

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION**

WRIT PETITION NO.6481 OF 1997

1. The Principal,
Tikaram Jagannath College
having his College at Elphistone Road,
Khadki, Pune – 411 0003

2 The Secretary,
Khadki Education Society
C/o Tikaram Jagannath College
Elphistone Road, Khadi,
Pune – 411 003

...Petitioners

Vs.

1 The State Of Maharashtra
(Notice to be served on the
Additional Govt. Pleader
High Court, Appellate Side
Bombay)

2 The Director of Education,
Higher Education, Maharashtra State,
having his Office at Mahapalika Marg,
Bombay.

3 Mr. Ramesh Keshavrao Wankhede,
C/o P.R. Wankhede,
Residing at B/35, Sevak Vasahat,
Pune University, Pune – 411 007.

4 The Presiding Officer,
University and College Tribunal
(Pune University), having his
Office at Pune, Dist. Pune)

....Respondents

Shri A.G.Kothari i/by S.G. Surana for the Petitioners.
Shri Manoj Nayak, for the Respondent No.3.
Shri S.L.Babar, AGP for Respondents/State.

CORAM : A.A. SAYED, J.

DATED : 4 May 2017

JUDGMENT:

1. By this Petition under Articles 226 and 227 of the Constitution, the Petitioner-Management has impugned the judgment and order dated 4 November 1997 passed by the University and College Tribunal, Pune, in an Appeal filed by the Respondent No.3/original Appellant under Section 59 of the Maharashtra Universities Act, 1994. By the impugned order the College Tribunal set aside the order of termination dated 25-12-1996 of the Respondent No.3 and directed the Petitioner-Management to reinstate him with backwages from the date of termination.

2. The case of the Respondent No.3 before the College Tribunal in a nutshell, was as follows:

An advertisement was issued in the Indian Express dated 16-05-1996 inviting applications for two posts of Lecturers in Geography subject, out of which one post was for Scheduled Caste and other was

for open category in Tikaram Jagannath College. He belongs to Scheduled Caste. Pursuant to his Application, he was interviewed on 13-07-1996 and was selected. He was however not given an appointment letter. He joined duties on 5-08-1996. His appointment for the academic year 1996-97 was approved by the University of Pune to which the College is affiliated. He was not allowed to sign the common muster and he was signing a separate muster. He was not paid regular emoluments and only advances were given to him from time to time amounting to Rs.7,000/-. He was working alongwith his colleague as per the time table given to them, which shows that the work available was of 44 clock hours. That was not only enough for two teachers, but work of 6 clock hours still remained in excess. There was enough work load for two Lectures and as long as he was working there, there were three lecturers which would show that at the most one lecturer was in excess. Since he belongs to Scheduled Caste and working on reserved post, he could not be held as surplus. He was given a letter dated 25-12-1996 terminating his services. He, therefore, filed the Appeal before the Tribunal seeking reinstatement and a direction to pay emoluments to him.

3. The Petitioner-Management had filed Written Statement resisting the Appeal. Their case in the Written Statement was as follows:

After taking into consideration the financial position of the Institution/College, it was decided that in the academic year no appointment is to be made which will be either permanent nature or which will bring financial burden on the College. Considering the number of students and the workload, it was decided that the appointment be made on temporary basis and that was depending upon the resources available. The appointments were to be made in accordance with the workload which was only 44 clock hours. It was decided that two professors can work for 22-24 clock hours and for the remaining clock hours two professors could be appointed on a "permanent basis". Therefore, the Respondent No.3 was appointed as a temporary teacher, which he refused to accept and started indulging in making false complaints. It was decided to abolish both the posts and find out a mode of teaching the subject by professors who can work on clock hour basis. Respondent No.3 was never appointed as a permanent teacher or as a probationary teacher and therefore the Petitioner-Management had every right to terminate the services of the Respondent No.3. The Respondent No.3 had not passed the NET/SET examination, which is compulsory for being appointed as a permanent teacher.

