

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

72 WRIT PETITION NO.5679 OF 2011

DASHRATH RAGHUNATH YALKATWAD
VERSUS
THE STATE OF MAHRSHTRA AND ORS

...

Advocate for Petitioner : Mr. N. P. Patil Jamalpurkar
AGP for Respondent No.1: Mr. S. R. Yadav-Lonikar
Advocate for Respondents 3 & 4 : Mr. B. A. Dhengle
Advocate for Respondent No.6 : Mr. V. P. Latange

CORAM : RAVINDRA V. GHUGE, J.

DATE : 21st March, 2022

ORDER:

1. The petitioner, original appellant is aggrieved by the judgment and order dated 21.07.2011 delivered by the University and College Tribunal, Aurangabad in Appeal No. SRTMU-08 of 2009, vide which, his Appeal challenging his termination dated 16.08.2006, has been dismissed.

2. I have considered the strenuous submissions of the learned Advocates for the petitioner and on behalf of the Management. The learned Advocate representing the University submits that it is a formal party. So is the case of respondent No.1 which is the State of Maharashtra. I have considered the record available with the assistance of the learned Advocates. The petitioner has cited the judgment delivered by the learned Single Judge of this Court in *Rohidas Ganpat*

Godsay Vs. Principal and others, 2011 (3) Mh.L.J. 54. The learned Advocate for the management has relied upon the judgment delivered by the Hon'ble Supreme Court in *Wainganga Bahuuddeshiya Vikas Sanstha through President B.B. Karanjekar and others Vs. Jaya and others. 2019 AIR (SC) 4647.*

3. I find that the basic controversy is as to whether the petitioner was appointed by following the due process of law and on a post which he could legally and legitimately occupy. A further controversy revolves around the date of termination of the petitioner in the light of the fact that the Management has taken a stand that the petitioner was terminated on 16.08.2006 and the petitioner has taken a stand that he was working even in the academic year 2008-2009.

4. There is no dispute that the Management published an advertisement dated 19.08.2004 in Marathi Daily Lokmat which is undisputedly a widely circulated newspaper in the entire State of Maharashtra. At Sr. No.6 in the advertisement, one full time post of a Lecturer in History reserved for the ST category, was advertised. The petitioner belongs to the ST category. The selection committee was constituted by the Swami Ramanand Teerth Marathwada University, Nanded (hereinafter referred to as the Nanded University). While proposing the name of the petitioner, the introductory part in the

selection report of the committee indicates that only one candidate was available for the interview. Though I find it unusual, at the bottom of the said report dated 16.12.2004, a foot note reads as under:

“1) Qualified candidates not available.

2) Caste validity certificate not produced.”

5. It is well settled that if there is only one candidate available for selection and appointment to a solitary post, the committee normally does not appoint a candidate due to lack of competition and there being no scope for selecting the best candidate. It is undisputed that the requisite qualification for appointment was mentioned in the advertisement as "*55% marks for Master Degree (MA, M.Lib. M.P Ed.) level in the relevant subject with good academic record (50% marks for S.C. and S.T.) with NET/SET.*" It is also undisputed that the petitioner did not have the qualification of NET/SET.

6. The appointment order was issued to the petitioner dated 17.12.2004 with Reference No.20/2004-05, under Statute 174 (2). Clause 2(B) of the appointment order indicates that he was appointed purely as a temporarily for a period from 17.12.2004 to 01.05.2005. This Clause 2(B) is followed by Clause 2(G) indicating that his appointment is on Clock hour basis. Clause 4(A) indicates that the petitioner was required to pass the NET or the SET and Clause 4(B)

mandated that he should acquire the said qualification. The Secretary of the Institution has signed below the appointment order.

