

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1670 OF 2014

The Chairman, Shri Doodhsakhar Shikshan Prasarak Mandal
and another ... Petitioners
Vs.
State of Maharashtra and others ... Respondents

WITH
WRIT PETITION NO.12181 OF 2016

Jyoti Bhausahab Kamble ... Petitioner
Vs.
Shri Doodhsakhar Shikshan Prasarak Mandal & others... Respondents

Mr. V. K. Bodhare for Petitioners in Writ Petition No.1670 of 2014 and for Respondents No.1 and 2 in Writ Petition No.12181 of 2016.
Ms Jyoti Jadhav, AGP for Respondents No.1 and 2 in Writ Petition No.1670 of 2014 and for Respondents No.4 and 5 in Writ Petition No.12181 of 2016.
Mr. Amit Borkar for Respondent No.3 in both the Petitions.
Mr. Sarnath S. Pramod for Respondent No.4 in Writ Petition No.1670 of 2014 and for Petitioner in Writ Petition No.12181 of 2016.

CORAM : R. G. KETKAR, J.
DATE : JULY 25, 2017

P.C. :

Heard Mr. Bodhare, learned Counsel for petitioners in Writ Petition No.1670 of 2014 and for respondents No.1 and 2 in Writ Petition No.12181 of 2016, Ms Jadhav, learned AGP for respondents No.1 and 2 in Writ Petition No.1670 of 2014 and for respondents No.4 and 5 in Writ Petition No.12181 of 2016, Mr. Borkar, learned Counsel for Respondent No.3 in both the Petitions and Mr. Sarnath, learned Counsel for respondent No.4 in Writ Petition No.1670 of 2014 and for petitioner in Writ Petition No.12181 of 2016 at length.

2. Writ Petition No.1670 of 2014 is instituted by the petitioners, hereinafter referred to as 'management', under Articles 226 and 227 of

the Constitution of India, challenging the judgment and order dated 10.07.2013 passed by the learned Presiding Officer, Bombay University and College Tribunal holding additional charge of Pune / Shivaji / Solapur University and College Tribunal, Pune (for short 'Tribunal') in Appeal No.19 of 2010. By that order, the Tribunal set aside oral termination from 29.03.2009 and allowed the appeal preferred by Smt. Jyoti Kamble, hereinafter referred to as 'respondent' (who is respondent No.4 in Writ Petition No.1670 of 2014 and petitioner in Writ Petition No.12181 of 2016). The Tribunal ordered reinstatement of the respondent in service within three months period and during that period, directed the management and the Joint Director, Higher Education, Kolhapur Region, Kolhapur to scrutinize her case in the light of the observations made in paragraphs 6 and 7 of the impugned order and take a decision in accordance with law. The Tribunal also gave liberty to the respondent to challenge the adverse decision passed against her before the competent forum.

3. In pursuance thereof, Divisional Joint Director (Higher Education), Kolhapur Division, Kolhapur has by communication dated 03/04.10.2014 informed the management that the respondent does not hold requisite educational qualification for appointment on full time post and consequently, she cannot be absorbed on full time post. The respondent has challenged this communication by instituting Writ Petition No.12181 of 2016.

4. Rule. Learned Counsel for respective respondents waive service. In view of the narrow controversy raised in these Petitions as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petitions are taken up for final hearing.

5. In support of the Petition instituted by the management, Mr. Bodhare has invited my attention to the service record of the respondent. He submitted that from 01.08.2000 to 31.03.2006, respondent was working on Clock Hour Basis (C.H.B.). She was selected through University Selection Committee only for the period from 03.09.2001 to 10.11.2001 i.e. for the period of two months and seven days. In respect of the rest of the period of service, she was selected through the Local Selection Committee. He submitted that respondent was selected through the University Selection Committee for the period from 20.07.2006 to 19.07.2008 i.e. two years on full time on contract basis. She was required to pass NET/SET examination within two years, failing which her services were to come to an end. As the respondent belongs to the Scheduled Caste, she obtained Certificate of Validity on 02.06.2010. However, till date, she has not obtained NET / SET qualification. Mr. Bodhare, therefore, submitted that as the respondent does not hold the requisite qualification, the Tribunal was not justified in ordering reinstatement and further directing the management and the Joint Director of Higher Education to scrutinize her proposal as per the observations made in paragraphs 6 and 7 of the impugned order. He, therefore, submitted that the impugned order deserves to be set aside.

