

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6933 OF 2019

Sinhgad Technical Education Society, Pune & Anr.... Petitioners
Vs.
Dr. Ashutosh Abasaheb Deshmukh and others ... Respondents

Mr. K. S. Bapat for Petitioners.
Mr. R. C. Sadasivan for Respondent No.1.

CORAM : UJJAL BHUYAN, J.
DATE : DECEMBER 09, 2019

P.C. :

Heard Mr. Bapat, learned counsel for the petitioners and Mr. Sadasivan, learned counsel for respondent No.1. None has appeared for respondent Nos.2 and 3 though served.

2. This petition has been filed under Articles 226 / 227 of the Constitution of India challenging the legality and validity of order dated 15.06.2018 passed by the College Tribunal, Pune in Appeal No.10 of 2017 filed by respondent No.1.

3. Shorn of details basic facts may be briefly noted.

4. Respondent No.1 was Assistant Professor of Nivrutti Babaji Navale College of Commerce, Pune (briefly 'the College' hereinafter). Acting on a complaint, service of respondent No.1 was terminated by petitioner No.1 (college authority) vide letter dated 03.05.2014 with effect from 05.05.2014.

5. Respondent No.1 challenged his termination from service before the College Tribunal, Pune (Tribunal) by filing appeal being Appeal No.7 of 2014.

6. By order dated 12.01.2017, the appeal was partly allowed by the Tribunal holding that impugned termination order was passed without complying with the requirements of the Statute and in violation of the

principles of natural justice. Consequently, termination order dated 03.05.2014 was set aside. College authority was directed to reinstate respondent No.1 in his post of Assistant Professor with effect from 03.05.2014 within three months. Liberty was granted to the college authority to hold fresh enquiry if they so desired with the clarification that entitlement of respondent No.1 to back-wages would be dependent on outcome of the enquiry if held by the college authority.

7. Respondent No.1 was thereafter reinstated in service by the college authority vide order dated 08.03.2017.

8. However, after reinstatement of respondent No.1, college authority decided to hold fresh enquiry and consequent upon such decision respondent No.1 was placed under suspension vide order dated 27.03.2017. Thereafter, show cause notice was issued to him on 05.04.2017 followed by appointment of enquiry committee of three members.

9. The said enquiry committee submitted its report to the college authority. On the basis of the report of the enquiry committee, respondent No.1 was again terminated from service vide order dated 04.08.2017.

10. This order dated 04.08.2017 was impugned by respondent No.1 before the Tribunal by filing a fresh appeal, which was registered as Appeal No.10 of 2017. The college authority resisted the appeal by filing written statement contending that termination of respondent No.1 was legal and valid. However it was mentioned that if the Tribunal came to the conclusion that the enquiry was not properly conducted or was vitiated on technical grounds, college authority be permitted to conduct a fresh enquiry.

11. After hearing the matter, Tribunal passed the order dated 15.06.2018 setting aside order of termination dated 04.08.2017 and

directing reinstatement of respondent No.1 with payment of back-wages from the date of termination i.e. 04.08.2017 till reinstatement. Regarding the payment of back-wages for the period covered by the previous order of termination, Tribunal observed that such claim to back-wages would depend on the finding in the enquiry for which liberty was granted to the college authority again.

12. It is this order dated 15.06.2018, which has been assailed before this Court in the present writ petition.

13. Learned counsel for the petitioners has assailed the legality and correctness of the aforesaid order dated 15.06.2018 more particularly, the direction to pay back-wages from the date of termination i.e. 04.08.2017 till reinstatement. He submits that after respondent No.1 was terminated from service vide order dated 04.08.2017, he was gainfully employed as an ad-hoc teacher in another college. This fact came to the notice of the petitioners only after they obtained information under the Right to Information Act, 2005 after filing of the writ petition. Therefore, Tribunal was not justified in directing payment of back-wages.

14. On the other hand, learned counsel for respondent No.1 submits that a reading of the Tribunal's order dated 15.06.2018 as a whole does not reveal any illegality or infirmity in the reasoning of the Tribunal to warrant interference. Referring to the allegation of being gainfully employed, he submits that respondent No.1 worked as ad-hoc teacher during the period when his service was terminated as he had to maintain his large family all of whom were dependent upon him. The amount earned by respondent No.1 somehow enabled him and his dependants to eke out a hand to mouth existence which by no stretch can be construed to be gainful employment.

15. On a query by the Court, learned counsel for the petitioners submits that petitioners have filed an additional affidavit on 03.05.2019

with copy to respondent No.1. However, the said affidavit is not on record.

16. Be that as it may, after hearing learned counsel for the parties and on due consideration, short point for consideration is as to whether in the facts and circumstances of the case, Tribunal was justified in directing reinstatement of respondent No.1 along with payment of back-wages with effect from 04.08.2017.

17. Relevant facts have already been noted above. Insofar previous order of termination dated 03.05.2014 is concerned, the same was set aside by the Tribunal on the ground that it was passed without following the due procedure and in violation of the principles of natural justice. Liberty was granted to the college authority to hold fresh enquiry against respondent No.1 if they so desired. Entitlement of respondent No.1 to back-wages was made dependant upon outcome of the enquiry if the college authority decided to hold such enquiry.

18. This order was accepted by the petitioners and following the above, respondent No.1 was reinstated in service. Shortly thereafter he was placed under suspension whereafter a fresh departmental enquiry was held which culminated in the order dated 04.08.2017 terminating the service of respondent No.1.

