

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3114 OF 1999

1. Shri Marutrao Ghule Patil
Shikshan Sanstha, at Bhenda,
Taluka Newasa, District Ahamednagar,
though it's Secretary
 2. The Principal,
Jijamata College of Science and
Arts, Dnayaneshwar Nagar,
at Bhenda, (Bk), Tal. Newasa
District Ahamednagar.
- ..Petitioners

Versus

1. Shri Ashok Raghunath Gadakh,
aged: major, Occ.nil.,
r/o. c/o. Shri U.M. Londhe,
Principal, Shaneshwar Vidyalyaya
and Junior College, at Sonai,
Taluka Sonai, Dist. Ahamednagar.
 2. The Registrar,
Poona University,
Ganesh Khind, Pune.
 3. The State of Maharashtra
through the Presiding Officer,
College Tribunal, Pune.
- ..Respondents

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Mr. S.R. Barlinge, Advocate for Petitioners.
Mr. V.P. Latange, Advocate for Respondent No.1.
Mr. S.D. Ghayal, AGP for Respondent/State.

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**CORAM : P.R. BORA, J.
RESERVED ON : 09th APRIL, 2019.
PRONOUNCED ON : 29th APRIL, 2019.**

JUDGMENT:-

1. The order passed by the College Tribunal, Pune in Appeal No.37 of 1997 (P) is challenged in the present writ petition. Present respondent no.1 had preferred the aforesaid appeal questioning the termination of his services by the present petitioner with effect from 16.06.1997 alleging the same to be otherwise illegal termination of his services.

2. It was the contention of respondent no.1 that his initial appointment dated 28.08.1994 was on a permanent vacant post, made by duly constituted selection committee and that respondent no.1 was possessing all requisite qualifications for to be appointed on the said post of Lecturer in Botany. It was his further contention that in fact he was liable to be continued further and must have been deemed to be appointed on probation for two years and after successfully completing the period of probation was liable to be confirmed on the said post. It was his further contention that the management however, illegally issued appointment for the specific period of one year and thereafter again advertised the said post. It was his further contention that he being in dire need of employment,

instead of challenging the action of the management preferred to again apply for the said post and was also again selected for the said post. It was his further contention that at the relevant time, the management illegally showed the said post to be reserved for the scheduled caste candidate and made his appointment against the post reserved for scheduled caste candidate for that particular year. It was his further contention that for next two years, the same trick was played by the management and temporary appointment orders were issued to him and ultimately his services were put to an end at the end of the academic year 1996-1997.

3. The learned College Tribunal accepted the contentions raised by respondent no.1 and allowed the appeal filed by him. Learned Tribunal has directed the petitioner to reinstate respondent no.1 with continuity of service and pay arrears of salary to him from 16.06.1997 till the date of his reinstatement. Aggrieved by, the present petition is filed by the management.

4. Heard Shri S.R Barlinge, the learned counsel appearing for the petitioners, Shri V.P. Latange, the learned counsel appearing for respondent no.1. and Shri S.D.

Ghayal, the learned AGP appearing for the respondent-State.

5. Shri Barlinge, the learned counsel appearing for petitioners assailed the impugned judgment and order on various grounds. The learned counsel submitted that the Tribunal has manifestly erred in holding that very first appointment of respondent no.1 was liable to be treated as the appointment on period of probation. The learned counsel submitted that the Tribunal has failed in appreciating that said initial appointment order was for the specific period of one academic year and the approval received to the said appointment was also for the period of one year only. The learned counsel further submitted that the Tribunal has also failed in appreciating that though respondent no.1 was thereafter appointed for consecutive three years, all the said appointments were temporary appointments. The learned counsel taking me through the said orders pointed out that in the 2nd year, respondent no.1 was appointed against the post reserved for scheduled caste candidate whereas, on 3rd year his appointment was against the post reserved for scheduled tribe candidate. The learned counsel further pointed out that last appointment which was given to respondent no.1 was as a part time

teacher and was for the specific period of one year. The learned counsel relying on the judgment of the Hon'ble Apex Court in the case of "**Hindustan Education Society and another Vs. Sk. Kaleem Sk. Gulam Nabi and others, AIR 1997 SC 2126**", argued that, if the appointment letter states that the appointment of a candidate in clear vacancy is purely temporary for a period of 11 months, his appointment has to be taken as purely temporary for a limited period and his appointment cannot be considered to be a permanent appointment. The learned counsel submitted that the appointment for 2nd, 3rd and 4th year were accepted by respondent no.1 voluntarily and without any reservation and as such, now it is not open for him to allege that he was forced to accept the said appointment. The learned counsel, in the circumstances, prayed for setting aside the order passed by the College Tribunal. The learned counsel further submitted that even otherwise after lapse of more than 20 years, now there is no propriety in directing reinstatement of respondent no.1 in the petitioner college and on that ground also the learned counsel prayed for setting aside the order passed by the College Tribunal.

