

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11525 OF 2016

Vice Chancellor,
Mahatma Phule Krishi Vidyapeeth,
Rahuri, Taluka Rahuri,
District Ahmednagar.

...PETITIONER

-VERSUS-

Dadaji Tanaji Sonawane,
Age : 58 years, Occupation : Labour,
R/o 60, Vidyapeeth Quarters,
Taluka Rahuri,
District Ahmednagar.

...RESPONDENT

**WITH
WRIT PETITION NO. 11528 OF 2016**

Vice Chancellor,
Mahatma Phule Krishi Vidyapeeth,
Rahuri, Taluka Rahuri,
District Ahmednagar.

...PETITIONER

-VERSUS-

Sarjerao Mahadeo Bhalerao,
Age : 59 years, Occupation : Labour,
R/o Digras, Taluka Rahuri,
District Ahmednagar.

...RESPONDENT

**WITH
WRIT PETITION NO. 11529 OF 2016**

Vice Chancellor,
Mahatma Phule Krishi Vidyapeeth,
Rahuri, Taluka Rahuri,
District Ahmednagar.

...PETITIONER

-VERSUS-

Arun Rambhau Phatak,
Age : 52 years, Occupation : Labour,
R/o At Post Sade, Taluka Rahuri,
District Ahmednagar.

...RESPONDENT

...
Advocate for Petitioner : Shri Navandar Manish N.
Advocate for Respondents : Shri Barde Parag Vijay.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 30th November, 2016

Oral Judgment :

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

2 The Petitioner/ University is aggrieved by the impugned judgments and awards dated 22.03.2016 delivered by the Labour Court, Ahmednagar in Reference (IDA) Nos.31, 30 and 32 of 2009 by which the references have been partly allowed and quantified compensation has been granted to the Respondents/ Employees in lieu of reinstatement, continuity and full back wages.

3 The Petitioner/ University claims to have appointed these Respondents under the emergency powers of the Vice Chancellor. I have been shown a copy of the appointment order of one of the Respondents dated 14.12.2004 by Shri Barde, learned Advocate for the Respondents/ Employees which would indicate that the Vice Chancellor of the Petitioner / University appears to have exercised his emergency powers and therefore, the Registrar of the University has appointed each of these Respondents from a particular category and on a particular scale which is Rs.2610-60-2910-65-3300-70-4000/- along with allowances as may be introduced by the University.

4 Shri Navandar, learned Advocate for the Petitioner/ University, therefore, strenuously submits while criticizing the impugned awards that the Respondents were appointed on 11 months tenure and after 11 months were over, they were liable to be terminated or granted an extension. They have no right to claim continued employment and no right was created in favour of the Respondents by which they could claim to be regular employees of the Petitioner/ University. He, therefore, submits that the Labour Court has lost sight of these facts and the appointment orders issued to these Respondents were not considered in proper perspective by the Labour Court.

5 He then draws my attention to the four grounds for challenge set out in the petitions to support his contention that as the Respondents have worked for a short duration and as they have failed to indicate that they were not gainfully employed, the compensation could not have been granted by the Labour Court. He further submits that unless the Respondents were held to be entitled for reinstatement, the compensation could not have been granted. He, therefore, prays that these petitions be allowed and the impugned awards be quashed and set aside.

6 Shri Barde submits that considering the appointment orders, the Petitioner was obliged to indicate as to what was the urgency in appointing these Respondents. All the Respondents were erstwhile employees of the Petitioner University, who had worked for one or two decades and retrenched on 01.04.2001 in the mass retrenchment. The Vice Chancellor was obliged to indicate as regards the urgency and exercise of his emergency powers. This aspect of the case has not been canvassed nor proved by the Petitioner.

7 Shri Barde further submits that there was an advertisement by which applications were called only from the retrenched employees. A proper selection committee conducted interviews of these Respondents

and thereafter, they were appointed. Neither the advertisement mentions that the appointment is temporary nor does it mention 11 months tenure.

8 He further submits that these Respondents were earlier involved in litigation with the Petitioner considering their earlier retrenchment dated 01.04.2001 which reached the Honourable Apex Court. The reference cases were initiated by these Respondents within three years. Though they were entitled for reinstatement, the Labour Court has granted compensation. The Respondents have accepted the said awards and have not challenged the same.

9 I have considered the submissions of the learned Advocates for the respective sides.

10 Though I quite see in the specimen appointment order, that I am shown and which is said to be identical in relation to all these Respondents who are identically placed, that the Vice Chancellor has exercised his emergency powers, neither do I find any material in the appointment order nor has the University led any oral or documentary evidence before the Labour Court to indicate the reasons and circumstances for justifying exercising the emergency powers. In this backdrop I find that emergency powers exercised by the Vice Chancellor

were inappropriate and unwarranted.

