUDGMENT (PER AARTI SATHE, J.):-

1 This Petition under Article 226 of the Constitution of India is filed challenging the decision of Respondent No. 2 dated 31st January 2012, thereby dismissing the Petitioner from the post of Welfare Commissioner of the Respondent No. 3-Board. The Petitioner contends that the impugned order is passed without any authority in law and on the basis of a complaint made by an employee of Respondent No. 3-Board, which was admittedly a false complaint as held in the enquiry report, of the committee constituted by Respondent No. 3-Board.

2. This Petition was admitted by an order dated 28th February 2012 passed by this Court, also granting an interim stay in terms of prayer clause (c).

Challenging the said order SLP Civil No. 16038/2013 was filed by the State before the Supreme Court. On 5th July 2013, the Supreme Court passed the following order on the Special Leave Petition:-

Heard learned counsel for both the parties.

1. Leave granted.

2. The short submission of Mr. Shankar Chillarge, the learned counsel for the appellants is that since the respondent was already dismissed from service, and which order was under challenge before the High Court, the High Court while admitting his petition could not have granted interim stay of that order of dismissal. Mr. Sudhanshu S. Chaudhary, learned counsel appearing on behalf of the respondents, on the other hand submits that the order could have been stayed to grant an opportunity to the appellants to make his submissions.

3. We are not in a position to accept the submission of Mr. Chaudhary. The dismissal having become operative it could not have been stayed. We do not go into the merits of this

case so that the first respondent will not be prejudiced in any manner in his submissions before the High Court. The High Court has admitted his petition and it will decide the matter on its own merits. It will also be open to the respondent to apply to the High Court for whatever reliefs that he wants. Chaudhary states that he has applied for voluntary retirement. If that is so, he can make his submission and High Court will consider it.

4. As of now, this interim stay, in terms of prayer clause 'C' granted by the High court, will stand set aside. The operation of the order of dismissal will remain operative.

5. The appeal is allowed in these terms.

6. Mr. Chaudhary makes a request that the concerned Bench of the High Court may take up the appeal for early hearing. The High Court will consider that request.”

3. In view of the aforesaid order the interim stay granted by this court stood vacated on 5th July 2013. Briefly facts relevant for adjudication of the present petition are as under:-

3.1 The Petitioner joined the services of Respondent No. 3- Board in the year 1992 and was appointed as Senior Deputy Welfare Commissioner on 14th May 1992 on the terms and conditions as given in the appointment letter of the said date. The Petitioner prior to joining the services of Respondent No. 3- Board was working as a Labour Officer with Maharashtra State Road Transport Corporation (MSRTC) for the period 15th November 1983 to 04th July 1992. The Petitioner applied to the post of Senior Deputy Welfare Commissioner on the basis of an advertisement published by Respondent No.3-Board, and as the Petitioner qualified for the said post on the basis of the eligibility criteria set out in the advertisement, he was appointed for the said post on 14th May 1992.

3.2 In the year 1999, the post of Welfare Commissioner was to fall vacant as the then Welfare Commissioner was due to retire. It is the Petitioner's case that he was

also entitled for promotion to the post of Welfare Commissioner under Rule 18A (1)(b) of the Bombay Labour Welfare Rules, 1953 (hereinafter referred to as the said **Rules**). Considering the Petitioner's performance, the Petitioner was promoted to the post of Welfare Commissioner on 27th August 1999. It is pertinent to note that as per section 11 of the Bombay Welfare Labour Fund Act, 1953 (hereinafter referred to as the said **Act**), the power to appoint the Welfare Commissioner vests with Respondent No. 3-Board with the prior approval of Respondent No. 1. The Petitioner was appointed as a Welfare Commissioner by Respondent No. 3- Board after the prior approval of Respondent No. 1.

3.3 Sometime in the year 2000-2001, a newspaper reporting in the "Times of India" carried the news that expenses incurred by Respondent No. 3- Board on the salaries of its staff was more than 95% of the total income which according to the Petitioner was an incorrect information. In pursuance of the said news report, Respondent No. 1 announced an enquiry into the matter and without assigning any reasons directed the Petitioner to proceed on leave. The Petitioner accordingly proceeded on leave. On such backdrop Respondent No. 1 appointed a Deputy Secretary to conduct an enquiry into the affairs of Respondent No. 3-Board. Charge sheets, etc were filed and served on the Petitioner and a five member committee was also formed to decide on the subject matter. The Petitioner raised a preliminary objection to the authority of Respondent no. 1 in holding the aforesaid enquiry against the Petitioner, in respect of the affairs of Respondent No. 3- Board, on the ground that the Petitioner was not an employee of Respondent No. 1 but was an employee of Respondent No. 3- Board. The Respondent No. 1 accepted this contention of the Petitioner. The enquiry proposed to be held along with the charge sheet issued to the Petitioner was cancelled.

3.4 Sometime in the year 2000, there were vacancies of Fund Inspector to be filled in the office of Respondent No. 3- Board. For that purpose a Selection Committee under the Chairmanship of Respondent No.3-Board was constituted.

