IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 428 of 2018

Dipak Kumar Chattopadhyay,
Age 59 years, Occu. Advocate,
R/at - 83/2, Western Railway Colony,
Matunga Road, Mumbai 400 019 **... Petitioner**

Versus

1. **State of Maharashtra,**
   Through the Secretary of
   Department of Women and
   Children, Mantralaya,
   Mumbai 400 023.
2. **Commissioner of Women and Child Development**, Maharashtra State, Pune -1, having office at - 28, Ranichabaug, Near Old Circuit House, Maharashtra State, Pune- 1.
3. **District Women and Child Development Officer**, Mumbai City Having office at - 117, BDD Chawl Worli, Mumbai. **... Respondents**

Dr. Uday Warunjikar a/w Mr. Aditya Kharkar, Mr. Jenish Jain, for the Petitioner.

Ms. P. H. Kantharia, G.P. for the Respondent Nos.1 to 3 - State

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CORAM : M.S. Sonak &
Jitendra Jain, JJ.

RESERVED ON : 26 JUNE 2025
PRONOUNCED ON : 01 JULY 2025

JUDGMENT : *(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

2. The rule was issued in this Petition on 07 December 2017, and the hearing was expedited.

3. The Petitioner challenges the order dated 22/25 September 2017 (Exhibit H) by which he was removed as a Member of the Juvenile Justice Board ("JJB"), Mumbai.

4. By Notification dated 18 June 2015, the Petitioner was appointed as a Member of the JJB by following the due procedure for selection. On 16 December 2016, the Principal Magistrate [Chairperson] filed a complaint against the Petitioner alleging misconduct, misbehaviour and abuse of power. A similar complaint was also made to the High Court, which the Registrar forwarded to the State Government. A show cause notice was issued to the Petitioner on 23 December 2016. On 20 January 2017, the State Government instructed the Commissioner for Women and Child Development to form a committee to investigate the allegations made in the complaint.

5. A committee was formed and submitted its report on 02 June 2017, which was forwarded by the Commissioner, Women and Child Development, to the State Government on 19 June 2017. A copy of the report was provided to the Petitioner, who was given an opportunity to present his case. After considering the Petitioner's response, the impugned order dated 22/25 September 2017 dismissed the Petitioner as a Member of the JJB. Hence, this Petition.

6. At the time the Petitioner was appointed as a Member, via Notification dated 18 June 2015, the Juvenile Justice (Care and Protection of Children) Act, 2000 ("2000 Act") and the Rules made thereunder in 2007 were in force. However, when the Petitioner was removed as a Member, the Juvenile Justice (Care and Protection of Children) Act 2015 ("2015 Act") had come into force, effective from 15 January 2016. The Petitioner was removed on 22/25 September 2017, but the Rules under the 2015 Act only came into force in January 2018.

7. Dr. Warujikar's first contention was that since the Petitioner was appointed under the 2000 Act and 2007 Rules, his removal ought to be governed by the 2000 Act and Rule 92(2) of the 2007 Rules. He submitted that in terms of Rule 92(2) of the 2007 Rules, only a Selection Committee constituted under Rule 91 of the 2007 Rules was empowered to hold a necessary inquiry into the complaint against any member of the JJB and recommend termination of such

member to the State Government, if required. He submitted that in this case, the complaint against the Petitioner was never referred to such Selection Board and consequently, the procedure prescribed under Rules 91 and 92 of the 2007 Rules was openly flouted. He submitted that on account of this glaring infirmity, the impugned removal order is ultra vires, null and void. Dr. Warunjikar relied on (1) **Smt. Anita Sadanand Vipat Vs. State of Maharashtra**[1]; (2) **Poonam Chandrashekhar Inamdar Vs. State of Maharashtra**[2]; and (3) **Renuka Vishnu Ghule Vs. State of Maharashtra**[3] in support of his contentions.

8. Without prejudice, Dr. Warunjikar submitted that the inquiry was in violation of principles of natural justice and fair play. He submitted that the inquiry committee, which was not properly constituted, recorded the statements of Priya Gavade, Sandhya Ballal and R. R. Kulkarni. Such statements were relied upon in the committee's inquiry report. However, neither were copies of such statements provided to the Petitioner during the inquiry, nor was the Petitioner given any opportunity to cross-examine these persons. He pointed out that the Petitioner, upon perusing the inquiry report, obtained copies of the statements of these persons after he was removed as a Member. Dr. Warunjikar submitted that reliance upon such adverse material without giving any opportunity to

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[1] Writ Petition No.11080 of 2017, decided on 15/11/2017

[2] 2017 SCC OnLine Bom 1286

[3] Writ Petition No.2400 of 2014, decided on14 October 2014

the Petitioner to rebut the same or to cross-examine such persons amounts to a gross violation of the principles of natural justice and fair play. He, therefore, submitted that on this ground as well, the impugned removal order is liable to be set aside.