4. After hearing the parties, the Tribunal passed the impugned order as indicated in paragraph 1 above.
5. I have heard the learned Counsel for the Petitioner-Management and the learned Counsel for the Respondent No.3.
6. Learned Counsel for the Petitioner Management has relied upon the following judgments/orders:
 - (i) State of Orissa v/s. Mamta Mohanty, 2011 (1) ES MC 281 SC;
 - (ii) Deepali Gundu Surwase v/s. Kranti Junior Adhyapak Mahavidyalaya and ors, (2013) 10 SCC 324;
 - (iii) Kalpataru Vidya Samasthe (R) and and ors. vs. S.B. Gupta & Ors., (2005) 7 SCC 524;
 - (iv) Vidyavardhaka Sangha (R) and ors. vs. Y.D. Deshpande, (2006) DGLS 627,
 - (v) Hindustan Education Society and others vs. S.K. Kaleem S. K. Gulam Nabi & Ors., 1977 (3) Supreme Court 292;
 - (vi) Bhartiya Gramin P. Sanstha vs. Vijay Kumar & Ors., (2002) 6 SCC 707;
 - (vii) Kendriya Vidyalaya Sangathan & Ors. vs. S.C. Sharma, (2005) 2 SCC 363;

- (viii) Chatrapati Shivaji Shikshan Prasarak Mandal & Ors. vs. Dattatraya Rupa Pagar & Ors., Order dated 13 April 2012 of Supreme Court in Civil Appeal No.3563 of 2012);
- (ix) Gridco Limited & Anr. vs. Sadananda Doloi & Ors., 2012 AIR (SC) 729;
- (x) Pandurang M. Dhumal vs. Siddarth Charitable Trust, Order dated 7 July 1999 in Writ Petition No.3488 of 1999, passed by the learned Single Judge of this Court;
- (xi) Pandurang M. Dhumal vs. Siddharth Charitable Trust, Order dated 22 November 1999 dismissing SLP No.14795 of 1999 wherein the aforementioned order dated 7 July 1999 in Writ Petition No.3488 of 1999 was challenged;
- (xii) Mr.Uttam Bhikarao Naik v/s. The Goa University & ors., 2009 (3) All MR 895 of Division Bench of this Court;
- (xiii) Kazi Safiruddin Muzaffaruddin v/s. The State of Maharashtra & ors., (Writ Petition No.2268 of 2005) of Division Bench of this Court;

- (xiv) Chandramani Devraj Tiwari v/s. The Secretary, Smt.R.B.Tiwari Sanskrutik Kendra & ors., 2008 (3) All MR 138 (Division Bench of this Court);
- (xv) Ramkrishna Chauhan vs. Seth D. M. High School & Ors., 2013 (2) MhLJ 713 of Full Bench of this Court;
- (xvi) Pournima Patil vs. The Principal, G.M. Momin Women's College & 2 ors., (Letters Patent Appeal No.101 of 2006 of Division Bench of this Court affirming the judgment dated 13 June 1999 of learned Single Judge in Writ Petition No.3934 of 2005);

7. Learned Counsel for the Respondent No.3, on the other hand, relied upon the following judgments/orders:

- (i) Dr.Ambedkar College of Commerce & Economics v/s. Sharmila Bose and ors, 1998 (2) MhLJ 99;
- (ii) Deepali Gundu Surwase v/s. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and ors, (2013) 10 SCC 324;
- (iii) S.P. Chengalvaraya Naidu (dead) by L.Rs. v/s. Jagannath (dead) by L.Rs. and others, 1994 AIR (SC) 853;
- (iv) Ambika Kaul v/s. Central Board of Secondary Education and ors. 2015 0 Supreme (P & H) 320;

- v) Order dated 18 April 2002 in Writ Petition No.5782 of 2001 of Division Bench of this Court.