3.5 The said selection committee held written tests. One of the lady employees of Respondent No. 3- Board (hereinafter referred as 'X') appeared for the said exam but was not selected by the selection committee. She there after started pressurizing the Petitioner and the concerned authorities for selecting her as the Fund Inspector. X also approached the then Deputy Hon'ble CM with her grievance for non-selection as Fund Inspector. The then Deputy Hon'ble CM enquired on the subject matter with the Petitioner and the Petitioner informed him that since the selection committee had not found Ms. Mhatre suitable for the said post, she was not appointed as a Fund Inspector. It is the Petitioners contention that Ms. Mhatre had presumed that her non selection to the said post was attributed to the Petitioner.

3.6 On 21st November 2002, when X and other employees of Respondent No. 3- Board were sitting in the server room, the Petitioner had visited the server room. It is alleged that the Petitioner asked all the persons sitting in the server room to leave the server room immediately and only the person in charge of the server room was allowed to sit in the said room and the others were asked to leave and occupy their respective tables. It is stated that the Petitioner gave the aforesaid instructions considering the confidentiality of the information in the server room and the presence of too many people in the said room was not warranted. X who was disgruntled on account of her presumption that her promotion had not come through because of the Petitioner, filed a complaint on 28th November 2002 at Dadar police Station against the Petitioner under sections 354, 504 & 509 of the Indian Penal Code, 1860. She alleged that the Petitioner had sexually harassed her at her workplace. On 26th December 2002, Respondent No.3-Board being the employer of the Petitioner on the complaint made by X initiated an enquiry against the Petitioner and came to the conclusion that the complaint by X was without any substance and had been made more out of a personal vendetta by X against the Petitioner.

3.7 On such backdrop, X lodged a similar complaint with Respondent no.2 and on the basis of the complaint, Respondent No. 2 appointed Dy. Secretary Ms. Beena Prabhu along with Deputy Commissioner of Labour Ms. Katti to enquire in to the subject matter. In such enquiry, Petitioner was not found guilty on the charges made by X. In such circumstances X approached the Chief Secretary, State of Maharashtra with a similar complaint and sometime in the year 2003, the Deputy Secretary of Respondent No. 1 issued a charge sheet to the Petitioner framing seven charges on the subject matter of complaint made by X.

3.8 In response to the chargesheet, the Petitioner filed a reply dated 25th November 2003 thereby denying the charges, as also raised a preliminary objection that Respondent No.1 did not have the jurisdiction and authority to initiate enquiry against the Petitioner on the ground that the Board was the appointing authority. On 15th December 2003 on the directions issued by Respondent No.1, the then Chairman of Respondent No.3-Board by an order dated 15th December 2003 issued an order suspending the services of the Petitioner.

3.9 The Petitioner in such circumstances filed Writ Petition No. 7562 of 2003 in this court challenging the Authority of Respondent Nos. 1 and 2 in holding an enquiry against the Petitioner. In the meantime, X on realizing her mistakes started making representations to the concerned authorities that she was not promoted to the higher post, not on account of the Petitioner and that the Petitioner was not responsible for her non promotion. In fact X submitted that she was under a mistaken assumption that the Petitioner was responsible for her non promotion and that under such misunderstanding, she had filed the said complaint against the Petitioner especially when she was undergoing mental depression. X filed an affidavit dated 17th January 2004 before the Principal Secretary, Labour Ministry, Maharashtra submitting that the alleged incident of sexual harassment had not occurred in so far as she was concerned, as allegedly done by the Petitioner, was not correct. She therefore withdrew her complaint against the Petitioner. She

also took the same stand in the criminal case filed by her against the Petitioner and on the basis of her statement, an order dated 10th January 2004 was passed by the learned Additional Chief Metropolitan Magistrate (CMM), Bhoiwada acquitting the Petitioner in criminal case No. 61/P/2003 filed by X.

3.10 In the meantime, Writ Petition No. 7562 of 2003 filed by the Petitioner in this court came up for admission. By an order dated 23rd February 2004, this Court admitted the said Writ Petition on the question raised regarding authority of Respondent Nos. 1 and 2 to hold enquiry against the Petitioner. However the court directed the enquiry to proceed and further directed that if any adverse order was passed in the said enquiry, the said order should not be brought into force for a period of 4 weeks thereafter. It is the Petitioner's contention that at the time of admission of the said Writ Petition, it was not pointed out that on the basis of statement made by X, criminal case against the Petitioner was withdrawn and the Petitioner was acquitted.

3.11 Considering the fact that X had withdrawn her complaint and that the Petitioner was acquitted from the criminal proceedings, the then chairman of Respondent No.3-Board by order dated 1st June 2004, withdrew the suspension order of the Petitioner and permitted him to resume duty.

3.12 Since this court, by order dated 23rd February 2004 had passed an order allowing the enquiry to be conducted against the Petitioner, the enquiry proceeded against the Petitioner and as a part of the enquiry, X was examined on 1st July 2004. In the course of the enquiry, the Petitioner also submitted his statement of defence. On the basis of the evidence of X and the statement of defense of the Petitioner, the enquiry officer submitted his report on 5th June 2006. Responding to the enquiry report, the Petitioner filed his say dated 14th November 2007, categorically submitting that Respondent No.1 did not have authority to initiate the enquiry against the Petitioner and he was submitting the aforesaid reply without prejudice to his submission on the jurisdiction of Respondent No. 1 in initiating the said enquiry.