9. Finally, Dr Warunjikar took us through the committee's findings and submitted that, even if accepted at face value, such findings did not constitute any misconduct or misuse of power. He submitted that in any event, the penalty of removal was grossly disproportionate because the Petitioner was a senior citizen and a professional (Advocate and Lecturer). He submitted that the report, along with the impugned removal order, casts an unjustified stigma upon the Petitioner, which was not warranted in the present case. On this ground, Dr. Warunjikar submitted that the impugned removal order may be interfered with.

10. On instructions from the Petitioner who is present in the Court, Dr. Warunjikar made a statement that the Petitioner, whose term had already expired, was not interested in once again becoming a Member of the JJB or claiming any financial benefits like back-wages, arrears, etc. Dr. Warunjikar submitted that the Petitioner was mainly concerned with the stigma which, according to the Petitioner, was unwarranted and, in any event, grossly disproportionate.

11. Ms Kantharia, the learned Government Pleader, submitted that neither the 2000 Act nor the 2007 Rules

applied to the case of the Petitioner, as the Petitioner was removed in September 2017, after the 2000 Act and the 2007 Rules were duly repealed. She submitted that even the 2018 Rules made under the 2015 Act may not apply because the Petitioner was removed in September 2017 when these Rules had not yet to come into force. However, she submitted that in this case, the action of removal is by the State Government, which is the prescribed authority under the 2015 Act. Therefore, there was no infirmity in the impugned removal order.

12. Ms. Kantharia argued that the decisions relied upon by Dr. Warunjikar were distinguishable. She stated that **Poonam Inamdar** (supra) and **Renuka Ghule** (supra) were cases under the 2000 Act, read in conjunction with the 2007 Rules. She argued that **Anita Vipat** (supra) supports the Respondents because it confirms that the State Government is the competent authority to remove a Member of the JJB under the 2015 Act. She contended that, in this case, the State Government appointed the inquiry committee, and it also issued the removal order based on the committee's report. Thus, there is no legal infirmity in the impugned action.

13. Ms. Kantharia submitted that the principles of natural justice were observed in this matter. The Petitioner was given a full opportunity to present their case before the inquiry committee made its report, and even afterwards. A copy of the inquiry report was provided to the Petitioner, and only after

considering his response, was the impugned removal order issued. She argued that at no stage did the Petitioner demand any opportunity for cross-examination, nor has the Petitioner shown any prejudice. For these reasons, Ms. Kantharia contended that there was no breach of natural justice or fair play.

14. Ms. Kantharia submitted that some of the charges established against the Petitioner were quite serious and, in that context, there is no disproportionality involved. She submitted that the Petitioner prepared a rubber stamp privately and used it for official purposes. She submitted that he was also not attending the proceedings for the full day. She submitted that the Petitioner was not getting on with the Magistrate presiding over the Board and, on one occasion, sat on her chair when addressing the law college students. She submitted that allowing 30 to 35 law students in the Observation Home without prior intimation also amounted to misconduct and misuse of power.

15. For all these reasons, Ms. Kantharia submitted that there was no disproportionality involved.

16. The rival contentions now fall for our determination.

17. As noted in paragraphs 4 and 5, the Petitioner was appointed as a Member of JJB on 18 June 2015. His selection and appointment were governed by the 2000 Act, read with the 2007 Rules. However, the 2000 Act and 2007 Rules were

repealed with effect from 15 January 2016, following the coming into force of the 2015 Act.

18. Admittedly, the Petitioner was removed vide impugned order/notification dated 22/25 September 2017. This was after the 2015 Act came into force but before the 2018 Rules made under the 2015 Act came into force. Therefore, the Petitioner cannot rely upon the provisions of the 2000 Act or the 2007 Rules, and based on the same, urge any infirmity in the impugned action.

19. Rule 91 of the 2007 Rules provides for the constitution of a Selection Committee and its composition for selecting members to the JJB. The composition includes, *inter alia,* a retired judge of the High Court as the Chairperson of the Selection Committee, along with other representatives and officials.