8. The two grounds for termination mentioned in the letter of termination dated 25-12-1996 issued to the Respondent No. 3 are - (1) lack of enough strength of students in the subject and (2) non-availability of funds. In paragraph 20 of the impugned order, the College Tribunal has observed as follows:

“20. The order of termination dated 25-12-1996 refers to the reduction in the strength of students and other financial conditions for the decision to reduce the strength of two professors in job in the Institution. There is no material about financial position here on record and which the authorities took into consideration. So far as the work load on the basis of students strength is concerned also there is no material produced to show that there has been reduction in the strength of students. One must take note of the fact that the order has been issued in the month of August, 1996 and the termination order issued in the month of December, 1996. The management decided to advertise two posts got persons to be appointed by selection and appointed them. Appointment was as the order shows effective from 5-8-1996 for the academic year ending on 15-4-1997. It was necessary for the Respondents No.1 and 2 to produce some material to show that there has been a reduction in the strength of students necessitating reduction in the strength of lecturers. The Statutes of the University prescribed the ratio of students and teachers as 10:1, as per staffing pattern of the Government.”

In paragraph 22, the College Tribunal has observed as under:

“22. ...I do not see how the Respondents' contention is consistent with the

stand taken in that termination order and with the Statutes prevailing. The Statute also provides for determination of workload and it is to be found on page 39. From there also it is seen that the workload of teacher is 17 lectures plus tutorials. If there are no tutorials then 18 lectures. Therefore, if 18 lectures is the workload of a teacher then 36 lectures should justify the strength of two teachers. Therefore, it is not for the management to find out ways and means for reducing the strength of lecturers. Management has to go by the Statutes and according to me there was enough workload for more than two teachers.”

9. I am in agreement with the aforesaid findings of fact by the College Tribunal. The grounds for termination of the Respondent No. 3 mentioned in the letter of termination dated 25-12-1996 were clearly unfounded and untenable and the Respondent No. 3 could not have been terminated on the said grounds. Nothing has been pointed out on behalf of the Petitioners how the said findings of fact can be said to be said to be perverse. The said findings of fact by the College Tribunal are not liable to be disturbed by this Court in the exercise of writ jurisdiction in absence of any perversity having been pointed out. Moreover, the College Tribunal in paragraph 23 of the impugned order has discussed the various correspondence and in particular the letter dated 16-05-1997 addressed by the University to the Principal of the College wherein it is stated that there is workload for the Respondent No. 3 and he should be taken back in service. As a matter of fact, no arguments on the aforesaid findings of

the College Tribunal are canvassed before this Court and the Written Arguments filed by the Petitioners also does not deal with the aforesaid aspect.

10. The main plank of argument on behalf of the Petitioners before the Court however is that the Respondent No. 3 was appointed on temporary basis and therefore he cannot claim protection of his service. Learned Counsel for the Petitioners pointed out that the letter of appointment dated 03-08-1996 clearly states that the appointment of the Respondent No.3 is purely temporary for the period 05-08-1996 to 15-04-1997 and the approval granted by the University is also for the said period and therefore the appointment being for a fixed period, the appointment was only a temporary appointment and therefore the Respondent cannot claim permanency and the services of the Respondent No. 3 cannot be protected. I am however unable to accept the said contention on behalf of the Petitioners for the reasons stated hereinafter.

11. The University of Pune Statutes prescribe the manner of recruitment of Teachers. Under statute 415(2), a regular appointment is made by the Management only after a Selection Committee constituted by the University makes a recommendation for the appointment. Such Selection Committee consists of:

- (a) Chairman, Governing Body of the College or/his Institution
nominee from amongst members of Governing Body.
- (b) A nominee of the Vice-Chancellor.
- (c) One Expert to be nominated by the Vice-Chancellor.
- (d) One nominee of the Director of Higher Education, not below
the rank of Deputy Director of Higher Education.
- (e) Principal of the College/Head of the Recognised Institution.
- (f) Head of the concerned Department of the College/Institution.
- (g) If the post is reserved one, the Vice-Chancellor shall nominate
one additional member, belonging to Scheduled Caste or
Scheduled Tribe or Denotified or Nomadic Tribe who should
preferably be an expert on the subject.