7. In view of the above, the Director of Board of College and University Development (BCUD), Nanded University, issued a communication dated 28.07.2006 by which the approval of the petitioner was kept in abeyance as he did not have a tribe validity certificate. The petitioner acquired the tribe validity certificate on 01.09.2008. By a communication dated 17.10.2008, the Director BCUD, Nanded University granted approval to the contractual appointment of the petitioner for the period 20.12.2004 till 15.08.2006.

8. The petitioner has relied upon a document dated 12.01.2008 by which the College Management has referred the case of the petitioner to the Tribe Scrutiny Committee with regard to his claim for validity of the tribe Koli Mahadev. The learned Advocate, therefore, contends that this indicates that the petitioner was in employment in January, 2008. To support his case, he relies upon the experience certificate dated 02.08.2008 issued by the In-charge Principal of the College. The said certificate is in handwriting and is without any reference No. This document is alleged by the College Management to be a forged document and the University Tribunal has agreed with the said contention.

9. There is much ado between the two parties with regard to whether the petitioner was actually disengaged by order dated 16.08.2006 or whether he continued in employment till the academic year 2008-2009. The order of termination is in handwriting and the subject indicates that the petitioner is disengaged/relieved due to his continued absence. The petitioner has placed reliance upon *Rohidas Ganpat Borse (Supra)* wherein the petitioner has challenged his termination and the management had taken a stand that his work was not satisfactory. It was further contended that he was appointed on a temporary basis and was terminated after around two years. This Court dealt with the issue of there being no assessment about the performance of the petitioner and hence, he was granted reinstatement with continuity and full back wages.

10. In the instant case, it is apparent that pursuant to the advertisement dated 19.08.2004, only one candidate applied to the post of Lecturer in History which was reserved for the Scheduled Tribe Category. The advertisement also indicated that this post was advertised for the first time. It is a matter of record that it was only the petitioner who was the applicant and he was the sole candidate who was interviewed.

11. I would not find fault with the appointment order issued to the petitioner in view of the admitted position that the advertisement did not grant any concession to a candidate having M.Phil. qualification as a substitute for NET/SET. The petitioner did not have the NET/SET qualification. He had actually applied to the University vide his communication dated 16.02.2009 praying for relaxation of the NET/SET qualification in the light of the Circular issued by the U.G.C. dated 19.08.2008 wherein it was provided that the candidates who have applied for M.Phil. and complete the same up to 30th June, 2009 will be exempted from NET for UG teaching. However, NET/SET shall be compulsory for the candidates completing their M.Phil. on or before 01.07.2009. The petitioner acquired his M.Phil. in History from the Yeshwantrao Chavan Maharashtra Open University, Nashik in the light of his Mark-sheet dated 04.02.2009. However, the issue is that he was purportedly terminated vide communication dated 16.08.2006.

12. Considering the record available, the acknowledgment by the petitioner of having received the relieving order dated 16.08.2006 and he having not denied his signature, would indicate that the said communication, which does not have any interpolation, was received by the petitioner and yet he did not raise a grievance about the same with promptitude. Even when he was issued with a certificate dated 02.08.2008, which is said to be a forged document, he was shown to be

a Lecturer on contract basis from 20.12.2004. The petitioner produced certain attendance record and certain entries with regard to two students to indicate that he was teaching even in the academic year 2006-2007 and 2007-2008. These two students have sworn an affidavit stating that the unit test reports indicating them as students in the academic year 2009, are false and bogus documents. As such, there is no convincing evidence before the Court to indicate that the petitioner worked after 16.08.2006, had conducted lectures, had marked his attendance and was paid his salary for the academic year 2006-2007 right up to to the academic year 2008-2009.

13. The petitioner has relied upon two documents which are undated, as proof of the petitioner being included in the list of teachers for the academic year 2006-2007 and 2007-2008. Both these documents do not carry any date and do not indicate as to why such list was prepared and whether it was tendered to the University or to any Statutory authority.

14. Taking an overall view of the factors available on record, it is difficult to believe that the petitioner continued in employment after 16.08.2006. Even the Director, BCUD approved his contractual engagement for the period 20.12.2004 till 15.08.2006. As such, the

petitioner would not be entitled for reinstatement in service and the impugned order cannot be interfered with to this extent.

