

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6977 OF 2013

Shri. Arun Vishnu Patil	}	Petitioner
versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

Mr.Sanjeev P. Kadam with Mr.R. P. Hake-
Patil and Mr.P. R. Raul for the petitioner.

Ms. R. P. Shinde-AGP for State.

CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.

DATE :- JANUARY 9, 2019

P.C. :-

1. Heard both sides.
2. Rule. Respondents waive service. None appears for respondent nos. 3 to 5 though duly served.
3. The Joint Director of Higher Education, Kolhapur has refused to allow the petitioner to draw salary admissible to the post and in fact, directed recovery. The petitioner says that he has rendered blemishless service as a lecturer in the senior college managed by respondent no. 4. He says that he is qualified and eligible to be appointed in senior college and fulfills all the

eligibility criteria. He was first appointed after he completed M.Sc. in Botany on 1st December, 1997 on the basic pay-scale of Rs.2,200/-. Even for the subsequent academic year, he was appointed on the same pay-scale. For the academic year 1999-2000, he was given a fresh appointment on the pay-scale of Rs.8,000/- and this continued for subsequent academic year 2000-2001. Again this story was repeated for the academic year 2001-02 and from the academic year 2002-03, he was given fresh appointment and to discharge the work load of full-time lecturer. There was no appointment order issued in his favour. The petitioner clearly says in the writ petition that there were interviews conducted by Local Management Committee as the University Selection Committee was not available. The appointment of the petitioner from time to time is approved by the University. It is in these circumstances that the petitioner claims that having fulfilled the requirement of acquiring higher qualification, he was exempted from passing the National/State Eligibility Test. He placed reliance upon several Government Resolutions to this effect as also the resolutions of the University Grants Commission. The petitioner, therefore, was expecting that his pay-scales would be fixed accordingly, giving him benefit of all the services rendered in the past academic years. However, the petitioner has not been extended these benefits.

4. It is stated that the petitioner was informed by the college by letter dated 13th June, 2013 that his salary has been disapproved by the second respondent for the period 2006-07 to 2012-13. The reason assigned is that in the earlier order of this court passed in Writ Petition No. 3523 of 2004 there is no direction for payment of salary. The petitioner then obtained copies of the earlier salary approvals and such approvals were dated 14th May, 2013. That is the reason why in June, 2013 the petitioner was informed with regard to the dis-allowance. The petitioner says that the reasons assigned by the Joint Director are thus not germane and relevant at all. The matter has been clarified on several occasions by the University and the Management.

5. In the affidavit in reply, we find that the Joint Director has justified the act by urging that the petitioner was appointed as lecturer on temporary basis through Local Selection Committee and he did not possess the required qualifications. There was never a duly constituted selection committee/statutory selection committee and therefore, the petitioner's appointment cannot be termed as valid. The affidavit in reply filed does not dispute that the petitioner was continued for every academic year and there is no denial of his factual statement that a duly constituted

University Selection Committee was not functional at the relevant time.

6. We find that there is no denial of the specific direction issued by the Division Bench in a common order and the common order only directs taking of an appropriate decision.

7. It is stated that the Management forwarded the proposal to the University, but the University did not forward the proposal to the University Grants Commission because the petitioner was appointed by the Local Selection Committee and not by the Statutory Selection Committee. The University has not given approval to the petitioner and that is the reason for disallowing the salary expenditure of the petitioner.

8. Pertinently, neither the University has filed any affidavit nor the University Grants Commission. The petitioner, in the writ petition, has made a categorical averment that the service of the petitioner has been protected by this court's order and the respondents were restrained from terminating his service. The Joint Director also sanctioned the pay fixation for the period 1997 to 2005. Thereafter, the 6th Pay Commission recommendations were also made applicable. Hence, the petitioner claims that as he worked from 1997 on a clear permanent post and his appointment was approved by the

authorities, now, the salary cannot be refused.

9. We have not been shown any document to support the assertion in the affidavit that the appointment was not made through the University Selection Committee. Thereafter, we have not been shown any contrary material so as to hold that the petitioner was not validly appointed. It is in these circumstances that we do not find any justification for the State Government denying the petitioner the relevant benefits. The communication of the Management at page 118 of the paper book clearly makes a reference to the above assessment or opinion of the Joint Director. Along with the communication are the relevant documents, copies of which are at pages 120 and 121 of the paper book.

10. We find that the reason assigned in the Note at page 121 of the paper book cannot be relied upon by the Joint Director in the teeth of the contrary factual assertions appearing from the record. Further, though Shivaji University is a party to the writ petition as also the University Grants Commission, there is no denial of the factual statements in the affidavit. The University has also been duly served. On 2nd August, 2013 this court, after hearing Mr. Kadam as also the learned AGP, passed the following order:-

“ Not on Board. Taken on board.

1 Heard the learned counsel for the petitioner and the learned A. G. P. for respondent nos. 1 and 2. Petition to come up on scheduled date which is 4th September 2013. Issue notice to the respondent Nos. 3 and 4 returnable on 4th September 2013. In addition to service of notice through Court, private service is permitted.

2 By way of ad-interim relief, we direct that no action of recovery shall be initiated against the petitioner on the basis of the impugned letter as well as impugned statement dated 14th May 2013. We also direct that till further orders, salary payable to the petitioner shall be regularly released.

3 parties to act upon an authenticated copy of this order.”

11. Once this order has been in force for five and half years and beyond the reiteration of the contents of the Note at page 121 of the paper book, the Government has not relied upon any other material, then, we allow this writ petition. Rule is made absolute in terms of prayer clause (b). There would be no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)