

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.4493 OF 1997  
WITH  
CIVIL APPLICATION NO.1754 OF 2003  
WITH  
CIVIL APPLICATION NO.2771 OF 2008

Shri Shriram s/o Barku Mahajan,  
Age-53 years, Occu-Service,  
16, Professor Colony,  
Dondaicha, Dist.Dhule

– PETITIONER

VERSUS

1. Adhyapak Shikshan Mandal,  
Taloda, District Dhule – 425413,

2. Arts Commerce College Trust,  
Conducted by Adhyapak  
Shikshan Mandal, at Taloda,  
Dist.Dhule,

3. Vice-Chancellor,  
Pune University at Pune

– RESPONDENTS

Mr.S.D.Kulkarni, Advocate for the petitioner.  
Mr.P.K.Joshi, Advocate for respondent No.2.  
Respondent Nos. 1 and 3 served.

( CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/02/2017

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment of the University  
Tribunal dated 26/07/1996 by which his Appeal No.NM-15/1994 was

dismissed.

2. I have heard the strenuous submissions of the learned Advocates for the respective sides. This court had not granted interim relief to the petitioner by order dated 31/01/2000 when the petition was admitted.

3. It is informed that after the petitioner was disengaged on 30/11/1993, which was his last day of the two years probation as a Principal, he has returned back to his parent college as he had kept his lien on the position of a teacher which he had occupied with the said college prior to being appointed as a Principal on probation. Subsequently, the petitioner has attained the age of superannuation and has retired from service and is also drawing his pensionary and retiral benefits. Considering this position, it is submitted by the petitioner that the relief that is been claimed in this petition is to the extent of compensation for the loss and manifest inconvenience caused by the respondents by disengaging him on completion of the probation period.

4. The submissions of Mr.Kulkarni, learned Advocate for the petitioner can be summarized as follows :-

[a] The petitioner is a qualified teacher having acquired his Ph.D. in the subject of Hindi,

[b] He joined the Arts and Commerce College Dondaicha, Dist.Dhule as a 'Lecturer' on 15/06/1970.

[c] From 01/12/1991, pursuant to an advertisement and a proper selection process, he was appointed as a 'Principal' with respondent No.2 / College on probation.

[d] During his entire two years of probation, he was not served with any adverse remarks or adverse assessment reports.

[e] By notice dated 01/09/1993, the Management informed the petitioner that he would stand disengaged and relieved as a 'Probationer' upon completion of his probation period on 30/11/1993.

[f] After preferring an appeal before the University Tribunal, his disengagement was stayed though the Management did not honour the order of the Tribunal.

[g] Statute 413(3) mandates the Chairman of the Governing Council of the College to prepare an assessment report of the Principal at least 2 months prior to the completion of the probation period.

[h] Statute 417(3) mandates that adverse remarks must be communicated to the Principal and he must be granted an opportunity of improving his performance.

[i] Statute 420(4)(c) requires the Governing Body or an outside expert nominated by the competent authority to consider the performance of a Principal.

[j] Without conducting the said procedure and assessment of reports, the petitioner has been disengaged.

[k] In the written statement before the Tribunal, the

Management has taken a stand that the work of the petitioner was not satisfactory and hence he was disengaged.

[l] By stating in the written statement that the performance of the petitioner is not satisfactory, the Management has attached a stigma to the service of the petitioner while disengaging him from service and hence the impugned order of disengagement is rendered stigmatic.

5. Mr.Joshi, learned Advocate appearing on behalf of the Management submits that the Governing Body had prepared an Assessment Report and the same was discussed in its meeting on 31/03/1993. It was resolved that since the petitioner's performance was not to the satisfaction of the Management, it was agreed that he should be disengaged. He, however, cannot point out from the record as to whether the petitioner was informed about the adverse report and whether the petitioner was called upon to improve his conduct.

6. I find that the thrust of the petitioner's submissions is that he has suffered a stigmatic termination from service. The said submission cannot be entertained for the reason that in the entire notice before disengagement dated 01/09/1993, the Management has nowhere stated any such misdemeanour so as to render the disengagement order stigmatic. It is merely stated that his probation

period would come to an end on 30/11/1993 and he would thereafter stand relieved from service. Three months notice was given to the petitioner.

7. The petitioner then submits that the contention of the respondent in the written statement that his performance is not satisfactory, amounts to a stigmatic termination. This submission deserves to be rejected for two reasons. Firstly, that performance of an employee, which is not to the satisfaction of the employer, can never be termed as being stigmatic termination. It is trite law that a candidate's suitability is always assessed during the probation period. If the performance is not satisfactory, the employee is not considered suitable for the organization.