15. The petitioner has taken exception to the contents of the termination order. According to him, the management has stated that he was not regular/punctual and was not performing up to the mark. Having concluded that the petitioner was not appointed on probation since he was the only candidate who was interviewed and the University committee could not have selected and recommended the appointment of a sole candidate on probation, the impugned order will have to be considered from this angle.

16. The College Management indicates from the Communication dated 11.01.2005, Reference No.314/2004-05 which was received by the petitioner on 12.01.2005, the notice dated 22.06.2006 bearing Reference No.2006-07 which was received by the petitioner and the notice dated 20.07.2006 bearing Reference No.27/2006-07 received by the petitioner, that it was brought to his notice that he was not punctual. The petitioner then approached the Management with an undertaking dated 14.12.2006 issued on a Rs.100 Non Judicial Stamp Paper stating therein that he has already been relieved by the Management and he prayed to the Management that his irregularity in

attendance be pardoned and if he is reinstated, he would work diligently and efficiently.

17. In the above backdrop, I have scrutinized the termination order which only talks of the petitioner being not punctual. It is also mentioned that there is not a single student admitted in the second and third year for history subject in the Bachelor of Arts Degree Course. Reliance is placed upon *Wainganga Bahuuddeshiya Vikas Sanstha* (Supra) wherein the Hon'ble Apex Court has concluded in paragraph No. 13, 14 and 15 as under:-

“13) In the present case, respondent No.1 was appointed on ad-hoc basis. Such temporary appointment pending filling up of a vacancy on regular basis does not confer any right at par with the candidate appointed on regular basis. The appointment of the respondent No.1 was not on probation as there is no such condition in the letter of appointment. The services of an employee can be dispensed with on account of unsatisfactory work. The decision to arrive at the unsatisfactory work is motive and not the foundation of termination of services. We have seen the opinion of the Principal, which does not contain any adverse comments but the comments are in relation to the work of the respondent No. 1, such comments cannot be made basis for setting aside the termination of an ad- hoc employee.

14) Ms. Mahalaxmi, learned senior counsel for the respondents, has referred to the orders of the High Court

of Judicature at Bombay in Wainganga Bahu-uddeshiya & Ors. v. Diwakar & Ors. 2012 SCC OnLine Bom 1414: (2013) 2 Mah.LJ 804: (2012) 114(5) Bom LR 3237 and Waingaga Bahu-uddeshiya Vikas Sanstha and Ors. V. Anil & Ors. 2011 SCC Online Bom 1233: (1012 3 Bom CR 788 to contend that the appellant has been taking punitive action against the members of the teaching faculty. However, we find that both the cases pertain to disciplinary action after conduct of regular inquiry which has no relevance with the termination of an employee appointed on ad-hoc basis.

15) Consequently, we find that the order passed by the Division Bench of the High Court is clearly unsustainable in law. The same is set aside. The appeal is allowed. No costs.”

18. The Hon'ble Supreme Court has held that when the service of an employee can be dispensed with on account of unsatisfactory work, the decision to arrive at such conclusion of unsatisfactory work, was the motive and not the foundation of the termination of service. As such, the observation made by the Management in the termination order would indicate that it's decision is due to the unsatisfactory attendance of the petitioner as being the motive. From this point of view, the impugned termination order cannot be interfered with.

19. In so far as the later part of the impugned judgment of the University Tribunal, there are certain serious observations made against

the petitioner with regard to forgery of documents or manipulation of documents. Such conclusions are arrived at on the basis of the photostat copies and some originals placed before the Tribunal. I am of the view that unless very strong circumstances and reasons emerge from the record and there is enough material which would convince that they are forged, such observations should not be arrived at casually.

20. In view of the above, this petition being devoid of merit, is dismissed.

21. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

JPC