3.13 On 25th January 2008, taking into consideration the submissions of the Petitioner and that of X and the report of the Enquiry Officer, the Under Secretary sought to drop charges against the Petitioner pertaining to the complaint of X with regard to the allegations of moral turpitude leveled against the Petitioner. By the said order of the Under Secretary, though the Petitioner was held not guilty for moral turpitude, yet the Petitioner was held responsible for charges Nos. 4, 5 and 6 regarding the transfer of X and sanction of leave given to her. The State also took the decision to stop two increments for 2 years to the Petitioner not on the charges as made by X of sexual harassment, but in view of the other charges which were upheld against the Petitioner.

3.14 In pursuance of the aforesaid order dated 25th January 2008, a show cause notice was issued to the Petitioner asking him to show cause as to why two increments of the Petitioner should not be stopped. The Petitioner replied to the aforesaid show cause notice and again raised a preliminary objection regarding the authority of Respondent No. 1 to hold any enquiry against him.

3.15 In view of the fact that the charges against the Petitioner had been dropped in the enquiry report, as also since X had withdrawn the complaint and all other charges against the Petitioner were dropped, the Petitioner withdrew Writ Petition No. 7562 of 2003 which was filed in this Court. In the meantime, another PIL No. 198 of 2009 came to be filed in this Court, once again raking up the issue of the sexual harassment of X, however after the Petitioner placed the correct facts on record, the said PIL was disposed off.

3.16 Despite the orders withdrawing the Petitioner's suspension passed by Respondent No. 3- Board and also the dropping of charges of sexual harassment leveled against the Petitioner by X, the Petitioner was served with a copy of the impugned order dated 31st January 2012 passed by Respondent No. 2 i.e. Principal

Secretary, Maharashtra State dismissing the Petitioner from the service of Respondent No. 3- Board pursuant to the complaint made by said X and the enquiry held pursuant thereto.

3.17 On 1st March 2013, the Petitioner made an application to the Chairman of Respondent No.3-Board and applied for voluntary retirement. The Petitioner's application for voluntary retirement was accepted on 2nd May 2013 by Respondent No. 3- Board and the Petitioner was relieved from the services of Respondent No. 3 - Board with effect from 31st May 2013.

3.18 Thereafter, the Petitioner sometime in the year 2016 filed a Notice of Motion No. 277 of 2016 in this court praying for his dues post retirement pending the hearing of the present petition. The said Notice of Motion was disposed of by order dated 26th April 2022 by this Court which reads as follows:-

"P.C.:

1. By filing this notice of motion, the petitioner, a dismissed employee, seeks direction to the respondents to pay to him dues on account of leave encashment, gratuity and pension. Such notice of motion, according to Mr. Ghosalkar, learned advocate for the petitioner, has been taken out pursuant to the liberty granted by the Supreme Court by an order dated 5th July 2013 in Special Leave to Appeal (C) No. 16038 of 2013. He has relied on the decision of the Supreme Court in Union of India & Ors. v/s. C. G. Ajay Babu & Anr., reported in (2018) 9 SCC 529, in support of his contention that despite termination of service, the petitioner is entitled to gratuity.

2. It is not in dispute that the petitioner's service has been terminated on the ground of moral turpitude in the course of his employment. Unless the Court holds the termination to be invalid, there can be no question of making any direction for payment of gratuity.

3. In so far as the other dues are concerned, they must also await final decision on the writ petition.

4. Accordingly, we reject the notice of motion.

5. However, since the writ petition is pending on the file of this Court for almost a decade, we propose to give the same precedence in hearing. List the writ petition for final hearing on 8th July 2022 (fairly high on board)."

4. It is on the above backdrop the issue which has fallen for consideration before the court in the present proceedings is whether Respondent No.1 had the jurisdiction to dismiss the Petitioner from the services of Respondent No. 3- Board and pass the impugned order dated 31st January 2012.

5. Mr. Dhakephalkar, learned Senior Counsel appearing on behalf of the Petitioner submitted that the impugned order has been passed by Respondent No. 1 without having authority of law to do so, in as much as Respondent No. 1 is not the employer of the Petitioner and it is only Respondent No. 3- Board who is the employer of the Petitioner. He therefore submitted that in law only the employer would have the authority to dismiss the concerned employee from services and such authority cannot be exercised by anyone else other than the employer. He further submitted that even otherwise the entire basis on which the impugned order has been passed had fallen to the ground, in as much as the complainant, X herself admitted to have filed a false and fabricated complaint on instigation of other co-employees.

6. Affidavit on behalf of Respondent No. 1 i.e. State dated 28th February 2011 of Mr. B. S. Wankhede, Deputy Secretary, Department of Industry, Energy and Labour, opposing the reliefs as prayed for in the said Petition. The following contents of this affidavit required to be noted :-

"2 At the out set I say and submit that the present Petition is an excellent example of abuse of process of law. I say and submit that the Petitioner has been dismissed from service after holding a departmental inquiry I say and Submit that the Respondent No.3 i.e. Maharashtra Labour Welfare Board has been constituted under Bombay Labour Welfare Act, 1953. This act has been enacted for the purpose of providing for constitution of a fund for the financing of activities to promote Welfare of Labour in the State of Maharashtra. I say that, from the various provisions of the Act, it is seen that the State Government has overall control over the functioning of the Board. As per the provisions of Section 11 of the said Act, the Welfare Commissioner is required to be appointed by the Board with the previous approval of the State Government. The said

Section further provides that the Welfare Commissioner shall be the Principal Executive Officer of the Board. Section 14 of the said Act provides that the Board shall with the approval of the State Government make regulations regarding the method of recruitment, pay and allowances and other conditions of service of the members of its staff (other than the Welfare Commissioner and the Inspectors). Section 15 further, provides that the State Government shall have the power to remove any person who it may deem unsuitable from the service of the Board.

