

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

WRIT PETITION NO. 12389 OF 2016

Tanaji Rambhau Borade
Age : 50 years, occ : service
R/o Pathrud, Tal. Bhoom,
District Osmanabad.

Petitioner.

Versus

1. The State of Maharashtra
Through its Secretary,
Higher Education Dept.
Mantarlaya, Mumbai.
2. The Joint Director,
High Education, Aurangabad
Region, Aurangabad.
3. Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad.
Through its Registrar.
4. Vidya Vikas Mandal, Pathrud
Taluka Bhoom, Dist. Osmanabad
Through its Secretary
Murlidhar Bhaurake Kate
Age : 49 years, occ : agri.,
R/o Bagalwadi, Post Pathrud,
Tal. Bhoom, Dist. Osmanabad.
5. Shankarrao Patil Mahavidyala
Bhoom, District Osmanabad.
Through its Principal.

Respondents

Mr. A.N. Nagargoje, Advocate for the petitioner.
Mr. S.K. Tambe, A.G.P. for respondents 1 and 2.
Mr. S.S. Thombre, Advocate for respondent No.3
Mr. V.J. Dhage, and Mr. D.A. Karnik,
Advocates for respondent No.4.
Mr. V.S. Kadam, Advocate for respondent No.5.

CORAM : ROHIT B. DEO.

Judgment reserved on : 27th January 2020.

Judgment pronounced on : 11th February 2020.

JUDGMENT :-

. Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2. The petitioner is aggrieved by the judgment dated 03.08.2016 rendered by the Presiding Officer, University and College Tribunal, Aurangabad (Tribunal) in Miscellaneous Application 14/2010 in Appeal BAMU 22/2006, whereby the contempt petition preferred by the petitioner, is dismissed.

3. The petitioner is working as a Lecturer in Shankarrao Patil College, Bhoom, District Osmanabad, which is affiliated to Dr. Babasaheb Ambedkar Marathwada University.

4. The petitioner contends that vide order dated 13.11.2006 he was terminated. Considering the restricted scope of the instant petition, it would not be necessary to narrate in detail the backdrop of the termination. Suffice it to say, that the petitioner challenged the termination in Appeal BAMU-22/2006 preferred under Section 59 of the Maharashtra Universities Act, 1994 (Universities Act).

5. The Tribunal decided the appeal vide judgment dated 19.10.2010. The operative part of the judgment reads thus :

"Appeal is allowed. The impugned termination order is quashed and set aside. The appellant be reinstated to the post in question and he is further entitled to all benefits including the salary to which he is entitled to with all benefits accruing there under. He is also entitled to get amount of Rs. 5,000/- as costs of this appeal as his claim has been accepted in toto".

6. The Management preferred Review Petition 1/2010 which was rejected by the Tribunal vide order dated 05.02.2011 on the ground that the Universities Act has no provision for review of judgment of the Tribunal.

7. It is not in dispute that the petitioner was reinstated on 21.02.2011. It is further not in disputed that the Management forwarded proposal dated 02.02.2012 to the Deputy Director of Education (Higher Secondary), Pune seeking salary grant in respect of the salary due to the petitioner from 06.02.2006 to 20.02.2011. The lack of response to the said proposal prompted the Management to address communication dated 23.09.2015 to the Director of Education (Higher Secondary), Pune reiterating that the salary grant of Rs. 17,30,515/- and arrears of Sixth Pay Commission be released

8. In the interregnum, the petitioner approached the Tribunal under Section 63 of the Universities Act seeking implementation of the order dated 19.10.2010 in Appeal 22/2006 and initiation of contempt action against the Management. The reinstatement which is referred supra, is during the pendency of the contempt application.

9. Surprisingly, in contempt proceedings the Management contended that the relief granted to the petitioner by the Tribunal was restricted to reinstatement and that the Tribunal did not grant back wages much less

interest.

10. The stand of the Management, to the extent the contention was that the interest is not granted by the Tribunal, is understandable. However, the stand that the Tribunal did not grant back wages is clearly untenable and belied by several communications which the Management addressed to the Authorities seeking the release of salary grant to enable payment of back wages to the petitioner. The judgment of the Tribunal and the operative of which is reproduced supra, also makes it abundantly clear that the direction was reinstatement with back wages.

