

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8388 OF 2014

Dr. Suresh S/o Baliram Gajbhare,
Age 46 years, Occ. Servicer as
Assistant Professor, Shri Sharda
Bhava Education Society, Nanded,
Tal. & District Nanded.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Higher Education Department,
Mantralaya, Mumbai.
2. The Director, Higher Education,
Maharashtra State, Pune.
3. The Assistant Director,
Higher Education Nanded
Division, Nanded.
4. The President,
Shri.Sharda Bhavan,
Education Society, Nanded,
Through its President,
[Ashok S/o Shankarrao Chavan]
(deleted name as per leave granted
by this Hon'ble Court dt. 03.02.2015)
5. Shri.Sharda Bhavan,
Education Society, Nanded,
Through its Secretary.
6. The Director, Board of College and
University Development, Swami
Ramanand Tirth Marathwada
University, Nanded.

7. The Principal,
Shankarrao Chavan Mahavidyalaya
(Art), Ardhapaur, Tal. Ardhapur,
District Nanded.

...RESPONDENTS

Mr. S.S. Thombre, Advocate for Petitioner
Mr. V.M. Kagne, Assistant Government Pleader
for Respondent Nos. 1 to 3
Mr. R.R. Mantri, Advocate for Respondent Nos. 5 and 7.
Mr. V.P. Latange, Advocate for Respondent No. 6
Respondent No. 4 served

**CORAM : S.V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

**JUDGMENT RESERVED ON : 11.09.2019
JUDGMENT DELIVERED ON : 21.09.2019**

JUDGMENT (PER ANIL S. KILLOR, J.) :

1. Rule.
2. Rule is made returnable forthwith. By consent of parties, the matter is taken up for final disposal.
3. By the present writ petition, the petitioner is praying for payment of arrears of salary for the post of Lecturer in 'Public Administration' in a pay scale of Rs.8000-275-13500/- from the year 2005 and to absorb him by declaring him as surplus, in some other institute.
4. It is the case of the petitioner that he applied for the post of Lecturer in 'Public Administration' in pursuance to the advertisement

dated 22.02.2004, issued by respondent No. 4 - Management for the various posts including the post of Lecturer in 'Public Administration' in respondent No. 7 Arts College. The petitioner was selected by the duly constituted Selection Committee under statute 166 (2) of the Swami Ramanand Tirth Marathwada University, Nanded and accordingly, he was appointed vide order dated 28.04.2005, in clear vacancy on full time basis on probation for the period of 24 months from the date of joining, in the pay scale of Rs. 8000-275-13500/-. The respondent-University had granted approval to the appointment of the petitioner vide order dated 28.09.2005 for the period of probation.

5. It is the further case of the petitioner that though earlier, the college of the petitioner was on permanent no grant basis but subsequently, in view of the policy of the Government it was brought on 100% grants vide Government Resolution dated 07.11.2009.

6. Thus, it is the grievance of the petitioner that since 28.04.2005 i.e. from the date of joining as Lecturer, the petitioner had received only Rs. 80,000/- towards the salary and he has been denied the payment of regular salary. Moreover, from July, 2014, the management is not admitting the students for the subject 'Public Administration' with a view to discontinue the petitioner and to avoid the payment of regular salary and also the arrears of salary.

Therefore, he is seeking to declare him surplus and absorb him under statute No. 178 of the respondent No. 6 – University, which reads thus -

S. 178. (1) (a) Whenever any confirmed teacher working in the College or Recognized Institution is rendered surplus due to reduction in workload, closure of the subject, closure of the faculty, closure of the College or due to any other reason which is beyond the control of the teacher, he shall be first absorbed in College or Recognized Institution within the Management and then within University jurisdiction otherwise anywhere in the State.

(b) While absorbing such teacher in any other University, College or Recognized Institution, service conditions of the teacher shall not be changed to his disadvantage.

(2) The Principal of the College or Recognized Institution, shall send the details of such teacher rendered surplus to the University and the Joint Director, who together shall absorb such surplus teacher as per the Government rules, from time to time.

7. On the other hand, the respondent No.1 - State of Maharashtra on 08.12.2017 filed an affidavit in compliance with the order dated 19.09.2017 passed by this Court, whereby the State and respondent No. 6 - University were directed to clarify their stand on two aspects, namely,

(i) Whether a person appointed on permanent non-grant-in-aid basis can be declared surplus, if yes, whether then he is required to be absorbed in another permanent non-grant-in-aid institution ?

(ii) Whether the State and University can direct an institution of permanent non- grant-in-aid basis to absorb a particular teacher/Assistant Professor in their college.