3. I further say that pursuant to the powers conferred upon the Respondent No.3 Board, the Respondent No.3 Board has framed the Rules which are known as *Maharashtra Labour Welfare Board Employees (conditions of Service) Rule 1961*. Rule 51-A reads as "except as specifically provided in a forgoing provisions of these Rules, the provisions of the *Bombay Civil Services Rules* (except Chapter 11 thereof) as amended from time to time shall be applicable to the Welfare Commissioner and other Employees of the Board". I therefore, say and submit that the considering provisions of the *Bombay Labour Welfare Fund Act, 1953* and the Rules framed thereunder i.e. the *Maharashtra Labour Welf Board Employees (conditions of service) Rule 1961*, it is clear that the *Maharashtra Civil Services Rule* are applicable to the services of Welfare Commissioner as per Rule 51-A. I further say and submit that the perusal of Section 15 of the Act, it is clear that the State Government has power to remove the Welfare Commissioner from the Services to the Respondent No.3Board, in case the State Government reaches to the conclusion that such person is unsuitable.

4. I say and submit that considering entire inquiry proceedings and the inquiry report submitted by the Enquiry Officer, the State Government has came to the conclusion that the case is of very serious nature and it is required to take action of dismissal against the Petitioner in order to uphold the dignity of women working in Organisations/Boards and other offices. I say and submit that the Government, considering all the facts of the case has granted approval to the dismissal of the present Petitioner. I therefore deny the contention of the Petitioner that the Order of dismissal dated 31.01.2012 was passed without any authority and on the basis of a complaint of a employee which is prove to be followed by three committies.

5. I further say and submit that X was a Clerk with the Respondent No.3- Board. I say that the said X made a complaint on 10.01.2003 to the Chief Secretary of the State of Maharashtra stating that she was facing sexual harassment from the Petitioner since the time the Petitioner was working as a

Senior Deputy Welfare Commissioner. A Copy of the complaint may by X is annexed hereto marked as Exhibit- "A". I say that after said complaint was received, an enquiry was constituted in the Chairmanship of Smt. Pratima Umarji the then Principal Secretary of Law and Judiciary Department and President of the State Women's Grievances Redressal Committee. The said committee under the Chairmanship of Smt. Pratima Umarji came to the conclusion that there was a prima facie case against the Petitioner and therefore departmental enquiry from the concerned Department was necessary. The report submitted by the said committee is annexed hereto and marked as Exhibit - "B".

6. I say and submit that pursuant to the recommendations to hold a departmental enquiry the State Government constituted one person enquiry committee by appointing Smt. Sanjeevani Kutty as a Enquiry Officer. I say and submit that the said enquiry committee after recording the evidence and after considering the documents which were placed before the Enquiry Committee, submitted its report to the State Government. A copy of the Enquiry Report submitted by Smt. Sanjeevani Kutty is annexed hereto and marked as Exhibit- "C".

7. I say and submit that the Petitioner has deliberately avoided to annex the relevant papers like enquiry papers etc. and has annexed irrelevant papers and the documents beneficial to the Petitioner only in order to mislead this Hon'ble High Court. I say that the Petitioner has annexed some papers to this Petition which are confidential papers and the Petitioner has no authority to be in possession of those papers. I say that the fact that the Petitioner has unauthorisedly obtain copies of confidential documents shows the interference caused by the Petitioner in the process of delivery of justice.

I therefore say and submit that in the facts of present case, no interference is required at the hands of this Hon'ble High Court exercising the powers under Article 226 of the Constitution of India and therefore, the present Petition may be dismissed with heavy costs."

7. Affidavit in reply on behalf of Respondent No. 3- Board dated 9th April 2012 has been filed by Shri. Ravindra Gavit, Chairman of the Respondent No. 3- Board. In the aforesaid affidavit, Respondent No. 3- Board has categorically submitted that the Petitioner was an employee of the Board and Respondent No. 1 had no role to play, except giving its approval at the time of appointment of the Petitioner. In the said affidavit, it has also been stated that save and except the

approval of the name of the Welfare Commissioner by the Respondent No. 1, all the other decisions regarding appointment of Welfare Commissioner, service terms and conditions of the Welfare Commissioner and payment of salary are undertaken by the Board i.e. Respondent No. 3- Board. Reliance is also placed on the provision of Section 4(6)(d) of the Act which empowers the Board to decide service terms and conditions of the welfare commissioner. The said provision reads as under:-

“4. Board.— (1) [The State Government shall, by notification in the Official Gazette constitute the Board for the whole of the State of Maharashtra for the purpose of administering the Fund, and to carry on such other functions assigned to the Board by or under this Act.] The Board shall consist of the 10[following members, not exceeding twenty-six in number], namely:—

[(6) Notwithstanding anything contained in this section, until the Board for the State of Maharashtra is duly constituted in accordance with the provisions of sub-section (1), the existing Board functioning and operating immediately before the commencement of the Bombay Labour Welfare Fund (Extension and Amendment) Act, 1961 (Mah. XXXVI of 1961), in any area of the State shall continue to function and operate in that area and shall be the Board for the purpose of this Act for that area ; and on the constitution of the Board for the whole of the State of Maharashtra under sub-section (1)—

(d) the Welfare Commissioner and the other officers and servants of the existing Board shall continue to be the Welfare Commissioner and officers and servants of the Board so constituted; but the terms and conditions of service of the Welfare Commissioner and other officers and servants shall not, until duly altered by a competent authority, be less favourable under the Board so constituted than those admissible to them while in the service of the existing Board.]”.

