

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

Writ Petition No.5560/2018

Dr. Sachin Zende V Joint Director, Higher Education, Amravati Division, Amravati
and others

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

Court's or Judge's Orders

Mr. P.D. Meghe, Advocate for petitioner.
Mrs. M.P. Munshi, Advocate for respondent no.2.
Mr. A.P. Raghute, Advocate for respondent nos. 3 and 4.
Ms K. Deshpande, AGP for respondent nos.1, 5 to 7.

**CORAM : DIPANKAR DATTA, CJ &
V.M.DESHPANDE, J.**
DATE : July, 27,2021.

1. Late Ku. Durga K. Banmeru Science College (hereafter "the college", for short) issued a public notice inviting applications from eligible candidates for appointments on full time posts of Assistant Professors in 9 (nine) subjects indicated therein including, *inter alia*, Computer Science. The petitioner, holder of a Ph.D. degree, was an aspirant for the post Assistant Professor in Computer Science. Since the petitioner had a Ph.D. degree to his credit, he was exempted from qualifying the NET/SLET/SET examination. It is not in dispute that the petitioner was interviewed by a duly constituted Selection Committee which, *inter alia*, included the nominees of the Sant Gadge Baba Amravati University as well as its Vice Chancellor. The petitioner was selected for appointment on the post of Assistant Professor in Computer Science. An appointment letter dated 12/15-04-2017 was issued by the Secretary of the Sanstha, which administers the college. Relevant clauses from such appointment letter are reproduced below :-

"With reference to your application dated 08/02/2016 for the post of Assistant Professor in subject Computer Science (Category-Open) at the late Ku. Durga K Banmeru Science College, Lonar Dist. Buldhana and as per the recommendations

of the selection committee held on 18/03/2017 and Resolution of the society, I am pleased to inform you that, you are here by appointed as Assistance Professor in this college.

- 1) Your salary shall be in the pay scale of Rs.15600-39100 & AGP 6000 plus usual D.A. and other allowances as per norms of State Government of Maharashtra.*
- 2) A) Your appointment is purely temporary for the period of Academic Year from the date of appointment on the clear vacancy. After expiry of the above period, your service shall stand terminated without any notice.*
B) Your appointment is only for one academic year. After expiry of the above period, your service shall stand terminated without any notice.
- 3) DCPS benefit will be given to you under the rules framed by Government of Maharashtra.*
- 4) Your appointment will be governed by the rules and regulation of Sant Gadge Baba Amravati University, Government of Maharashtra & Amrut Sevabhavi Sanstha, Parbhani.*
- 5) You shall have to undergo a medical examination within 3 months from the date of joining the post. Your appointment shall be conditional pending the receipt of Physical fitness certificate.*
- 6) You are requested to acknowledge receipt of this order of appointment and communicate the acceptance of the appointment within 15 days from the date of receipt of the same.*
- 7) If no reply accepting appointment is received within the period mentioned in paragraph (5) the order shall be treated as cancelled.*
- 8) The appointment will be of course subject to the approval of Sant Gadge Baba Amravati University. Let me make clear that you will not receive your salaries unless the approval for your appointment is granted and the amount of your salary is received from the government.*
- 9) If above terms & conditions are acceptable, you should be report to duties forthwith. Report to duties to Principal, Amrut Sevabhavi Sanstha, Parbhani's Late Ku. Durga K.Banmeru Science College, Lonar Dist. Buldhana 443302 (MS) in the office hours."*

2. It is the claim of the petitioner that although he was serving the college in a different capacity at the relevant time, no attempt was made to serve the appointment letter to him personally. The version of the college, however, is to the contrary. According to the college, an attempt was made to personally serve the letter of appointment on the petitioner but he having refused to accept the same, the college had dispatched the

appointment letter to the petitioner's home address in district Beed by Regd. Post on 12-04-2017. Be that as it may, the petitioner further claims that having received the appointment letter, he reported for duty on 02-05-2017 but was not allowed to join. This position is again disputed by the college. According to it, the petitioner did not report for duty and accordingly, in terms of clause 6(six) of the appointment letter the same stood cancelled. Such cancellation of appointment letter was communicated to the petitioner by a letter dated 01-07-2017. Here again, the petitioner disputes that he had received any such communication. We have enquired from Mr. Raghute, learned advocate for the college as regards the mode of service of the communication. According to him, the same was dispatched by Registered Post; however, no document to show receipt of the communication by the petitioner has either been produced or annexed to the reply affidavit.

