

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 300/2012**

Dr. (Mrs.) Purnima Sanjeev Ghadi,
wife of Dr. S. C. Ghadi, aged 43 years,
Indian National, resident of
C1/T4, T. R. Residency, Taleigao Market,
Taleigao-Goa, presently
working as 'Lecturer' in Dhempe
College of Arts & Science,
Miramar, Panaji, Goa.

..... Petitioner.

V/s.

1) The State of Goa,
through the Secretary (Education),
with his Office at Secretariat,
Porvorim, Goa.

2) The Director,
Directorate of Higher Education,
Government of Goa, Junta House,
Second Lift, 5th floor, Panaji, Goa.

3) The Secretary, Governing Body,
Dempo Charities Trust's,
Dhempe College of Arts and
Science, Miramar, Panaji, Goa.

4) The Principal,
Dempo Charities Trust's,
Dhempe College of Arts and
Science, Miramar, Panaji, Goa.

5) Goa University, through its
Registrar, Taleigao Plateau,
Goa 403206.

..... Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Ms. P. Hegde and Ms. M. Furtado, Advocates for the petitioner.

Mr. M. Salkar, Government Advocate for the respondents No.1 and 2.

Mr. Sudesh Usgaonkar, Advocate for the respondents No.3 and 4.

Ms. A. Agni, Senior Advocate with Ms. Kalpa Govenkar, Advocate for the respondent No.5.

**CORAM :- F.M. REIS &
K.L. WADANE, JJ.**

Date : - 3rd September, 2015.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Mr. S. D. Lotlikar, learned Senior Counsel appearing for the petitioner, Mr. M. Salkar, learned Government Advocate appearing for the respondents No.1 and 2, Mr. Sudesh Usgaonkar, learned Counsel appearing for the respondents No.3 and 4 and Ms. A. Agni, learned Senior Counsel for the respondent No.5

2. The above petition takes exception to the order of termination passed by the respondent No.3, whereby the services of the petitioner as a Teacher on regular basis in the College of the respondents No.3 and 4 came to be terminated.

3. The brief facts of the case are that the College run by the respondents No. 3 and 4, which is covered under the Grant-in-Aid Scheme of the State Government, had invited applications for filling up two posts of Lecture in the Department of Botany, out of which, one post was to be filled up on regular basis in the unreserved category and the other on lecture basis. In response to such advertisement, the petitioner applied on 12/9/2008 to the Full Time post of Lecturer in the Botany Department and was selected. The approval to such post was conveyed by the respondent No.2 on 18/07/2008 to fill up the post of Full Time Lecturer in the Botany Department. The respondent No.5 conveyed their approval to the appointment of the petitioner on 26/9/2008. Thereafter, the petitioner was informed on 12/11/2011 that her appointment as a Lecturer in Botany Department of the said College stands terminated with immediate effect. The petitioner raised a challenge to the said order of termination by filing a Writ Petition before this Court which came to be disposed of on 16/12/2011, *inter alia*, setting aside the said order of termination and directing the Authorities to issue a show cause notice and decide such a show cause notice, in accordance with law. Consequently, on 28/12/2011, a show cause notice was issued by the respondent No.3, calling upon the

petitioner to show cause within 10 days as to why the services of the petitioner should not be terminated. The petitioner filed her reply disputing the contents of the show cause notice and ultimately, on 30/03/2012, the services of the petitioner, as a Full Time Lecturer in the Botany Department were terminated with immediate effect. But, however, giving an option to the petitioner to be appointed on lecture basis. Being aggrieved by the said order, the petitioner filed the above writ petition.

4. Mr. S.D. Lotlikar, learned Senior Counsel appearing for the petitioner points out that the impugned order of termination issued by the respondent No.3 has no basis in law as, according to him, the petitioner was appointed on a regular post, after undergoing the regular recruitment process. The learned Senior Counsel further points out that the grounds on which the respondent No.3 sought to take action against the petitioner are totally erroneous as, according to him, taking of 21 periods for complying with the requirement to receive the grants from the State Government is a matter of internal arrangement which had to be followed by the respondents No.3 and 4. The learned Senior Counsel further points out that the College of the respondents No.3 and 4 has two divisions, one wherein they impart education on

