

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

WRIT PETITION NO. 12225 OF 2016

BHARAT MADHUKARRAO NALGE
VERSUS
HINDUSTANI EDUCATION SOCIETY AUSA, THROUGH ITS
SECRETARY AND OTHERS

...

Advocate for Petitioner : Mr Prabhakaran T.K.
Advocate for Respondents : Mr Syed Masood Chand For R-1,
Mr Kalyan Patil h/f S R Barlinge for R/2
Mr S G Chapalgaonkar For R/3,
Mr S W Munde AGP for respondent No.4.
Mr Deshmukh Vijay Vasant Rao For R/5

...

CORAM : N.M. JAMDAR, J.
Dated : 3 December 2018

...

ORAL ORDER :-

Heard learned counsel for the parties.

2. By order dated 10.2.2017 this Court had put the parties to the notice that the petition will be taken up finally at the admission stage. Accordingly, taken up for final disposal.

3. Main argument advanced by the Petitioner is that the Tribunal has not considered the arguments of the petitioner that

changing the status of the petitioner from a lecturer on permanent basis to clock hour temporary basis would amount to termination of his services as a permanent lecturer, before coming to the conclusion that the Tribunal has no jurisdiction.

4. The petitioner was appointed as an Assistant Professor in the respondent no.1 institution on 6 July 2009. On 14 June 2011, the Joint Director of Higher Education stopped salary of the petitioner. Thereafter on 26 June 2012 approval to the appointment of the petitioner was withdrawn. On 18 June 2013, the petitioner was directed to work on Clock Hour Basis as a temporary employee. The petitioner filed an appeal to the University and College Tribunal, Aurangabad bearing No.2 of 2013 under section 59 of the Maharashtra Universities Act, 1994.

5. The Tribunal framed issues and one of the issue was regarding the jurisdiction of the Tribunal. The Tribunal observed that the petitioner was not terminated, but he was simply asked to work on Clock Hour Basis. It was also observed that there was no termination of the services of the appellant as he continued to be in employment of the respondent-institution. The Tribunal held that the documents shows that the petitioner's services were converted into Clock Hour Basis and ,there is no reduction in rank. The Tribunal held that in

these circumstances there is no jurisdiction to entertain the appeal.

6. Learned counsel for the petitioner submits that a complete change in the status of the petitioner was effected by the order challenged in the appeal. He submitted that the petitioner ceases to be a permanent lecturer and is now converted as a temporary lecturer on Clock Hour Basis. He submitted that this clearly amounts to termination of his services as a permanent lecturer. Learned counsel submits that, this aspect has not been considered by the Tribunal at all and the Tribunal has directly held that the petitioner having not been terminated, the appeal is not maintainable. The learned counsel for respondents supported the impugned order and submitted that there is no termination of services neither there is any reduction in rank and the order passed by the Tribunal is correct and proper.

7. There is a security of tenure attached to a lecturer appointed on permanent basis. By the impugned order, the petitioner now is directed to work on Clock Hour Basis on payment of fixed amount per hour. There is certainly a substantial change in status. It is the contention of the petitioner that as far as the post of permanent lecturer is concerned, the petitioner ceases to occupy the said post. This according to the petitioner is a termination from the said post.

8. The Tribunal has only referred to the provisions of Section 59, however, has not considered the matter in above conspectus. Question is whether there has been a termination from the post of a permanent lecturer. There is no debate that these two posts are different. Since the Tribunal has not considered the appeal in this light of the matter, it is necessary that the Tribunal takes a view there upon. The Tribunal has decided the appeal only on the jurisdictional issue and has not gone into the merits of the matter. It is, therefore, necessary to remand the proceeding to the Tribunal.

9. Accordingly, the order dated 1 September 2016 passed by the College Tribunal is quashed and set aside. The appeal filed by the petitioner stands restored to file. The Tribunal will decide the question as to whether the withdrawal of the status of the petitioner as a permanent lecturer would amount to his termination from the said post. If it is a termination, then the Tribunal can decide the appeal on its own merits. Contentions of the parties are kept open.

10. The writ petition is disposed of in above terms.

(N.M. JAMDAR, J.)

...