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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2001 OF 2016

Pune Vidyarthi Griha,
Through Its Secretary & Anr.
V/s.
Vidya D. Kulkarni & Anr.

...Petitioners

...Respondents

Mr.Shirish Pitre for the Petitioners.

Mr.Sugandh Deshmukh for the Respondent No.1.

Ms.Vaishali Nimbalkar, A.G.P. for the State – Respondent No.3.

CORAM : R.D. DHANUKA, J.
DATE : 27TH JUNE, 2016.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner management has impugned the order dated 7th January, 2016 passed by the Presiding Officer of Savitribai Phule, Pune, Shivaji and Solapur University and College Tribunal, Pune thereby allowing the appeal filed by the respondent and setting aside the order of termination of services of the respondent dated 21st August, 2013. By the said impugned order, the tribunal has directed the management to reinstate the respondent on her original post of lecturer with effect from 21st August, 2013 with continuity of service

and all consequential reliefs within two weeks from the date of the said order.

2. Mr.Pitre, learned counsel appearing for the petitioners invited my attention to the letter of appointment of the respondent issued by the management and also the letter of termination. He submits that since the letter of termination was issued within the period of probation, the petitioner did not become permanent lecturer in the college run by the petitioner no.1. He submits that even if the respondent no.1 had become permanent, in view of the misconduct of the respondent no.1, the petitioner is entitled to conduct an enquiry and take appropriate action. He submits that if this Court comes to the conclusion that this Court cannot interfere with the order passed by the tribunal, the order insofar as full back wages awarded by the tribunal is concerned, shall be modified and back wages can be reduced to 50%.

3. Learned counsel appearing for the respondent no.1 supports the findings drawn by the tribunal and would submit that no interference with the said order can be made by this Court.

4. A perusal of the order passed by the tribunal clearly indicates that the respondent no.1 had applied for the post of lecturer pursuant to an advertisement issued by the management in the newspaper Lokmat on 1st June, 2010. She was interviewed by a duly

constituted Selection Committee and was selected for the post of lecturer in Marathi. She was appointed with effect from 22nd August, 2011. Her appointment was approved by the Pune University by a letter of approval dated 28th December, 2011 with effect from 22nd August, 2011. The tribunal has rendered a finding that the respondent no.1 completed the period of probation on 21st August, 2013.

5. A perusal of the said order indicates that it was the grievance made by the management that during the probation period, the performance of the respondent no.1 was not satisfactory. It was the case of the management that the respondent no.1 had counter signed the agreement between Mr.Upasani as Director of Pune Vidyarthi Griha S.S. Dhamankar College of Commerce, Science and Arts. It was the case of the petitioner that the respondent had apologized for the said act.

6. The tribunal has construed Statute 417 and 420 and has rendered a finding of fact that if any adverse remark ought to have been made against the respondent no.1, it was necessary to communicate to the respondent no.1 such adverse remarks as per Statute 420. It is held by the tribunal that the services on probation could be terminated during the period of probation if the performance of the probationer was not satisfactory. It was however, necessary to justify the action and for that mandatory provisions of Statute 417

were required to be complied with. It is held by the tribunal that the management while terminating the services of the respondent no.1 on the ground of unsatisfactory performance, had not followed Statutes 417 and 420 of Pune University Statute and thus the order of termination deserves to be set aside. The tribunal has also considered the merits of the case and has rendered a finding that the letter alleged to have been addressed by the respondent no.1 was addressed by her after her services were terminated and no cognizance of such letter could have been taken.

7. In my view, the tribunal has rightly rendered the aforesaid findings which in my view, are not perverse and thus cannot be interfered with by this Court under Article 227 of the Constitution of India. The management had failed to comply with those two mandatory provisions before taking action of termination against the respondent no.1. I am thus not inclined to accept the submission of the learned counsel for the petitioners that the impugned order passed by the tribunal is perverse or suffers from any illegality.

8. Insofar as the submission of the learned counsel for the petitioners that the back wages awarded by the tribunal shall be reduced to 50% is concerned, no case is made out for modification of the order passed by the tribunal. The petition is devoid of merits and is accordingly dismissed. No order as to costs.

9. It is made clear that whether the management can conduct any enquiry against the respondent no.1, the said issue is kept open. All the contentions of the respondent no.1 in respect of such enquiry, if proposed by the petitioner management are kept open.

10. Learned counsel for the petitioners at this stage states that the petitioners would comply with the order passed by the tribunal however, seeks some time to make payment of back wages. Statement is accepted. Learned counsel for the respondent no.1 states that the respondent no.1 will not apply for execution of the order passed by the tribunal for a period of four weeks from today. The statement is accepted. It is made clear that no further extension would be granted.

(R.D. DHANUKA, J.)