

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

WRIT PETITION NO. 3897 OF 2018

Mohan Badrinath Balgarkashi
(B.K.)

.. Petitioner

Versus

Swami Ramanand Teerth Marathwada
University and another

.. Respondents

Shri Avinash S. Deshmukh, Advocate for the Petitioner.

Shri U. S. Malte, Advocate for the Respondent No. 1.

Shri S. P. Tiwari, A.G.P. for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA AND
R. G. AVACHAT, JJ.**

DATE : 21ST DECEMBER, 2018.

FINAL ORDER :

. The petitioner assails the order dated 12.02.2018 issued by the respondent No. 1 thereby appointing the petitioner for a period of six months as a Training and Placement Officer in the School of Commerce and Management Sciences with the respondent No. 1 on purely temporary basis in the pay scale of Rs. 15600 – 39100 with AGP of Rs. 6000/- and further prays for restoration of the order dated 01.01.2018 thereby appointing the petitioner as a Training and Placement Officer for a period of two years in the same pay scale.

2. Mr. Deshmukh, the learned counsel for the petitioner contends that, the petitioner was initially appointed as a Training and Placement Officer by the respondent No. 1/university on 10.12.2012 for a period of five years. On or about 13.10.2017, the Management Council passed a resolution that the petitioner be given extension of two years on the same terms and conditions and pay and allowances. However, instead of issuing orders of continuation, the respondent No. 1/university issued order of fresh appointment on 01.01.2018. The petitioner gave an application to protect his pay scale and salary. However, instead of correcting the pay scale and protecting the salary a fresh appointment order again came to be issued on 12.02.2018 only for a period of six months or till filling in of the said post. The learned counsel submits that, initial appointment of the petitioner on 10.12.2012 was after participating in the selection process pursuant to advertisement. According to the learned counsel, under order dated 01.01.2018, the appointment of the petitioner was on tenure basis. As the appointment of the petitioner was on tenure basis, the age of superannuation is immaterial. The learned counsel submits that, the petitioner was required to be treated as in continuous service since 10.12.2012. The petitioner belongs to teaching faculty. The advertisement of the year 2012 pursuant to which the petitioner was appointed also shows that the same is a teaching post and the age of retirement of the person in the teaching post is 60 years. As per order dated 01.01.2018 the appointment of the

petitioner is tenure appointment and so the age of retirement is immaterial. The learned counsel submits that, the petitioner was issued with the appointment order dated 01.01.2018. The petitioner was in continuous service without any break. The order relieving the petitioner from 13.12.2017 is issued on 26th December, 2017 and the same is received by the petitioner on 28.12.2017. On 03rd January, 2018, the petitioner communicated to the respondent No. 1 that the continuation of the petitioner was approved for two years as per the resolution of management council dated 13.12.2017. It is also further stated that, the petitioner was on duty from 13.12.2017 to 23.12.2017 and it was further stated that he is already working on the said post. So there is no question of joining the duties within seven days from the date of order dated 01.01.2018. The learned counsel submits that, on 03.01.2018, he gave letter to the Registrar to the effect that, he has already joined duties from 27th December, 2012 in the School of Management Science before noon, inspite of that fresh appointment order dated 12.02.2018 is issued. Same is erroneous. The learned counsel to buttress his submission that he was in continuous service has relied on e-mail issued by him to the Registrar.

3. Mr. Malte, the learned advocate for the respondent No. 1/university submits that, on 01.01.2018 a fresh appointment order was issued to the petitioner for the post of Training and Placement Officer. In the appointment order it was specifically

mentioned that the petitioner shall join service within seven days. The petitioner failed to join service within seven days, as such said appointment order stood revoked. The management council passed resolution to that effect and thereafter fresh appointment order was issued to the petitioner on 12.02.2018. Pursuant to the said appointment order the petitioner joined service on 15.02.2018 and joining letter is issued to that effect by the petitioner on 15.02.2018. The learned counsel submits that, muster produced by the petitioner showing his attendance is in collusion with the director. In fact, when his tenure came to an end and the order was already passed to relieve the petitioner, the Director had no right to allow the petitioner to continue on the post. The said signatures on the muster would not be of any benefit to the petitioner. The learned advocate submits that, the post on which the petitioner is working is non teaching post. The petitioner cannot take benefit of mistake in the advertisement and the petitioner had already completed 58 years of age. As such has no right to continue in service. The advertisement is also published on 11.06.2011 for recruiting various temporary posts and tenure for the post of training and placement officer is mentioned as eleven months from the date of joining. From time to time extensions are granted to the petitioner. The initial appointment of the petitioner was for eleven months. The petitioner applied for extension of further five years. One year extension is approved by the respondent No. 1 on 31st April, 2012 itself. According to the learned counsel, the petitioner having

violated terms and conditions of the appointment order dated 01.01.2018 by not joining the service within seven days, does not have right to any favour or relief pursuant to appointment order dated 01.01.2018. The new appointment order dated 12.02.2018 is in pursuance to the resolution passed by the management council. The advertisement is issued on 10th April, 2018 calling application for the post of training and placement officer. The tenure of the post is mentioned as two years in the said advertisement. The candidates have also filed applications pursuant to the said advertisement. The petitioner is not entitled for any relief from this Court.

