

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11687 Of 2018

(Prakash Suryabhan Tribhuvan Vs. Sanjeevani Rural Education
Society and others)

WITH WRIT PETITION NO.1543 OF 2019

Mr.C.V.Dharurkar, Advocate for the petitioner.

Mr.N.T.Bhagat, AGP for respondent No.4.

Mr.A.V.Patil and Mr.V.P.Golewar, Advocate for respondent Nos. 1 and
2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 12/04/2019

PER COURT :

1. On 15/03/2019, the following order was passed :-

“1. The petitioner in the first petition is the original appellant and the respondent in the first petition is the petitioner in the second petition which is the educational institution. Both these petitions are directed against the same judgment and order dated 10/11/2017, by which, the University And College Tribunal has allowed Appeal No. 02/2015 filed by the employee. He is deprived of back wages. Stoppage of one increment has been imposed as a punishment and he has been granted re-instatement with continuity of service.

2. *This matter was heard for some time.*

3. *I had expressed a view that considering that the employee Prakash*

is a watchman on the hostel premises of the Management, dismissal from service would amount to a harsh punishment. Instead, the stoppage of one increment and depriving the employee of back wages would be a commensurate punishment keeping in view that he was apprehended sleeping on duty four times. The learned Advocate for the employee submits that the sleeping on duty incidents have occurred when the employee was made to work over time, practically by way of a double duty because the reliever did not arrive and these incidents have occurred on account of mental stress and fatigue.

4. The learned Advocate for the Management seeks time to take instructions on the following issues :

- (a) The employee would be reinstated in service.*
- (b) He shall tender an undertaking that he would not sleep while on duty.*
- (c) Only in an emergent situation, that he may have to perform a double duty.*
- (d) He will not claim back wages till the date of his reinstatement and he would be granted continuity in service.*

5. Stand over to 29/03/2019 for "passing orders".

6. Writ Petition No.3415/2018 filed by Arun Shamrao Wagh against the same educational institution shall stand over to 29/03/2019 for admission hearing."

2. On 29/03/2019, the following order was passed :-

“1. In the two petitions involving the employee Prakash, the learned Advocate for the Management has taken instructions pursuant to the order dated 15/03/2019 and submits that the Management is agreeable to the 4 conditions set out in paragraph No.4.

2. As such, the path for reinstating Prakash subject to the conditions set out in paragraph No.4 of the earlier order, is cleared.

3. Learned Advocate for Prakash, however, submits that the relations in between Prakash and the Management have soured. He may consider seeking voluntarily retirement at this stage so that he would get his continuity of service, retiral and pensionary benefits. He, however, makes a request that as his salary today would be about Rs.25,000/- per month and has 3 years of service left, he might agree to a quantified payment of some portion of the wages for this period and have a golden handshake with the Management.

4. Mr.Patil, learned Advocate submits that he will take instructions and make a statement on next Friday. As such, Stand over to 05/4/2019 for "passing order" alongwith WP No.1543/2019.”

3. The learned Advocate for the employee Prakash submits that

he would abide by the statement made before this Court which is recorded in paragraph No.4 of the order dated 15/03/2019 and would tender an undertaking on or before 22/04/2019. He would join duties on 15/04/2019. He would not be claiming back wages from the date of his termination till the date of his reinstatement. He be granted continuity of service and monthly wages at par with a comparable watchman. He points out from the judgment of the College Tribunal dated 10/11/2017 that his date of appointment as a security guard is 02/09/1989 and his date of termination is 19/11/2014. He clarifies that these dates have not been disputed by the Management before the College Tribunal.

4. Learned Advocate for the Management submits that the last drawn monthly wages of the employee were @ Rs. 15,600/- per month. Learned Advocate for the employee submits that a comparable security guard is now drawing Rs.25,000/- per month.

5. Both the learned Advocates pray that this Court may pass an appropriate order and both these petitions can be disposed off.

6. In view of the above, both these petitions stand disposed off. The judgment of the College Tribunal dated 10/11/2017 shall stand

merged in the following directions :-

[a] The employee Prakash would report for duties on 15/04/2019 at 10.00 a.m. and would follow the duty timings as are scheduled by the Management.

[b] He would tender an undertaking on or before 22/04/2019 that he would not sleep while on duty and would perform additional duty in emergent situations.

[c] His statement that he would waive back wages from 19/11/2014 till 14/04/2019 is recorded.

[d] He would be granted continuity in service for the above stated period.

[e] He would be paid his monthly wages at par with the comparable security guard, for illustration :- if a security guard is appointed in the year 1989 as like the employee Prakash, the Management would be bound to pay the monthly wages to Prakash at par with such a security guard.

[f] The above stated directions and the disposal of these petitions shall be restricted to the facts and circumstances of this case and shall not be cited as a precedent in any case of such nature by any litigating side.

7. The order of College Tribunal directing stoppage of one

increment for one year with effect on future increments connected thereto, would lose its efficacy since the employee has waived back wages for the period 10/11/2017, which is date of the judgment of the College Tribunal, till 14/04/2019.

(Ravindra V.Ghuge, J.)