19. Regarding reinstatement order dated 04.08.2017 is concerned, Tribunal noted that the enquiry committee had not recorded the statements of witnesses to know what they had stated before the enquiry committee. Since the statements of the witnesses were not recorded, respondent No.1 had no opportunity to cross-examine those witnesses which was vital and an integral part of the principles of natural justice. Besides it was found from the record that interaction of the enquiry committee members with the witnesses on 22.06.2017 was in the absence of respondent No.1 and without notice to respondent No.1. Enquiry had proceeded *albeit* in a manner in total contravention with the

due process, that too, in the absence of respondent No.1. Therefore, it was held that the enquiry conducted was not in accordance with the provisions of Statute 433(A) applicable to Pune University. Consequently, Tribunal came to the conclusion that the enquiry conducted against respondent No.1 stood wholly vitiated being in violation of the due process as well as in violation of the principles of natural justice. As such, impugned order of termination dated 04.08.2017 was set aside and quashed.

19.1. Coming to payment of back-wages, Tribunal held as follows:

“14) So far as the back-wages are concerned, it will not be proper to deprive the appellant of back-wages. The same mistake is committed by the Management and Inquiry Officer while holding second inquiry. In the Judgment in earlier appeal, it was specifically mentioned as to what procedure is to be followed in the inquiry. The said procedure is prescribed in Statute applicable to Pune University, in Statute 433 (A to D). However, it was not followed. So the inquiry was vitiated and employer was allowed to conduct fresh inquiry and claim of back-wages for the period from earlier termination till reinstatement was to depend on outcome of departmental inquiry. Now if again and again inquiries are being conducted in violation of procedure and principles of natural justice then each time keeping the claim of back-wages depending on outcome of departmental inquiry, that will amount to harassment of employee. In such circumstances, in my opinion, appellant shall be entitled to back-wages from the date of second termination i.e. 4-8-2017 till reinstatement. Though the appellant has claimed unpaid salary for the period from earlier termination till reinstatement as per order in earlier appeal, that will depend on fresh inquiry and that claim cannot be allowed at present. The Tribunal can grant relief of reinstatement with consequential benefits of back-wages from the date of termination till reinstatement. ...”

20. From the above, what is discernible is that Tribunal noted that the same mistakes were committed by the college authority while holding the second enquiry for the reasons the first termination order was interfered with by the Tribunal. Those were repeated while passing the second termination order. In such circumstances, Tribunal held that if the enquiries were conducted in violation of procedural norms and in violation of principles of natural justice again and again despite being

pointed out by the Tribunal, denial of the claim of back-wages on the subsequent occasion would amount to harassment of the employee. After holding so, Tribunal ultimately passed the following order on 15.06.2018:

“ **ORDER**

- 1) Appeal No.10/2017 (P) is partly allowed.
- 2) Order of termination dated 4-8-2017 is hereby quashed and set aside.
- 3) The Respondents No.1 & 2 are directed to reinstate the appellant on his original post of Assistant Professor (Economics) w.e.f. 4-8-2017 with back-wages from the date of termination till reinstatement, within three months from the date of this order.
- 4) The Respondents are at liberty to hold inquiry if they so desire. However, the entitlement of back-wages for the period from earlier termination dated 3-5-2014 till his reinstatement as per order in Appeal No.7/2014 (P) shall depend on finding in respect of misconducts allegedly committed before his termination by order dated 3-5-2014. Misconduct allegedly committed after reinstatement shall not be considered for deciding his claim in respect of back-wages for that period.”

21. On thorough consideration of the matter, Court finds no error or infirmity in the reasonings and findings of the Tribunal. While directing reinstatement, Tribunal has clearly kept the distinction as to the two periods under termination in mind. While directing payment of back-wages subject to outcome of the fresh enquiry insofar the previous period of termination is concerned, in the second round following setting aside of the order of termination dated 04.08.2017 for the same reasons which had compelled the Tribunal to interfere in the earlier round, Tribunal has deemed it fit and proper to direct payment of back-wages with effect from 04.08.2017 till reinstatement.

22. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak*, (2013) 10 SCC 324, while dealing with the proposition of law relating to payment of back-wages, Supreme Court held that in cases of wrongful termination of service, reinstatement with continuity of service and

payment of back-wages is the normal rule. While ordinarily, an employee or workman seeking back-wages is required to plead or at least make a statement before the adjudicating authority that he was not gainfully employed or was employed on lesser wages, if the employer wants to deny back-wages then he has to plead and also lead evidence to prove that the employee / workman was gainfully employed and was getting wages equal to the wages he / she was drawing prior to termination of service.

23. Respondent No.1 stated in the appeal memo that the college authority had failed to release the salary for the period of service after reinstatement and also subsistence allowance after placing him under suspension with the aim of making an economic attack on respondent No.1.

24. Though not happily worded, the above statement can be construed to be a statement of helplessness on the part of respondent No.1 of not being paid even subsistence allowance following his suspension on reinstatement.

25. On the other hand in the written statement of the college authority, there is no pleading that respondent No.1 was gainfully employed after termination or that he was drawing wages equal to the wages he was drawing prior to termination of service.

26. Viewed in the above context and taking an overall view of the matter, this Court finds no good ground to interfere with the impugned order. There is no merit in the writ petition.

27. Writ Petition is accordingly dismissed.

(UJJAL BHUYAN, J.)