

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3106 OF 2018

Suman Kishanrao Shinde ... PETITIONER

VERSUS

The Director, Higher Education,
Maharashtra State, Pune & ors. ... RESPONDENTS

.....
Shri Pradeep Deshmukh, Advocate holding for
Shri Yogesh p. Deshmukh, Advocate for petitioner
Shri S.N. Morampalle, A.G.P. for respondents No.1 & 2
Shri A.V. Hon, Advocate for respondent No.4.
Shri A.D. Aghav, Advocate for respondent No.5
.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 4th March, 2021

Date of pronouncing order : 10th June, 2021

ORDER :

The challenge in this Writ Petition is to the judgment and order dated 10/10/2017, passed by Presiding Officer, University and College Tribunal, Aurangabad (for short, Tribunal) in Appeal, No.SRTMU-1/2012. By the impugned order, the appeal preferred by the petitioner against the order of her oral termination from service as a Lecturer and for grant of back wages came to be dismissed. The

petitioner is, therefore, before this Court in this Writ Petition.

2. Heard. Shri Pradeep Deshmukh, learned counsel appearing for the petitioner would submit that the Tribunal simply reproduced the averments of the appeal memo and the affidavit filed in support thereof by the petitioner. Similarly, it reproduced the contents of the affidavits filed by respondents No.4 and 6 in reply to the contentions raised by the petitioner in her appeal. The Tribunal did not appreciate the documents filed in support of the claim of the petitioner. The Tribunal was expected to give a finding of fact on appreciation of the evidence in the appeal. It has dismissed the appeal on technical grounds. In view of the Tribunal, the petitioner did not give the exact date of her oral termination nor is there any evidence to show the petitioner to have been in service post 2004 to the date of her alleged termination. According to learned counsel, the respondent No.4, in 2009, forwarded the proposal for dereserving the post held by the petitioner. The same indicates the petitioner to have been in service as against the claim of respondents No.4 and 6 that she has not been in service since 2004. The learned counsel urged for setting aside the order and remand of the matter with a direction to the Tribunal to decide it afresh.

3. Shri A.V. Hon, learned counsel for respondent No.4 would, on the other hand, submit that the petitioner has not been in service post 2004. She did not qualify NET/ SET. The petitioner is thus not eligible for appointment to the post of Lecturer in a Senior College. According to Shri Hon, the petitioner was serving on Clock Hour Basis (COB) and she had been paid all the remuneration due to her. According to the learned counsel, no interference is called for with the impugned order.

The learned A.G.P. supported the impugned order.

4. The petitioner claimed to have been Master in Philosophy (M.Phil.) and Ph.D. Admittedly, the petitioner was appointed on 10/12/1999 in respondent No.4 College as a Lecturer in Public Administration pursuant to the advertisement dated 31/10/1999. The post against which the petitioner was appointed, was reserved for O.B.C. Women category. Since no candidate from the said category was available, the petitioner was given the appointment. She joined the service on 10/1/2000. The advertisement, pursuant to which the petitioner was appointed, was the third

advertisement published for the said post. For the next two years namely 2000-2001 and 2001-2002 also, the petitioner came to be appointed on the said post. Even for the academic year 2002-2003, an advertisement was published for filling up the said post. Since no candidate of the concerned category was available, the petitioner was given the appointment. There is a Government Resolution (G.R.) dated 5/12/1994 prescribing the procedure for dereservation of the post in case a candidate of the category for which the post was reserved was not available for continuous period of six years in spite of issuance of advertisement for filling up such posts each year. There were two posts of Lecturer in the subject of Public Administration, one held by the petitioner and the other was reserved for Scheduled Caste candidate. One Mallikarjun Karajgi was serving on the post reserved for S.C. Since no S.C. candidate was available for six years in spite of the procedure for filling up the said post was undertaken by publication of the advertisement every year, the proposal for dereservation of the posts held by the petitioner and Mallikarjun Karajgi was forwarded. As it was a joint proposal, the authorities concerned directed the respondent No.4 College to submit two separate proposals. The proposal regarding dereservation of the post held by the

petitioner had, however, not been submitted until May 2009.

5. The petitioner filed Writ Petition (W.P. No.158/2011) challenging the decision rejecting the proposal of dereservation of the post held by her. The Writ Petition was allowed on 4/7/2012 with a direction to the Director of Education to take a decision afresh after extending opportunity of hearing to the petitioner and the respondents therein.

6. The question regarding dereservation of the post held by the petitioner is not a matter in issue in this petition nor was it a subject in appeal before the Tribunal. The question is whether the services of the petitioner have been orally terminated immediately after the decision dated 4/7/2012 in Writ Petition No.158/2011.

7. I have perused the impugned judgment. It is true that the Tribunal has adverted to and reproduced as well all the contentions raised by the parties to the appeal. The Tribunal, however, found the petitioner to have not produced any evidence in support of her claim of having been in service with the respondent No.4 College until alleged termination of her services. The Tribunal also found the petitioner to have

not given the exact date of termination of service so as to constitute a cause of action to the appeal. True, the petitioner has averred in the appeal memo that her services were terminated soon after the decision in Writ Petition No.158/2011 was given on 4/7/2012.

8. I would have considered the prayer for remand of the matter had there been a shred of evidence indicating the petitioner to have in fact been in service with the respondent No.4 post 2005 till the date of alleged termination of her service. True, the respondent No.4 had forwarded the proposal in 2009 for dereservation of the post held by the petitioner. The same, however, cannot be termed to be admission on the part of respondent No.4 as to the petitioner having been in service till then. On the record of this petition, there are documents indicating the petitioner to have been in service until 2004 and not thereafter. According to the petitioner, she has not been paid salary since 2003 to 2013. Her claim appears to be unpalatable. There is no evidence to indicate the petitioner to have ever raised any grievance before the College authorities or in Courts of law, asking for payment of unpaid salary. It appears that, on the day or a few days before or after the decision in Writ Petition No.158/2011 was given, the petitioner filed the appeal before

the Tribunal.

9. It is reiterated that, there is no material on record to infer the petitioner to have in fact been continued in service post 2004-2005 until 2010-2013. The petitioner was said to be serving on CHB. It is a specific case of the respondent No.4 that due to 5th Pay Commission recommendations, the workload of the post of Lecturer in the subject of Public Administration was reduced to 28 hours. As per the said workload, there was one permanent post and the other was on CHB. It is reiterated that since the petitioner has not produced on record any material indicating her to have been in service with the respondent No.4 post 2004 as a Full Time Lecturer in the subject of Public Administration, the Tribunal has rightly negatived her claim and dismissed the appeal.

10. I do not find any reason to interfere with the impugned judgment and order. The Writ Petition, therefore, fails and is thus dismissed.

**(R. G. AVACHAT)
JUDGE**

fmp/-