20. Rule 92 (2) of the 2007 Rules provides that in the event of any complaint against a Member of the Board or Committee, the Selection Committee shall hold necessary inquiry and recommend termination of appointment of such Member to the State Child Protection Unit or the State Government, if required.

21. Since the 2000 Act and the 2007 Rules do not apply, the Petitioner cannot fault the impugned action on the ground that the Selection Committee did not conduct the inquiry against the Petitioner constituted under Rule 91 or that the

removal of the Petitioner is not based on the inquiry report and on recommendation of the Selection Committee constituted under Rule 91 of the 2007 Rules.

22. **Poonam Inamdar** (supra) and **Renuka Ghule** (supra) were the cases to which the 2000 Act and the 2007 Rules applied. Therefore, reference was made to Rules 91 and 92 of the 2007 Rules, and after finding non-compliance, the impugned action of removing the Member was set aside. That is not the position in the present case because by the time the Petitioner was removed, the 2000 Act and the 2007 Rules were not in force.

23. **Anita Vipat** (supra) was a case where the appointment of the Member was made under the 2000 Act, read in conjunction with the 2007 Rules. However, the removal was after the 2015 Act came into force. Therefore, this Court held that the power to terminate the appointment of any member of the committee vested in the State Government and the termination can be made only after the State Government holds an inquiry. Factually, however, it was found that the State Government had neither appointed an inquiry committee nor an officer; therefore, in the absence of the State Government appointing an inquiry officer or directing the holding of an inquiry, the termination order was illegal and ultra vires.

24. In the present case, there is no dispute, and even the records show that it was the State Government that appointed

the committee to inquire into the complaints against the Petitioner. The committee submitted its report to the State Government. A copy of such report was furnished to the Petitioner, and after considering the Petitioner's response, it was the State Government that passed the impugned removal order. Therefore, Dr. Warunjikar's first contention that the inquiry or order was made by authorities not empowered to do so will have to be rejected.

25. Regarding the violation of natural justice, it appears that the inquiry report relied on the statements made by Priya Gawade, Sandhya Ballal, and R. R. Kulkarni. There is no record of such statements being furnished to the Petitioner during the inquiry or before the inquiry report was made, wherein these statements were relied upon. There is also no record of the Petitioner seeking any opportunity for cross-examination. Dr. Warunjikar, however, explained that the Petitioner had no knowledge of such statements and came to know of them only after he was furnished a copy of the inquiry report.

26. Still, apart from vaguely alleging a violation of natural justice, no specific objection was taken about the deprivation of opportunity for cross-examination. The statements of these three persons are not particularly significant, considering the Petitioner's response, where he also admitted to some of the aspects contained in those statements.

27. Apart from the aspect of non-furnishing of statements, the overall procedure followed cannot be said to be in gross breach of principles of natural justice or fair play. Normally, adverse material must be furnished to the member proceeded against, and if the member so demands, even the opportunity of cross-examination should be considered. Still, there is nothing like a mere technical breach of principles of natural justice. The party alleging failure of natural justice must plead and establish prejudice. Considering the totality of the circumstances, we do not think that a case is made out to fault the impugned action for want of natural justice. Accordingly, even the second ground urged by Dr. Warunjikar cannot be accepted.

28. As regards the third ground, which relates to the disproportionality, we note that several allegations were made by the Magistrate [Chairperson] who was presiding over the JJB in her complaint. From the allegations, it appears that there were some ego clashes between the two, and they were not getting along very well.

29. However, ultimately, the findings that are alleged to have been established are only the following:

(a) That the Petitioner was not devoting his full time to the work of the JJB.

(b) The Petitioner prepared his own rubber stamp instead of getting the rubber stamp prepared

from the office. He was using this stamp, indicating his name and the fact that he was a Member of the JJB.

(c) The Petitioner did not obtain prior permission before permitting law students to visit the Observation Home. Due to this, there was an obstruction to the working of the JJB.

(d) The Petitioner invited 30 to 35 students at the JJB office and "*sat on chair of the Chairman*" to give guidance to such students. The committee felt that this amounted to misuse of the position "*for his own personal benefit".*

(e) The Petitioner made some allegations against the Magistrate (Chairperson) and suggested her transfer. However, the Chairperson had already been transferred. Due to lack of coordination between the Petitioner and the Chairperson, the functioning of the JJB was affected.

