

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12800 OF 2018

Mr. Umesh Krishna Agawane	...Petitioner
V/s.	
The State of Maharashtra	
and Ors.	Respondents

* * * * *

Mr. Shailesh D. Chavan, Advocate for the petitioner.

Mr. Y.S. Khochare, AGP for respondents no.1 to 3.

Mr. Jagdish G. Aradwad (Reddy), Advocate for respondent no.4.

Coram : A.S. Oka, &

Sandeep K. Shinde, JJ.

Monday, 17th December, 2018.

ORAL JUDGEMENT (PER : A.S. OKA, J)

1. Rule. The learned AGP waives service for first to third respondents. The learned Counsel appearing for the fourth respondent waives service. On the earlier date, parties were put to notice that an endeavour shall be made to decide the petition finally at the stage of admission. On

14th March, 2016 an order of appointment (Exhibit-B to the petition) was issued by the State Government appointing the petitioner and fourth respondent on the post of Assistant Professor in the subjects of Stroga and Prasuti Tantra. The order dated 14th March, 2016 issued by the State Government records that both of them were appointed in the Government Ayurvedic College at Nanded. The terms and conditions of the appointment and in particular Clauses-3 and 6 thereof show that both of them were appointed on probation for a period of two years which was extendable by a period of one year. The petitioner had to approach the Maharashtra Administrative Tribunal (MAT). The grievance made by the petitioner before the MAT was that, he was not allowed to join the post to which he was appointed under the order dated 14th March, 2016. By a letter dated 1st April, 2016 addressed by the Dean of the said Ayurvedic College, the petitioner was informed that the person holding the post on which the petitioner was appointed has filed a Writ Petition in this Court being Writ Petition No. 10255 of 2015 and that in view of the ad-interim order passed by this Court, the employment of the

person occupying the the post has been protected. The prayer made in the Original Application was that the petitioner has a preferential right over the fourth respondent to join the post and accordingly a direction be issued to permit the petitioner to join the post. A prayer was also made for setting aside the order of appointment of the fourth respondent. By the impugned order dated 15th February, 2018 MAT declined to grant any relief. The Tribunal in the impugned order observed that, it was accepted by the petitioner that he was aware of the fact that the person occupying the post on which he was appointed had filed a Writ Petition in this Court. The Tribunal observed that the petitioner has failed to intervene in the said Writ Petition and failed to pray for modification or vacation of the ad-interim order passed therein.

2. We may note here that by a communication dated 1st April, 2016 the petitioner was informed that only after the decision of the pending Writ Petition, the petitioner will be permitted to join the duty.

3. The case made out by the petitioner was that after receipt of the order of the appointment dated 14th March,

2016 he tendered resignation of the post held by him in Yashwantrao Ayurvedic College at Kodavli and his resignation was accepted with effect from 30th March, 2016.

4. On the earlier date, a copy of the government order dated 3rd November, 2018 was tendered across the bar in which it is stated that now the post to which the petitioner was appointed is vacant and therefore, on the terms and conditions mentioned in the order dated 14th March, 2016 the petitioner was appointed on temporary basis in the Government Ayurvedic College at Usmanabad. The said order also states that the petitioner will be treated as a senior to the fourth respondent.

5. As noted in the order dated 3rd December, 2018 now the question which survives is of grant of benefits such as salary etc from 31st March, 2016 and pay-fixation. The learned AGP pointed out that, there are documents available on record to show that the petitioner was gainfully employed in Yashwantrao Ayurvedic College, Kodavli as a Reader from 18th April, 2016 to 12th November, 2018 and that he resigned from the said post on 12th November, 2018.

6. The learned Counsel appearing for the petitioner, on

instructions of the petitioner who is present in the Court states that, on the basis of the government order dated 3rd November, 2018 the petitioner had joined the post of Assistant Professor at the Government Ayurvedic College at Usmanabad. On instructions, he accepts that the petitioner was gainfully employed from 18th April, 2016 till 12th November, 2018.

7. The petitioner was appointed to the post of Assistant Professor at Government Law college at Nanded by order dated 14th March, 2016 and he was granted time of 30 days to report to the duty. The petitioner resigned from his earlier post with effect from 30th March, 2016 but again on 18th April, 2016 he got employment which continued till 12th November, 2018. Therefore, the petitioner is dis-entitled to backwages.

8,. After having heard the learned counsel for the petitioner, the learned AGP for first to third respondents, and learned counsel for the fourth respondent, we find that only in view of the ad-interim relief granted to the person who was holding the post on which the petitioner was appointed, for no fault on the part of the petitioner, he could

not assume the charge of the post from 14th March, 2016 onwards. In the impugned order, the Tribunal has not really considered the case of the petitioner on merits. The Tribunal observed that, the petitioner ought to have intervened in the Writ Petition filed in this Court and applied for vacating the ad-interim order. The Tribunal has not really adverted to the fact that for no fault on the part of the petitioner, he could not take benefit of the order dated 14th March, 2016.

9. Though the Government order dated 3rd November, 2018 states that the petitioner will be appointed on temporary basis, Clause-2 thereof specifically records that the petitioner has been appointed subject to the terms and conditions in the order dated 14th March, 2016. Clauses-3, 5 and 6 thereof clearly show that by order dated 14th March, 2016, the petitioner was appointed to the post of Assistant Lecturer as a probationer. It is, therefore, obvious that the petitioner's appointment under the order dated 3rd November, 2018 is as a Probationer and if he complete the probation period satisfactorily, the petitioner will be entitled for confirmation.

10. As stated earlier, for no fault on the part of the petitioner, he was deprived of the appointment on the basis of order dated 14th March, 2016. Therefore, pay of the petitioner will have to be fixed on the footing that he entered the employment on 14th March, 2016. The petitioner, however, will not be entitled to the benefit of backwages. The issue of seniority of the petitioner is already settled by the order dated 3rd November, 2018.

11. We accordingly pass the following order :

(I) the impugned order dated 15th February, 2018 is hereby quashed and set aside. We direct the first and second respondents to fix the pay-scale of the petitioner on the footing that he entered government service as a Probationer with effect from 14th March, 2016. We make it clear that the petitioner will be disentitled to receive backwages for the period from 14th March, 2016 till the date he took the charge of the post as per the order dated 3rd November, 2018;

(ii) We also make it clear that for the purposes of Clauses-3 and 6 of the order dated 14th March, 2016, the period of probation of the petitioner will commence from the date on which the petitioner assumed the charge of the post as per order dated 3rd November, 2018;

(iii) The Original Application No. 630 of 2016 and the present Writ Petition stand partly allowed in terms of the above directions;

(iv) Rule is accordingly made partly absolute.

(SANDEEP K. SHINDE, J)

(A.S. OKA, J)