On the other hand, the appointment of a temporary Teacher is made under Statute 415(3) and Statute 438. Ordinarily, a temporary Teacher is appointed by a Local Selection Committee or on contract basis. It is not disputed in the present case that the Respondent No.3 is appointed by a duly constituted Selection Committee. It therefore cannot be said that the appointment of the Respondent No. 3 was a temporary appointment. As indicated above, temporary appointments are ordinarily made by the Local Selection Committee or on contract basis. The letter dated

16-05-1997 addressed by the University to the Principal of the College annexed as Ex 4 to the Affidavit in Reply of the Respondent No. 3 dated 23 March 1998 also states that the Respondent No. 3 was **duly appointed** and his service was required to be continued and he should be taken back in service. The University had also written to the Joint Director, Higher Education, State of Maharashtra that since the College had disregarded the directives of the University to continue the services of the Respondent No. 3, a decision has been taken to halt the grants of the College temporarily and requested him to act accordingly. Moreover, it is noticed that the Respondent No.3 was not issued an appointment order and he had made grievances in that regard to the University also and the Petitioners were directed to issue the letter of appointment to him.

12. In the Affidavit in Reply dated 18 June 2016, the Respondent No.3 has annexed several documents which he received pursuant his Application under the Right to Information Act. Annexure R 18 to the Affidavit is the Teacher's Approval Form signed by the Principal of the College on 01-08-1996 and counter signed by the Deputy Registrar (Academic). In the said Teacher's Approval Form, the entry in clause (8) requires the College to state "Whether Temporary/Permanent/Visiting or Contract Basis (Please state the period)". Against this entry, it is clearly stated by the College that the appointment is "**Permanent from**

01-08-1996 to Continue”. The said Teacher’s Approval Form also states in clause 12 that there is increase in workload. Annexure R17 to the said Affidavit is a letter dated 11-09-1996 addressed by the Registrar to the Deputy Registrar (Reservation Cell), University of Pune requesting to examine the proposals in connection with reservation. In the said letter also, the appointment of the Respondent No. 3 is shown as **‘permanent’**. From the aforesaid documents it is evident that the Petitioners as well as the University had accepted the appointment of the Respondent as a permanent appointment and not a temporary appointment.

13 The question is why then does the appointment letter dated 03-08-1996 of the Respondent No. 3 state that the appointment is temporary and why the approval by the University is also for a fixed period. It is necessary to state here that at the relevant time, there was a dearth of Lecturers who had not passed their NET/SET examination. NET/SET was an additional qualification laid down by University Grants Commission for being appointed as Lecturer. In these circumstances, State Government in the interest of the teachers and the students permitted appointment of non-NET/SET Lecturers with a condition that the NET/SET examination would be cleared within a specified period and till then their appointment would be considered as ad-hoc/temporary and

they would be regularized only after clearing NET/SET examination. University Grants Commission had also approved such a course later on, subject to such proposals of exemption from NET/SET being submitted to it through the University and being approved by it. The appointment letter 03-08-1996 of the Respondent No. 3 also contained a condition that he would have to clear the NET/SET examination within the stipulated period.

14 Pertinently, the appointment letter 03-08-1996 of the Respondent No. 3 specifically states in paragraph 2(b) as follows:

“Your appointment is purely temporary for a period of academic year i.e from 05/08/1996 to 15/04/1997 **as per Govt. Letter No. NGC/1794/Vishi-4 dated 22/12/1995.**”

Clause 7(c) of the said Government Letter/Resolution dated 22 December 1995 reads as follows:

“If the candidate of aforesaid eligibility is appointed or to be appointed, due to the non-availability of the candidates holding the prescribed educational qualification, all such appointment shall be treated as Ad-hoc in nature. And as such appointed Ad-hoc lecturer cannot be removed/dismissed from the service due to the reason of non passing the NET/SET exams. However the annual increment should not allow to these lecturers till passing NET/SET exam and their increment shall be payable from the date of passing the NET/SET exam. However the outstanding of such payable amount shall not be permissible. And also the service period of the lecturer appointed on temporary basis should not be considered for the selection of

senior category/selection category. Their service period for senior category/selection category shall be calculated from the date of passing NET/SET exam. The lecturers who pass the NET/SET exam earlier, shall be treated senior than others.”

