

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12138 OF 2015

SATYANARAYAN GANGABISANJI SARDA
VERSUS
GAJANAN SHIKSHAN PRASARAK MANDAL AND OTHERS

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Advocate for Petitioner : Shri Tripathi Manish P.
Advocate for Respondents 1 & 2 : Shri Kute R.L.
AGP for Respondent 4 : Shri Korde D.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 21, 2015

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PER COURT :-

1. Leave to add the Joint Director of Education, Nanded as respondent No.4 is granted. Addition to be carried out forthwith.
2. Shri Kute, learned Advocate appears on behalf of respondent Nos.1 and 2. Learned AGP appears on behalf of respondent No.4.
3. Shri Tripathi, learned Advocate for the petitioner has strenuously criticized the impugned order dated 28.10.2015 delivered by the University and College Tribunal, Aurangabad in Appeal No. SRTMU-03/2015, by which, the application for stay filed by the petitioner has been rejected.
4. He submits that the petitioner had filed an interim relief application seeking a stay to the termination dated 2.5.2015 and with a further direction to reinstate him as Assistant Professor and pay his regular salary. He states that the petitioner was initially suspended by the employer. A

departmental enquiry was initiated against him. Without giving an opportunity of hearing the enquiry was completed in a haphazard manner.

5. He further submits that the petitioner has been made a scapegoat by the management and false allegations were levelled upon him. Principles of natural justice were not adhered to while conducting the enquiry. The management was predetermined to terminate his services. Subsistence allowance was not paid to him during the period of his suspension.

6. He further adds that non-payment of subsistence allowance during the suspension period results in vitiating the entire enquiry. The College Tribunal did not consider the law applicable and has rejected the application for stay after considering the reply of the respondent. The impugned order deserves to be quashed and set aside and the order of termination dated 2.5.2015 deserves to be stayed till the appeal is decided.

7. Shri Kute, learned Advocate has reiterated his submissions as were put forth before the College Tribunal and which have been recorded in paragraph No.6 of the impugned order. He further submits that no perversity is pointed out from the impugned order. Final relief cannot be granted by way of an interim relief. A full fledged departmental enquiry has been conducted against the petitioner and that cannot be brushed aside by way of an interim order.

8. The learned AGP submits that the role of the Joint Director of

Education would come into play while assisting the College Tribunal in deciding the main appeal.

9. Shri Tripathi, in response to the submissions of Shri Kute, submits that the petitioner is suffering from tongue cancer, which was diagnosed in 2009. He is undergoing treatment like chemo-therapy / radiation. In the event this Court is not inclined to grant any relief to the petitioner, considering his health status, the appeal may be expedited so as to be decided within the period of six months.

10. I have considered the submissions of the learned Advocates as have been recorded herein above.

11. It is settled law that interim relief ought not to amount to granting final relief.

12. The petitioner had alleged that the management is indulging in misappropriation, illegal activities and embezzlement of UGC funds. He made a representation to the competent authority exposing the management. A charge sheet containing false charges was served upon him, after suspending him, pending enquiry. It would be premature at this stage to draw any conclusion on these submissions. It is informed that the petitioner was paid his entire suspension allowance after this Court has passed an order in Writ Petition No.4951 of 2015.

13. Considering the above and the position in law, the impugned order dated 28.10.2015, refusing interim relief to the petitioner cannot be termed as being perverse or erroneous. However, it cannot be ignored that the petitioner is suffering from an ailment as recorded above. Ends of justice would be met if the College Tribunal is directed to decide Appeal No. SRTMU-03/2015 as expeditiously as possible and preferably on/or before 31.8.2016.

14. At this juncture, the petitioner points out that an advertisement has been published by the respondent / management in Daily Lokmat on 21.11.2015, by which applications are called for, for filling in the position occupied by the petitioner. Shri Tripathi points out that the reference of the pending appeal has been mentioned. However, he submits that in the event any person is appointed, it would be appropriate to take an affidavit / undertaking from the said candidate that his appointment shall be subject to the result of the appeal filed by the petitioner.

15. Shri Kute, learned Advocate seriously opposes the said request.

16. In my view, it would be appropriate to direct respondent Nos.1 and 2 to take an undertaking / affidavit from a candidate who may be selected in place of the petitioner and the said affidavit should have a mention that the said candidate would not seek any right to continue on the said post and equities would not be created in the said candidate till the appeal is decided. In short, the appointment of such a candidate shall be subject to

the result of the appeal.

17. As such, I direct respondent Nos.1 and 2 to ensure that any candidate who may be selected, in place of the petitioner, shall specifically state in an affidavit / undertaking that he would not seek any right to continue in the post and would not make any claim against the respondent / management in the event the petitioner succeeds in his appeal. Similarly his continuance shall be subject to the result of the appeal and litigation initiated by the petitioner.

18. In the light of the above, this petition is disposed off without causing interference in the impugned order.

19. Needless to state, the College Tribunal shall decide the appeal by giving preference to the said appeal, in the light of the health status of the petitioner and decide the appeal on/or before 31.8.2016. The litigating sides shall not seek adjournments on unreasonable and trivial grounds and if such an application is noticed by the College Tribunal, it shall have the liberty to reject the same.

(RAVINDRA V. GHUGE, J.)

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