

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

WRIT PETITION NO. 4996 OF 1999

- 1 Hind Seva Mandal,
Borkar Nagar,
At and Post Ahmednagar.
Through its Secretary.
- 2 Principal, Premraj Sarda College,
Address as above.

...PETITIONERS

-VERSUS-

- 1 Gangadhar Maruti Chindhe,
Age : 30 years, Occupation : Nil,
R/o C/o P.P.Sathe, Plot No.8,
Renavika Nagar, Behind Savedi Naka,
Savedi, Ahmednagar.
- 2 Registrar, Pune University,
Pune.
- 3 State of Maharashtra.

...RESPONDENTS

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Advocate for Petitioners : Shri V.J.Dixit, Senior Counsel with Shri S.V.Dixit.
Advocate for Respondent 1 : Shri R.L.Kute.
AGP for Respondent 3 : Shri S.S.Dande.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th May, 2017

Oral Judgment :

- 1 The Petitioners are aggrieved by the judgment and order

dated 20.08.1999 delivered by the University and College Tribunal by which Appeal No.16/1998 filed by Respondent No.1/ original Appellant has been allowed and by setting aside the oral termination of the Appellant, he was granted reinstatement on the post of Part Time Lecturer and with arrears of salary till the date of reinstatement.

2 This Court, by order dated 25.10.1999, admitted the petition and granted interim relief in terms of prayer clause (B), which reads as under:-

"(B) That, pending hearing and final disposal of the present Writ Petition, the execution, implementation and operation of the judgment and order dated 20.08.1999 passed by Presiding Officer, Pune-Shivaji University and College Tribunal, Pune in Appeal No.16/1998 be stayed."

3 It was, however, mentioned in the order dated 25.10.1999 that in case the work is available to be offered to the Appellant, he should be given preference.

4 During the pendency of this petition, the Appellant filed Contempt Petition No.246/2004 alleging that two persons, namely, Mr.Lad and Mrs.Pandit have been engaged in place of the Appellant. By detailed judgment dated 05.10.2005, this Court dismissed the Contempt Petition by concluding that minuscule workload was available, but not enough to

engage a Part Time Lecturer and hence, Mr.Khan and Mr.Patni, who were lecturers in Electronics, were called upon to shoulder the responsibilities of few additional lectures in Physics subject. This Court concluded that interim order passed by this Court has not been flouted by the Petitioners.

5 Consequent to the above, Respondent No.1/ Appellant is said to be out of employment for almost 20 years.

6 I have heard the learned counsel for the Petitioners and the Respondents and have gone through the record available.

7 There is no dispute that the Appellant had acquired qualifications for being appointed as a Lecturer, though the Petitioners have put forth the case of lack of NET/SET qualification which would disentitle the Appellant to seek regular employment. This issue has already been dealt with by the learned Single Judge of this Court in the matter of *Dr.Ambedkar College of Commerce and Economics vs. Sharmila Bose and others*, **1998(2) Mh.L.J. 99** and by the learned Division Bench in the matter of *Sudhir Sharadrao Hunge vs. State of Maharashtra*, **2010 (5) All M.R. 79**, by concluding that lack of NET/SET qualification would disentitle an employee to regular employment and increment. However, it ought not to result in his termination.

8 In the instant case, by appointment order dated 27.07.1995, the Appellant was appointed as Part Time Lecturer for one academic year 1995-1996. By communication dated 19.01.1996, the Petitioners informed the Appellant that he could continue till the end of academic year 1995-1996 as a Part Time Lecturer in Physics.

9 By appointment order dated 12.06.1996, the Petitioners continued the service of the Appellant for the academic year 1996-1997 and mentioned therein that unless he passes NET/ SET examination, he would not be entitled for increments. Accordingly, the Appellant was continued as a Part Time Lecturer in Physics for the academic year 1996-1997.

10 By order dated 30.06.1997, the Petitioners appointed the Appellant w.e.f. 01.07.1997 on leave vacancy till 30.11.1997. Thereafter, he was issued with another order dated 29.11.1997 and was continued on the same post till 04.02.1998. By yet another communication, he was continued as such from 04.02.1998 till 24.02.1998.

11 The Appellant approached the University and College Tribunal alleging that he was orally disallowed to sign the attendance

record w.e.f. 01.03.1998 and that, therefore, amounted to oral termination or otherwise termination.

12 The Petitioners contested the appeal by putting forth three grounds. Firstly, that the Appellant was appointed on part time basis initially for the period 1995 till 1996. Secondly, he was continued in the academic year 1996-1997 on the same conditions and by mentioning that he must acquire qualification of NET/SET. Thirdly, he was then continued from June, 1997 for four months with further orders as noted above on the basis that a part time lecturer Mr.Keskar was absent due to health reasons and the Appellant was engaged during his leave vacancy.

