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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11602 OF 2013

The Registrar, University of Mumbai And Anr. ...Petitioners
vs
Smt. Jasbir Kaur ...Respondent

.....
Ms. Rimi Jain, i/b. Rui Rodrigues, for the Petitioners.

Mr. Mihir Desai, Senior Counsel, i/b. S.S. Pramod, for the Respondent.

.....
CORAM : S.C. GUPTA, J.

DATED: JULY 18, 2018

P.C.:

. Heard learned Counsel for the parties. Rule. Rule taken up for hearing forthwith.

2. This petition challenges an order passed by the University and College Tribunal on an appeal under Section 59 of the Maharashtra Universities Act, 1994. The Respondent herein, who was the Appellant before the Tribunal, was working as a lecturer in the department of Physical Education of Mumbai University. She claimed to be working in an adhoc post and as a temporary appointee since 2009. The adhoc appointment was extended by the University from time to time. The last of such extensions was till July 2012, whereafter her services stood terminated. Non-continuation of her service thereafter was challenged by the Respondent before the Tribunal. The Tribunal, in its judgment

delivered on 9 January 2013, set aside the Appellant's termination and ordered her reinstatement in service with continuity from 5 July 2012 as an adhoc appointee and with 50% of back wages. This order has been challenged by the University in the present petition.

3. It is an admitted position that the Respondent teacher was reinstated in pursuance of the impugned order of the Tribunal in part compliance, but, thereafter, she shifted to another institution and is no more interested in reinstatement. The controversy now pertains only to the order of payment of 50% of back wages. The question of back wages has to be considered only for the period between July 2012 and 9 January 2013, i.e. the date of the impugned order.

4. The reasons given by the Tribunal for reinstatement and back wages at the outset indicate that as a basis of the impugned order, the Tribunal treated the adhoc appointment of the Respondent teacher to be in compliance with regular selection procedure prescribed for temporary appointments, that is to say, after an interview duly held by a local selection committee of the University, and this was purportedly on the basis that this fact was not disputed by the University. The record of the case does not leave a manner of doubt that this fact was specifically disputed by the Petitioner University. In its written statement, the University had categorically claimed that the appointment was made merely on the recommendation of the Department of Physical Education and no local selection committee was constituted in accordance with law, i.e. the proviso to Section 77 of Maharashtra Universities Act, 1994. Accordingly, the very basis of the impugned order of this Tribunal is

undermined by the record of the case.

5. It was secondly observed by the Tribunal that there was no valid reason to withhold the Respondent teacher's name for extension as was done earlier in routine course. It is not for the University to show a valid reason for withholding her name; it is for the teacher to show a valid reason for extension of her adhoc appointment. In our case, no such reason is borne out on record. Thus, the second reason cited for impugned order of the Tribunal is also unsustainable.

6. Accordingly, the impugned order of the Tribunal discloses a mis-direction in law and a resultant failure of justice. Rule is, accordingly, made absolute by setting aside and quashing the order of payment of 50% back wages.

**Smita
Johnson
Gonsalves**

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(S.C. GUPTE, J.)