8. The petitioner has relied upon the judgment of the learned Division Bench of this Court in the matter of College of Engineering of Yeshwant Rural Education Society, Sewagram, Dist.Wardha and another Vs. Mrs.Asmita Basole and another, [1987 Mh.L.J.676] to support the contention that if a stigma is attached, even the service of a probationer cannot be terminated simplicitor. I find that the reliance of the petitioner on the said judgment is misconceived since his service was terminated for a specific misconduct of being

negligent in duties.

9. The learned Division Bench of this Court in the matter of Mohd. Hanif Khan Mohd. Wahed Khan Vs. Maharashtra State Electricity Distribution Company Ltd., and others [2011(131) FLR 180] has concluded that mentioning the reason for disengagement or transfer in the reply to the proceedings before this Court, can only be interpreted to mean that the said litigant has invited such remarks.

10. So also, in the matter of Radhey Shyam Gupta Vs. U.P. State Agro Industries Corporation Ltd., and another [(1999)2 SCC 21] and in the matter of Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others, [AIR 1999 SC 983], the Hon'ble Apex Court has concluded that if the disengagement order of a probationer is innocuous and makes no mention of any misconduct or misdemeanors and does not in any way create a picture of a misconduct committed by the probationer, no interference would be called for as there would be no stigma attached.

11. The Hon'ble Apex Court (7 Judges) in the matter of Shamsher Singh Vs. State of Punjab and another [AIR 1974 SC 2192] has also

held that if a simple order of termination is passed without attaching any stigma, it would enable such an Officer to develop his career in other walks of life as no stigma has been attached and his prospectus for a new appointment would not be hampered. In this backdrop and considering the fact that the petitioner has returned to his parent college and has successfully completed his teaching career, no relief can be granted to the petitioner as regards difference of salary as canvassed by Mr.Kulkarni.

12. Mr.Kulkarni has also canvassed the aspect of compensation since Statute 417(3) and 420(4)(c) has not been complied with prior to assessing the performance of the petitioner leading to his disengagement. Record reveals that his submissions are supported to the extent of the non-compliance of Statute 417(3) which reads as under :-

***“417(3) - The Assessment Report of the Principal of Conducted Colleges/Head of the University Department on probation shall be maintained by the Vice-Chancellor, of the Principal of Affiliated College by the Chairman of the Governing Body and will be placed before the Competent Authority at least two months before the date of expiry of the period of probation with definite recommendation of confirmation in service or extension of probationary period or otherwise.”***

13. So also, Statute 420(4)(c) has not been complied with for making a proper assessment of his performance which reads as under :-

*“420(4)(c) :- Affiliated College/Recognized Institution :*

- (i) the Chairman, Governing Body or his nominee.*
- (ii) the Principal of the College concerned/Head of the Recognized Institutions.*
- (iii) the Head of the Department in the subject, if any, or an expert in the subject nominated by the Chairman/Governing Body.*
- (iv) two experts in the subject nominated by the Vice Chancellor.*

*However, in case where assessment o the Head of the Department/Principal/Head of the Institution is concerned in place of the Head of the Department/Principal/Head of Institution the words “an outside expert nominated by the Competent Authority” be instituted.”*

14. The petitioner has stated that he was earning about Rs.9,000/- per month as a 'Principal' of the respondent/College. After his disengagement, he has returned to the parent college and has worked thereafter. The opportunity of being confirmed as a 'Prinicpal' has been lost. Had he been apprised of the adverse opinion of the Management which appears to have been recorded in the meeting of the Governing Body on 31/03/1993 which is almost 8 months prior

to his disengagement, he could have improved his performance in those 8 months so as to reach the satisfaction level of the employer.

15. Considering the above, I deem it proper to grant compensation of 6 month's salary to the petitioner @ Rs.9,000/- per month which would reduce the hardships and inconvenience suffered by him. It cannot be ignored that he was not rendered unemployed after being disengaged as a Principal.

16. As such, this petition is partly allowed. The impugned judgment of the Tribunal dated 26/07/1996 is modified and appeal No.NM-15/1994 stands partly allowed. The respondent/ management shall therefore pay the petitioner compensation of 6 months salary @ Rs.9.000/- per month within a period of 6 (six) weeks from today, failing which the respondent shall be liable to pay interest @ 6% from the date of judgment of the University Tribunal. Rule is made partly absolute in the above terms.

17. Pending civil applications, if any, do not survive and stand disposed of.

( RAVINDRA V. GHUGE, J.)