13 The Tribunal, while considering the above noted facts, concluded that the termination of the Appellant w.e.f. 01.03.1998 was illegal and invalid. The reason for drawing such conclusion was on the basis that absence due to illness of Mr.Keskar was not proved and the Appellant had worked continuously for about two years and 10 months and hence, the oral termination was bad in law.

14 There is no dispute that the Appellant was not disengaged by issuance of any termination order. However, it cannot be ignored that the Appellant accepted the appointment orders dated 30.06.1997, 29.11.1997

and 04.02.1998 by which he was lastly engaged on leave vacancy. It is quite conspicuous that the Petitioners did not find it necessary to mention in the said appointment orders that a part time lecturer Mr.Keskar is unwell and therefore, the Appellant is being engaged till he resumes duties.

15 At this juncture, the learned counsel for the Petitioners tenders a copy of the appointment order dated 29.11.1997. On perusal of the said copy now shown to the Court, I find that the words "*in the leave vacancy of professor M.P.Keskar*" have been written into brackets in front of the date 04.02.1998 and the signature of the Principal appears in front of these words. The Appellant is unable to state as to whether, these words can be found in the copy of the appointment order that was issued to him. The said words are subsequently written in the said order.

16 The issue before the Tribunal was twofold. Firstly, whether, engagement of the Appellant for the academic years 1995-1996 and 1996-1997 could create any vested right to continue in employment. Secondly, having accepted the appointment orders dated 30.06.1997, 29.11.1997 and 04.02.1998 wherein the leave vacancy of Mr.Keskar has been mentioned in the second order, would estop the Appellant from contending that he should be deemed to be permanent in service. I do not

find that the Tribunal has dealt with these two issues in the impugned judgment.

17 Nevertheless, it cannot be ignored that the Appellant was engaged as a part time lecturer. If he was not satisfied with the said purpose of appointments, he could have declined to accept the same. The record reveals that initially the Petitioners had engaged three permanent lecturers for Physics subject depending on the workload, namely, Principal Mr.S.G.Khandkekar, Dr.H.C.Patni and Mr.S.S.Joshi. Principal Mr.Khandkekar was performing administrative work as Principal and was also imparting education. Mr.Keskar was throughout a part time employee. The workload sheet placed before the Tribunal for the academic year 1997-1998 indicates three lecturers for the subject of Physics i.e. Dr.H.C.Patni, Mr.S.S.Joshi and Appellant Mr.G.M.Chindhe (part time). The workload placed on record for the academic year 1998-1999 indicates Dr.Patni being allocated 16 lectures per week and Mr.Joshi being allocated 10 lectures per week and the total lectures per week, according to the strength of the students, was 26. Apparently, the workload has fallen in 1998-1999. Mr.Keskar, who was a part time lecturer, was also not kept in employment for the academic year 1998-1999.

18 Considering the above, I find that the Tribunal has committed

an error in directing the reinstatement of the Appellant as a part time lecturer on temporary basis. In the absence of the workload, there could not have been such an order.

19 Nevertheless, the conduct of the Petitioners in engaging the Appellant as a part time lecturer on temporary basis, then introducing the condition of NET/SET qualification and thereafter, claiming that he was engaged in place of Mr.Keskar on leave vacancy, has caused prejudice to the Appellant. The main thrust of the Petitioners before the Tribunal was that the Appellant was not SET/NET qualified. So also, the Petitioners have presumed that the service of the Appellant came to an end by efflux of time and the Petitioners did not issue any communication to the Appellant after 24.02.1998 that his services are no longer required as Mr.Keskar has resumed duties.

20 Considering the above, I find it appropriate to impose costs on the Petitioners in order to reduce the manifest inconvenience and rigours of litigation suffered by the Appellant. No doubt, the order of reinstatement cannot be sustained since the Appellant was engaged initially on part time basis and thereafter, purportedly in place of Mr.Keskar, who was on leave and was subsequently disengaged leaving no scope for his reinstatement.

21 This Writ Petition is, therefore, partly allowed. The impugned judgment of the Tribunal dated 20.08.1999 is quashed and set aside. The appeal stands rejected and the Petitioners shall pay to Respondent No.1/ original Appellant, an amount equal to three months gross salary at the rate of the last drawn monthly salary of the Appellant within a period of TWELVE WEEKS from today, failing which the said amount would carry interest at the rate of 6% per annum from the date of the impugned judgment of the Tribunal.

22 Rule is made partly absolute in the above terms.

23 Pending Civil Application, if any, stands disposed of.