

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 WRIT PETITION NO.5173 OF 2021

PRAGATI SHANKAR JADHAV
VERSUS
THE VICE CHANCELLER AND OTHERS

...
Advocate for Petitioner : Mr. Vishal S. Kadam h/f
Mr. S. S. Kulkarni Suvidh S.

...
CORAM : RAVINDRA V. GHUGE &
SANDIPKUMAR C. MORE, JJ.
DATED : 09/06/2022.

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PER COURT :

1. By this petition, the petitioner has approached for seeking an approval to her post of Assistant Professor. She has been selected and appointed as an Assistant Professor. She joined service on 07/01/2020. The post on which she has been appointed for the Physics subject, was reserved for the EWS category.

2. It is now contended that the Education Society has issued a notice to the petitioner dated 14/05/2022 calling upon her to explain as to whether she can be continued in employment despite having been appointed on a post reserved for the EWS category and whether her service needs to be dispensed with as the reservation for the EWS category is no longer in existence. The petitioner is still in employment.

3. Section 81 of the Maharashtra Public Universities Act, 2016

reads as under :

"81. Right of appeal :- (1) Notwithstanding anything contained in any law or contract for the time being in force, any teacher or other employee in the university governed by this Act or in affiliated college or recognized institution of any of these universities, other than that managed and maintained by the State Government, Central Government or a local authority, who is-

(a) dismissed or removed or whose services are otherwise terminated or who is compulsorily retired or who is reduced in rank by the university or management and who is aggrieved; or

(b) aggrieved by the decision of the Grievances Committee established under this Act;

shall have a right of appeal and any appeal against any such order or decision shall lie to the Tribunal:

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided or pending before a Court or Tribunal on the date of commencement of this Act or where the order of dismissal, removal, otherwise termination of service, compulsory retirement or reduction in rank, or decision of the Grievances Committee was passed at any time before the date on which

this Act comes into force and in which case the period for filing an appeal has expired.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of services, compulsory retirement or reduction in rank, or of decision of the Grievances Committee, as the case may be:

Provided that, where such order was made before the date of commencement of this Act, such appeal may be made if the period of thirty days from the date of receipt of such order or decision has not expired.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee as prescribed which shall not be refundable and shall be credited to the university fund:

Provided that, it shall be lawful for the State Government to revise, by notification in the Official Gazette, such fees as it may deem fit, from time to time".

4. The Hon'ble Supreme Court has settled the law in ***Hindustan***

Lever Limited Vs. Ashok Vishnu Kate, 1996 SC 285 that when a court is empowered to deal with a cause of action of termination, an employee can approach the court even at the penultimate stage prior to being actually terminated without waiting for the act of termination being actually perpetuated.

5. Since a statutory efficacious remedy is available to the petitioner, we do not find any reason to entertain this petition. The petitioner would be at liberty to approach the University and College Tribunal at Pune.

6. In view of the above, this petition is disposed off with liberty to the petitioner to approach the University Tribunal. All contentions are kept open.

(SANDIPKUMAR C. MORE, J.)

(RAVINDRA V. GHUGE, J.)

VS Maind/-