

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7199 OF 2018

1. The President
(Adv. G.N . Dudhgaonkar),
Age 72 years,
Dnyanopasak Shikshan Mandal,
Jintur, Tq. Jintur, Dist. Parbhani
2. The Secretary,
(Dr. Sandhya Ganeshrao Dudhgaonkar)
Occu. Service
Dnyanopasak Shikshan Mandal,
Jintur, Tq. Jintur, Dist. Parbhani
3. Dr. Suryakant s/o Laxmanrao Sadawarte
Age 61 years, Occu. Service,
R/o Jintur, Tq. Jintur, Dist. Parbhani **...PETITIONERS**

VERSUS

Ramkisan s/o Namdeorao Adude
Age 50 years, Occu. Service,
R/o Nanded, Tq. And Dist. Nanded **... RESPONDENT**

.....
Shri R.N. Dhorde, Senior Counsel with
Shri V.R. Dhorde, Advocate for petitioners
Shri T.K. Prabhakaran, Advocate with
Shri A.S. Kulkarni, Advocate for respondent
.....

WITH

WRIT PETITION NO.12187 OF 2017

Shri Ramkishan s/o Namdeorao Adude

Age 46 years, Occu. Service,
R/o C/o S.V. Jadhav,
38, Madhuri Sadan, Naiknagar,
Nanded, Tq. And Dist. Nanded

...PETITIONER

VERSUS

1. Dnyanopasak Shikshan Mandal's
through its President
Adv. G.N. Dudhgaonkar
R/o Jintur, Tq. Jintur, Dist. Parbhani
2. Dnyanopasak Shikshan Mandal's
through its Secretary,
Dr. Sandhya Ganeshrao Dudhgaonkar,
R/o Jintur, Tq. Jintur, Dist. Parbhani
3. Dr. S.L. Sadawarte,
Age major, Occu. Service,
Principal, Dnyanopasak Shikshan Mandal's
R/o Jintur, Tq. Jintur, Dist. Parbhani
4. Joint Director of Higher Education,
Department of Higher Education,
Nanded Division, Nanded

... RESPONDENTS

.....
Shri T.K. Prabhakaran, Advocate with
Shri A.S. Kulkarni, Advocate for petitioner
Shri R.N. Dhorde, Senior Counsel with
Shri V.R. Dhorde, Advocate for respondents
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CORAM : R. G. AVACHAT, J.

Date of reserving order : 20th January, 2021

Date of pronouncing order : 3rd March, 2021

J U D G M E N T :

Rule. Rule made returnable forthwith and taken

up for final hearing with the consent of learned counsel for the parties.

2. Both these Writ Petitions are being decided by this common judgment as common question of facts and law arise therein. Parties thereto are also same. For the sake of convenience, the pleadings and documents in Writ Petition No.7199/2018 are referred to.

3. The challenge in both these petitions is to the order dated 4/8/2017, passed by the College Tribunal (Tribunal) in Appeal, No.4/2016. By the impugned order, the appeal preferred by the respondent against his termination from service, has been allowed. The petitioners have been directed to reinstate the respondent as Assistant Professor in Chemistry with continuity and consequential benefits. He has been held to be entitled to back wages for a period from 15/4/2011 18/4/2011 only.

Writ Petition No.12187/2017 has been filed by the respondent for setting aside the impugned order to the extent of granting back wages from 15/4/2011 to 18/4/2011. In Writ Petition No.12187/2017, the respondent has sought for

grant of full salary and other service benefits w.e.f. 4/8/2011 to date of his reinstatement and thereafter.

4. Mr. R.N. Dhorde, learned Senior Counsel would submit that, petitioners No.1 to 3 are the office bearers of educational institution – Dnyanopasak Shikshan Mandal, Jintur (for short, educational institution). An advertisement was issued in daily Sakal to fill up the post of Assistant Professor in Chemistry. The post was reserved for Other Backward Class (OBC) category. Seven candidates applied in response to the said advertisement. Four of them were qualified. All the qualified candidates were issued call letters. Respondent was the only candidate appeared for the interview. He was, therefore, given a temporary appointment only for one academic year. The respondent accepted the appointment without any demur. The respondent was working with the University as a Chemical Analyst. He was relieved on lien for a period of six months. The lien was later on extended for two years.