15 Reference may also be made to the letter of the University of Pune dated 11-10-1996 granting approval to the appointment of the Respondent No. 3. Clause (b) of the said letter mentions the period of the appointment and reads as follows:

“(b) for period from 05.08.1996 to the end of academic year 1996-97 **(for NET/SET)..**”

16 The appointment letter dated 05-08-1996 as well as the approval letter of the University thus fortifies the fact that the appointment of the Respondent No. 3 was considered as temporary only until he would clear NET/SET examination. The learned Counsel for the Respondent No.3 has also pointed out the State Government Resolutions dated 22 May 1998 and 18 October 2001 which support his contention that such candidates appointed during the period 19-09-1991 to 11-12-1999 were granted protection of their services and that they were only not entitled to increments till they cleared their NET/SET examination. The Government Resolution dated 18 October 2001 records that between 19.9.1991 and 11.12.1999 there were 6000 non NET/SET lecturers/teachers appointed

and the Government had decided that these candidates will not be removed, but they will have to clear NET/SET by December, 2003.

17 It would thus be apparent that the appointment letter dated 03-08-1996 mentioned that the appointment was “temporary” only for the reason the appointment was of ad-hoc nature till the Respondent No.3 cleared his NET/SET Examination. It is for this reason that the University also had approved the appointment of Respondent No. 3 only for a fixed period. The appointment was to be regularized only after the Respondent No. 3 would clear NET/SET examination. The Government Resolutions also granted protection to such ad-hoc Lecturers and they could not be removed from the service due to the reason of not passing NET/SET exam with a rider that they would not be entitled to annual increment and shall not be considered for selection of senior category/selection category until they pass their NET/SET exam. As a matter of fact Annexure R22 of the Affidavit dated 18 June 2016 reveals that the proposal of appointment of the Respondent No. 3 for exemption from NET was approved by UGC in March 2010 wherein the name of Respondent No. 3 was shown at Sr. No. 1237 and wherein his date of appointment was shown as 05 August 1996.

18 In these circumstances, the appointment of the Respondent No.3 was shown as ad-hoc/temporary despite the fact that he was duly appointed after following due procedure, only because at the time of the initial appointment the Respondent No.3 had not cleared his NET/SET examination. The Respondent No. 3 could not have been terminated as he enjoyed protection of his service by virtue of the Government Resolutions. The contention of the Petitioners that the appointment of the Respondent No.3 was a temporary appointment therefore cannot be accepted. Though it is sought to be argued that this Court ought not to look into the documents annexed to the Affidavit dated 18 June 2016 as the said documents did not form part of the record before the College Tribunal, I am not disposed to accept this submission. The Respondent No. 3 has succeeded before the College Tribunal and his Appeal has been allowed. The documents relied upon by the Respondent No. 3 were within the special knowledge of the Petitioners and ought to have been disclosed by the Petitioners themselves before the College Tribunal. It is pointed out on behalf of the Respondent No.3 that one Mr. Jain, who is an Advocate, was the Chairman of the Petitioner Management. It is submitted that Mr. Jain was also the Chairman of the Selection Committee which had recommended the appointment of Respondent No.3, and further the said Mr. Jain had appeared before the College

Tribunal as the Advocate for the Management and the documents have been suppressed before the College Tribunal. In my view, the Petitioners have not come clean and have taken a stand which is contrary to their own documents and contrary to the records of the University, which were in their knowledge and the Respondent No.3 cannot be prevented from relying upon the said documents to bring forth the contradictory stand of the Petitioners. Having held that the appointment of the Respondent No.3 cannot be said to be a temporary appointment, the judgments relied upon by the learned Counsel on behalf of the Petitioners in support of the contention that a temporary employee ought not be granted protection of his service, are of no avail. In the facts of the present case and having regard to the fact that we are dealing with a case governed by the provisions of Poona University Statutes and State Government GRs which grant protection to the services of the Respondent No.3, the other judgments cited on behalf of the Petitioners would have no application.