self-financing scheme and the College section comes under the Grant-in-Aid Scheme of the State Government. The learned Counsel further submits that merely because there was an Audit action with regard to the payment of salary to the petitioner on the ground that the respondents No.3 and 4 were asking the petitioner to give some lectures in the self-financing scheme, the services of the petitioner were illegally sought to be terminated. The learned Counsel further submits that in any event, a Teacher working in the College of respondents No.3 and 4 had already retired in the year 2011 and, as such, the petitioner was rendering 21 periods in the College section at the time when the impugned order of termination was passed. The learned Counsel further points out that the contention of the respondents that the initial appointment of the petitioner itself was a nullity, is totally farfetched as, according to him, the petitioner was appointed on a regular post, after getting approvals from the State Government, as well as the respondent No.5/University. The learned Senior Counsel has, thereafter, pointed out that there was need to obtain any approval from the respondent No.5/University in case the work load had reduced. The learned Senior Counsel, in support of his submissions, has relied upon a Judgment of the Division Bench of this Court reported in 2008(2) All M.R. 241 in the case of *Dnyanopasak*

Shikshan Prasarak Sanstha & anr. vs. Ku. Rekha d/o. Vishwanath Ingole & Ors., and submitted that the impugned order be quashed and set aside and the petitioner be ordered to be reinstated on regular basis.

5. On the other hand, Mr. M. Salkar, learned Government Advocate appearing for the respondents No.1 and 2 pointed out that in terms of the conditions in the Grant-in-Aid Scheme of the State Government, a Teacher who is working in the Botany Department has to render 21 periods in the College Section. The learned Government Advocate further submits that when it was brought to the notice of the concerned Department that the petitioner was meeting the requirement of 21 periods as she also gave lectures in the self financing scheme of the respondents No.3 and 4, the State Government took action to suspend the payment of the grants to the respondents No.3 and 4 with that regard. The learned Government Advocate further points out that after a detailed inquiry, the State Government has recovered the amounts from the respondents No.3 and 4 which were illegally appropriated by the respondents No.3 and 4 in connection with the lecturers rendered by the regular Teacher in the self-financing scheme.

6. Mr. Sudesh Usgaonkar, learned Counsel appearing for the respondents No.3 and 4 has pointed out that the initial entry of the petitioner itself was a nullity as, according to him, there was no workload of 21 periods in the College Section at the time when the petitioner was appointed in the year 2008. The learned Counsel has further pointed out that in view of the objections raised by the State Government, a detailed exercise was carried out by the respondents No.3 and 4 to verify the situation and it transpired that there was no available workload which could be provided to the petitioner to meet the requirement of 21 periods in the College Section. The learned Counsel further points out that as such, a show cause notice was issued to that effect and after an inquiry was conducted by the concerned Authority, the services of the petitioner were terminated. The learned Counsel, however, does not dispute that when the order of termination came to be passed, one of the regular Teachers had already retired and the petitioner was satisfying the requirement of giving 21 periods in the College Section. The learned Counsel, as such, submits that there is no case made out for interference in the impugned order of termination.

7. Ms. A. Agni, learned Senior Counsel appearing for the

respondent No.5/University, however, points out that as far as the respondent No.5 is concerned, they had already cleared the approval for appointment of the petitioner on regular basis and that there was no request by the respondents No.3 and 4 to reduce the workload. The consent, according to the learned Senior Counsel, was given by the University on the ground of the workload in the College Section.

8. We have given our thoughtful consideration to the rival contentions and we have also gone through the records. The contention of Mr. Usgaonkar, learned Counsel appearing for the respondents No.3 and 4 that the initial appointment of the petitioner itself was a nullity, cannot be accepted. The records clearly reveal that the petitioner had applied for a regular post which was advertised by the respondents No.3 and 4. At the relevant time, the State Government had also given an approval for such a post on the basis of the representation by the respondents No.3 and 4 to the effect that there were enough number of periods to be rendered by the petitioner to such a post. In such circumstances, it was not open to the respondents No.3 and 4 to thereafter contend that the initial entry of the petitioner itself was a nullity for deficiency in rendering the requisite number of periods to avail of the benefit of the Grant-in-Aid

Scheme of the State Government.

