

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

WRIT PETITION NO. 3097 OF 2004

Rajaram Ratilal Choudhari,
Age :- 30 years, Occu.-Nil,
R/o -C/o Sunil B.Choudhari,
Plot No.-1/35, Telephone Nagar,
Jalgaon, Dist. Jalgaon.

...Petitioner
(Ori.Appellant)

Versus

The North Maharashtra University,
through Registrar, Jalgaon.

...Respondent
(Ori. Respondent)

Advocate for Petitioner : Shri S. P. Brahme
Advocate for Respondent : Shri Vivek Dhage

...

**CORAM : RAVINDRA V. GHUGE, J.
DATED : 10th May, 2018.**

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ORAL JUDGMENT :-

1. The petitioner is aggrieved by judgment dated 12/03/2004 delivered by the University and College Tribunal by which, Appeal No. NMU-13/2003 filed by the petitioner was rejected.

2. I have heard the strenuous submissions of the learned advocates for the petitioner and the respondent University. With their assistance, I have gone through the record and proceedings available.

3. The petitioner was said to have been appointed on daily-wages by the respondent University on 3-6-1997. He continued as such till 22/01/2002, which was followed by a termination. Thereafter, he was engaged on 24/01/2002 and terminated on 24/04/2002, re-appointed on 26/04/2002 till 01/08/2002 when he was terminated. Again he was appointed on 03/08/2002 and terminated on 25/10/2002. He was again appointed on 27/10/2002 and terminated on 29/01/2003.

4. The petitioner approached the University Tribunal claiming that he is a workman under Section 2(s) of the Industrial Disputes Act, 1947 and the respondent University is an industry under section 2(j). It was further contended that as the petitioner had completed 240 days in continuous employment in each calendar year and specifically in the 12th Calendar months preceding the date of reference which is his last termination, his disengagement amounts to an illegal termination as the law of retrenchment under Section 25B and 25F of the Industrial Disputes Act, 1947 is applicable. It was prayed that the termination be set aside and the petitioner be reinstated with continuity, back wages and be regularized in service.

5. It is further contended that the University Tribunal has

refused all the prayers of the petitioner and has only directed the respondent to pay one months wages to the petitioner. It is canvassed that the petitioner was engaged as a peon on temporary basis on 03/06/1997 as work was available and he had worked continuously till 12/04/2003, barring breaks on five occasions during January 2002 to April 2003. Reliance is placed upon the judgment of the Honourable Supreme Court in the matter of **H.D.Singh Vs. Reserve Bank of India and others, (1985) 4 SCC 201.**

6. The learned advocate for the respondent University has strenuously opposed this petition. It is submitted that the University had no vacancies in so far as class-IV employees are concerned. There was no resolution, no advertisement was published, no applications were invited, no interviews were conducted and the entry of the petitioner would amount to a purely temporary appointment and also amount to a back door entry de-hors the Rules, in the light of the judgment delivered by the Apex Court in the matter of **Secretary, State of Karnataka Vs. Umadevi, 2006(4) SCC 1 : AIR 2006 SC 1806.**

7. It is now well settled that merely because an employee completes 240 days in continuous employment on

daily wages in a state instrumentality, would not entitle him for reinstatement or continued work. What is required to be ascertained is that vacant posts are available and the recruitment process in public employment is followed.

8. There can be cases when, keeping in view the law laid down by the Honourable Apex Court in paragraph No. 44 of the *Umadevi* (supra), an employer could be directed to prepare a scheme for regularization of such employees. The respondent University has submitted its written statement in July 2003. It is averred in the written statement that since there are no posts available, the petitioner cannot be accommodated and in the event of any posts created, his claim can be considered on the basis of his seniority.

9. It is quite obvious that the petitioner was engaged by the respondent University de-hors the Rules. Such appointment in public employment can not be permitted. However, the petitioner eventually, expecting regularization in employment, has continued on whatever terms that were put to him by the University. With the hope and desire of

becoming a regularized employee some day, it compelled the petitioner to work with the respondent despite the artificial breaks given by the University. Such artificial breaks are to be ignored in view of the law laid down in the matter of H.D. Singh (supra).

10. Considering the peculiar facts as above, though the petitioner would not be entitled to reinstatement and regularization in employment under the orders of the Court, he would be entitled for retrenchment compensation and gratuity since he has worked for seven years, in the light of the law laid down by the Honourable Apex Court in the matter of **Bangalore Waterworks and Sewerage Board Vs. A. Rajappa, (AIR 1978 SC 548)** wherein a college or university is held to be an industry.

11. As such, this petition is partly allowed.

12. The impugned judgment of the University Tribunal dated 12/03/2004 is sustained in so far as refusal of reinstatement and regularization is concerned. However, the

said judgment is modified by directing the respondent to pay one months wages as notice pay, fifteen days gross wages per year of service as retrenchment compensation and gratuity for the like amount, to the petitioner herein within a period of eight weeks from today, failing which the said amount would attract interest @ 6 % per annum from the date of the judgment of the Tribunal and the interest component, due to such delay, would be paid from the personal salary of the Registrar of the respondent University.

13. Rule is made partly absolute accordingly.

14. The record and proceedings received from the University Tribunal be returned forthwith.

(RAVINDRA V. GHUGE, J.)

shp/-