

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

WRIT PETITION NO.2371 OF 2016

Miss. Megha d/o. Shivajirao Maknikar,
Age : Major, Occ. Nil,
r/o. Laxmi Colony, Old Ausa Road,
Latur

..Petitioner

Vs.

1. The State of Maharashtra,
Through the Secretary,
Education Department,
Maharashtra State,
Mantralaya, Mumbai – 32
2. The Registrar,
Swami Ramanand Teerth,
Marathwada University,
Nanded
3. The Director (Technical),
Vilasrao Deshmukh Foundation
Group of Institution, Latur
New MIDC Airport Road,
Latur
4. The Chief Executive Officer,
Vilasrao Deshmukh Foundation,
Group of Institution, Latur,
New MIDC, Airport Road,
Latur
5. The Principal,
V.D.F. School of Engineering and
Technical, New MIDC, Airport Road,
Latur

..Respondents

AND
WRIT PETITION NO.6670 OF 2016

Jitendra s/o. Chandrashekhar Hugar,
Age : 29 years, Occ. Nil,
r/o. Samarth Niwas, Basweshwar Nagar,
Nilanga, Tq. Nilanga, Dist. Latur ..Petitioner

Vs.

1. The State of Maharashtra,
Through the Secretary,
Education Department,
Maharashtra State,
Mantralaya, Mumbai – 32
2. The Registrar,
Swami Ramanand Teerth,
Marathwada University,
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3. The Director (Technical),
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Group of Institution, Latur
New MIDC Airport Road,
Latur
4. The Chief Executive Officer,
Vilasrao Deshmukh Foundation,
Group of Institution, Latur,
New MIDC, Airport Road,
Latur
5. The Principal,
V.D.F. School of Engineering and
Technical, New MIDC, Airport Road,
Latur
6. Shaikh Khalil Karim
Age : 30 years,

Occ. Service as Assistant Professor,
r/o. c/o. V.D.F. School of Pharmacy,
New MIDC, Airport Road,
Latur

..Respondents

In both petitions :

Mr. R.D.Biradar, Advocate for petitioners
Mr. A.S.Shinde, AGP for respondent no.1
Mr. U.S.Malte, Advocate for respondent no.2
Mr. A.V.Hon, Advocate for respondent nos.3 to 5

CORAM : R.G. AVACHAT, J.
RESERVED ON : OCTOBER 03, 2019
PRONOUNCED ON : FEBRUARY 28, 2020

ORDER :-

Both these Writ Petitions were heard together and since common questions of fact and law arise therein, they are decided by this common judgment.

2. Heard learned Counsel appearing for the parties.

3. The challenge in both these petitions is to a common judgment and order passed by University and College Tribunal, Aurangabad ("the Tribunal", for short), in Appeal Nos.SRTMU-5 of 2015 and 7 of 2015

dated 30.10.2015. By the impugned judgment and order, the Tribunal has upheld the order of discontinuation/termination of services of the petitioners. The petitioners are, therefore, before this Court.

4. Respondent no.1 is State of Maharashtra in Education Department. Respondent no.2 is Swami Ramanand Teerth Marathwada University (S.R.T.M.U.). Respondent nos.3 to 5 are Director, Chief Executive Officer and Principal of Vilasrao Deshmukh Foundation's Group of Institution, Latur ("V.D.F. Institute", for short).

WRIT PETITION NO.2371 OF 2016 :

5. Mr.Biradar, learned Counsel for the petitioner, would submit that the petitioner is a Post Graduate in Science stream. She is B.Ed. as well. V.D.F. Institute appointed her on 20.06.2010 on the post of Lecturer in Chemistry with effect from 01.07.2010. Lateron, the petitioner was appointed as Assistant Professor in Chemistry. She had been in

continuous service for little over five years. Respondent no.2 – S.R.T.M.U. granted approval to the petitioner's appointment on 01.02.2012. The petitioner rendered sincere and unblemished service. Respondent – V.D.F. Institute, however, on 02.06.2015, abruptly terminated the petitioner's service on false and frivolous grounds namely, no-workload, misbehavior, etc. One Shri Bhosle was appointed in March, 2011 for the subject of Chemistry. V.D.F. Institute wanted to make him permanent in the job, causing prejudice to the service rendered by the petitioner. According to learned Counsel, since the petitioner completed five years' continuous service, she earned the status of deemed permanency. The petitioner had not been served with any notice to show cause before the order of termination was passed. As such, the impugned order terminating service of the petitioner is illegal and therefore, liable to be set aside. The petitioner, therefore, preferred appeal under Section 59 of the

Maharashtra Universities Act, 1994. Learned Counsel would further submit that learned Presiding Officer of the Tribunal did not take into consideration all these facts. The impugned order is, therefore, liable to be set aside.

WRIT PETITION NO.6670 OF 2016 :

6. Learned Counsel for the petitioner would submit that the educational qualification of the petitioner is M.Pharmacy. Pursuant to the advertisement issued by V.D.F. Institute, the petitioner applied for the post of Assistant Professor. The petitioner appeared for interview on 21.07.2013. Since his performance was very good, he came to be selected to the post of Assistant Professor in Pharmaceutics. The petitioner joined the service on 02.09.2013. His appointment was made as per All India Council of Technical Education (A.I.C.T.E.) Rules. Since the date of joining of service, the petitioner rendered continuous service

until 02.06.2015. V.D.F. Institute, however, on 30.04.2014, shown the petitioner to have been relieved from his job. The Headmaster/Principal has issued the petitioner the certificate of good work and rendering continuous service. The V.D.F. Institute, however, terminated the petitioner's services vide order dated 02.06.2015 on false and frivolous grounds. During his service period, there were no complaints either from the students, colleagues or other staff members. Within 3-4 days next before the order of termination of the petitioner's service, the V.D.F. Institute obtained statements of the staff members and colleagues, indicating the petitioner to have not been good in his behavior. The students were also made to state to have not been happy with the teaching ability of the petitioner. The petitioner preferred appeal under Section 59 of the Maharashtra Universities Act, 1994. Learned Counsel would further submit that learned Presiding Officer of the Tribunal did not take into

consideration all these facts. The impugned order, therefore, is liable to be set aside.

