

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.7222/2016

Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur through its Registrar
and another
...Versus...
Shri Anil s/o Motiram Madane

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri P.B. Patil, Counsel for petitioners
Mrs. Gauri Venkatraman, Counsel for respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 03/03/2020

1. Heard Shri Patil, learned Counsel for the petitioners and Mrs. Venkatraman, learned Counsel for the respondent.

2. The present petition challenges the judgment dated 22/7/2016 passed by the University and College Tribunal in an appeal under Section 59 of the Maharashtra Universities Act, 1994 ,as filed by the present respondent/ Class-IV employee, on account of his termination from services on 30/6/2015. It was contended before the Tribunal that the respondent being Class- IV employee had completed 240 days of service and therefore, was entitled to protection under Section 25 F of the Industrial Disputes Act, 1947. It was contended that the respondent was initially appointed

on the salary of Rs.2,000/- per month, which has subsequently being increased to Rs.6,000/- per month. It was further contended that since 1/7/2015, the respondent was continuously working with the petitioners till 2015, when he was terminated. The respondent, therefore, sought for reinstatement by setting aside order of termination and payment of full back wages.

3. Before the Tribunal, the petitioners raised a plea that the respondent/complainant was not appointed against a permanent vacancy. It was, however, not disputed that since the appellant has put in more than 240 days service, Section 25 F of the Industrial Disputes Act did apply to the respondent. It was further contended that the respondent/complainant was being paid from contingency fund, which was no longer available, under a scheme and therefore, the question of any regularization did not arise.

4. The learned Tribunal upon consideration of the entire facts came to the conclusion that the complainant was appointed, had completed 240 days of service, and therefore, was entitled to protection under the provisions of Section 25 F of the Industrial Disputes Act. It further found, that persons junior to the complainant/respondent were continued and therefore, under the principle of last come first go, the employment of the complainant/respondent could not have been terminated. In this regard, the learned Tribunal relies upon the admitted position that one

Shri Megharaj Pandurang Sonone was appointed w.e.f. 1/7/2013 and was being continued as against which the respondent/appellant was appointed on 3/11/2008. The learned Tribunal, therefore, set aside the order of termination and directed reinstatement with full back wages.

5. Shri Patil, learned Counsel for the petitioners, while assailing the judgment of the Tribunal, contends that the appointment of the appellant was under a scheme promulgated by the Government of India, Ministry of Science and Technology Department of Biotechnology dated 26/9/2003 under which one Professor Shri Sudhir Meshram, Director of the respondent was appointed as the course co-ordinator, who was empowered to engage staff under Clause-16 of Annexure-III, the conditions attached to the grant are mentioned in para 5 of the sanction letter. He, therefore, submits that the application for appointment as made by the appellant/respondent was not to the University, but the course co-ordinator under the scheme. He, therefore, submits that in ignoring this position, the learned Tribunal has committed an error, which needs to be corrected. He further submits that in any case the Tribunal while ordering reinstatement, ought not to have directed payment of full back wages, for which according to him, there is no material on record. He places his reliance upon the judgment of the Hon'ble Apex Court in the case of Deepali Gundu Surwase Vs Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and

others, reported in **2013 (11) SCALE 268** and specifically para 33.

6. As against this, Mrs. Venkatraman, the learned Counsel for the respondent submits that there is nothing on record to demonstrate the appointment of the appellant under the scheme, in light of which, the findings rendered by the learned Tribunal are unjustified.

7. Having heard learned Counsel for the parties and perused the record with their assistance, I find that there is nothing on record to link the employment of the respondent with the scheme dated 26/9/2003, as is sought to be canvassed by the learned Counsel for the petitioners. It was permissible and open for the petitioners to place on record of the Tribunal some evidence, documentary or otherwise, to establish that the appointment of the respondent was under the scheme dated 26/9/2003. The petitioners could have, at least, demonstrated that the salary of the respondent, was being paid out of the funds, as received under the scheme, which was easily establishable by reason that the payments were all made by cheques, as is the statement made by the learned Counsel for the respondent. This having not been done, the Tribunal was correct in holding that the plea as raised by the petitioners was not established and the respondent having completed 240 days of service, was entitled to the benefit of the provisions under the Industrial Disputes Act.

8. The next contention by Shri Patil, learned Counsel for the petitioners that the application for appointment was made by the respondent, not to the University but to the Rajiv Gandhi Biotechnology Centre and therefore, the employment of the respondent was under the scheme also does not stand to the reason, in light of the averment, as contained in para 1 of the written statement of the University before the Tribunal to the effect that the Rajiv Gandhi Biotechnology Centre is a department under the University. The judgment of the Tribunal, therefore, insofar as it relates to reinstatement of the respondent cannot be faulted with. In fact, the learned Counsel for the respondent makes a statement that consequent to the judgment of the Tribunal, the respondent has already been reinstated in service on 26/10/2016.

9. This takes me to the plea raised by Shri Patil, learned Counsel for the petitioners that the grant of full back wages by the Tribunal cannot be sustained in light of the position that the impugned judgment does not contain any reason for awarding the same, and the reliance on the dictum of the Hon'ble Apex Court in the case of *Deepali Surwase* (Supra) and specifically on para 33 (iii).

10. A perusal of the judgment of the Tribunal in this regard, indicates, that the Tribunal has awarded full back wages without there being any discussion in this regard. Upon a query being put to the learned Counsel for the

respondent, as to whether the memo of appeal contained a statement as was required by the mandate of paragraph 33 (iii) in the case of ***Deepali Surwase*** (Supra), she states that no such statement was there. Thus, in absence of any reason as reflected from the judgment of the Tribunal, the order directing full back wages, is clearly not sustainable in law. The contention of the learned Counsel for the respondent that the gap between the termination and the filing of the appeal was hardly a period of five months, would also not be of any assistance to the respondent, in light of the dictum in the case of ***Deepali Surwase*** (Supra). Thus, that part of the judgment of the Tribunal, which awards full back wages to the respondent, is hereby set aside, however, the direction of reinstatement is maintained. Further considering that the salary of Rs.6,000/- per month, which was being received by the respondent at the time of his termination & the short period I feel that a direction directing payment of 50% of back wages from the date of termination till reinstatement would be just and proper.

The writ petition is, therefore, partly allowed to the above extent. In the circumstances, there shall be no order as to costs.

JUDGE