5. Learned Senior Counsel for the petitioners would further submit that, students of F.Y.B.Sc. made complaints against the respondent. It was their grievance that the

respondent would come to the Class late. He did not teach properly. He would not attend the practicals in Laboratory. Even the Head of the Department of Chemistry submitted report of assessment of his performance. The Principal had issued the respondent letter to improve his performance. The respondent, however, refused to receive the letter. Since the respondent's performance was not satisfactory, the educational institution decided to terminate his services. A resolution to that effect was passed. Respondent was served with a termination order dated 15.4.2011. He immediately joined his service as Chemical Analyst with the University. One and a half year after his termination, the respondent preferred the appeal to the Tribunal. The same was allowed.

Learned Senior Counsel for the petitioners would further submit that, the Tribunal erred in directing to reinstate the respondent in service. The respondent was appointed for a temporary period of one year. Since his performance was not found satisfactory, his services were terminated. The termination order is in one line. It is not stigmatic. The Tribunal, in the factual backdrop, ought not to have observed that the educational institution should have conducted disciplinary enquiry and given the respondent opportunity of

hearing. The learned Senior Counsel would further submit that the resolution to terminate the services of the respondent was not taken exception to in the proceedings before the Tribunal. The Tribunal, therefore, ought not to have made any observations in that regard. An affidavit of the Peon was produced in proof of efforts to serve the respondent with Principal's letters. The Tribunal, however, observed that, no such affidavit was filed. These observations are inconsistent with evidence in the case. An affidavit of students of F.Y.B.Sc. was also produced in proof of their complaints against the respondent. According to learned Senior Counsel, the impugned order is perverse and, therefore, the same is liable to be set aside.

6. Mr. Prabhakaran, learned counsel for the respondent would, on the other hand, submit that, this Court, in exercise of jurisdiction under Article 227 of the Constitution of India, cannot reappreciate the evidence in the case. The impugned order is consistent with the evidence on record. The learned counsel relied on certain provisions of the Statutes governing the terms and conditions of services of the teachers working in the Colleges and recognized institutions, of the Swami Ramanand Teerth Marathwada University. The

learned counsel picked up holes in the appointment order. He would submit that, many of the columns in the appointment order are blank. The respondent was appointed on a permanent post. He was on probation. For removal of probationer from service, a procedure has been prescribed under the Statute. The same has not been followed. Most of the evidence produced in the case was fabricated one. Had the respondent therein refused to receive Principal's letter, there was no end of the road. There were ways and means to effect service of a communication. Those were not resorted to. He would further submit that, the respondent's services were terminated for extraneous reasons. The Tribunal has rightly allowed the appeal. According to him, the Tribunal ought to have granted the respondent full back wages. The learned counsel placed reliance on the following judgments :

- (1) Progressive Education Society V. Rajendra
[2008 (2) CPSC 264]
- (2) Rohidas Ganpat Godse V. Principal & others
[2011 (5) Bom.C.R. 646]
- (3) Deepali Gundu Surwase V. Kranti Junior Adhyapak
Mahavidyalaya (D.Ed.) & ors.
2014 AIR (SC) (supp) 121

7. The Tribunal held the respondent to have been appointed on probation against a substantive post. It,

therefore, further observed that the petitioner institution ought to have given respondent opportunity of hearing before his services were terminated. The order of termination has been held to be stigmatic.

8. Advertisement in daily Sakal dated 2/5/2009 was issued for filling up a post of Lecturer in Chemistry. Pursuant to the advertisement, seven applications were received. Four of them were found to be qualified. Moreover, a list of 25 candidates was received from University. Three of them were found to be qualified. The respondent was, however, the only candidate who appeared for interview. He came to be selected.

9. It is true that the respondent was selected by following the procedure contemplated under Section 166 of the Statutes. The respondent had, therefore, every reason to contend that he was appointed on probation against a substantive post. Before adverting to appreciate the issue involved in these writ petitions, it would be apposite to refer to relevant provisions of the Statute :-

“(67) ‘Substantive appointment’ means an

appointment made in a substantive or a permanent capacity in a permanent post which is clearly vacant.”

“S.166. There shall be a separate Selection Committee for the post of Principal and the teacher to be appointed in the College or Recognised institution.

(1)

(2) for the post of teacher :

(a) Chairman of the Management or his nominee (Chairman)

(b) Two nominees of the Vice-Chancellor out of which one shall be from the reserved category.

(c) Three experts in the subject concerned having teaching experience of sixteen years to be nominated by the Vice-Chancellor out of which one shall be female.

(d) Principal – Member Secretary.

(e) Head of the Department in the subject concerned.

(f) Joint Director or his nominee, who has at least sixteen years of teaching experience.

Explanation : In respect of the Professional Colleges, Joint Director means the Joint Director of Technical Education, Medical Education or Ayurved Medicine, as the case may be.