7. Mr.Hon, learned Counsel appearing for V.D.F. Institute, would submit that appointments of both the petitioners were *ad-hoc*. The petitioner in Writ Petition No.2371 of 2016 was appointed against a post reserved for the candidate of Scheduled Tribe category. Since the performance of the petitioner was found to be unsatisfactory, her services have duly been discontinued.

So far as the petitioner in Writ Petition No.6670 of 2016 is concerned, Mr.Hon,learned Counsel, would submit that there were complaints about his behavior and teaching skills. His appointment too, was on *adhoc* basis and on consolidated salary. The petitioner did not render continuous service for about two years, so as to sustain his claim to have become a permanent employee. Mr.Hon supports the impugned judgment and order.

8. Mr.Shinde, learned AGP for respondent no.1 and Mr.Malte, learned Counsel appearing for respondent no.2, also supported the impugned order.

9. I have considered submissions made by learned Counsel. Perused the Record and Proceedings of the respective appeals.

10. Admittedly, the petitioner in Writ Petition No.2371 of 2016 (Ms.Maknikar) was appointed as a Lecturer in Chemistry on 20.06.2010. Her appointment order specifically states it to be an *adhoc* appointment for a period with effect from 01.07.2010 till the end of second term of academic year 2010-11 or till a suitable candidate is selected for the post as per the University procedure, whichever is earlier. Vide order dated 19.07.2011, the petitioner – Ms.Maknikar was relieved from service with effect from 22.07.2011, while on 24.07.2011, she was appointed to the post of Assistant Professor in Chemistry. The terms and conditions of her

appointment specifically state that her appointment was to last until end of second term of the academic year 2011-12 or till a suitable candidate is found for the post. The petitioner's appointment was against a vacancy reserved for a scheduled tribe category candidate. The appointment is stated to be purely temporary and was to come to an end, as stated in the order of appointment.

11. True, there is no record to indicate the petitioner's service to have come to an end by efflux of time, since she continued to serve until her services were terminated/discontinued vide communication dated 02.07.2015. The grounds stated in the order of discontinuation from service are – no workload was available during the last year, hence her position was excess staff. She was found to have been creating unhealthy atmosphere in the department and Institute. The petitioner did not follow instructions of her seniors. True, before terminating her services, she had neither been given a notice

nor was called upon to give her explanation so far as regards the grounds contained in the order of termination of service. The fact, however, remains that the appointment of the petitioner was *adhoc*/temporary and liable to be terminated without any notice and/or assigning any reason. Since the petitioner's appointment was against a post reserved for S.T. category candidate, she cannot claim to have become permanent on the reserved post. There is nothing to indicate that a post in the Open Category was vacant, so as to accommodate her, as she was from Open Category. Even such claim had not been raised before the Tribunal. The appeal of the petitioner, thus, rightly been dismissed.

12. As regards Writ Petition No.6670 of 2016, the letter of appointment of the petitioner (Mr.Hugar) dated 19.08.2013, states it to be *adhoc* appointment on the post of Assistant Professor in Pharmaceutics. The duration of appointment of the petitioner was from 01.08.2013 to 30.04.2014 or until

a suitable candidate is selected. The petitioner was appointed on consolidated salary of Rs.20,000/- per month. One of the terms and conditions of his appointment state that his services were liable to be terminated at the discretion of the management. The petitioner gave joining report dated 02.09.2013, acknowledging the conditions of employment contained in the appointment order dated 19.08.2013. Vide order dated 02.06.2015, the services of the petitioner have been discontinued for the reasons namely, poor academic performance, students' feedback was not good, misconduct and disobedience, etc.

13. True, the order dated 30.04.2014 indicates the petitioner to have been relieved from service. This may indicate it to be a technical break in service. There is, however, on record a certificate issued by the Principal of V.D.F. Institute, dated 29.04.2015, stating that the petitioner had been in service from 01.09.2013 to date. The Principal has also certified the petitioner to have been sincere,

hardworking and had ably handled academics. There is material on record to indicate that the Management, just a few days before discontinuation of the petitioner's service, received complaints against the petitioner. The students gave their feedback as 'unsatisfactory'. The petitioner has, therefore, every reason to say that the management has created such evidence with a view to discontinue his service. The fact, however, remains that the petitioner had not completed continuous two years of service from the date of his appointment to the date of his discontinuation from service. His appointment was *ad-hoc* and on consolidated pay. Although, learned Presiding Officer of the Tribunal declined to grant the petitioner relief on the ground of he, having been not qualified as did not have first class in Bachelor of Pharmaceutics and the same being essential qualification, in view of Pharmacy Council of India Notification dated 11.11.2014, it appears that learned Presiding Officer lost sight of Clause

(ii) of the Note below the Notification, which states that the existing teaching faculty working on regular basis, shall not be affected.

14. Be that as it may, since the appointment of the petitioner was *adhoc*/temporary and on consolidated pay and he, having not completed continuous service of two years for acquiring permanency in the post, his impugned discontinuation/termination cannot be faulted with.

15. For the reasons stated herein above, both the petitions are liable to be dismissed. The Writ Petitions stand dismissed. No costs.

[R.G. AVACHAT, J.]

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