

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3138 OF 2015

The Rashtrasant Tukdoji Maharaj Technical and Education Society, Nagpur. Thr. its
Secretary and anr.

-vs-

Commissioner, Office of Commissioner of Social Welfare, Pune and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. S. Ghate, Advocate for petitioner.
Shri S. Ahirkar, AGP for respondent No.1.
Shri N. R. Saboo, Advocate for respondent No.2.

CORAM : A.S.CHANDURKAR, J.

DATE : JUNE 13, 2016

Heard.

The challenge in the present writ petition is to the judgment dated 27/02/2015 passed by the learned Presiding Officer, University and College Tribunal, Nagpur thereby allowing the appeal filed by the respondent No.2 and directing his reinstatement with back-wages.

According to the respondent No.2, he was appointed on the post of 'Driver' vide appointment order dated 15/10/2010. This appointment was on probation for a period of two years. The services of the respondent No.2 came to be discontinued by communication dated 20/04/2013. Being aggrieved, the respondent No.2 filed an appeal under Section 59 of the Maharashtra Universities Act, 1994. By the impugned judgment, the Tribunal has allowed the aforesaid appeal.

Shri S. S. Ghate, the learned counsel for the petitioner

submitted that the respondent No.2 did not complete the period of probation and his services were terminated with effect from 31/08/2012. According to him, various communications were issued to the respondent No.2 as he remained absent from duty but there was no satisfactory explanation to these communications. He submitted that the Tribunal was not justified in holding that the termination was effected retrospectively inasmuch as the order dated 30/04/2013 was merely a relieving order. It was then submitted that on the post held by the respondent No.2 another employee by name B. D. Joge had been appointed and the proposal with regard to his approval was pending with the Authorities.

Shri N. R. Saboo, the learned counsel for the respondent No.2 supported the impugned order. According to him, the respondent No.2 had completed the period of probation. The order dated 20/04/2013 itself was the termination order which stated that the services were being terminated from 31/08/2012. According to him, the Tribunal rightly held that such retrospective termination of services was not legally permissible. He then submitted that initially one Gajanan Charhe was stated to have been appointed in place of respondent No.2 and after his death another employee by name B. D. Joge was appointed. He submitted that the right of respondent No.2 could not be taken away by making a subsequent appointment.

I have heard the respective counsel for the parties at length. The finding recorded by the Tribunal that the respondent No.2 completed the period of probation is justified in view of the fact that the communication dated 15/04/2013 issued by the Management itself states that on

the said date a proposal for terminating the services of respondent No.2 was under consideration of the Management. Similarly, the communication dated 20/04/2013 states that the services of the respondent No.2 were being terminated from 31/08/2012. There is no communication on record by which the respondent No.2 was informed that his services were being terminated prior to completion of the period of probation. On that ground the finding recorded by the Tribunal cannot be faulted.

In so far the aspect of the right of a subsequent appointee is concerned, the same will have to be treated as being subject to outcome of the appeal that was filed by the incumbent on whose post the subsequent appointee was appointed. The reply filed on behalf of the respondent No.1 indicates that approval has already been granted to the appointment of respondent No.2 from 16/10/2012. Hence, on this count, the entitlement of respondent No.2 cannot be defeated.

In view of aforesaid, there is no case made out to interfere in writ jurisdiction. The writ petition is therefore dismissed. No costs.

JUDGE