

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***WRIT PETITION NO. 10243 OF 2013
ALONG WITH
CIVIL APPLICATION NO. 1932 OF 2014***

Dr.Pradeep Dattatray Kamble

... Petitioner

v/s

The State of Maharashtra & ors.

... Respondents

Mr.Abhijeet A. Desai for the petitioner.

Ms.S.S. Bhende, A.G.P for the State.

***CORAM: SMT. VASANTI A. NAIK &
SHRI C. V. BHADANG, JJ.***

DATED : 9TH FEBRUARY, 2015

P.C.:

Heard.

By this petition, the petitioner challenges the order of the Divisional Joint Director, Higher Education, Kolhapur Division, Kolhapur, dated 18th September 2013 directing the Principal of the respondent No.5 college to send the salary bills of the teaching staff excluding the name of the petitioner and Mr.Rathod. The petitioner also challenges the order of the Principal, New College, Kolhapur, dated 1st October, 2013 asking the petitioner to refund

the amount received by the petitioner towards the regular salary, in view of the order of the Divisional Joint Director, Higher Education, Kolhapur Division, dated 18th September, 2013.

The petitioner was appointed on contract basis to teach the subject of Physics by an order dated 30th June, 2008 in pursuance of an advertisement issued by the respondent management on 16th November, 2007. The petitioner was asked to work on a fixed salary of Rs.8,000/- and the appointment of the petitioner on contract basis was subject to the fulfillment of the conditions mentioned in the advertisement. The University granted approval to the appointment of the petitioner on contract basis by an order dated 25th June, 2008. It is the case of the petitioner that the petitioner secured Ph.D. on 9th July, 2009 and the college granted the appointment to the petitioner on regular basis by an order dated 25th June, 2010. The University granted approval to the appointment of the petitioner on regular basis. However, by the impugned order dated 18th September 2013, the Divisional Joint Director, Higher Education, asked the management to remove the salary bills of the petitioner and Mr.Rathod. Similarly, the respondent college, by an order dated 1st October, 2013 informed the petitioner that the name of the petitioner is excluded by the educational authorities from the list of approved teachers and the petitioner should refund the amount received by the petitioner towards the salary. The petitioner has impugned the orders dated 18th September, 2013 and 1st October, 2013, in the instant petition.

Inter alia, it is submitted on behalf of the petitioner that the Divisional Joint Director of Higher Education could not have cancelled the approval and asked the management to remove the salary bill of the petitioner from the salary bills of the other employees without granting an opportunity of hearing to the petitioner. It is stated that the petitioner was appointed as Assistant Professor for teaching the subject of Physics on 25th October, 2010 and since the Joint Director of Higher Education had granted approval to the appointment of the petitioner on regular basis, the approval could not have been cancelled and the petitioner's salary bill could not have been removed from the other salary bills submitted by the management, without hearing the petitioner. It is stated that the respondent authorities could not have relied on the Government Circular dated 6th July, 2007. The learned counsel for the petitioner relied on the communication dated 5th July, 2008 issued by the State Government to the Vice Chancellor of the Mumbai University.

Ms.Bhende, the learned Assistant Government Pleader, appearing on behalf of the Divisional Joint Director of Higher Education, stated that, in pursuance of the circular dated 6th July, 2007 no appointment could have been made on contractual basis after 31st May, 2007 and the petitioner was appointed on contract basis on 30th June, 2008. It is stated that the petitioner did not

have the necessary educational qualification for the appointment as the Assistant Lecturer i.e. NET/SET. It is stated that, in view of the directions issued in the circular dated 16th July, 2007, the respondent No.3 college could have appointed the petitioner as an Assistant Lecturer only on clock-hour basis. It is stated that the appointment of the petitioner on contract basis was bad in law as no appointments could have been made on contract basis after 31st May, 2007. The learned Assistant Government Pleader, however, fairly admitted, on instructions, that an opportunity of hearing was not granted to the petitioner before the impugned order was passed by the Divisional Joint Director of Higher Education.

On hearing the learned counsel for the parties, it appears that, it would not be necessary for this Court to consider whether the appointment of the petitioner was rightly made by the respondent No.3 management on contract basis at the relevant time as that aspect can be considered by the Divisional Joint Director of Higher Education, after hearing the petitioner. The petitioner was appointed on contract basis and an approval was granted to the appointment of the petitioner on contract basis by the University. So also, after the petitioner was appointed on regular basis as a Assistant Professor for teaching the subject of Physics, the approval was granted by the University to the said appointment. By the impugned order, the Divisional Joint Director of Higher Education, directed the management to remove the salary bill of the petitioner from the salary bills of the other

employees. The management issued the impugned communication in furtherance of the order passed by the Divisional Joint Director of Higher Education. Since the petitioner was not heard before the impugned order was passed by the Divisional Joint Director on 18th September, 2013, it would be necessary to quash and set aside the impugned order and direct the Divisional Joint Director of Higher Education to pass an appropriate order after hearing the petitioner.

For the reasons aforesaid, the writ petition is partly allowed. The impugned order of the Divisional Joint Director of Higher Education is quashed and set aside. The matter is remanded to the Divisional Joint Director of Higher Education for taking appropriate action in accordance with law after hearing the petitioner. The petitioner undertakes to appear before the Divisional Joint Director of Higher Education on 2nd March, 2015 so that issuance of notice to the petitioner could be dispensed with. The question of payment of salary to the petitioner would be subject to the decision of the Divisional Joint Director of Higher Education. The Divisional Joint Director of Higher Education is directed to decide the matter as early as possible and positively within a period of six weeks. The contentions raised in the writ petition are kept open.

Order accordingly. No costs.

In view of disposal of the writ petition, the civil application does not survive and stands disposed of.

(C. V. BHADANG, J.)

(VASANTI A. NAIK, J.)