

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

34. WRIT PETITION NO. 2303 OF 2019

1. Dr. Hasham Baig S/o Mustabaig Mirza
age 44 years occupation service as Associate Professor
in Arts, Commerce and Science College,
Naldurg, District Osmanabad ...Petitioner

VERSUS

1. The State of Maharashtra
through : the Principal Secretary,
Higher Education Department,
Mantralaya, Mumbai.
2. The Joint Director of Higher Education,
Aurangabad Division, Aurangabad.
3. The Principal,
Arts, Commerce and Science College,
Naldurg District Osmanabad
4. Dr. Pandit Sahebrao Gaikwad,
age years occup. service as Assistant Professor
R/o Ramlila Nagar, Naldurg, District Osmanabad.
...Respondents

Mr. S.S. Thombre, Advocate for petitioner
Mrs. A.V. Gondhalekar, Asstt. Govt. Pleader for Respts. No.1 & 2
Mr. P.P. More, Advocate for respondent No.3
Mr. V.D. Gunale, Advocate for respondent No.4

CORAM : S.V. GANGAPURWALA

AND

AVINASH G. GHAROTE, JJ.

DATE : 27th November, 2019

ORAL JUDGMENT (PER : S.V. GANGAPURWALA, J.) :

1. Rule. Rule made returnable forthwith. Heard the learned Counsel for the respective parties finally with their consent.
2. The petitioner is challenging the order declaring the petitioner as surplus.
3. We have heard learned Counsel Mr. Thombre for the petitioner, Mrs. Gondhalekar, learned Asstt. Govt. Pleader for respondents No.1 & 2, Mr. More, learned Counsel for respondent No.3 and Mr Gunale, learned Counsel for respondent No.4.
4. The contour of the submissions on behalf of the petitioner is that the petitioner is appointed in the year 1998 by following due process as a permanent employee and is approved as such. Respondent No.4 is an adhoc employee and not a regular employee. If the post is reduced, it is respondent No.4, who alone can be declared surplus and no other. Reliance is placed on the judgment of the University and College Tribunal, Aurangabad, Appeal No. BAMU-4/2000 filed by respondent No.4.
5. The submission of the learned Counsel for respondent No.4 is that respondent No.4 is appointed in the year 1994. He was illegally terminated. He filed an appeal before the University and College Tribunal. He is reinstated. Approval for his appointment is

granted by the University by following due procedure as a regular employee. He also belongs from Scheduled Caste category, he cannot be declared as a surplus and the petitioner is rightly declared as surplus.

6. The stand of respondent No.2-Joint Director of Higher Education, Aurangabad, is that respondent No.4 has been granted approval by the University in S.C. category. The petitioner belongs to open category and he is rightly declared as surplus.

7. The spectrum of the dispute would be the person to be rendered as a surplus. It appears that the approval has been granted to the petitioner and respondent No.4. Respondent No.4 was terminated from service i.e. by way of oral termination. Respondent No.4 challenged the termination before the University and College Tribunal, Aurangabad, by filing Appeal No. BAMU-4/2000. The said appeal was disposed of by the Presiding Officer, University & College Tribunal, Aurangabad, on February 22, 2001. Operative part of the judgment reads, thus:

“

O R D E R

The respondent no.1 – Management (Balaghat Shikshan Sanstha, Naldurg) shall submit a draft advertisement to the university for its approval. With that draft advertisement, the respondent no.1 shall submit sufficient and full data as would

be required by the University while considering the draft advertisement. After such draft advertisement is approved by the University, it shall be duly published in the local newspapers for inviting applications for the post of Lecturer in Hindi subject. The selection of the Lecturer shall be made by a duly constituted Selection Committee. During the period of this selection process, the appellant stands reinstated in the service as an ad-hoc employee. It is given to understand to the appellant that this stop-gap arrangement shall not confer on him any right to hold the post. The appellant shall be at liberty to submit his application in response to the advertisement which shall be eventually published by the respondent No.1, as per this order. The respondent no.1 shall pay the salary of the appellant for the period during which a regularly selected candidate is appointed, as per this order. The respondent no.5 (Joint Director of Higher Education, Aurangabad) shall give his approval to such arrangement for the purpose of payment of salary of the appellant out of the Grants made available to the respondent no.1 (Management) and respondent no.3 (College). The appellant shall be entitled to the salary from the date he reports on duty in consequence of this order. No order as to costs. "

8. It appears that the said order is not assailed by any

party and has become final. As per the said order, present respondent No.4, who is appellant in Appeal No. BAMU-4/2000, is directed to be reinstated in service. The management is directed to submit the draft advertisement to the University and get it approved from the University, publish the same inviting applications for the post of Lecturer in Hindi subject. It is further clarified by the University and College Tribunal that present respondent No.4 i.e. appellant before the University and College Tribunal would be reinstated in service as an adhoc employee. The stop-gap arrangement shall not confer on him any right to hold the post. The management was directed to pay salary to the present respondent No.4 till a regularly selected candidate is appointed as per the order of the University and College Tribunal.

9. The judicial order passed by the University and College Tribunal on February 22, 2001 in the appeal filed by present respondent No.4 has become final. The Joint Director of Higher Education, Aurangabad, is also a party to the said appeal. The Joint Director of Education cannot sit over the order passed by the University and College Tribunal. Said order is also binding upon him.

10. It appears that while passing the impugned order, the Joint Director of Higher Education lost sight of the order of the University and College Tribunal, Aurangabad, dated February 22,

2001 in the appeal filed by present respondent No.4. In the wake of the order of the University and College Tribunal we do not find that the order passed by the Joint Director of Higher Education, Aurangabad – respondent No.2 can withstand.

11. In the light of above, the impugned order/communication of respondent No.2-Joint Director of Higher Education is quashed and set aside.

12. Rule is made absolute in terms of prayer clause (B).

(AVINASH G. GHAROTE)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

Madkar