30. Admittedly, the Petitioner, after being appointed as a Member of the JJB, was permitted to teach as a lecturer or even practice as an advocate. Nothing was shown to us restricting such activities. Therefore, to state that the Petitioner was not devoting his whole time to the JJB is rather vague. There are no details in the charge or the findings recorded by the committee.

31. There are no allegations about the Petitioner misusing the rubber stamp or that the Petitioner was disentitled to use a rubber stamp. The only charge is that the Petitioner should have got prepared such a stamp from the office, rather than privately. Upon examining the stamps on some of the documents, we found that they were the same or similar to those used by others. It is not as if some prohibited emblem was used. The stamp was not used on any documents unconnected with the petitioner's official functions. Nothing was produced during the enquiry or in the reply in this Court regarding any rules or office procedures for obtaining such stamps only through the office.

32. The Petitioner was a lecturer, and if he felt that the law students should be acquainted with the functioning of the JJB or the Observation Home, there was nothing *prima facie* wrong. No doubt, to ensure proper coordination, the Petitioner should have given prior intimation or even obtained prior permission. However, it appears that 30 to 35 law students were invited to acquaint themselves with the functioning of the JJB. Observation homes are sensitive places, and as Ms Kantharia submitted, a visit by about 35 students had to be meticulously planned in consultation with the authorities.

33. On this occasion, the students visited the JJB premises to acquaint themselves with its functioning. In the absence of the Chairperson, if the Petitioner merely sat on the "*chair of*

the Chairman", we do not think that this should be regarded as serious misconduct warranting his removal as a Member of the JJB. No details of the "personal benefit" derived by the Petitioner by occupying the Chairperson's chair on one solitary occasion were brought to our notice.

34. The Petitioner and the Chairperson did not get along well and had filed complaints and counter-complaints against each other. However, most of these complaints are related to ego issues or minor differences. The chairperson was also transferred. It is likely that there were some difficulties in the functioning of the JJB due to the Petitioner and the Chairperson not getting along very well. However, as noted earlier, the charges pertain more to temperamental issues than misconduct or misuse of power.

35. Based on the above charges, the penalty of removal appears to be grossly disproportionate. At the highest, some warning could have been issued to the Petitioner to mend his ways so that such issues are eliminated or reduced. However, we do not believe that in these circumstances, the petitioner's removal was warranted. There were no allegations of any corruption or harassment. There were no allegations of nepotism in the discharge of functions as a member or taking any decisions for extraneous considerations. The allegations primarily concern coordination with the Chairperson. The allegations, such as sitting in the Chairperson's chair on a

solitary occasion or concerning the rubber stamp, do not warrant the extreme penalty of removal with a stigma.

36. Ultimately, the Petitioner is a professional (Advocate) and a lecturer. The Petitioner is also a senior citizen. At this stage, there is no reason for the Petitioner to be branded with a stigma. There is disproportionality involved in the action. At the most, some warning could have been issued to the Petitioner. Better still, the Petitioner should have been counselled to mend his ways. Insufficient weight was given to these relevant considerations.

37. The penalty of removal, in the facts of the present case, is strikingly disproportionate. Normally, in such a situation, the matter is referred to the Disciplinary Authority for determining the quantum of punishment. However, as noted above, the Petitioner is a senior citizen, but practices as an Advocate and is also a part-time lecturer. The Petitioner has already made it clear that his primary interest is to eliminate the stigma, and he has no interest in claiming any financial benefits for the remaining nine months of his term. The Petitioner has also clarified that he is not interested in once again becoming a Member of the JJB in future. The established charges listed in paragraph 29 of this judgment and order are certainly not of a magnitude deserving of his stigmatizing removal. As noted earlier, a warning or, perhaps better still, counselling would have been appropriate. In these peculiar facts, a remand may not be appropriate.

38. The Petitioner has already foregone his nine months' emoluments, sitting fees, etc. The Petitioner has borne the stress of litigation for all these years. The Petitioner has borne the stigma of removal for the last 7 to 8 years. The Petitioner has also borne the brunt of litigation during that period. On cumulative consideration of all these aspects, we believe that any further penalty or remand for deciding on the quantum of punishment is not called for in the peculiar facts of the present case.

39. This Petition is accordingly disposed of by setting aside the impugned order dated 22/25 September 2017. The Rule is disposed of in the above terms. There shall be no order as to costs.

40. All concerned must act upon an authenticated copy of this order.

(Jitendra Jain, J) (M.S. Sonak, J)