3. That the petitioner was allegedly not allowed to join duty upon reporting on 02-05-2017 in pursuance of the appointment letter dated 12/15-04-2017 was brought to the notice of the respondent no.-1, Joint Director of Education (hereafter "Joint Director", for short). An order was issued by the Joint Director upon hearing the parties that the petitioner should be allowed to join forthwith and if the Principal of the college does not so allow, then the salary of the Principal of the college should be withheld for not having allowed the petitioner to join. Such order is on record at page 36 of the writ petition. It is also been brought on record by the college that the order passed by the Joint Director stood modified by reason of the minutes of meeting recorded on 31-05-2018, which was conducted in the office of the Director of Higher Education (hereafter "Director", for short). Mr. Raghute has submitted that by a letter dated 07-07-2018 the said minutes of meeting were forwarded to the

petitioner. Yet again, the petitioner has denied receipt of such minutes of meeting although he does not dispute that he was present in the meeting convened by the Director.

4. It is in this factual background that this Writ Petition has been presented by the petitioner seeking a direction on the college to implement the order passed by the Joint Director dated 22-02-2018 which, as noticed above, has met stiff opposition from the side of the college to the effect that the order dated 22-02-2018 does not survive after the minutes of meeting dated 31-05-2018. However, it has not been disputed before us by Mr. Raghute that based on the minutes of meeting no formal order was passed either by the Director of Education or by the Joint Director revoking the order dated 22-02-2018.

5. Having regard to the narrative of facts and circumstances relatable to the petitioner's grievance, as expressed in this Writ Petition, certain factual and legal questions crop up for being answered. The first is, whether in the absence of any indication in the advertisement inviting applications, was the college justified in offering appointment to the petitioner temporarily, and that too for one academic year? If indeed the appointment was to be temporary and limited to one academic year, the further question is, why did the college not indicate such intention in the advertisement? The next question that would arise is, whether the petitioner had refused to accept the appointment letter when it was allegedly tendered to him in person by the college? It is difficult to comprehend that a person who has been aspiring for an appointment and after due selection, would refuse to accept the appointment letter tendered to him. In any event, it has to be further ascertained as to whether the petitioner, after receipt of the appointment letter by post, reported for duty on 02-05-2017 or not. If indeed he reported for duty and the college had refused to permit him join,

the petitioner cannot be faulted. That the claim of the petitioner, *prima facie*, has substance is evident if one takes a look at the order dated 22-02-2018 of the Joint Director, referred to above. The Joint Director had also directed to initiate proper enquiry into the affairs of the college. Why would the Joint Director require the college to allow the petitioner to join duty while, at the same time, direct stoppage of salary of the employer, if the petitioner's claim had no substance? This order of the Joint Director definitely would suggest that the Principal of the college was remiss in not allowing the petitioner to join after he had reported for duty. However, the situation has taken a different turn with the minutes of meeting dated 31-05-2018 held in the presence of the Director of Education where the petitioner attended. However, it is of significance that the document at page 76 which happens to be the copy of the minutes does not bear the signature of any authority or the persons who were present at the meeting. Insofar as the petitioner is concerned, there is an indication therein that since he did not report for duty within 15 days after receipt of appointment letter, the same automatically stood cancelled. The probative value of such document, therefore, is inconclusive.

6. Mr. Meghe, learned Advocate for the petitioner contends before us that the minutes of meeting dated 31-05-2018 was not served on the petitioner at any point in time. There is no contemporaneous record produced either by the Joint Director, who is said to have forwarded the minutes of meeting by his letter dated 07-07-2018, or by the college to prove service of the same upon the petitioner to contend that he was made aware of such minutes. We do not know whether the minutes were recorded in the presence of the petitioner. If indeed the college could have produced material to prove that the petitioner was aware of the minutes of meeting, he would have been required to lay a challenge to such minutes. Since the minutes of

meeting do not bear the signature of the petitioner, we are inclined to give the benefit of doubt to the petitioner.

7. Be that as it may, we have noticed above that certain factual questions require to be answered upon proper investigation into factual aspects. However, such investigation is ordinarily not undertaken by the writ court; more so, when on affidavit evidence, the contrary stands taken by the parties are clear.

8. In such view of the matter, we are of the considered opinion that this is a matter which ought to be relegated to the Director of Education for taking an appropriate decision after hearing the petitioner, the college authorities as well as the authorities of Sant Gadge Baba Amravati University. The Director of Education must endeavor to answer the questions, both touching factual and legal aspects which we have referred to in paragraph 5 supra and pass an appropriate reasoned order on the merits of the rival claims. Once the order is passed, the same shall be communicated to the parties.

9. It would be desirable, having regard to the lapse of time since the advertisement was issued by the college, if the Director of Education gives his decision in terms of this order as early as possible but not later than a period of 8 (eight) weeks from date of receipt of a copy of this order.

10. Needless to observe, if after hearing the parties, the Director if of the opinion that the petitioner has been wronged, he will pass an order directing the college to issue requisite appointment letter for his appointment on the permanent post for which the advertisement was issued and he was selected. However, if the version of the college is accepted, no consequential order need be passed. These observations shall

also not preclude the Director to make such other or further order as the facts and circumstances of the case would warrant.

11. The Writ Petition, accordingly, stands disposed of. There will be no order as to costs.

(V.M.DESHPANDE, J.)

(CHIEF JUSTICE)

Deshmukh