11 The appointment order also indicates that, as one employee was moved out of a particular posting and consequent to which, the said permanent post had fallen vacant, which is admitted by the Petitioner, the Petitioner/ University decided to fill in the said posts by publishing an advertisement. There is nothing on record to indicate that an advertisement mentioned that the said appointment was being made only for 11 months and on temporary basis. If the posts had fallen vacant, the University should have proceeded to fill in the posts by regular appointments. Failure to mention in the advertisement that the posts were being filled in temporarily, has created a picture in the minds of those retrenched employees, who were called upon to apply pursuant to the said advertisement, that the said posts are vacant and permanent.

12 It has also come on record that the selection committee interviewed the Respondents and they were appointed. The terms and conditions of the appointment order indicate that the appointment of these Respondents was to continue till regular candidates are appointed on permanent vacant posts. It is informed by the Respondents and which is not disputed by the Petitioner that such regular appointment was made in the year 2012 considering the pending litigation and though the

Respondents applied for appointments, the Petitioner University has rejected their candidatures on the ground that they were now age bar.

13 If these three posts were not filled in for about 08 years, it clearly indicates that there were no circumstances or reasons for the Vice Chancellor to exercise emergency powers. It also indicates that pursuant to the advertisement published and the appointment of these Respondents, the said appointments could have been on regular basis. It is, therefore, apparent that for reasons best known to the University officials, though these Respondents were selected by following a selection process, they were handed over appointment orders mentioning that they would be temporaries until further orders.

14 In the peculiar facts as recorded above, these Respondents were inducted in employment. Their removal from service is equally surprising as they have been orally removed from service. I have scanned the petition paper books as well as the impugned awards to find out whether, it is the case of the Petitioner/ University that regularly selected candidates were appointed and hence, these Respondents were terminated. I do not find any such material either in the petition paper books or in the impugned awards. It also does not appear to be the case of the University before this Court that since properly selected candidates

were available for filling in the permanent vacant posts, the Respondents were terminated.

15 Be that as it may, the Labour Court has granted compensation to these three Respondents. They have not chosen to challenge the said awards by which they have been deprived of reinstatement.

16 In the above backdrop, the reference to the following four judgments of the Honourable Supreme Court would be appropriate:-

- (a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal*, **[(2013) LLR 1009]**;
- (b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh*, **[(2013) 5 SCC 136]**;
- (c) *BSNL Vs. Man Singh*, **[(2012) 1 SCC 558]**; and
- (d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board*, **[(2009) 15 SCC 327]**.

17 No doubt, the view taken by the Honourable Supreme Court in the above four cases is that when the employees are engaged for a short duration and are out of employment for a longer duration, the compensation of Rs.30,000/- per year of service put in by the employees

should be granted. Shri Barde has placed reliance upon the following judgments of the Honourable Supreme Court:-

- (a) *General Secretary, Coal Washeries Workers Union, Dhanbad vs. Employers in relation to the Management of Dugda Washery of M/s BCCL*, **AIR 2016 SC 4441**.
- (b) *Bhavnagar Municipal Corporation vs. Jadeja Govubha Chhanubha*, **AIR 2015 SC 609**.
- (c) *Tapash Kumar Paul vs. BSNL*, **AIR 2015 SC 357**.

to support his contention that the latest view of the Honourable Supreme Court appears to be that the compensation of higher amounts in such cases needs to be granted.

18 In the Coal Washeries Workers Union case (supra), the employees had worked for about four years and were also granted benefits of Section 17-B of the Industrial Disputes Act, 1947. In the Bhavnagar Municipal Corporation case (supra), the worker had worked for 18 months and was granted Rs.2.50 lac as compensation since he has litigated right upto the Honourable Supreme Court. In Tapash Kumar Paul case (supra), though the duration of work put in is not found, the Honourable Apex Court, while dealing with the relief of compensation in lieu of reinstatement in service, has set out the parameters which are to be

considered while granting the compensation.

19 As such, even if it is presumed that the compensation awarded by the Honourable Apex Court in 2016 has been raised to about Rs.50,000/- per year of service, all three Respondents have put in two years in service. Two Respondents have attained the age of superannuation. In my view, the compensation of Rs.1 lac would be appropriate to each of them in the first two cases. In the third case, the Respondent had about 9 to 10 years left for attaining the age of superannuation. In his case, an amount of Rs.1.25 lac would be an appropriate compensation.

20 In the light of the above, these Writ Petitions are partly allowed only to the extent of modifying the compensation amounts. The Petitioner/ University shall pay the compensation of Rs.1 lac each to the two Respondents in the first two cases, namely, Dadaji Tanaji Sonawane and Sarjerao Mahadeo Bhalerao. The Petitioner shall pay an amount of Rs.1.25 lac to the third employee, namely, Arun Rambhau Phatak.

21 These amounts shall be paid within THREE MONTHS from today, failing which the Registrar of the Petitioner/ University shall pay the amount of interest at the rate of 5% per annum on the said amounts

from the date of the awards of the Labour Court till actual payment, from his personal salary and the said amount of interest shall not be paid either from the State Exchequer or from the University funds.

22 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)