

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 924 OF 1998

1. Jalgaon Zilla Maratha Vidhya
Prasarak Cooperative Samaj Ltd.
Jalgaon, through it's Secretary.

2. M.D.M.V.P.'s Arts, Science and
Commerce College, Jalgaon
Through it's Principal.

3. M.D.M.V.P.'s Arts, Science and
Commerce College, Yaval,
District Jalgaon Through it's Principal. ..Petitioners

Versus

1. Dr. Fakira Chintaman Mahajan
age 48 years, Occ. Nil
R/o 7, Samarth Colony, Zilla Peth,
Jalgaon.

2. North Maharashtra University
U.M.V. Nagar, Bambhori,
Taluka Erandol, Dist. Jalgaon
Through it's Registrar.

3. Administrative Officer,
Higher Education Grants, Jalgaon.

4. Shri Pradip Ramlal Bagul
Age 38 years, Occ. Service
R/o 9, Tagore Nagar,
Zilla Peth, Jalgaon. ..Respondents

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Advocate for Petitioner : Shri Mewara Rajesh H.

Advocate for Respondent 1 : Shri Golewar V.P.

h/f Shri Joshi A.R.

Advocate for Respondent 2 : Shri Bolkar Yogesh

h/f Shri Raghuwanshi R.B.

AGP for Respondent 3 : Shri Bhagat N.T.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 19, 2017

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ORAL JUDGMENT :-

1. The petitioner / management has challenged the judgment of the University Tribunal, dated 6.11.1997, by which, Appeal No. NM 6 of 1997, filed by respondent No.1 / appellant has been allowed and his oral termination dated 10.10.1995 has been set aside. He has been granted arrears of salary and allowances from 10.10.1995.

2. This petition was admitted on 26.3.1998 and interim relief in terms of prayer clause (D) was granted. Consequentially, the impugned judgment was stayed.

3. I have considered the strenuous submissions of the learned Advocates for the petitioner, respondent Nos.1 and 2 and the learned AGP for respondent No.3.

4. Despite being served, none appears for respondent No.4 who is said to have been appointed in place of the appellant.

5. The petitioner has relied upon the judgment of the

Honourable Delhi High Court dated 1.6.2012, in Writ Petition (Civil) 762 of 2011 in the matter of Surendra Kumar Tiwari Vs. National Thermal Power Corporation Limited.

6. Considering the submissions of the learned Advocates, the following undisputed factors need mention:-

(a) The appellant was a confirmed Lecturer in the petitioner college having worked from 1984 till 1992.

(b) He is said to have joined a different college by name, Uttar Maharashtra Commerce College as a Principal from 1.8.1992.

(c) During his probation as a Principal, he was disengaged on 4.3.1993.

(d) He reported back to the petitioner and sought leave to report for duties.

(e) He was allowed to report for duties from 5.10.1993 and the work allotted to him was on Clock-hour basis.

(f) He was orally removed from service from 10.10.1995 and thereafter, he approached the University Tribunal.

6. Learned counsel for the petitioner submits that the appellant had not taken permission to join the new college and had not been granted lien to take up the other employment. Once he has failed to take lien, he cannot claim reinstatement in service and is presumed to have abandoned the service. In support of this contention, reliance is placed on paragraph No.8 of the judgment in the case of Surendra Kumar (supra), which reads as under:-

“7. We have considered the aforesaid submissions. Before we deal with these submissions, we reproduce the relevant provisions of the NTPC Service Rules as well as NTPC Conduct, Discipline and Appeal Rules:

24.9. Termination on account of unauthorized absence:

An employee who remains unauthorizedly absent from duty or place of work either without sanction of any leave or after expiry of sanctioned leave, if any, and does not report for duty for any reason whatsoever within 90 (ninety) consecutive days from the date of his/her unauthorized absence, shall

automatically lose lien on his/her post and he/she shall be deemed to have voluntarily abandoned and left the service of the corporation, without notice.

Provided, however, if the employee subsequently substantiates and accounts for his/her unauthorized absence from duty within 90(ninety) consecutive days from the date of the termination order to the entire satisfaction of the Management, the Management may regularize his/her period of unauthorized absence on such terms and conditions as it may deem fit and proper.

2(s) "Unauthorized Absence" means absence by an employee from his/her duty or place of work without authority either without sanction of any leave or after expiry of sanctioned leave, if any."

7. The submissions of the petitioner are fallacious. It cannot be ignored that the appellant has proved before the University Tribunal that after he received his appointment as a Principal in another college on 13.7.1992, he submitted an application to the petitioner on 14.7.1992, requesting for keeping lien on his permanent employment as a Lecturer. By communication dated 6.8.1992, the North Maharashtra University granted approval to the petitioner to join as a Principal. Based on the same, the appellant once again submitted an application on 6.8.1992, stating that he was keeping his lien on his post as a Lecturer and

was then joining duties in the other college as a Principal on probation. This would indicate that the petitioner has not rejected the application for grant of lien. It is a matter of record that the petitioner has not replied to the applications filed by the appellant.

8. The University Tribunal has considered Statute 411(8), which defines 'lien' as a right of the teacher to substantively hold his permanent post for the period as is permissible in law. This Court in the matter of Mukund Vs. State of Maharashtra [1978 Mh. L. J. 538], has concluded that a person can hold on to his substantive post, to which he is confirmed, and lien invests in him a right to go back to that post, if he wishes to return from the new post.

9. If the petitioner was not inclined to grant lien to the appellant, it could have passed an order stating that lien was not being granted. It is argued before this Court that several documents filed by the appellant were forged. However, the petitioner could not prove this allegation before the University Tribunal and there was no impediment for the management to prove as to which document was forged. On this count, the conclusion of the Tribunal that the appellant had held lien on the

post of his Lecturer cannot be termed as being perverse or erroneous.

10. This case takes a curious turn. After the appellant returned to the petitioner / parent organization and sought leave to report for duties, the petitioner / management indeed allowed him to report for duties, but started allotting the work on Clock hour basis. This clearly indicates that the management has not taken a stand of abandonment of service, though even if such a stand was taken, the onus and burden lay on the petitioner / management to prove the charge of abandonment, which is based on the charge of remaining unauthorizedly absent. (Novartis India Ltd. Vs. State of West Bengal and others [2009 LLR 113 = AIR 2008 SC (Suppl) 836]. Having permitted the appellant to report for duties and having allowed him to work for two years, the petitioner could not take a stand that a permanent Lecturer was converted into a temporary Lecturer on Clock hour basis. Such stand taken in these proceedings by the management is apparently vexatious and frivolous.

11. Considering the above, I do not find that University Tribunal has committed any error in concluding that a permanent Lecturer could not be terminated at the whims and

fancies of the management. The impugned judgment cannot be termed as being perverse or erroneous. Consequentially, this petition being devoid of merits is, therefore, dismissed.

12. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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