

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6597 OF 2020

Shaikh Mahammad Shamsoddin,
Age : 58 Years, Occupation : Govt.
Service as Junior Clerk,
College of Community Science,
Parbhani, Dist. Parbhani

..PETITIONER

VERSUS

1. The State of Maharashtra,
General Administration Department,
Mantralay, Mumbai-4000032
2. The Vice-Chancellor,
Vasantrao Naik Marathwada Agricultural
University, Parbhani-431402
Dist. Parbhani
3. The Registrar,
Vasantrao Naik Marathwada Agricultural
University, Parbhani-431402
Dist. Parbhani
4. Associate Dean & Principle of
Colleges of community science
N.M.K.V., Parbhani-431402

..RESPONDENTS

Mr A.D. Soman, Advocate for the petitioner;
Mr S.G. Sangle, AGP for respondent No.1;
Mr Manish M. Navandar, Advocate for respondent Nos.2 to 4

**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ.**

DATE : 5th August, 2021

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the action of respondent no.3 disallowing payment of wages for the period from 10.7.2019 till 26.12.2019. He has superannuated from employment on 30.6.2020. As such, he has put-forth prayer clause (B), which reads as under:-

“(B) By issue of Writ of Mandamus or any other Writ, Order or Direction in the like nature, the impugned communication No.APC-1 dated 18.03.2020 issued by respondent No.3 (Exhibit “F”) thereby disallowing the payment of wages from 10.07.2020 to 26.12.2019 may kindly be quashed and set aside.”

3. The petitioner submits that he was issued with a transfer order dated 8.7.2019, moving him from Parbhani to

Latur. He was working as a Junior Clerk in the College of Community Science in the Vasant Rao Naik Marathwada Agricultural University at Parbhani. He was relieved from Parbhani on 9.7.2019. He preferred Writ Petition No.8679 of 2019 before this Court for challenging his transfer. By order dated 10.12.2019, his petition was allowed. This Court concluded that the petitioner was due to retire after six months. His transfer from Parbhani to Latur is mid-term and mid-tenure. Reliance was placed on Section 5 of the Maharashtra Government Servants Regulations of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and this Court concluded that special reasons were necessary to support such a transfer when the employee had six months for retirement. Since such reasons were not assigned, this Court quashed and set aside the transfer order restoring the petitioner to his position at Parbhani.

4. The learned Advocate for the petitioner submits that after being relieved on 9.7.2019, he was granted 7 days time to report at the place of transfer. He preferred his writ petition on 15.7.2019 and on 17.7.2019, before he reported at

the place of transfer, he received an ad interim protective order from this Court in the nature of status quo on 17.7.2019. That was the 8th day on which he was protected by this Court. Consequent to his success in the writ petition, he was allowed to report for duties at Parbhani only on 27.12.2019. It is, therefore, contended that no fault can be attributed to the conduct of the petitioner. He was legally allotted 7 days time to join and on the 8th day, this Court had granted a protective order. In these circumstances, the principle of 'no work - no pay' cannot be made applicable to him.

5. The learned Counsel representing respondent nos.2 to 4 - university authorities submits that the petitioner should have reported at the place of transfer within 7 days, considering Rule 29 of the Maharashtra Civil Services (Joining Time, Foreign Services and Payments During Suspension, Dismissal and Removal) Rules, 1981. Moreover, he was relieved from Parbhani and he had not reported at Latur and during this intermediate period, this Court had granted status quo. This would not entitle him to the salary for the period from 10.7.2019 to 26.12.2019. The principle of 'no work - no

pay' is squarely applicable to him.

6. The learned Advocate has placed reliance upon the judgment delivered by the Honourable Apex Court in the matter of **State of Haryana & ors. vs. O.P. Gupta (1996) AIR (SC) 2936**. A specific reference is made to paragraph 7 of the said judgment, which reads as under:-

“7. This Court in [Paluru Ramakrishnaiah & Ors. vs. Union of India and Another](#), considered the direction issued by the High Court and upheld that there has to be "no pay for no work", i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in [Virender Kumar v. Avinash Chandra Chadha](#) [(1990) 3 SCC 482].”

7. The learned Advocate then submits that the transfer of the petitioner was not a punitive position. This petition is not adversarial litigation to the university. If an employee has chosen not to join duties, he cannot claim wages for the period that he has not worked with the university.

8. This Court has delivered a judgment in the matter of **Seema Ashok Kamble vs. Collector, Pune and others, 2008 (3) Mh.L.J. 781**, while considering the issue of computing 7 days from the date of the filing of a requisition notice moving a no confidence motion under the Maharashtra Village Panchayats Act. The special meeting for taking up the no confidence motion has to be held within 7 days from the date the Tahsildar receives the requisition motion. This Court ruled that the day on which the motion is delivered to the Tahsildar, should be excluded while computing 7 days for holding a special meeting.

9. Sections 9 and 10 of the General Clauses Act, 1897, read as under:-

“9 Commencement and termination of time. —

(1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word “from”, and, for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

10 Computation of time. —

(1) Where, by any [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open: Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877) , applies.

(2) This section applies also to all [Central Acts] and Regulations made on or after the fourteenth day of January, 1887.”

10. It is thus, provided that the first day in the series of days or period of time to be computed, is to be excluded.

9. As such, in the case in hand, the petitioner was relieved from Parbhani on 9.7.2019. Naturally, 9.7.2019 cannot be reckoned with for computing 7 days period that was available to the petitioner to report at Latur. The days to be counted are from 10.7.2019. The petition was filed on 15.7.2019. Consequentially, on the 8th day, i.e. 17.7.2019, after completion of 7 days, this Court issued a status quo order. This Court did not direct the petitioner to report for duties during the pendency of the petition. This Court was aware that the petitioner was relieved from Parbhani. Nevertheless, while this Court decided Writ Petition No.8679 of 2019, the impugned transfer order was held to be illegal and unsustainable and, therefore, was quashed and set aside.

10. In these circumstances, we do not find that the petitioner could be blamed when he was granted an ad interim protective order by this Court. So also, as the transfer

order itself was held to be an illegal act on the part of the employer, it is clear that the petitioner was relieved from Parbhani on the basis of such an illegal order. Hence, all legal benefits available to the petitioner, consequent to the transfer order being quashed, would be payable.

11. The petitioner submits that after he succeeded before this Court on 10.12.2019, he approached the university with a copy of the order. By communication dated 26.12.2019, the Registrar of the university permitted the petitioner to report for duties and hence, he has reported on 27.12.2019.

12. In the peculiar facts of this case, we are convinced that the principle of 'no work - no pay' would not be applicable to the petitioner. Consequentially, this petition is allowed in terms of prayer clause (B). As the petitioner has superannuated, we expect the respondent university to clear his outstanding wages for the period from 10.7.2019 to 26.12.2019, within 3 months.

13. Rule is made absolute in above terms. No order as to costs.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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