

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.4657 of 2016

Pratibha Shikshan Prasarak Mandal, Janoona & another
VS.
Joint Director of Higher Education, Amravati & others

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Ms. Geeta Tiwari, A.G.P. for Respondent Nos.1.
Shri Raju Kadu, Adv. h/f Shri S.D. Chande, Adv. for Respondent No.4.
Smt. S.W. Deshpande, Advocate for Respondent No.5.

CORAM : S.B. SHUKRE, J.
DATE : 4th SEPTEMBER, 2018.

Nobody is present for the petitioners. Ms. Geeta Tiwari, learned A.G.P. for respondent No.1, Shri Raju Kadu, Advocate holding for Shri S.D. Chande, learned Counsel for respondent No.4 and Smt. S.W. Deshpande, learned Counsel for respondent No.5 are present. Respondent Nos.2 & 3 are absent.

02] The record shows that several opportunities have been given to the petitioners to argue their case, but, the petitioners have not availed of the opportunities. The petitioners have also obtained an order regarding issuance of notice for final disposal on the very first date indicating that the petitioners were desirous of expeditious disposal of the petition, but, the desire expressed initially has not matched with the

actions of the petitioners. Any way, now it is the time for this Court to consider the issue involved in this petition upon hearing those parties, who are present before this Court. Accordingly, this petition has been taken up for hearing.

03] Although, it is stated that respondent No.5, whose appeal has been allowed by the College Tribunal by the order impugned in this petition, was appointed on probation and, therefore, there was no need for the petitioners to have issued any 'show cause notice' to her, I find that the impugned order has been passed on the principle of 'first come last go' and applying this principle to the facts established on record, the conclusions have been drawn, and rightly so. It is further seen that there has been a seniority list maintained by the petitioners themselves about which, it appears, there was no dispute raised by the petitioners. This seniority list discloses that respondent No.5 was senior to respondent Nos.3 & 4 and, therefore, if any post held by any of these respondents was found to be surplus, the junior most in the seniority list ought to have been selected for termination of his or her service. It is further seen that as respondent No.5 was not the junior most, no

termination order of her service could have been issued by the petitioners and as it was issued, the College Tribunal rightly found it to be patently illegal. There is no material present on record to enable me to disagree with this finding. Therefore, the ground raised in the petition holds no water and is rejected.

04] It is further averred in the petition that no back wages could have been directed to be paid without framing of any issue in that regard. The objection is without any basis, the reason being that the petitioners chose not to file any reply and even did not appear before the College Tribunal although duly served. This is clearly stated in paragraphs 3 & 7 of the impugned judgment. In these circumstances, there was no need for the College Tribunal to frame the issue and in any case, the issue could have been framed only when a debatable point, which is required to be adjudicated upon, is raised through the pleadings of the parties, which was never the case here.

05] It is also contended in the petition that the petitioners were unable to file their reply before the College Tribunal. No explanation has been given in the petition as to why the petitioners expressed their inability to file the reply. Nothing is mentioned in the

petition about the number of opportunities granted to the petitioners for filing of the reply either. On the contrary, the College Tribunal has noted the fact that neither any reply was filed by the petitioners nor the petitioners appeared before the College Tribunal. It is obvious that the objection on this count is also without any substance.

06] In the result, I find that no arguable case has been made out by the petitioners and the petition deserves to be dismissed summarily. The petition stands dismissed summarily with no order as to costs.

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JUDGE

Sandesh
Daulatrao
Waghmare

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Sandesh Daulatrao
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