6. On the other hand, Mr. Pramod supported the impugned order. He submitted that after the Tribunal set aside the oral termination, it was not justified in directing the management and the Joint Director of Higher Education to scrutinize respondent's case and take a decision in accordance with law. He submitted that the Tribunal has no such power to issue directions.

7. Mr. Pramod submitted that the Divisional Joint Director, Higher Education committed serious error in addressing communication dated

03/04.10.2013 to the management on the ground that respondent does not possess requisite qualification for appointment on full time basis, and therefore, she cannot be absorbed in the services. He submitted that as on date, respondent has not obtained NET / SET qualification and she is M.Sc. (Zoology).

8. Mr. Borkar submitted that as per approval given by the third respondent University, respondent was appointed on full time post for two years on contract basis subject to her obtaining NET / SET qualification. No exemption is given for acquiring NET / SET qualification. As the respondent did not obtain NET / SET qualification, her services automatically came to an end after the expiry of two years on 19.07.2008.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the service record of the respondent shows that she was appointed for the following periods on Clock Hour Basis through Local Selection Committee:

- (a) from 01.08.2000 to 21.10.2000
- (b) from 30.08.2002 to 27.03.2003
- (c) from 19.07.2003 to 24.04.2004
- (d) from 05.07.2004 to 31.03.2005; and
- (e) from 25.07.2005 to 31.03.2006.

10. At the same time, respondent was selected by the University Selection Committee for the period from 03.09.2001 to 10.11.2001 on Clock Hour Basis. Finally, she was appointed on contract basis for the period from 20.07.2006 to 19.07.2008 through University Selection Committee with a specific condition of acquiring NET / SET qualification as also obtaining validity certificate. As far as the validity certificate is concerned, respondent has obtained that certificate on

02.06.2010. It is however admitted position that as on date, respondent has not acquired either NET or SET qualification. In view thereof, I do not find that the Divisional Joint Director committed any error in sending communication dated 03/04.10.2013. The Tribunal, though has power under Section 61(2)(f) of the Maharashtra Universities Act, 1994 to give such other reliefs to the employees and to observe such other conditions as it may be specified having regard to the circumstances of the case, should have considered whether the respondent holds a requisite qualification for appointment on full time basis. Admittedly, respondent holds qualification M.Sc. (Zoology) and has not acquired either NET or SET qualification. In paragraph 5, the Tribunal has observed thus,

“5. Thus, it is seen that it is not a case where the incumbent has been given one appointment order on ad-hoc basis or contract basis for consolidated salary and therefore, he or she would not be entitled for any extension for further continuity of service. In the present case, appellant (respondent herein) has served for 8 years continuously after her selection by a regular Selection Committee and therefore, her services cannot be orally terminated.”

11. In my opinion, the Tribunal has not considered respondent's entire service record as also her last appointment on contract basis from 20.07.2006 to 19.07.2008 that too subject to fulfillment of condition of acquiring NET / SET qualification. Merely because respondent was selected by University Selection Committee that does not ipso facto mean that she holds the requisite qualification. In my opinion, the Tribunal with respect has totally misdirected itself in allowing the appeal that too without recording a categorical finding whether the respondent possesses the requisite qualification. Hence, the impugned order dated 10.07.2013 passed by the Tribunal is set aside. Appeal preferred by the respondent is dismissed. Rule is made absolute in terms of prayer clause (b) of Petition No.1670 of 2014. As I have held

that the respondent does not possess requisite qualification, her challenge to the communication dated 03/04.10.2013 issued by the Divisional Joint Director, Higher Education fails. Rule in Writ Petition No.12181 of 2016 is discharged with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

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