4. We may not be required to go into the debate about the post being a teaching post or otherwise. The appointment order dated 01.01.2018 is an appointment for a period of two years and as such was for a particular tenure. The only question would be whether the petitioner had joined pursuant to the appointment order dated 01.01.2018. The spectrum of dispute between parties is about the date of joining of the petitioner.

5. According to the petitioner, he was in continuous service without any break and the appointment order dated 01.01.2018 was issued to him and prior to that management council had passed a resolution to continue the petitioner for a period of two years. The petitioner to show that he had already joined or that he was already working on the said post had produced one letter

dated 03.01.2018 addressed to the Registrar, Swami Ramanand Teerth Marathwada University Nanded stating that he has joined the duty from 23rd December, 2017 in the school of commerce and management science before noon. He wanted to show that he was working on the said post continuously. The relieving order was served on the petitioner on 28.12.2017 and in the letter dated 03.01.2018, he states that, he has joined the duties on 23rd December, 2017 that is after the completion of tenure pursuant to the earlier order.

6. The order dated 01.01.2018 was for a period of two years. The copy of muster is produced on record by the petitioner to suggest that he has worked in the month of December 2017 and January 2018. According to the respondent No. 1, the Director of School of Commerce and Management Science, S.R.T.M.U, Nanded ought not to have allowed the petitioner to sign the muster and he did not have authority to allow the petitioner to sign the muster. Well the same will be subject of indoor management. The Director of School of Commerce and Management Science is also officer of the university. The Registrar, though it is shown that the letter was typed on 13.12.2017, it was issued on 26.12.2017 and served on the petitioner on 28.12.2017 stating that on 12.12.2017 he stand relieved. Certainly the relieving order was served on the petitioner on 28.12.2017. So he could not have been relieved on 13.12.2017, when in December 2017 already a resolution was

passed by the management council that the petitioner is to be continued for two years.

7. The petitioner also on 03.01.2018 has communicated to the Registrar, S.R.T.M.U. Nanded through Director of School of Commerce and Management Science that he is already working on the post since seven years. Whereas fresh appointment order dated 12.02.2018 states that, the petitioner has not joined as per the appointment order dated 01.01.2018 within the period of joining, hence said period is treated as cancelled. Pursuant to the said order the petitioner gave letter on 15.02.2018 that he has joined the duties on the said date.

8. The petitioner produced muster, which is maintained by the university and the officers of the university. Apart from that, there are communications from the Registrar in the shape of e-mails issued to the petitioner. One such e-mail is dated January 11, 2018, December 20, 2017, December 13, 2017. It is also further submitted that, the petitioner is also paid D.A. and T.A. for representing university in the conference held at Department of Commerce, University of Mumbai and letter for claiming T.A. and D. A. is dated 05.01.2017. If the petitioner was not working from 28th December, 2017 till 15th February, 2018, then we fail to understand the communication made by the Registrar on January 11, 2018, so also on December 30, 2017 to the petitioner.

9. All the documents on record suggest that the petitioner has worked all along in the month of December and January continuously. So also e-mails are issued by the Registrar to the petitioner even after 30th December, 2018. The respondent authorities ought have satisfied themselves as to whether the petitioner was working on the said post. If the petitioner was already working on the said post submitting joining report pursuant to the appointment order dated 01.01.2018 would be a mere formality. The petitioner on 03.01.2018 that is within a period of seven days from the date of appointment order dated 01.01.2018 has submitted a letter that he is already working on the said post. The respondents ought to have considered all these aspects before taking a final decision that the petitioner has not joined or was not working on the said post upon service of appointment order dated 01.01.2018.

10. In the light of the above, it would be appropriate for the respondent authorities to conduct an enquiry about the petitioner having worked during the said period. In the result we pass following order.

11. The respondent No. 1 through its Registrar or such other person authorized by the respondent No. 1/competent authority shall conduct an enquiry about the petitioner having worked/not worked from 01.01.2018. If upon enquiry it is found that the petitioner was working after appointment order dated 01.01.2018

continuously then fresh appointment order dated 12.02.2018 shall not be acted upon and shall stand revoked and the petitioner shall be allowed to work for a period of two years since the date of appointment order dated 01.01.2018.

12. In case upon enquiry it is found that the petitioner was not working from 01.01.2018 as per the appointment order dated 01.01.2018, then the appointment order dated 01.01.2018 shall stand revoked and cancelled. Till the enquiry is completed the petitioner shall be continued and shall be paid emoluments as per the appointment order.

13. The writ petition accordingly is disposed of. No costs.

[R. G. AVACHAT, J.]

[S. V. GANGAPURWALA, J.]

bsb/Dec. 18