19 So far as the issue of backwages is concerned, it is at the outset required to be noted that it is an admitted position before the Court that the Respondent No.3 has been reappointed on 8 August 1998 by the Petitioners and he is working in the same department of the College as a Lecturer of Geography. In these circumstances, the claim of the

Respondent No.3 for backwages is confined to the period from the date of termination dated 25-12-1996 till the date of fresh appointment on 8 August 1998, i.e. a period of about one year and seven months.

20 Both the learned Counsel have relied upon the case of **Deepali Kundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya** (supra). In the said case, the Supreme Court after reviewing all the judgments on the issue of backwages held in paragraph 38 as under:

“38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove

that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee

or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. v. Employees*, (1979) 2 SCC 80 : 1979 SCC (L&S) 53.

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal*, (2007) 2 SCC 433: (2007) 1 SCC (L&S) 651 that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches (1979) 2 SCC 80 : 1979 SCC (L&S) 53, *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*, (1980) 4 SCC 443 : 1981 SCC (L&S) 16 referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

Thus, the employee who is seeking to claim backwages is in the first instance required to plead or make statement before the Adjudicating Authority/Tribunal/Court that he was not gainfully employed. It is thereafter that the burden shifts on the employer. This is because if the employee is infact gainfully employed elsewhere and drawing the same or more salary, the said employee may not be entitled to backwages.

21 Reverting to the case in hand, it is noticed that there was no Affidavit filed before the College Tribunal by the Respondent No.3 that was not gainfully employed elsewhere. The College Tribunal by the impugned order has granted full backwages mechanically without any such Affidavit having been filed before it by the Respondent No.3. There is no discussion in the impugned order by the College Tribunal whether

or not the Respondent was not gainfully employed elsewhere or the reasons why 100% backwages need to be awarded to the Respondent No. 3 even in absence of any such statement/Affidavit. It was only when the matter was being heard, such an Affidavit was filed in this Petition for the first time on 5 December 2017 though several Affidavits have been filed earlier in the present proceedings by the Respondent No.3. In these circumstances, the learned Counsel for the Petitioners would be justified in his grievance that there was no opportunity to the Petitioners to refute the statements in the said Affidavit dated 5 December which was filed at the time of final hearing of the Petition. The averments made by the Respondent No.3 in the Contempt proceedings after the impugned order was passed by the College Tribunal would be of no avail.

22 It is noticed that after the present Petition was filed, this Court had granted an interim order in favour the Petitioners, in that, this Court had stayed the impugned order of the College Tribunal pending the hearing and final disposal of the Petition by an order dated 01-04-1998. Consequently, the Petitioners were not required to reinstate the Respondent No.3 pending this Petition. In paragraph 18 of the Affidavit dated 30 November 2001 the Respondent No.3 has averred as follows:

“18. Notwithstanding the interim order, which was granted by this Honourable Court, I say that by virtue of a fresh appointment made on 8th August 1998, I was given a further chance by the Management to again work in the said Department...”

It is thus seen that despite an interim order in their favour, the Petitioners have in fairness appointed the Respondent No. 3 in the College on 8 August 1998. As rightly pointed out by the learned Counsel for the Petitioners, the Petitioners could have very well granted the fresh appointment conditional upon the Respondent No.3 giving up his claim of backwages. The Respondent No.3 had not worked in the College during the interregnum. Regard being had to the length of the employment of the Respondent No.3 (about four and half months), the principle of ‘no work, no pay’ and the fact that the Petitioners have ultimately re-appointed the Respondent No.3 despite having an order of stay of the impugned order in their favour and considering the overall facts and circumstances of the case, in my view, interest of justice would be served by awarding 50% backwages to the Respondent No.3 for the period from the date of his termination i.e. 25-12-1996 till the date of his reappointment i.e. 8 August 1998, instead of full backwages as awarded by the College Tribunal. The impugned order of the Tribunal shall stand modified to that extent.

23 The Petition is partly allowed in the aforesaid terms. Rule made partly absolute accordingly. There shall be no order as to costs. It is clarified that the Respondent No.3 would be entitled to benefit of continuity of service for the aforementioned period.

(A.A. SAYED, J.)