8. It was also submitted that since the Petitioner's salary is debitale to the funds of Respondent No.3-Board, it is clear that the Petitioner was an employee of the board and on a conjoint reading of the provisions of the Act and the Rules, Respondent No. 3-Board is empowered to take all decisions in respect of the service of the Petitioner,including the termination and/or dismissal from the services of Respondent No.3-Board. Therefore the decision of Respondent No.1 to dismiss the Petitioner from the services of Respondent No.3-Board by the impugned order is without the authority of law. In the said affidavit, it has also been submitted that the dismissal of service of Petitioner was primarily based on an

enquiry held against the Petitioner on the basis of alleged sexual harassment case initiated on a complaint made by X in the year 2002. This complaint has been found without substance in the enquiry report and also the said X has withdrawn all her charges and the criminal cases filed against the Petitioner.

Analysis

9. We have heard the parties, we have also perused the records and relevant provisions of law applicable to the facts of the case. We accordingly proceed to decide the basic issue which has fallen for consideration in the present proceedings i.e., whether Respondent No.1 had jurisdiction to dismiss the Petitioner from the services of Respondent No.3-Board under the provisions of Section 15 of the Act. To decide the issue, it will be beneficial to reproduce the provisions of Section 15 of the Act, which reads as under:-

“15. Power of State Government to remove any person on staff of Board.— The State Government shall have the power to remove any person whom it may deem unsuitable, from the service of the Board and to make an appointment in respect of whom more than one-third of the members of the Board have not agreed.”

(emphasis supplied)

10. On a plain reading of the aforesaid section, it is clear that section 15 empowers the State to remove any person who is found unsuitable for being appointed in service of the Board, in peculiar circumstances, if the State finds that any person employed is “unsuitable” then the State has the power to remove such person exercising powers under Section 15 of the Act. This power is coupled with a power as conferred in the second part of Section 15 to appoint such person in respect of whom more than 1/3rd of the members have not agreed. The power to appoint/employ any person on the Board is exclusively the right of the Board under the said Act as conferred under Section 15. Thus, “and” in section 15 needs to be read in conjunction for the reason that the first part of section 15 when empowers the State Government to remove any person whom it may deem unsuitable from the service of the Board simultaneous to it clothe’s the State Government to “make an appointment” of a person in respect of whom more than 1/3 of the members of the Board have not agreed. The corollary thereto is

therefore, in the fact of the present case, the Petitioner is an employee of Respondent No.3-Board, as his appointment has been made by Respondent No.3-Board and not by Respondent no.1. Further the power to appoint Welfare Commissioner is vested in Respondent No.3-Board. The provision of Section 11 of the Act reproduced below makes the same clear:-

*“11. (1) (i) The Welfare Commissioner shall be appointed by the Board with the previous approval of the State Government;
(ii) The Welfare Commissioner shall be the principal executive officer of the Board ;
(iii) It shall be the duty of the Welfare Commissioner to ensure that the provisions of this Act and the rules made thereunder are duly carried out and for this purpose he shall have the power to issue such orders not inconsistent with the provisions of the Act and rules made thereunder as he deems fit including any order implementing the decisions taken by the Board under Act or rules made thereunder.”*

11. The power to find a candidate unsuitable cannot be equated akin to a power of termination. Section 15 is not a provision which would override the provisions of Section 11 of the Act which confers an exclusive power with the Board to appoint its employees. It is a settled principle of law that a power to appoint includes a power to terminate/dismiss. (See: Section 16 of the General Clauses Act). This is also apparent that from the fact that Section 15 does not begin with non obstante clause overriding the provisions of Section 11 which is an exclusive power of the Board to appoint its employees. Thus, to attribute a meaning to Section 15 that it confers powers to terminate the employees of the Board would be reading something in Section 15 not explicitly provided for. In fact, it would amount to doing violence to the plain reading and purport of the provision.

11.1 On examining as to what would be the true intention, meaning and implication as brought about by Section 15, it primarily confers power on the State Government to “remove” any person whom it may deem “unsuitable” from the service of the Board and to make an appointment in respect of whom more than one-third of the members of the Board have not agreed. When the provision uses the word “unsuitable”, the first consideration would be as to what is the purport

and meaning of such connotation. Meaning of the word 'suitable' is required to be seen from different dictionaries:

Black's Law Dictionary¹ –

'suitable': fit and appropriate for their intended purpose

Oxford English Dictionary² –

'suitable': right or appropriate for a particular person, purpose, or situation

Merriam-Webster.com Dictionary –

'suitable': (c) Able, Qualified : a suitable candidate for the job.

