IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4055 OF 2017

Madhav Gangaram Bhusnar .. **Petitioner**

Versus

The State of Maharashtra and others .. **Respondents**

Shri R. N. Dhorde, Senior Advocate h/f. Shri V. R. Dhorde, Advocate for the Petitioner.
Shri N. T. Bhagat, A.G.P. for Respondent Nos. 1 to 3.
Respondent No. 4 served.
Shri Manish N. Navandar, Advocate for Respondent Nos. 5 & 6.

CORAM : S. V. GANGAPURWALA & SUNIL K. KOTWAL, JJ.

DATE : 26th June, 2018

PER COURT :

1. Mr. Dhorde, learned Senior Advocate for the petitioner submits that the petitioner was appointed as an Assistant Professor by the respondent - institution under appointment order dated 13.12.2010. The petitioner joined his services on 21.12.2010. The appointment was on probation. The learned Senior Advocate submits that one month before the petitioner could complete his tenure on probation the petitioner was

terminated. The petitioner approached the college tribunal and even filed complaint with the University. The University constituted enquiry committee. Upon enquiry the committee came to the conclusion that the termination is illegal, the allegations against the petitioner were without substance and directed the institution to reinstate the petitioner. Under duress the bond was got executed from the petitioner that he will not claim the arrears of salary. The petitioner was thereafter reinstated on 16.06.2014. The learned Senior Advocate submits that the appointment of the petitioner on probation was also approved by the University on 16.06.2011. The institution submitted the proposal to the Joint Director of Higher Education for condonation of break in service. The same is rejected, relying upon the Government Resolution dated 12th August, 1999. According to the Joint Director of Higher Education, the break in service for more than one year cannot be condoned and the break in service is of 552 days. The learned Senior Advocate submits that the Government Resolution dated 12th August, 1999, would not apply in this case. The petitioner is entitled for continuity in service.

2. The learned Assistant Government Pleader submits that the institution had submitted the proposal for the condonation of break in service. As per Government Resolution dated 12.08.1999, the break in service for more than one year cannot be condoned. The office of the Joint Director of Higher Education has further declined the proposal for giving increments to the salary and for sanctioning the salary for the period during the termination.

3. Learned A.G.P. further submits that the management cannot shift the financial burden on the State Government.

4. Mr. Navandar, learned counsel appears for the institution and submits that, as agreed between the parties the institution has acted.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. The fact that the petitioner was appointed under the appointment order dated 13.12.2010 as an Assistant Professor on

probation is not disputed by any of the parties. It is also a matter of record that the petitioner was terminated. The petitioner approached the college tribunal and also filed writ petition before this court. In the interregnum, the University constituted an enquiry committee. The enquiry committee upon conducting the enquiry came to the conclusion that the allegations made against the petitioner are baseless and directed the management to reinstate the petitioner. The petitioner was eventually reinstated in service. The order dated 16.06.2014 by virtue of which the petitioner is reinstated is very specific and it states that the petitioner is allowed to join the duties. The management under communication dated 31.03.2015 has also affirmed the completion of the probation period as on the date it was completed.

7. In fact, there was no need for the institution to forward the proposal for condonation of break in service. It is not the case of the fresh appointment of the petitioner so as to count his past services. The petitioner was terminated from service. Upon enquiry being conducted by the University, directions were given

by the University to the institution to reinstate the petitioner. Pursuant thereto, the petitioner is reinstated. When the termination is illegal and the order of reinstatement is passed, naturally the continuity in service would follow.

8. As far as backwages is concerned, one of the term of the settlement between the parties appears to be that the petitioner would not claim the arrears from the date of termination till the date of reinstatement.

9. In the light of above, now the petitioner cannot be allowed to take a somersault and contend otherwise. However, the petitioner's services will be counted from the date of his initial appointment on 13.12.2010 as continuous service and the period between the termination and reinstatement would be counted for the purpose of continuity and also for the purpose of notional benefits.

10. In the light of above, we pass the following order -

ORDER

I] We hold that the proposal submitted for condonation of break in service was unwarranted.

II] The petitioner is entitled for continuity in service from the date of his initial appointment. However, the petitioner will not be entitled for backwages from the date of termination till the date of reinstatement.

III] The period between the date of termination and reinstatement shall be notionally counted for all consequential benefits.

11. Writ Petition is accordingly allowed. No costs.

[SUNIL K. KOTWAL, J.] **[S. V. GANGAPURWALA, J.]**

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