

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2919 OF 2000

Shri Sukumar Dadu Awale

...Petitioner

Vs.

The Joint Director (Higher Education),
Kolhapur & Ors.

...Respondents

Ms.Prachi Khandge i/b. M.M. Vashi for Petitioner.

Mr.J.A. Madane, AGP for Respondent No.1.

Mr.Prashant Bhavake for Respondent Nos.2 and 3.

CORAM : S.C. GUPTE, J.

DATE : 8 AUGUST 2018

P.C. :

Heard learned Counsel for the parties and learned AGP for the State.

2 This petition challenges an order passed by the University and College Tribunal at Kolhapur on 21 March 2000. The Petitioner was working as a full-time lecturer in the 2nd Respondent college. The post, in which he was working, was a clear, open and vacant post. His appointment was duly approved by the 4th Respondent university. After completion of his probation, his services were confirmed and he continued to work with the 2nd Respondent college. On 20 April 1999, his services were terminated on the ground that due to reduction of posts, he had been surrendered surplus. No approval, however, was obtained from the Education Office for treating him as surplus or terminating his services. His appeal before the College Tribunal was dismissed by the Tribunal. That order has been challenged in the present petition.

3 Pending the hearing and final disposal of this petition, there was another pending lis between the parties, which *inter alia* concerned revision of pay scales and payment of differential salary due to such revision in accordance with the Fifth Pay Commission. In a petition filed before this court concerning that lis, consent terms were arrived at between the parties. These consent terms *inter alia* required the Respondent college not to make any appointment to the post of Assistant Lecturer for Marathi which had earlier been held by the Petitioner, until it absorbed the Petitioner in a future vacancy of lecturer for Marathi. The Petitioner, for his part, agreed to withdraw the present petition and even gave up his claim of arrears of salary and other monetary dues. The college management agreed to pay difference of salary due to revision of scales as per Fifth Pay Commission if any amount was received from the Respondent State in respect of the Petitioner's past service with the Respondent college. The order passed by this court in terms of these consent minutes of order, modified subsequently by an order dated 2 August 2017, *inter alia* permitted disposal of the present petition in terms of modified consent minutes of order. These modified consent minutes of order *inter alia* permitted the Petitioner to get the break in his service condoned by the university.

4 The parties now file consent terms in the present petition in pursuance of the above. The consent terms *inter alia* provide for reinstatement of the Petitioner with effect from 13 June 2006, i.e. the date on which he was reinstated in service, with continuity of service though without backwages and salary arrears for the period for which his services were terminated by the Respondent college, i.e. 19 June 1999 till 13 June 2006, when he was reinstated in service.

5 Though these consent terms are not *per se* opposed by the Education office represented by Respondent No.1, learned AGP submits that the arrangement proposed in the consent terms is a matter between the teacher and the college and it is not in any way binding on the State. Learned AGP relies on the order passed by a Division Bench of this court on 2 August 2017 by taking on record modified consent terms proposed in the civil application. Learned AGP submits that this order makes it clear that the civil application was allowed with a clarification that the consent terms would be binding only on the Petitioner and the Respondent college. Learned AGP also relies on Government Resolution dated 12 August 1999, which provides for certain conditions for condoning break in service for the purposes of retirement benefits.

6 As far as the present Petitioner is concerned, his grievance, originally forming part of the present petition, is that though the post held by him was claimed to have been rendered surplus as a result of reduction in number of posts and he was claimed to be liable to be terminated for that reason, proper procedure for such declaration and termination was not followed by the school management. It is not in dispute that such procedure was indeed not followed.

7 In the premises, considering the peculiar facts and circumstances of the case, the reinstatement of the Petitioner with effect from 13 June 2006 ought to be treated as an order of the court disposing of the writ petition, and not merely an inter-party arrangement between the Petitioner and the Respondent management. Even if it is an arrangement between the two, it should be treated as having the imprimatur of the

court. The particular G.R. referred by learned AGP deals with the power and authority of the Education office. It does not deal with a case where the teacher originally dismissed from service is reinstated by court.

8 In any event, there is no immediate burden on the State by reason of the reinstatement order passed in terms of the consent minutes of order. The Petitioner has forgone backwages and salary differential on account of the relief of reinstatement.

9 In the premises, it is ordered that the Petitioner's services shall be treated as continuous and his prospective salary and terminal benefits shall be determined accordingly. It is made clear that this order is passed in the peculiar facts and circumstances of the case and shall not be treated as a precedent for any other matter. Writ Petition is disposed of.

(S.C. GUPTE, J.)