Provided that, in case of the Management which runs more than one College or Recognized Institutions, seniormost Principal who is nominated by the Chairman shall be the member of the Selection Committee.

Provided further that, in case of the Management which runs more than one College or

Recognized Institutions, seniormost Head of the Department shall be the member of the Selection Committee.”

S.168. Only in exceptional circumstances and in the interest of teaching, the Management shall make temporary appointment against the substantive vacancy in the following manner :-

(1)

(2) If the vacancy of the teacher exists for a period exceeding one term but not more than one year, then vacancy shall be filled in on the recommendation of Local Selection Committee constituted as follows :

(a) Chairman of the Management or his nominee (chairman),

(b) Principal

(c) Head of the Department in the concerned subject or seniormost teacher nominated by the Principal.

(3) Local Selection Committee shall interview the eligible/ qualified candidates and recommend the name(s) in order of merit for the appointment.

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CHAPTER III

APPOINTMENT

“S.174. (1) The Appointing Authority shall appoint the teacher(s) by selection as recommended by the Selection Committee under these statutes strictly as per the recommendations of the Selection Committee and approval of the University.

(2) The appointment order shall be issued only in the proforma given in the Appendix.”

“S.176. (1) The appointment to a permanent post by selection shall be on probation for not more than a period of twenty-four months.

(2) During the period of probation, the teacher shall comply with conditions of successful completion of the period as prescribed under these statutes.

(3) (a) Head of the Department, shall be the Assessing Authority under whom the teacher on probation is working. He shall submit teacher’s Self Assessment Report; as prescribed by the University to the Reviewing Authority every six months from the date of joining.

(b) Deficiencies, adverse remarks, remarks of appreciation, if any, mentioned in the Self Assessment Report shall be communicated in writing to the teacher for his guidance and improvement.

(c) The Self Assessment Report of the last six monthly period shall be submitted to the Reviewing Authority, at least three months prior to the expiry of probationary period with specific recommendations of confirmation or otherwise.

(4) On receipt of the last Self Assessment Reports, and consideration of all the reports, the Reviewing authority may -

(a)

(b) terminate his service after giving him one month’s notice in writing.”

10. True, the respondent was appointed after having followed the procedure meant for an appointment to a substantive post on probation. The same, however, ipso facto would not clothe the respondent to have been probationer

Assistant Professor in Chemistry. One has to go by the order of appointment dated 23/4/2010. It has been substantially in the form prescribed under the Statutes. Relevant terms of the of the appointment order are reproduced hereinbelow :-

“2. (a) You are appointed in --- against on full time basis on one academic year only.

(b) Your appointment is purely temporary for one academic year, i.e. from ---- to ----.

(c) The post is reserved for O.B.C.”

Reading of the aforesaid appointment order would make it crystal clear that the respondent was appointed for a period of one academic year only. His appointment was stated to be purely temporary. Although 2 – 3 items in the appointment order have been blank, there should not be any manner of doubt to observe that the respondent was appointed temporarily for one academic year. In the factual backdrop, the petitioner institution was justified in giving the respondent such appointment since the Statute (Section 168) authorises, in exceptional circumstances and in the interest of teaching, the management to make temporary appointment against the substantive vacancy in a manner provided therein. Although the procedure contemplated under Section 168 has

not been followed, the appointment of the respondent could not be said to be on probation. Respondent was the only candidate who appeared for the interview. He did not have an experience of teaching. He was serving as a Chemical Analyst with Swami Ramanand Teerth Marathwada University. The petitioner institution has, therefore, all along been contending that in the best interest of students the appointment was made for a temporary period of one year.

11. The Principal is not the appointing authority. The respondent has been appointed by the management of the petitioner institution. A reference in one of the letters issued by the Principal, stating therein that the respondent was appointed on probation for one year would, therefore, be of no avail for the respondent. Moreover, during the service period of the respondent, students of First Year B.Sc. had made complaints in writing on 9/8/2010 and 20/9/2010. It was their grievance that the respondent did not teach properly. He would come to the Class late, leave early, did not attend practicals in Laboratory etc. The Head of the Department had also made a report to the Principal in that regard. The Principal, in turn, attempted to bring it to the notice of the respondent. He, however, refused to receive the

communication. There is on record an extract from the dispatch book indicating that Peon Raut had tried twice to serve covers containing communications to the respondent. Affidavit of Peon Raut in that regard had been produced before the Tribunal. The Tribunal, however, observed that, no original register of postal Tapal was produced. If the Tribunal had any such doubt in that regard, it could have directed the petitioner institution to produce the original record. Affidavits of some of the students of F.Y.B.Sc. had also been produced before the Tribunal, reiterating to have had made complaint about the teaching of the respondent. True, the petitioner institution had other ways and means to serve its communication to the respondent. Failure to resort to those means, however, is not sufficient to observe that the documents suggesting respondent's dismal performance were fabricated one.