8. The respondent No. 1 in its affidavit stated that the teachers working in college/faculty or subject having 100 % grant-in-aid are eligible to be declared surplus and such teachers can only be absorbed.

9. The respondent No. 1 further made it clear that since the petitioner was not appointed in a college having 100% grant- -in-aid, the relief sought by the petitioner to declare him surplus and absorb in some other college cannot be granted. The respondent No. 1 for this purpose, is relying upon the circular dated 19.07.2019, issued by the Director of Education (Higher Education), carving out the policy for absorption of surplus teachers in colleges. The relevant clause No. 5 of the said circular reads thus –

५. जी महाविद्यालये, तुकड्या अभ्यासक्रम व विषय १०० टक्के अनुदानावर आहेत अशा महाविद्यालयातील तुकड्यांमधील अथवा विषयामधील विद्यार्थीसंख्या कमी झाल्यामुळे कार्यभारानुसार कार्यरत शिक्षकांना अतिरिक्त ठरवावे. विनाअनुदानित महाविद्यालये, तुकड्या अभ्यासक्रम व विषय यांमधील विद्यार्थीसंख्या कमी झाल्यास त्यावरील कार्यभारानुसार अतिरिक्त ठरणा—या शिक्षकांना सेवेत संरक्षण नसल्यामुळे त्यांना अतिरिक्त ठरवू नये.

10. While answering the second aspect, the respondent No.1 pointed out that there is no provision under the Maharashtra

University Act, 2016, which regulates teachers in the permanent no grant private colleges, who have become surplus by whatever reasons and therefore, the employee who is rendered surplus in University Departments, affiliated or conducted colleges and institutions shall not be eligible for absorption on the vacancies in University Department/affiliated or conducted colleges and institutions.

11. The respondent No. 6 – University reiterated the stand taken by respondent No. 1 and further pointed out that as per section 8 of the Maharashtra Universities Act, 2016, without prior approval of the State Government, the University can not take any decision regarding affiliated colleges resulting in increase in financial liability direct or indirect for the State Government and therefore it is for the State Government to take decision.

12. The learned counsel for respondent Nos. 4, 5 and 7 opposed the petition on the ground of delay and laches. According to him, the relief sought by petitioner relating to arrears of salary is barred under the Limitation Act. The respondents-management and college further submit that the petitioner is having alternate remedy for the relief and since the petitioner failed to execute the deed of contract as prescribed in statute at the time of joining the duties and as stipulated in clause 5 of the appointment order dated 28.04.2005

he is not entitled for any relief. He further contended that the petitioner wanted to run private coaching classes, and therefore, he was working on 'clock hour basis' and not as full time Lecturer and further he denied the allegation that the management and college have stopped admitting the student from the year 2014, for the subject 'Public Administration'.

13. Perused the record and after considering the contentions of the respective parties, this Court finds that the petitioner was appointed in the respondent Arts college as a Lecturer for the subject 'Public Administration' vide appointment order dated 28.04.2005, in clear vacancy on full time basis on probation for the period of 24 months, in the pay scale of Rs. 8000-275-13500/-. There is no dispute that the petitioner was continued beyond the period of probation.

14. The appointment order of the petitioner does not show his appointment on clock hour basis and in absence of any document or evidence produced by the management and college in support of their contention that the appointment of the petitioner was on 'clock hour basis' or he was not working as full time Lecturer, this Court cannot accept the argument of respondent Nos. 4, 5 and 7 that the petitioner was appointed on clock hour basis, therefore, it is rejected and it is held that the appointment of the petitioner was as full time

Lecturer and because he continued after the period of probation he is a confirmed teacher.

15. On the point of limitation, it is a well settled law position that the maximum period fixed by the legislature as the time within which the relief by a suit in Civil Court must be brought may ordinarily be taken to be the reasonable period for filing writ petition. The limitation for any monetary relief is three years, and therefore, to the extent of claim of the petitioner for arrears of salary for the period of 3 years preceding the date of filing of present petition i.e. 16.09.2014 and for the further period after 16.09.2014, is maintainable. In the light of the same, the argument of Respondent Nos. 4, 5 and 7 about limitation is rejected.

16. That as far as the contention of the respondent-management and the college about non-execution of deed of contract of service as prescribed in statute and as a pre-condition of the appointment, is concerned, the same cannot be accepted as the management failed to point out any action taken by the management against the petitioner which the management could have taken in case of non-execution of deed of contract or in case of breach of any condition of the appointment order by the petitioner. In the said backdrop, just to avoid or to deny the rightful claim of the petitioner, if the management is raising such objections, the same

cannot be accepted more particularly, after more than 14 year's service of petitioner. Thus, looking to the service period of the petitioner, only because he did not execute deed of contract, the claim for arrears of salary for the period for which he worked, cannot be denied.