11.2 We may usefully refer to the decision of the Supreme Court in **Parvez Qadir v. Union of India**³ wherein the Supreme Court held that the word 'suitable' does not require a definition because any man of experience would know who is suitable. It was held that however, each case has to be viewed in the context in which the word 'suitability' or 'suitable' is used, the object of the enactment and the purpose sought to be achieved. It was also held that the word 'suitability' itself is correlated with the object of retirement, viz., that a person has to be considered suitable for appointment to a superior service which itself furnished the norm that he is considered suitable having regard to his service. If this be the connotation of the word 'suitable', we are afraid to read any removal on unsuitability as termination on disciplinary proceedings. It is thus clear that the word 'unsuitable' cannot in any manner be read to be termination. It is thus clear that a candidate is unsuitable is certainly not mean that he is found to be unsuitable in the context of termination of disciplinary enquiry. If the legislature intended to confer such power of termination, clearly such purport of termination could have been included in plain terms in the said provision⁴. The provision would be required to be read as it stands and without adding or altering any of the words which are likely to change the purport, meaning and/or the object sought to be achieved under the said

1 Eight Edition, page 1476

2 Eleventh Edition, page 1442

3 AIR 1975 SC 446

4 Expressio unius est exclusio alterius

provision. In another decision of *Valsala Kumari Devi M. Vs. Director, Higher Secondary Education and Others*⁵ the expression “suitability” has held to mean that a person to be appointed shall be legally eligible and “eligible” should be taken to mean “fit to be chosen”.

12. We are also of the view that in the impugned order there are no findings regarding the unsuitability of the Petitioner warranting his removal from the services. The power to find a candidate unsuitable is not the power of termination. In fact the impugned order has been passed only on the complaint of the said X and on the basis of the aforesaid complaint, the services of the Petitioner have been terminated. The relevant findings of the impugned order are reproduced herein below:- (English translation)

“7. The present action of the Departmental Enquiry against the Delinquent Officer by name Shri Mohan Dhotre, Welfare Commissioner, Maharashtra Labour Welfare Board has been initiated in accordance with the Rules. All the documents in respect thereof have been made available to the Delinquent Officer. He was even given an opportunity to cross examine the Government Witnesses and the witnesses named by him were also called to record their testimony. Therefore, the Delinquent Officer's claim that this enquiry was not in accordance with the law cannot be accepted. In Paragraph Nos. 11 and 12 of his Report, the Enquiry Officer has made detailed analysis of the pressure tactics behind Smt. Pradnya Mhatre's withdrawing her said complaint of sexual harassment.

8. The Government Letter demanding the Delinquent Officer Shri Dhotre to show cause as to why his two increments for two years should not be withheld, is withdrawn.

9. The Welfare Commissioner is the Chief Administrative Officer of the Maharashtra Labour Welfare Board and all financial and administrative powers of the Board are vested in him and in the present matter, Shri Mohan Dhotre has taken undue advantage of this very comprehensive authority-powers. The Enquiry Officer has categorically mentioned in his Enquiry Report that, in fact, being a Commissioner for Labour Welfare and even in the capacity as the Head of the Office, the Delinquent Officer only was solely responsible to maintain an overall suitable and safe environment for the women working in the office and in spite of that, it is very unfortunate that he only has committed the said

acts. On this background, the 06 articles of charges in respect of the acts viz. to cause sexual harassment to Smt. Pradnya Mhatre, the then Junior Clerk, to maliciously / vengefully transfer to some remote places the employees supporting or extending their co-operation to Smt. Mhatre, to suspend them without any reason therefor, to initiate Departmental Enquiries against them and to make misuse of the office of the Welfare Commissioner are unbecoming of a Government Employee are proved against the Welfare Commissioner by name Shri Mohan J. Dhotre. On this background, in exercise of the powers vested in the Government as per the provisions of Rule 5 (Nine) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and also of Section 15 of the Bombay Labour Welfare Fund Act, 1953, Shri Mohan J. Dhotre, Welfare Commissioner is dismissed from the services of the Maharashtra Labour Welfare Board.

10. As per the Decision dated 23/02/2004 of the Hon'ble Bombay High Court passed in the Writ Petition No. 7562 of 2003 filed in the Hon'ble Bombay High Court by Shri Mohan Dhotre, Welfare Commissioner in connection with this Departmental Enquiry, the aforesaid Order will not be implemented up to the period of four weeks from the date of issuance of the aforesaid order. Similarly, the Delinquent Officer - Shri Mohan J. Dhotre shall have full liberty to approach to the Appropriate Authority for seeking a relief against this Decision of the Government.”

13. These findings clearly show that only moral turpitude has been made the basis against the Petitioner to dismiss him from his services. This, to our mind, is not a correct approach adopted by Respondent No. 1 in passing the impugned order in as much as section 15 does not envisage that moral turpitude can be a ground to dismiss any employee from his/her services. The impugned order further fails to consider the crucial facts that the complainant X had herself, on 3 instances withdrawn the allegations against the Petitioner. In fact by an affidavit dated 17th January 2004 filed before the Principal Secretary, the said X categorically submitted that she was depressed as she was not selected for promotion to the post of Fund Inspector which was a higher post, and therefore presuming that the Petitioner was responsible for her non promotion, she filed a complaint against the Petitioner on the said misunderstanding. In the said affidavit, she also stated that she has realized her mistake and she has withdrawn all allegations against the Petitioner.

