

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12197 OF 2016

Atik Ahemad Laikh Ahemad Inamdar
Age 33 years, Occ. Assistant Professor
in Marathwada College of Education,
Aurangabad, at present nil.,
R/o National Colony, Roza Bagh,
Aurangabad.

..Petitioner

versus

1. The President,
Maulana Azad Education Society,
Rauza Bagh, Aurangabad.

2. The Principal,
Marathwada College of Education,
Dr. Rafiq Zakaria Campus,
Rauza Bagh, Aurangabad.

3. The Registrar,
Dr. Babasaheb Ambedkar
Marathwada University
Aurangabad.

4. The Joint Director of Higher
Education, Aurangabad Division,
Aurangabad.

..Respondents

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Advocate for Petitioner : Shri Syed Masood Chand
Advocate for Respondents 1 & 2 : Shri Kakade A.N.
Advocate for Respondent 3 : Shri Jarjare Prasad
h/f Shri Thombre S.S.
AGP for Respondent 4 : Shri Tambe S.K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 08, 2018

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the judgment and order dated 27.10.2016, delivered by the University and College Tribunal, Aurangabad in Appeal No.5 of 2016, whereby, the said appeal preferred by the petitioner, challenging his termination w.e.f. 31.5.2015, has been rejected.
5. The learned counsel for the petitioner / appellant submits that an advertisement was published in Daily Navbharat on 23.5.2014, Mumbai Edition, by which, candidates were invited for Walk-in-Interview for Marathwada College of Education, Aurangabad. Two posts in the Marathi Medium, one for Mathematics and one in History were advertised in the said advertisement. Two posts of Assistant Professors were also advertised in the un-aided category out of which one was a full time

post in Geography and one was a part time post in English. The qualifications prescribed by UGC, NTCE and the State Government were made applicable. There is no dispute that the petitioner was qualified and was eligible for appointment.

4. Contentions of the petitioner are that the advertisement does not mention appointment on consolidated wages and on contractual basis for 11 months. Though the petitioner was issued with the appointment order dated 26.6.2014 on 11 months contractual basis, the proposal sent to the University by letter dated 7.7.2014, seeking approval was turned down by the University on the grounds that a contractual appointment is impermissible. The petitioner had made a representation for seeking payment of salary as is admissible to the Assistant Professor. The Principal addressed the President of the Educational institution vide covering letter dated 13.2.2015 recommending the case of the petitioner. The President of the institution approved the grant of regular pay scale by passing an order on the said letter.

5. Grievance is that despite the above, respondents 1 and 2 - College and Institution, terminated the service of the petitioner on the ground that his 11 months' contract had come to an end. It is, therefore, contended that when the advertisement clearly indicated

appointment of an Assistant Professor in the B.Ed. non-aided section of the college and when the mistake of appointing the petitioner on consolidated wages was rectified by the President of the institution, the petitioner could not have been terminated for the reason that his appointment was on contractual basis.

6. Shri Kakade, learned Advocate for respondent Nos.1 and 2 has strenuously defended the impugned order contending that the appointment on contractual basis was accepted by the petitioner with open eyes. As the management was having financial difficulties and since the appointment was on un-aided college, the institution was not receiving any salary grants. It, therefore, decided to appoint the petitioner on contractual basis with consolidated salary of Rs.20,000/- per month. When this was accepted by the petitioner, his grievance after his discontinuation cannot be entertained.

7. He specifically points out from the affidavit-in-reply filed by the institution before the tribunal that the petitioner should not have accepted the appointment order, if he had any grievance about the terms and conditions of his appointment. Having accepted the order, it is not open to the petitioner to challenge the same as the appointment order binds the petitioner as well as the management.

8. Learned Advocate for the University has relied upon the communication dated 9.3.2015 addressed to the educational institution to contend that there was no provision for appointing an Assistant Professor on consolidated salary and on contractual basis. The Director BCUD, therefore, declined to grant approval. The University then received a specific proposal, dated 12.3.2015 from the institution, wherein, the deficiency of appointing the petitioner for 11 months was cured and he was given a new appointment order on regular basis.

9. Learned counsel for the petitioner submits that though the educational institution has categorically corrected its mistake and converted the contractual appointment of the petitioner into a regular appointment, a specific appointment order was not served upon the petitioner.

10. I have considered the above submissions and have gone through the record available with the assistance of the learned Advocates. The above contentions with regard to the advertisement, first appointment order, communication by the University and the letter of the management correcting the mistake of issuing contractual appointment order to the petitioner, are undisputed. By the approval of the President of the institution, full-fledged salary

scale for the post of Assistant Professor was also made applicable to the petitioner.

11. In the above back-drop, the issue would be as to whether the educational institution can take a diagonally opposite stand and contend that the appointment of the petitioner was never on regular basis and was on contractual basis. Had the management discontinued the petitioner, immediately after receiving the communication from the University dated 9.3.2015, the contention of the management could have been accepted. However, in response to the deficiency pointed out by the University, the management issued the letter dated 12.3.2015, addressed to the Deputy Registrar of the University indicating that the selection of the petitioner was by a duly constituted committee. There were two candidates available and the petitioner was at Sr. No.1 in the merit list and was hence recommended for appointment. So also, the fact that the mistake of appointing the petitioner on 11 months' contract having been rectified and converted into a regular appointment, keeping in view that the President of the institution specifically approved the regular pay scale of an Assistant Professor, would indicate that the management has rectified its mistake and has converted the employment of the petitioner into a regular employment.

12. The above aspects apparently have not been considered by the University Tribunal. Even the advertisement, in pursuance to which the petitioner had applied, never indicated that the appointment would be on consolidated wages and for a contractual period of 11 months. This was lost sight of by the University Tribunal despite the fact that the Director, BCUD of the University had indicated the said error and which was cured under the order of the President of the educational institution.

13. In the above back drop, since the petitioner would have to be treated as being a regular employee appointed as an Assistant Professor in the College of Education, which is still in existence, the order of termination of the petitioner w.e.f. 31.5.2015 deserves to be set aside. Nevertheless, it cannot be ignored that if the petitioner as an Assistant Professor is to be considered for regular employment, he would have to undergo the probation period, since his suitability to the organization would be considered after his completion of probation period.

14. It needs to be noticed that the College of Education would now be in the middle of its academic year 2017-18, which normally concludes by the end of May of the academic year. As such, even if the petitioner is to be reinstated, he would be on probation and his

performance will have to be considered. That would amount to placing the petitioner on probation for a period of about 12 months and normally the probation period is for a period of two years. Ends of justice would, therefore, met by reinstating the petitioner as an Assistant Professor on the regular pay scale as was approved by the President of the educational institution, for a period of one year of probation from the date of his reinstatement. His earlier employment of 11 months would be as a probationer.

15. Considering the above, this petition is partly allowed. The impugned judgment and order of the University Tribunal dated 27.10.2016 is quashed and set aside. Appeal No.5 of 2016 is partly allowed and the termination order dated 21.4.2015 w.e.f. 31.5.2015 stands quashed and set aside.

16. Consequentially, the petitioner shall be reinstated as an Assistant Professor with the said college w.e.f. 1.2.2018 on probation. The earlier one year and the period from 1.2.2018 till 31.1.2019, shall be the period of probation of the petitioner. The management shall assess his performance as is legally required to be done on quarterly basis and any deficiency or adverse report shall be brought to the notice of the petitioner so as to give him an opportunity to improve himself in the event of there being any

deficiency. After the probation period is concluded, the respondent / management would consider the case of the petitioner on its own merits.

17. Rule is partly made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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