

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

WRIT PETITION NO.2652 OF 2016

Sanjivani Education Society, Parbhani,
Bhimrao Gyanoji Nirwal,
Age : 76 years,
Occ. Agri. and Pensioner,
r/o. Rajshree Shahu Housing Society,
In front of Bharose Petrol Pump,
Basmat Road, Parbhani ..Petitioner

Vs.

The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai - 32
and ors. ..Respondents

Mr. V.A.Bagdiya, Advocate for petitioner
Mr. S.K.Tambe, AGP for respondent nos.1 and 3
Mr. Uday Malte, Advocate for respondent no.2
Mr. J.M.Murkute, Advocate for respondent no.4

CONTEMPT PETITION NO.628 OF 2016

IN

WRIT PETITION NO.2652 OF 2016

Appasaheb s/o. Narayanrao Mulgir,
Age - 42 years, Occ. Agri.,
r/o. Shelgaon Hatkar,
Tq. Sonpeth,
Dist. Parbhani ..Petitioner

Vs.

Ramakant Dnyanoba Mundhe,
Age – 40 years, Occ. Ex-Principle,
r/o. Sant Tukaram Arts and Science
College, Vasmat Road, Parbhani
and ors.

..Respondents

Mr. J.M.Murkute, Advocate for petitioner
Mr. A.R.Vyawahare, Advocate for respondent no.2
Mr. V.A.Bagdiya, Advocate for respondent no.3

CORAM : R.G. AVACHAT, J.
RESERVED ON : AUGUST 27, 2019
PRONOUNCED ON : NOVEMBER 22, 2019

JUDGMENT :-

Heard. With the consent of learned Counsel for the parties, the petition is taken up for final disposal.

2. The challenge in this Writ Petition is to the order dated 06.01.2016 passed by the University and College Tribunal, Aurangabad, allowing the Appeal, being SRTMU-01/2015.

By the impugned judgment and order, the petitioner – educational institution and Principal of its college – Sant Tukaram Arts and Science College,

Vasmat Road, Parbhani, have been directed to reinstate respondent no.4 herein, in its service.

FACTS :-

3. The petitioner is an educational Institution. It had invited applications for the post of full-time Lecturer in the subject of Political Science, from reserved category of Vimukta Jamati (VJ-Women), by publishing an advertisement in Daily 'Sakal' on 15.09.1999. Respondent no.4 belongs to Hatkar caste i.e. Nomadic Tribe (N.T. Category). He had applied for the said post. He was selected by the selection committee against a reserved category, on temporary basis for remaining period of four months for the academic year 1990-2000. Accordingly, the appointment order was issued to him on 29.12.1999.

According to the petitioner, respondent no.4 did not possess the requisite qualification. He was not regular in attending his duty. There were

complaints of students against him. Later on, respondent no.4's appointment order was made temporary for a period of academic years 1999-2000 to 2000-2001 by virtue of the approval dated 14.06.2000 of the University. Since June, 2001, respondent no.4 did not report on duty. Thus, the post became vacant. Thereafter, reservation came to be changed and the post of Lecturer for the subject – Political Science, came to be reserved for scheduled caste category. On following the requisite procedure, vacancy came to be filled up. Approval has also been granted to his appointment.

4. Respondent no.4 did not make any grievance for over seven years. First time in 2008, he approached the grievance redressal committee of Swami Ramanand Teerth Marathwada University (S.R.T.M. University). The Committee turned down the complaint. Respondent no.4 challenged the order passed by the Grievance Cell Committee before the University and College Tribunal. Someone, claiming to be the

Secretary of the petitioner - Institution, appeared in the proceeding before the Tribunal and gave consent for allowing the Appeal preferred by respondent no.4. The petitioner - Institution is, therefore, before this Court.

5. Mr.Bagadiya, learned Counsel for the petitioner-Institution, would submit that the appointment of respondent no.4 was on *ad-hoc* basis. He did not possess requisite qualification (i.e. NET/SET). Since June, 2001, respondent no.4 stopped reporting on duty. All of a sudden, in 2008, he approached the grievance redressal committee of S.R.T.M. University. Learned Counsel would further submit that a vacancy had occurred due to non-reporting on duty by respondent no.4. Therefore, the post came to be advertised and filled up by appointing a candidate belonging to Scheduled Caste. The Tribunal did not consider any of the aspects of the matter. It simply passed the impugned judgment and order on admission.

Learned Counsel would further submit that there was a dispute between the management of the petitioner – Institution. All the change reports from the period 2010 to 2016 have not been approved by the Joint Charity Commissioner. The President, through whom the present petition has been filed, has every authority to look after the affairs of the petitioner – Institution. The person, who had appeared before the Tribunal, did not have authority to represent the petitioner – Institution. Learned Counsel, ultimately, urged for allowing the petition.