14. Further an order dated 10th January 2004 has also been passed by the Additional CMM Bhoiwada acquitting the Petitioner in Criminal case No. 61/P/03 filed by X against the Petitioner. It is also seen from the evidence note (Exhibit-O, Page 102 to 104 to the Petition), that in the evidence given by X before the enquiry officer, she has categorically submitted that on the instigation of some other co-employees, she filed the complaint against the Petitioner. The relevant notes to evidence are reproduced below: (English translation)

“Question: Why did you make these complaints?

Answer: At first, it is necessary to state brief facts of this matter. Two years before this incident, our written examination and oral interview had been conducted in the office, for promotion. I had heard that I stood first in the written examination. I was also confident about this because I have performed well in both the written and oral examination. At or around the same time, Shri. Dhotre called me and asked me as to how much salary would increase, if I get promotion. He told me that I have scored good marks. However, I don't know what happened thereafter. Because, my name was not there in the list of the employees who were promoted. Among the people who were promoted, promotion was given to Shri. B.V. Shinde against whom there were allegations of misappropriation of money and on seeing this I was surprised as to how the promotion was given to the said person. It was said that there were give and take transaction of money for promotion. Shri. Jagdish Naik said that Shri Dhotre was responsible for my name left out. I felt very bad about the said thing, however I did not say anything for two years. Thereafter, in or around October 2002, I learnt that the post was going to be filled up again by way of promotion. I felt that I should try again to see that injustice should not be done to me and therefore, I filed complaint to the Hon'ble Deputy Chief Minister regarding the promotion issue.

Thereafter, Shri. Dhotre asked me as to why I filed complaint with the Hon'ble Deputy Chief Minister. Even, the Chairman of the Board asked me for the explanation in that regard. The Chairman of the Board told me that all these promotions were given by his order and Shri. Dhotre was not involved in the said matter.

Thereafter, on the date 21" November, 2002, when I was working on the computer as usual, Shri. Dhotre came and

asked me as to why I was sitting there. I would always sit on this Computer and I would sit on this computer with the permission of Shri. Ingle, Assistant Welfare Commissioner. As the said Computer was operating fast, I was working on the same. Thereafter, in my presence, Shri. Dhotre told Shri. Chaudhari that the computer in his own antechamber was operating fast and that he should make me to sit there. This made me feel insulted and it was inappropriate to talk about a woman like this. At that time, I became very upset and immediately I came out of the office and went to my husband. Similarly, at that time, I tried to meet Mr. Jagdish Naik of the Employees' Union, but since he was not in the office, I submitted a leave application and left the office. I contacted Mr. Jagdish Naik over the phone and went to meet him at Elphinstone Station. After having discussion with Mr. Jagdish Naik, I was taken to Matunga Police Station. Shri. Haldankar, Shri. Jagdish Naik, Shri. Kale, the Office-bearers of the Union told me that earlier also Mr. Dhotre had harassed the women in this manner at the offices at Nagpur and Aurangabad and therefore, those women will also get justice on the basis of my complaint. I had become very disappointed with the promotion issue and similarly, Shri. Dhotre had not liked that I had made complaint in that regard to the Hon'ble Deputy Chief Minister. Further, I filed a complaint as suggested by the Office-bearers of the Union regarding the inappropriate comments made about me i.e. making me seated in the antechamber on November 21". These people took me at various places and met the Officers and Office-bearers regarding my complaint at various levels. My father also was the President of the Union and as I was acquainted with all these people of Union since my childhood, I was like their daughter. Further, Shri Parandekar, the then Deputy Welfare Commissioner also came to my house twice and met me and he advised and guided me regarding filing complaints. With the advice of all of them, I filed complaint applications at various offices.

I would like to mention again that the promotions in the Welfare Commissioner's Office become the center points of this matter. These promotions were made in a completely wrong manner and the wrong people were promoted. The Government approval is necessary while giving these promotions. It is unlawful that these promotions have been granted without even obtaining such approval.

Question: Why did not you use your conscience while affixing signature to the complaint?

Answer: I thought that there are many women, who might

have suffered harassment at the hands of Shri. Dhotre but, they could not come forward, so I am taking the initiative and doing a good job. However, now I feel that the Union has made use of me.

Question: Why did you trust the Office-bearers of the Union and filed complaint on hearsay information?

Answer: All these Office-bearers were friends of my father and since my childhood, I was acquainted with them. They are my well-wishers and they are like my father and therefore, I trusted them. Similarly, though the information about other women is an heresay information, the words about making me to sit in the antechamber were actually uttered for me, were very upsetting to me and definitely defamatory to the woman.

Why did you withdraw your complaint later on?

Answer: On the basis of my complaint, Shri. Dhotre was suspended and the matter was even reached to the Court and I was not aware that all this would happen. Even after that, I did not get promotion. The Office-bearers of the Union persuaded me by saying that it would not be proper to promote me while this matter was pending. After Mr. Dhotre's suspension, the Office-bearers of Union stopped talking to me and I was left with no support. I learnt that the Union had collected contributions of Rs. 1,000/- to Rs. 1,500/- from about thousand employees to fight my case. However, later on, I was told that that my case was personal and that I had to fight the same at my own expenses.

