

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8158 OF 2015
WITH
CIVIL APPLICATION STAMP NO.37259 of 2016

Marathwada Krishi Vidyapeeth,
Parbhani
(Now Vasant Rao Naik Marathwada Krishi
Vidyapeeth, Parbhani)
Through its Registrar,
Tq. and Dist.Parbhani

-- PETITIONER

VERSUS

Mohammad Fayazuddin Wahiduddin,
Age-60 years, Occu-Nil,
R/o Yusuf Colony, Waheb Saheb,
(Physical Instructor)
Parbhani, Tq. and Dist. Parbhani

-- RESPONDENT

Mr.S.G.Sangale, Advocate for the petitioner.
Mr.S.S.Bora, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 13/12/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the judgment and order dated 28/08/2014 by which the Industrial Court, Jalna has allowed Complaint (ULP) No.601/1994 (Old No.173/1991).

3. The strenuous submissions of Mr.Sangale, learned Advocate for the petitioner and considering the affidavit in rejoinder as well as the civil application tendered across the bar, can be summarized as under :-

- [a] The respondent was appointed as a 'daily wager' when he was 31 years old on 01/11/1976 in the Class IV category.
- [b] Pay scale available to him was Rs.2,550-3,200 per month.
- [c] The scale available to a Compounder who falls in Class III category is 4,500-7,000 per month.
- [d] Though he was appointed as a Compounder on 15/03/1978 by the Registrar of the University, he was not qualified since he was not matriculate (S.S.C.).
- [e] Though the Registrar, by order dated 06/05/1978 granted the wages of skilled labour as a Compounder to the respondent, he was not qualified to continue as a Compounder.
- [f] He acquired S.S.C. qualification on 22/06/1985.
- [g] The rules reproduced in the impugned judgment would indicate that the respondent could not be appointed or continued as a Compounder.
- [h] On 15/01/1975, the special meeting of the Executive Council settled the qualifications of the Ministerial Staff and prescribed the qualifications of a Compounder, which indicate that the respondent was not qualified to work as a Compounder even in 1975.
- [i] On 26/07/1991, new Rules were prescribed for a Compounder / Compounder-cum-Dresser and minimum

qualification was S.S.C. with Compounder's examination.

- [j] On 28/09/1999, during the pendency of the ULP complaint, the respondent was not selected as a Compounder on Ad-hoc basis and he therefore was not to be continued as a Compounder.
- [k] Owing to the interim orders of the Industrial Court dated 26/04/1991, the petitioner was directed to maintain status-quo by continuing the respondent as a Compounder.
- [l] He was appointed as a "Watchman" during the pendency of the complaint and therefore he retired on 01/05/2003 as a "Watchman".
- [m] The respondent can be held entitled for retiral benefits as a daily wager or as a Watchman and not as a Compounder.
- [n] He was once held guilty of grave offences and though he could have been dismissed from service, the Vice Chancellor imposed a fine of Rs.500/- by order dated 10/06/1996.

4. Mr.Bora, learned Advocate on behalf of the respondent submits that the impugned judgment is a finding on facts. In 1985, since the respondent acquired the S.S.C certificate and by which time he had put in more than 7 years in the hospital of the petitioner/University, he had acquired the requisite qualification of S.S.C. and one year experience in a hospital. Under the interim orders of the Industrial Court, he continued as a Compounder till his retirement on 01/05/2003.

5. His non selection in 1999 was with regard to an ad-hoc appointment. Nevertheless, he continued as a Compounder and was eventually retired on attaining the age of 58 by order dated 30/04/2003.

6. Having considered the submissions of the learned Advocates, I have gone through the record available as well as the contents of the rejoinder and the civil application filed by the petitioner.

7. There is no dispute that the petitioner did not lead any oral and documentary evidence and closed its evidence by *purshis* Exh.C-12 despite the fact that this Court had remitted the complaint for a decision afresh by its judgment dated 09/04/2014 in WP No.1458/2001.

8. There is no dispute that as in 1975, the prescribed qualification for appointment of a Compounder was S.S.C examination and one year experience in a hospital. There is no dispute that the respondent had neither of these qualifications. Yet, by order dated 15/03/1978, the Registrar of the petitioner/University directed the Medical Officer to allot work on skilled wages to the petitioner who was appointed as a Compounder. Though the actual appointment

order of Compounder is not placed on record, the said communication indicates that the respondent was appointed as a Compounder.

9. By a further communication by the Registrar dated 06/05/1978, the Medical Officer of the Health Center of the University was informed that the proposal regarding rate of wages to be paid to the respondent has been approved. The communication dated 10/12/1991, which is an inter-office note signed by the Registrar, would indicate that the respondent was working as a Compounder. Since the Industrial Court had granted him an interim order, he was continued as a Compounder until the final decision of the complaint.

10. The order of relieving the respondent dated 30/04/2003, upon his retirement, also indicates that he was treated as a Compounder on temporary basis.

11. In the light of the above and keeping in view that the respondent/ University did not choose to render any assistance to the Industrial Court as it refrained from leading oral or documentary evidence despite the complaint having been remanded for a

rehearing, led the Industrial Court to conclude that these documents indicate that the respondent was working as a compounder on temporary basis from 1976 till his retirement in 2003. Despite the strenuous submissions of Mr.Bora that the respondent has proved his continuous service as a Compounder from 01/11/1976 till his retirement, I am not inclined to accept the said submissions to the extent of the period from 1976 to 1985.

12. There can be no dispute that the length or duration of service of an illegal appointee, cannot legalize or legitimize such an appointment. As has been concluded by the Hon'ble Apex Court in paragraph Nos. 43 and 44 of its judgment in the matter of State of Karnataka & Ors. vs. Uma Devi (3) & Ors., 2006(4) SCC 44 that irregular appointments could be regularized, though illegal appointments cannot be legalized.

13. On 22/06/1985, the respondent passed his S.S.C. and by which time he had spent about 7 years and 3 months as a Compounder in the medical facility of the petitioner. The rules applicable as in 1985 for appointment of a Compounder indicate that the candidate must possess qualification of S.S.C. and one year of training in a hospital. In 1985, he had acquired S.S.C. and had put

in 7 years in the said medical faculty. As such, from 22/06/1985, it can be concluded that the respondent was eligible and qualified to work as a Compounder.

14. In the above backdrop, the respondent continued as a Compounder and he retired as a Compounder on 01/05/2003 as is evidenced by the order dated 30/04/2003 issued by the Medical Officer of the Health Center of the petitioner.

15. In the light of the above, this petition partly succeeds and is partly allowed to the extent of modifying the directions of the Industrial Court granting benefits to the respondent/employee from 01/11/1976. The said direction stands substituted with the direction that the service of the respondent shall be considered as being an appointment as a Compounder from 22/06/1985 till his retirement on 01/05/2003. His gratuity and pensionary benefits shall be calculated on the basis of the scale available to a Compounder as on 01/05/2003 and subject to the Rules as may be applicable.

16. In so far as the direction to extend monetary benefits and difference of wages is concerned, the said direction will stand modified and shall be operative only from 22/06/1985 considering

that the respondent has worked as a compounder from the said date.

17. Rule is made partly absolute in the above terms. Pending civil application stands allowed as the documents placed on record vide the same have been considered by this Court while deciding this petition.

(RAVINDRA V. GHUGE, J.)