6. Shri V.P. Latange, the learned counsel appearing for respondent no.1 supported the impugned judgment and

order passed by the College Tribunal, Pune. The learned counsel submitted that the College Tribunal has rightly held that since his very first appointment was on a clear and permanent vacancy and was made after following due process of law through duly constituted selection committee, the said appointment must have been deemed to be a permanent appointment. The learned counsel submitted that though in the appointment order it was mentioned that the appointment was for the period of one year, it was not enough to negate the right of respondent no.1 to be appointed on the clear permanent vacant post on probation for two years. The learned counsel submitted that at the relevant time, being in need of employment, respondent no.1 did not raise any objection while accepting the subsequent appointments against the post reserved for scheduled caste and scheduled tribe candidates and lastly on the basis of part time. The learned counsel submitted that in fact, respondent no.1 was exploited by the petitioner society by making him to accept the subsequent appointments on the post reserved for scheduled caste and scheduled tribe candidates and lastly on part time basis. The learned counsel, in the circumstances, prayed for dismissal of the petition.

7. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. I have perused the impugned judgment and other material placed on record. The material on record reveals that the very first appointment was made of respondent no.1 vide order of appointment dated 28.08.1994 on the post of Lecturer in Botany on a clear vacant post and by duly constituted selection committee. As such, the petitioner management must have given an appointment to respondent no.1 on probation of two years and after completing the probation successfully, the services of respondent no.1 were liable to be confirmed. However, if the order of appointment is carefully perused, it is mentioned therein that the appointment of respondent no.1 was purely temporary for specific period from 01.09.1994 by the end of academic year 1994-1995 subject to approval of Vice Chancellor, University of Pune and the Director of Higher Education Maharashtra State. Admittedly, respondent no.1 had accepted the said appointment without making any grievance that it was wrongly shown as purely temporary and for specific period and that he was entitled to be issued a letter of appointment on the permanent vacant post on probation for two years. The documents on record

further reveal that in the subsequent year, the petitioner accepted the appointment against the post reserved for scheduled caste candidate and the year thereafter, respondent no.1 accepted the appointment against the post reserved for scheduled tribe candidate. The material on record further reveals that lastly, the appointment was given to respondent no.1 as a part-time teacher and he accepted the same without any protest or any objection in that regard.

8. Considering the circumstances as above, though ostensibly it appears that the petitioner management did not commit any illegality in issuing temporary appointments, it cannot be ignored that there was no reason for the petitioner management to issue an order in the year 1994-1995 for the specific period of one year when the appointment of respondent no.1 was made on the clear permanent vacant post by following due process of law and through the duly constituted selection committee. There is substance in the arguments advanced by Shri Latange, the learned counsel appearing for respondent no.1 that, respondent no.1 being in dire need of employment could not raise any objection when the advertisement was issued for the second year though he was working with the petitioner

college and there was no need of issuance of such advertisement. There is reason to believe that since, the management might have assured respondent no.1 that his services will not be terminated and he will be appointed may be against the reserved post, respondent no.1 accepted the said appointments. However, the fact remains that respondent no.1 accepted the subsequent appointments without any protest against the post reserved for scheduled caste and scheduled tribe candidates and lastly as a part time teacher. Moreover, it also cannot be lost sight of that period of about 20 years has lapsed after order of reinstatement has been passed and respondent no.1 has not been reinstated till date. Surprisingly no serious efforts seems to have been made by respondent no.1 also for either disposal of the present writ petition expeditiously or to proceed against the petitioner management for contempt of the order passed by the College Tribunal. In the circumstances, it appears to me that there is no propriety now in directing the reinstatement of respondent no.1 on the post of Lecturer in Botany since, someone else is now occupying the said post.

9. However, having regard to the fact that respondent no.1 worked with the petitioner college for a

consecutive period of about 4 years and that his initial appointment was in fact on the clear permanent vacant post and through the duly constituted selection committee, he needs to be compensated in terms of money. Section 61 of the Maharashtra Universities Act, 1994 prescribes the powers of the Tribunal to give appropriate reliefs and directions. Section 61(2)(e) provides that the Tribunal may in appropriate cases grant the compensation in case the reinstatement is not possible. The compensation is however restricted to the emoluments for the period of six months. The learned counsel for respondent no.1 has brought to my notice the decision rendered by the Hon'ble Apex Court in Special Leave to Appeal (C) No.26468 of 2017 decided on 08.03.2019 whereas, the Apex Court in the special circumstances of the case before it has awarded the compensation equivalent to 12 months salary to the petitioner employee therein. The learned counsel in the circumstances, alternatively prayed for compensation equivalent to 12 months Salary.

10. The learned counsel Shri Barlinge appearing for the petitioner was fair enough in submitting that the judgment which is cited of the Hon'ble Apex Court by respondent no.1 was arising out of the writ petition wherein

he has appeared for one of the parties and prayed for appropriate orders accordingly.

11. After having considered the entire material on record, I have reached to the conclusion that though the case of respondent no.1 is difficult to be outrightly rejected, it may also not be possible to direct his reinstatement after the period of 20 years and as such, the only appropriate remedy will be to award the compensation to respondent no.1. As provided in the statute, though the compensation is restricted to the emoluments of six months relying upon the judgment of the Hon'ble Apex Court in Special Leave to Appeal (C) No.26468 of 2017, I direct the petitioner management to pay 12 months salary with the allowances to respondent no.1 within the period of eight weeks from the date of this order by way of compensation. The present writ petition stands disposed of in the aforesaid terms. Pending civil applications, if any, stand disposed of.

(P.R. BORA, J.)

Mujaheed//