9. On going through the records, we find that even in the show cause notice issued to the petitioner, there were no particulars given to the petitioner to ascertain on what basis the petitioner has been singled out to be terminated when there were similarly placed lecturers in the College of the respondents No.3 and 4 who were also employed and availing of the benefit of the Grant-in-Aid Scheme of the State Government. On this ground itself the show cause notice stands vitiated being vague and, as such, the petitioner did not get an adequate opportunity to meet such allegations sought to be raised by the respondents No.3 and 4 in the affidavit-in-reply filed before this Court.

10. Apart from that, the records also reveal that in the year 2011 when the petitioner's services as a regular Lecturer were terminated, one of the Lecturers of the College had already retired and the petitioner was meeting the requirement of 21 periods in order to avail of the benefit of Grant-in-Aid Scheme of the State Government. In such circumstances, we find that at the relevant time, the petitioner was rendering 21 periods in the College Section of the

respondents No.3 and 4, which fact has not been denied by Mr. Usgaonkar, learned Counsel appearing for the respondents No.3 and 4. As such, we are of the opinion that the impugned order passed by the respondents No.3 and 4 terminating the services of the petitioner as a regular Lecturer, cannot be sustained and deserves to be quashed and set aside. The Division Bench of this Court in the case of ***Dnyanopasak Shikshan Prasarak Sanstha & anr. vs. Ku. Rekha d/o. Vishwanath Ingole & Ors.*** (supra), has observed at para 14, thus :

“14. In view of this, Ku. Rekha Ingole's claim of having been appointed on a full-time post is not beyond the pale of doubt. Even so, it is not necessary for us to go into this question in view of the fact that the Management had itself written to the University seeking approval for her appointment as a full-time Lecturer. If the Management was ready to take this risk of appointing a full-time teacher in a subject which was not one in which the College was permitted to impart instructions, the Management would undoubtedly suffer. The contention of Advocate Shri R.L. Khapre for the Management that Ku. Rekha Ingole was herself instrumental in getting such letter, is of no avail, since the signatory of the letter - the Secretary of the Managing Committee - should have considered the implications before seeking approval to Ku. Rekha Ingole's appointment as a full-time teacher

from the University. Thus, either because the workload was available, or because the Management could not have questioned availability of workload, in the circumstances enumerated above, the claim of both Shri Ravindra Deshmukh and Ku. Rekha Ingole to be full-time teachers in their respective subjects, cannot be questioned in these Letters Patent Appeals.”

The view taken by the Division Bench of this Court in the aforesaid Judgment, would lend support to the view taken by us herein above.

11. As already pointed out hereinabove, as on the date when the impugned termination order came to be passed, the petitioner was already rendering 21 periods which is the requirement to avail of the Grant-in-Aid Scheme of the State Government. Consequently, the impugned order terminating the services of the petitioner cannot be sustained and deserves to be quashed and set aside.

12. At this stage, Mr. S. D. Lotlikar, learned Senior Counsel appearing for the petitioner seeks for a direction to the respondents to pay the full back-wages to the petitioner. We find that whilst passing the interim order in the above writ petition, the petitioner was permitted to avail of the option given in the impugned order and work on Lecture Basis with the College. Apart from that, Mr. Usgaonkar

has also pointed out that the respondents No.3 and 4 have already refunded the amount in view of the directions of the State Government. The amounts were recovered in connection with the lectures given by the Lecturers in Self-financing Scheme. Apart from that the petitioner was working on Lecture Basis and she has been duly paid accordingly. In the peculiar facts of this case, the petitioner would be entitled to only 75% of the back-wages, after deducting the amounts which she had already received while serving on lecture basis in terms of the interim directions of this Court.

13. In view of the above, we pass the following :

ORDER

- (I) The impugned order dated 30th March, 2012 is quashed and set aside.
- (II) The petitioner is directed to be reinstated in the College of the respondents No.3 and 4 notionally, on payment at 75% of back-wages from the date of the impugned order of termination upto the date of passing of this order, in the light of the observations made herein above.
- (III) The amount of arrears of back-wages shall be paid within three months from today.

(IV) Rule is made absolute in the above terms. There shall be no order as to costs.

K.L. WADANE, J.

F.M. REIS, J.

ssm.