12. Since the performance of the respondent was not found satisfactory, the management terminated his services. A resolution dated 27/3/2011 was passed to that effect. The said resolution had not been objected to before the Tribunal on the ground of having not been under signature of those who proposed the resolution and one who seconded it. Here

again it is to be stated that, the Tribunal could have, if it had any doubt, asked the petitioner institution to produce the original record. Pursuant to the said resolution, the respondent was served with termination order dated 11/4/2011. The order reads thus :-

“With reference to our earlier Order No.DSMJ/Sr/2009-10/2089 dated 23/04/2010 your service period was not satisfactory. Hence, your services as Assistant Professor in Chemistry at Dnyanopasak College, Jintur is stand terminated w.e.f. 15/04/2011.”

13. Since the performance of the respondent was found to be not satisfactory, his services were terminated w.e.f. 15/4/2011, may be a few days before completion of his period of appointment for one year. The respondent may have a remedy to claim compensation in that regard. Although the respondent's dismal teaching performance appears to be a reason behind his termination, the order terminating his services does not contain anything that would suggest the termination to be stigmatic. Even if it is assumed that the respondent was a probationer for a period of one year, his assessment report was found to be dismal. The management was, therefore, justified to discharge him. The shortcoming only is of failure to give him one month notice as

has been expected under Statute [Section 174(4)(b)].

14. The facts in the case of Progressive Education Society (supra) were altogether different. The respondent therein was under probation. In the factual backdrop of the said case, it was observed :-

“Service Law – Education – Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 – Section 9 – Termination – Respondent under probation – Basic ground of challenge taken by the Respondent no.1 was that there was nothing wrong with his performance or conduct and that the results in Mathematics, which was his Subject, was Cent percent – The facts of this case are a little different from the normal cases relating to probation and the termination of the services of a probationer in that the satisfaction required to be arrived at under Sub-section (3) of section 5 of the MEPS Act has to be read along with rule 15 of the MEPS Rules, 1981 with particular reference to Sub-rule (6) which provides that the performance of an employee appointed on probation is to be objectively assessed by the Head during the period of his probation and a record of such Assessment is to be maintained. If the two provisions are read together, it would mean that before taking recourse to the powers vested under Sub-section (3) of section 5 of the MEPS Act the performance of an employee appointed on probation would have to be taken into consideration by the School management before terminating his services – The requirements of Rule 15(6) and Rule 14 had not been complied with prior to invocation by the School management of the powers under Sub-section (3) of section 5 of the MEPS Act. ”

15. While in the case of Rohidas Godse (supra), the management had not produced assessment report of the petitioner therein while he was on probation. The written statement was even silent to disclose that such assessment report was maintained by the Principal of the College. Although Statute 417 referred to in the said case warrants selection to be on probation for a period of not exceeding 24 months, the facts of the present case would undoubtedly suggest that in the interest of teaching, the respondent was appointed temporarily for a period of one academic year in spite of the fact of having observed the selection procedure meant for appointment of a candidate on probation.

Deepali Surwase's case (supra) pertains to grant of back wages in case of reinstatement of an employee.

16. The respondent was serving as a Chemical Analyst in Swami Ramanand Teerth Marathwada University. As such, he was not having experience of teaching when he came to be appointed as an Assistant Professor in Chemistry with the petitioner institution. He had obtained the lien on his previous post for a period of six months. It was later on extended for two years. Since he was the only candidate to

appear for the interview, he was given a temporary appointment for a period of one academic year. During his service, his performance was not satisfactory. The management, therefore, passed resolution to discontinue his services. The termination order was, therefore, issued simply stating therein that the performance of the respondent was not satisfactory. By no stretch of imagination, this order could be said to be stigmatic.

17. In the aforesaid factual backdrop, the order of the Tribunal directing the respondent to reinstate, holding him to have been appointed on probation and order being stigmatic is nothing short of a perverse order. Interference is, therefore, called for with the said order. In the result, Writ Petition No.7199/2018 succeeds. The same is allowed in terms of prayer clause (B). Rule made absolute.

18. Writ Petition No.12187/2017 fails. It is dismissed. Rule discharged.

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