17. With this firmly grounded position, now the questions remain are -

(i) who shall be responsible for payment of arrears of salary of the petitioner ?

and

(ii) Whether the petitioner is entitled for absorption ?

18. The science and commerce faculties of respondent management were brought on 100% grant-in-aid as per the scheme of the Government vide Government Resolution dated 07.11.2009. It is an admitted position that the petitioner was teaching in Arts college of the respondent- management, and there is no order of bringing Arts College on 100% grant. The petitioner is not therefore entitled to claim arrears of salary from the Government.

19. It is a well settled principle of law that the principal responsibility of payment of salary is of the management even if the college is not receiving any grant. The learned Counsel for the petitioner, Shri. Thombre relied upon the Judgment of this Court in

case of ***Mrs. Vaishali V. Chandekar & others Vs. State of Maharashtra & others 1998 (1) Bom. C.R. 227 and Ganesh Ratan Ade Vs. The State of Maharashtra and Ors. Writ Petition No. 2942 of 2012 decided on 06.09.2012,*** wherein this Court has equivocally held that the private managements of the school irrespective of the fact of receiving grant or not are under statutory obligation to pay as per statute.

20. The said judgments fortified the case of the petitioner and make the petitioner entitled for arrears of salary from the respondent-management for the period of three year preceding the date of filing of the petition and for the further period after filing of the petition at the pay scale as was prescribed in the appointment order.

21. The attention was drawn to a letter dated 14.01.2019 by the management, issued by the Principal of Netaji Subhashchandra Bose Arts, Commerce and Science College, Nanded, *inter alia* stating that the petitioner is working in the said college on clock hour basis for the subject 'M.A. Public Administration'. The said letter was issued by the Principal of the said college in pursuance to the request made by the respondent No. 7 college vide letter dated 30th January, 2019. The said letter depicts that the petitioner is now working on clock hour basis in Netaji Subhashchandra Bose Arts College, Nanded.

22. However, the date of appointment is not mentioned in the said letter and even the respondent-college and management were not in a position to point out the date of the appointment of the petitioner in the said college. Thus, in absence of any such evidence in this regard and since the said letter bears dated 14.01.2019, the petitioner is held to be entitled for the future salary after filing of the petition up to academic year 2017-2018 along with the arrears of salary for the period of three years preceding the date of filing of the petition.

23. As far as the second point is concerned about the absorption of the petitioner, statute No. 178 (2) of the respondent No. 6-University specifically lays down that the Principal of the College for recognized institution shall send the details of such teachers rendered surplus to the University and the Joint Director, who together shall absorb such surplus teachers as per the Government Rules, from time to time.

24. Thus, every absorption of a teacher rendered surplus would be strictly as per the Government Rules. In the present matter, the State of Maharashtra has pointed out the circular dated 19.07.2017 particularly clause 5 of the same which permits absorption of a teacher rendered surplus only in case such teacher is serving in any college, faculty or subject having 100% grants from

the State Government and in absence of such grants, the said clause 5 does not permit even to declare any teacher as surplus.

25. In the light of the said provision, there is no doubt that as per Government Rules, the absorption of the petitioner by declaring him surplus is not permissible for the simple reason that the petitioner was working in Arts College of the respondent-Management which is admittedly not receiving any grants from the State Government.

26. The respondent-University is also denying the claim of the petitioner for absorption by relying upon section 8 of the Maharashtra Public University Act, 2016. After going through the said provision, there is no doubt that in case of financial liability direct or indirect, immediate or in future on the State Government, prior approval of the State Government is necessary. In the present matter, as pointed out above the policy of the Government does not permit the petitioner to be absorbed. Thus, University also cannot get any such approval for absorption of petitioner from the State Government. The prayer of the petitioner for absorption by declaring as surplus in service in view of the statute 178 is therefore rejected for the above said reason.

27. In view of the above said discussion, we pass the following order :-

(i) The Petition is partly allowed.

(ii) The respondent No. 4 - management is directed to pay arrears of salary to the petitioner for the post of full time Lecturer at a pay scale of Rs.8000-275-13500/- from 16.09.2011 i.e. three year preceding the date of filing of petition till the year 2017-2018, within a period of three months from the date of order.

(iii) The writ petition is accordingly disposed of.

(iv) No order as to costs.

[ANIL S.KILOR]
JUDGE

[S.V.GANGAPURWALA]
JUDGE

mta