6. Mr.Murkute, learned Counsel for respondent no.4, would, on the other hand, submit that respondent no.4 was duly appointed. His appointment has been approved by the University and Education Department as well. In 2001, the Principal did not allow respondent no.4 to sign the muster roll. He, however, continued in the employment. The respondent is M.A., M.Ed. and M.Phil. As per the Government Resolution dated 22.12.1995, a candidate in service

is required to pass NET/SET and until such candidate clears NET/SET, his annual increments are not to be released. Learned Counsel would further submit that there is a dispute between the management of the petitioner-Institution. The President, who has filed present petition, did not have authority to look after the affairs of the petitioner-Institution. The duly authorised person had represented the petitioner – Institution before the Tribunal. According to learned Counsel, no interference is warranted with the impugned judgment and order.

7. Mr.Tambe, learned AGP for respondent nos.1 and 3 and Mr.Malte, learned Counsel for respondent no.2, made their submissions consistent with their stand made in the affidavits-in-reply.

8. The petitioner – Institution issued an advertisement for filling up various posts on its establishment. There were two full-time posts of Lecturers in the subject of Political Science. One

of the posts was reserved for VJ (Women) category. Respondent no.4 applied in response to the advertisement. As no candidate of VJ-Women category could be found/selected, respondent no.4 came to be selected. He was issued appointment order on 29.12.1999. The appointment order indicates that the appointment was purely temporary on probation period of one year i.e. commencing from the date of joining till 14.06.2000.

Respondent no.4 joined the service. S.R.T.M. University, by its communication dated 14.06.2000, granted approval to the appointment of respondent no.4 for the academic years 1999-2000 to 2000-2001 (2 years), subject to passing GATE/NET examination and in pursuance to the Government Resolution dated 12.12.1995.

9. Be that as it may, the record indicates that respondent no.4 had not passed NET/SET examination when he was appointed. He also appears to have earned Master degree in Philosophy long after he

ceased to be in service. The record indicates respondent no.4 to have not been in service since June, 2001. It is a case of otherwise termination.

True, in his affidavit-in-reply, respondent no.4 claims to have continued to report on duty until 2007, but he was not allowed to sign the muster-roll. The stand of respondent no.4 appears to have been taken for defence sake. There is no material in support thereof. On the contrary, the record speaks otherwise. In March, 2008, respondent no.4 first time approached the grievance redressal committee of S.R.T.M. University. A copy of the complaint is filed on record. The complaint is in printed form. Clause 7 thereof suggests that respondent no.4 contended to have been removed from service in June, 2001. When he asked for the reasons for his termination from the service, no reply was given. A complaint was being made to the grievance redressal Committee pursuant to the communication dated

30.12.2017 received from the petitioner – Institution.

10. There appears to be a dispute between the management of the petitioner – Institution. The petitioner is a public trust. The change reports submitted from time to time for the period from 2010 to 2016 had, in fact, not been approved. In the recent past, the Joint Charity Commissioner, Aurangabad, by judgment and order dated 07.05.2019, dismissed the appeals filed from Mr.Bharose group. The office of the Superintendent of Charity Commissioner, Parbhani, by its communication dated 30.02.2012, informed that Shri. Anand Sheshrao Bharose was not authorised by the Charity Commissioner office, to act as Secretary of the petitioner – Institution.

11. It was Anando Bharose, who appears to have appeared on behalf of the petitioner – Institution before the Tribunal and gave consent for allowing the appeal. It appears that he did not act in the

interest of the petitioner – Institution. He ought to have put before the Tribunal, the facts and circumstances of the case. He is not a party to the present petition. True, he ought to have been before this Court.

The fact, however, remains that the office of the Charity Commissioner, Parbhani, has informed that Anand Bharose had not been authorised by the office of the Charity Commissioner, Parbhani, to act as a Secretary. The further communication dated 31.05.2010 of the very office, indicates that only *de-facto* trustees were authorised to look after the affairs of the petitioner – Institution.

12. Since the University and College Tribunal has passed the judgment and order on admission and the facts on record, *prima facie*, indicate respondent no.4 to have not been in service since 2001, it is desirable to set aside the impugned judgment and order and remand the matter back to the Tribunal to decide it afresh on merits.

13. For the reasons given herein above, the Writ Petition partly succeeds. The impugned judgment and order dated 06.01.2015 passed by the University and College Tribunal, Aurangabad, is set aside. The matter is remanded back to the Tribunal for deciding it afresh, after giving the petitioner – Institution and other parties, an opportunity of hearing. The so-called Secretary, who had earlier appeared before the Tribunal, be made party to the said proceedings.

14. The Contempt Petition stands disposed of.

[R.G. AVACHAT, J.]

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