11. The Tribunal observed in paragraph 9 of the judgment impugned that the judgment dated 19.10.2010 in Appeal 22/2006 makes no reference to interest, which observation is unexceptionable. However, the further observations in paragraph 11 of the judgment impugned and which is the rationale underlying the dismissal of the contempt petition leave a lot to be desired. The observations read thus :

“11. Thus, while dealing with an application for contempt the court cannot traverse beyond the decision and order passed in an appeal. I find that the present

applicant has been reinstated in service and his bills regarding arrears of pay were also forwarded by the college to the Jt. Director of Higher Education. So the original judgment and order dated 19/10/2006 passed is substantially complied with by the respondent Management. Under the circumstances, the contempt petition will not survive in the eye of law and is liable to be rejected. Therefore, I proceed to pass the following order.

ORDER

The contempt petition bearing M.A. No.14/2010 is hereby dismissed. Parties to bear their own costs for the Petition”.

12. The Tribunal assumes and rightly so, that the petitioner is entitled to back wages in terms of the judgment of which contempt is alleged. However, the Tribunal assumes that the fact that Management has forwarded the salary bills to the Joint Director of Higher Education is substantial compliance of the order of reinstatement with back wages. At this stage, it is necessary to note that the learned A.G.P. has invited my attention to the communication dated 15.01.2020 received from the Joint Director of Higher Education, Aurangabad Division which is to the effect that since the Management did not seek approval of the University and the Education Department for terminating the petitioner, it is the Management alone which is responsible to pay the back wages

for the period from 06.02.2006 to 20.02.2011.

13. In my considered view, the Tribunal committed grave error in dismissing the contempt petition reasoning that the fact that salary bills are forwarded constitute substantial compliance with the order of the Tribunal.

14. The primary responsibility to pay the salary is that of the Management. The Management would undoubtedly be entitled to claim grant, if the post is aided, subject to the fulfillment of the conditions governing the grant. The Management however cannot be heard saying that forwarding of the salary bills is the beginning and the end of its responsibility. In the case at hand, the petitioner is left in lurch. The petitioner is irrefutably entitled to back wages for the period from 06.02.2006 to 20.02.2011. The Management did not then dispute the entitlement of the petitioner to back wages and as a fact forwarded the salary bills to the Authority for release of salary grant. It is only at a later stage, in the contempt petition and before this court, that the Management is disputing the petitioner's entitlement to back wages and in the alternate is submitting that forwarding of the salary bills is a substantial compliance of the judgment of the Tribunal.

15. The Authority has refused to release the grant reasoning that the Management terminated the services of the petitioner illegally and without obtaining requisite approval, and therefore, it is the Management and the Management alone who is responsible for the back wages. The Management shall be free to join issues with the Authority in appropriate proceedings, if so advised. However, in the situation obtaining the Management cannot be permitted the shirk its responsibility of paying back wages to the petitioner on the specious plea that the salary bills are forwarded to the Authority for releasing grant.

16. In my considered view, if the forwarding of the salary bills is held to be substantial compliance of the direction to pay the back wages, the rule of law would be in jeopardy. The Management which arbitrarily or whimsically or otherwise illegally terminates an employee, secured in the belief that ultimately the financial liability, if any, will be borne by the State Exchequer, will be emboldened if not held accountable for payment of salary irrespective of the receipt or otherwise of the grant from the State Exchequer. In my view, the impugned order deserves to be set aside with a direction that the Tribunal shall revisit the issue in view of the

observations herein and subsequent development that the Education Department as refused to release the grant.

17. Before parting with the judgment, I must record that the learned Counsel for the Management relied on several decisions to buttress the submission that in contempt jurisdiction nothing can be added to or deleted from the judgment of which the contempt is alleged.

18. The decisions were cited in the context of the submission that the relief of back wages is not granted by the College Tribunal, and therefore, in contempt jurisdiction the Tribunal could not have, in any event, considered grant of back wages. In view of the finding that as a fact the relief granted by the College Tribunal did include back wages, and that this was how even the Management understood the judgment of the Tribunal, and therefore, requested the Education Department to release the salary grants to enable the payment of back wages, I have not referred to or considered the decisions cited by the learned Counsel for the Management, in this judgment.

19. The order impugned is set aside.

20. The matter is remitted to the College Tribunal for fresh decision in accordance with law and keeping in view the observations made herein.

21. Rule is made absolute in the afore-stated terms.

(ROHIT B. DEO, J.)

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