

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

946 WRIT PETITION NO.9560 OF 2021

SANJAY NARAYAN GURJALWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Bhapkar S.B.
AGP for Respondent No. 1 : Mrs. R.P. Gaur
Advocate for Respondent No. 2 : Mr. S.J. Gaike

CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.

DATE : 28.09.2022.

PER COURT :

We have heard both the sides.

2. The petitioner has filed the present petition seeking following reliefs :

A) This Writ Petition may kindly be allowed;

B) Record and proceeding may kindly be called for.

C) To direct the respondents No. 2 and 3 to release the salary of petitioner for the period from February 2021 onwards forthwith, in favour of the petitioner.

D) During the pendency of this Writ Petition, to direct the respondent Nos. 2 and 3 to release the salary of petitioner for the period from February 2021 onwards forthwith, in favour of the petitioner.

E) To direct the respondent Nos. 2 and 3 not to create the obstacle and hindrances in discharge of duties of the petitioner as Laboratory Assistant at the respondent No. 3 College, by permitting him to perform his duties.

F) To direct the respondent No. 1 to take the necessary proper action against the respondent No. 3 College in the matter of non-compliance of directions issued by the Respondent No. 1.

G) Any other suitable and equitable order may kindly be passed in favour of petitioner.”

3. The petitioner was appointed on compassionate ground on the post of ‘Laboratory Assistant’ by the respondent No. 3-College by order dated 19.06.2019. So far as period up to January 2021 is concerned, it appears that there is no dispute about payment of salary. The petitioner is seeking payment of salary only from the month of February 2021 onwards. However, by letter dated 14.06.2021 the petitioner himself had communicated that he was on medical leave on 22.03.2021 and was reporting for duties from 14.06.2021. Therefore, during the month of March 2021 till June 2021 the petitioner was admittedly not present for duties. Whether there is any sufficient leave in his leave account or not is something which is required to be decided by the respondent No. 3-College. The petitioner’s entitlement to the salary during the said period from 22.03.2021 to 14.06.2021 would depend upon the entitlement to leave. It is an admitted position that after 14.06.2021 there are serious disputes between the parties as to whether the petitioner was willing to work or not. Admittedly, from that date, the petitioner has not been working. While the petitioner is blaming the Management, the Management on the other hand is holding the petitioner responsible for absence from duties. Sitting in a writ jurisdiction, we will not be in a position to determine whether the petitioner has actually worked after June 2021 or not. Consequently, we cannot grant prayer clause ‘D’ sought for in the petition.

4. So far as prayer clause ‘E’ is concerned, the relief sought is general in nature and we are afraid we will not be able to give any direction to the respondent No. 3-College not to create any obstacle or hindrance in discharge of the duties of the petitioner.

5. So far as prayer clause 'F' is concerned, we do not think any case is made out by the petitioner for directing any action to be taken against respondent No. 3-College.

6. We must observe that the petitioner is still on probation and has been allegedly remaining absent from duties from time to time. So long as employer-employee relationship is not served, respondent Management would not be justified in not permitting the petitioner from joining duties. At the same time, the Management would not require any prior permission of Director of Education for taking action against him for alleged absence. In such a situation the school Management must take some decision in the matter so that petitioner can either continue to work or exercise appropriate remedy.

7. We therefore do not find any merit in the petition. The same is accordingly dismissed. No costs.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

mkd/-