After the complaint, Dhotre Saheb transferred me from that office. Further, an enquiry was again made into the half pay maternity leave, which was approved a year ago, without any reason. I was very bothered by all these things. Everyone keeps talking to me about this same topic and I am tired of the same. Thereafter, Shri. Parandekar again transferred me to the Central Office. In this manner, I started feeling for myself that I have become a toy. Even today, my health is not good due to this mental stress and I am taking medication. Later on, I also learnt that due to this matter, people are spreading malicious gossips about me and that as result thereof, my reputation whatever that has been lowered is intolerable. For all these reasons, I have withdrawn my complaint."

15. It is thus seen that the impugned order has failed to consider the crucial fact that the complainant X had withdrawn the allegation against the Petitioner and this itself was the basis on which the impugned order was passed. As that very basis / allegation itself did not survive against the Petitioner, the very foundation on which

the impugned order was passed stood extinguished.

16. The impugned order also deserves to be set aside on the ground that the same has been passed without jurisdiction, in as much as Respondent no.1 was not the employer of the Petitioner and it was Respondent no. 3-Board, who was the employer of the Petitioner. The appointment of the Petitioner under section 11 of the Act has been made by Respondent No. 3- Board and the only role that Respondent No. 1 had to play in the appointment of the Petitioner was to give previous approval for the said appointment. This approval was made by Respondent No.1 way back in the year 1999. Once the approval has been given by Respondent No.1, the role of Respondent No. 1 ends and the State has no powers to decide on the employment conditions of the Petitioner. In fact the salary of the Petitioner as submitted by Respondent No. 3- Board is paid from the funds of Respondent No. 3- Board and is directly debit able from those funds. Further, the mandate of section 15 is very clear as to when Respondent No. 1 can exercise such powers as discussed hereinabove. In the facts of the present case, the Chairman of the Respondent No.3-Board conducted an enquiry on the allegations made by X and informed the same to Respondent No. 1 on 26th December 2002. Therefore there was no failure on the part of the Board to act on the complaint of X conferring any powers on Respondent No.1 to remove/dismiss the Petitioner from service.

17. We are therefore of the view that the impugned order has been passed wholly in the absence of any jurisdiction or authority of Respondent No.1 in matters which are in the exclusive domain of Respondent No. 3- Board. Respondent No. 3- Board is an autonomous body with a perpetual succession, common seal and power to acquire movable and immovable property. It is an independent body constituted under Section 4 of the Act. The State Government has mere general supervisory power and control over the Board and cannot exercise powers otherwise than what has been provided under the Act. In the present case powers under Section 15 of the Act could not have been exercised. Therefore

considering the statutory provisions, it is clear that Respondent No. 3- Board is a fully independent body having its own set of rules and regulations to ensure the smooth functioning and conditions of service of its employees. The impugned order has further failed to discuss or record any finding on the 'suitability' of the Petitioner, as held aforesaid. The Petitioner was appointed only once he fulfilled all the criteria set out for the post of the Welfare Commissioner. The impugned order nowhere casts a doubt on the suitability of the Petitioner for the post of the Welfare Commissioner, thereby not taking into consideration the most important ingredient i.e. 'suitability', as required to trigger the provisions of Section 15 of the Act.

18. In the context of the State exceeding its jurisdiction the following decision of the Supreme Court is reproduced in the case of *Municipal Board Kannauj Versus State of Uttar Pradesh & Ors.*⁶ in the context of UP Municipalities Act, 1916 held that *sub section (1-B) does not clothe the State Government with a power to set aside or cancel an order of dismissal under the cover of purporting (to prohibit the execution or further execution). The Resolution of the board or the order of a duly authorized order of the board is not liable to be cancelled or set aside under this section. All that could be done under it is to prohibit the execution or further execution of the resolution or order, or the doing or continuance by any person of any act in pursuance of or under cover of such resolution/order. Whether the resolution/order does not require any acts to be performed or steps to be taken in the execution or further execution of the resolution or order of the board or of its officer, there is nothing to prohibit. If the object of the provision was to cloth the State Government with power to cancel or set aside the resolution of the board/order, it would have simply said so without resorting to the circumlocution "prohibit execution or further execution of the resolution/order". Sub section (1-B) of Section 34 referred to does not apply to any resolution/order which exhausts itself after it is passed or made even if the sub section is read with sub section 4 of section 34.*" Taking the aforesaid view the Supreme Court allowed the appeal and

6(1972 3 SCC 345)

quashed and set aside the order of the State Government dated 12th May 1965.

19. In our view therefore, the impugned order miserably fails not only in taking into consideration the crucial facts of the case but also has been passed without jurisdiction and hence liable to be quashed and set aside. As a result of the above discussion, the Petition is allowed in terms of the following order:-

ORDER

- (i) We quash and set aside impugned order dated 31st January 2012 passed by Respondent No.2.
- (ii) Rule made absolute in terms of prayer clauses (a) and (b).
- (iii) Parties to act on the authenticated copy of the order.
- (iv) As we have allowed the Petition, if there are consequential benefits which become entitled to the Petitioner, it is open to the Petitioner to make a representation to that effect to the Board. The Board shall consider the same and take appropriate view of the matter in accordance with law. Let such representation be made within four weeks from today which be decided after hearing the Petitioner within four weeks thereafter. If any payment is due, the same be realized within further four weeks of such decision.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)