

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2379 OF 2014

Dr.Gautam Bandyopadhyay .. Petitioner
Vs.
The State of Maharashtra and ors. .. Respondents

Mr.C.R.Sadasivan i/b Mr.N.M.Ganguli, for the Petitioner.
Ms.Jyoti Chavan, AGP for Respondents No.1 & 2 – State.
Mr.S.C.Naidu i/b M/s.C.R.Naidu and Company, for Respondents
No. 3 & 4.
Mr.Rui Rodrigues, for Respondent No.5.

**CORAM : B.R.GAVAI &
M.S.KARNIK, JJ.
DATE : 24th AUGUST 2018**

P.C. :

. Rule. Rule is made returnable forthwith. Heard by
consent.

2. The petitioner has approached this Court being
aggrieved by the decision of respondent No.2 thereby directing
that the petitioner's service period between 01/07/2002 to
17/06/2003 should be treated as a period of service without

approval and thereby directing the recovery of salary paid to the petitioner during the said period.

3. Shri Sadasivan learned Counsel for the petitioner submits that, the appointment of the petitioner to the post of lecturer in the subject of Geology was made after following due procedure and as such the impugned order is not sustainable. Shri Naidu learned Counsel appearing on behalf of respondents No.3 & 4 also supports the petitioner. The Petition is vehemently opposed by Smt. Chavan learned AGP. She submits that, in view of the Government Circular dated 01/03/2000, respondents No. 3 & 4 were required to obtain prior permission of respondent No.2 and since the appointment of the petitioner was made without obtaining prior permission, the aforesaid period is rightly to be held as a period of service without approval. She therefore submits that the recovery from the salary of the of the petitioner has been rightly made by the respondents.

4. The factual position is not much in dispute that the Post Graduate Department of Geology is available only in the College run by respondents No.3 & 4 apart from the Department of Geology run by University itself. It is not in dispute that post on which the petitioner was appointed is a post sanctioned by respondent No.2 as per the staffing pattern. The respondent - University has also framed regulations on 13/09/1988, vide which Colleges are required to fill vacancies arising on account of variety of reasons. However, vide subsequent circular issued by the State of Maharashtra dated 01/03/2000, it was provided that whenever the vacancy arises, before filling such vacancy, College and Management should obtain prior permission for filling up such vacancy. The vacancy in the College of respondents No.2 & 3 arose on account of superannuation of one Dr. R. K.Avasia on 31/07/2001. Immediately upon the said vacancy arising, the respondents No.3 & 4 applied to the respondent No.2 on 18/09/2001 for grant of permission to fill up the vacant post. Since there was no reply, again another communication was addressed to respondent No.2 dated

16/02/2002 reminding the request for grant of NOC. Since the said communication was also not responded by respondent No.2, another communication was addressed on 20/03/2002 seeking permission for filling up the post for academic year 2002-03. However, there was no response to the same as such respondents No.3 & 4 made an application to respondent-University for issuance of advertisement for filling up the said post. The University has also granted approval for filling up the post. In pursuance to the advertisement issued, 2 candidates applied and the petitioner was selected. On his selection he came to be appointed on 01/07/2002.

5. It could thus be seen that respondents No.3 & 4 have waited for a period of almost one year to get NOC from respondent No.2. In spite of the application being made and two reminders being sent, office of respondent No.2 did not take any steps. Accordingly, respondents No.3 & 4 were left with no other alternative, but to get the advertisement approved from the University and fill up the post. On one hand on account of

vacancy of the post, the students were suffering inasmuch as requisite approval to fill vacancy was not available and on the other hand respondent No.2 was not responding to the communications addressed by respondents No.3 & 4.

6. The specific averments are made in the affidavit of respondents No.3 & 4 with regard to the date of application and reminders. Specific averments of respondents No.3 & 4 dated 06/02/2015 have not been denied by the respondent No.2 in his affidavit, which is filed almost after a period of more than 2 years on 03/05/2017. As such the averments made by respondents No.3 & 4 have gone uncontroverted.

7. In this view of the matter, we find that it is neither the petitioner nor respondents No.3 & 4, who can be said to be in fault. It is inaction on the part of the respondent No.2 which has led to this situation. Only after appointment was made, the respondent No.2 found it appropriate to give approval from 17/06/2003. In this view of the matter, we find that the

inaction of respondent No.2 is not sustainable in law. The Petition deserves to be allowed.

8. It is held and declared that the petitioner is duly appointed from 01/07/2002. He shall be entitled to all service benefits treating the said date as date of entry in service with all consequential benefits including seniority and wages etc.

9. Needless to state that recovery on the basis of the communication dated 16/11/2012 is held to be bad in law.

10. Respondent No.2 is directed to refund the amount recovered along with interest @ 6% p.a. within a period of 6 weeks from today.

11. Rule is made absolute in the aforesaid terms. No order as to costs.

(M.S.KARNIK, J.)

(B.R.GAVAI, J.)