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

WRIT PETITION NO.5812 OF 2004

Rais Ahmed Siddiqui,
Age 40 years, Occ. Service,
R/o Rajmohammed Darga Road,
Udgir, Taluka Udgir, District Latur ... PETITIONER

VERSUS

1. Maharashtra Animal & Fishery
Science University,
(through its Registrar),
Nagpur – 6.
2. The State of Maharashtra
(through the Principal Secretary,
Agricultural, Animal Husbandry,
Dairy Development and Fisheries
Department, Mantralaya, Mumbai

(Respondent No.2 to be served through
the Government Pleader, High Court of
Bombay, Bench at Aurangabad)

... RESPONDENTS

.....
Shri K.M. Nagarkar, Advocate for petitioner
Shri P.G. Rodge, Advocate for respondent No.1.
Smt. M.A. Deshpande, Addl. G.P. for respondent N.2
.....

CORAM: RAVINDRA .V. GHUGE AND
 SUNIL K. KOTWAL, JJ.

DATED : 2nd NOVEMBER, 2017.

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.):

1. By this petition, the petitioner has put forth the
following prayers in terms of prayer clauses 19(A) to 19(C):

(A) To hold and declare that the petitioner's services as Junior Clerk shall be deemed to have been transferred and he has become an employee of the respondent No.1 on and from the date appointed by the Government Resolutions dated 2.7.2001 and 3.8.2001 and therefore, entitled to grant of all the consequential benefits thereof including continuity in service, arrears of salary, seniority, etc.

(B) To direct the respondents to forthwith pay salary to the petitioner for the post of Junior Clerk on and from the date appointed by the Government Resolutions dated 2.7.2001 and 3.8.2001 with interest at the rate of 18% per annum by issuing a Writ of Mandamus or any other appropriate writ, order of direction.

(C) Pending hearing and final disposal of the above Writ Petition, the respondents, their officers, subordinates, agents and servants be restrained from accepting applications, considering and filling in one post of Junior Clerk in the respondent No.1 in terms of Advertisement No.18816 and 18818 of 2004.

2. By order dated 5.10.2004, passed by this Court, interim relief in terms of prayer clause (C) was granted with the further direction that the petitioner's salary and other benefits

shall be paid equivalent to those payable to a Junior Clerk.

3. The petitioner had approached the Labour Court against his initial proposed retrenchment. His complaint was allowed. The said judgment was subsequently quashed by the learned Single Judge of this Court.

4. This Court noted in the order dated 5/10/2004 that, since respondent No.1 was a new University and as the petitioner was granted continuation in service by preventing respondent No.1 from terminating his services pursuant to the proposed termination, by the Labour Court, this Court concluded that the petitioner's services should be continued under the respondent No.1 new University and he would be entitled to all consequential salary and other benefits.

5. By a further order dated 8/9/2008, this Court concluded that since the petitioner is in continuous employment after his transfer to respondent No.1, and since the challenge to the judgment of the Labour Court, setting aside his retrenchment order was subjudice in Writ Petition No.4567/2004 before the learned Single Judge, it was held that the reliefs sought by the petitioner in this petition would be dependent upon the final order that may be passed by the learned Single Judge in Writ Petition No.4567/2004.

6. The petitioner points out that, subsequently the respondent No.1 University withdrew its challenge in Writ Petition No.4567/2004 and, therefore, this Court, by order dated 10/11/2008, disposed of the said Writ Petition as having been withdrawn by the respondent No.1 University.

7. Learned counsel for the petitioner submits that, pursuant to the above developments, he has already been absorbed as a Junior Clerk by the respondent No.1 University and there is no break in service. Even factually, there was no break in service as he had rushed to the Labour Court after receiving the notice of retrenchment and before he could be retrenched, the Labour Court had protected his services. Subsequently, the Labour Court had allowed his U.L.P. Complaint and had set aside the proposed termination.

8. Considering the above, and in the light of the earlier two orders passed by this Court, the petitioner has been deemed to have been transferred to respondent No.1 and is continuing with the respondent No.1 University for the last 13 years, with continuity.

9. Taking into account the above factors, we do not intend to travel beyond our observations in the said two orders and especially the order dated 8/9/2008.

10. Considering the length of service of the petitioner, and the circumstances in which the new University was created for the purposes of all Veterinary Colleges being brought under the umbrella of the said University, we hereby allow this petition by concluding that the petitioner's services shall be deemed to be continued with respondent No.1 on the post which he was earlier occupying with the erstwhile Marathwada Agricultural University, Parbhani with reference to its Research Centre at Beed. The petitioner's services shall be deemed to be continuous. The petitioner would be entitled for all such benefits as are permissible in law, in the light of the service conditions applicable to the petitioner.

11. Rule is made absolute accordingly.

(SUNIL K. KOTWAL)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

fmp/