

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION (WP) NO. 5454/2019

Shri Sudhakar s/o Dharmaji Haste
Aged – 51 Yrs. Occ. Service,
R/o. Naginabag, Chandrapur
Tah. & Distt. Chandrapur

..... PETITIONER

// VERSUS //

1. State of Maharashtra through
the Principal Secretary, Technical
and Higher Education, Mantralay,
Mumbai-01.
2. Desk/Section Officer,
Technical and Higher Education
Mantralay Mumbai-01.
3. The Director Technical and Higher
Education, Dhobi Talao, Mahyalika
Mark, Mumbai – 01.
4. The Joint Director,
Technical Education, Sadar,
Nagpur, Tah & Distt – Nagpur.
5. The Government College of
Engineering, Through its Principal,
Chandrapur, Tah. & Distt.
Chandrapur
6. Shri M.M. Joshi,
Age Major, Occ. Service,
Administrative Officer in Technical
Education Department, Sadar,
Nagpur, Tah. and District – Nagpur.
7. Ku. Neha Omprakash Kamble,
Age Major, Occ. Service,
In Government College of Engineering,
Through its Principal, Chandrapur,
Tah. & Distt. Chandrapur.

.... RESPONDENT(S)

Shri R.D. Hajare, Advocate for the petitioner
Miss. Nivedita P. Mehta, AGP for respondent nos 1 to 5/State
None for respondent nos. 6 and 7

CORAM : A.S. CHANDURKAR AND SMT. M.S. JAWALKAR, J.J.

DATED : 26/02/2022

ORAL JUDGMENT : (PER:- A. S. CHANDURKAR, J.)

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2 The challenge raised in this writ petition is to the order passed by the Maharashtra Administrative Tribunal, Bench at Nagpur (for short the “Tribunal”) dated 22.01.2019. By that order Original Application bearing No. 448/2018 challenged the order of termination dated 31.05.2018 has been dismissed by the Tribunal on the ground that the petitioner failed to challenge an earlier adjudication by the Industrial Court dated 07.08.2013.

3. Relevant facts to consider the challenge raised are that the petitioner was appointed as a Laboratory Assistant on 01.07.1999. His services came to be terminated on 30.04.2000. The petitioner filed ULP Complaint No. 77/2000 challenging the order of termination before the Labour Court, Chandrapur. The Labour Court by its judgment dated 25.2.2004 allowed the application and directed the reinstatement of the

petitioner's service. The Revision Application preferred by the employer - the Government College of Engineering was dismissed by the Industrial Court on 15.10.2004. The employer then filed Writ Petition No. 4413/2005 which was allowed by the learned Single Judge on 26.09.2012 and the order passed by the Labour Court was set aside. Being aggrieved, the petitioner filed Letters Patent Appeal No. 104/2013. The Division Bench on 20.06.2013 allowed the said Letters Patent Appeal by setting aside the judgment of learned Single Judge and restoring the order of reinstatement as passed by the Labour Court and maintained by the Industrial Court. The Special Leave Petition No. 4779/2013 challenging the judgment in Letters Patent Appeal No. 104/2013 was dismissed on 06.05.2016. As a consequence, the order of reinstatement passed by the Labour Court attained finality.

4. After aforesaid adjudication the services of the petitioner were reinstated. Subsequently, the post of Laboratory Assistant was advertised by the employer on 19.08.2009. The petitioner filed Complaint (U.L.P) No. 80/2009 for challenging the same. The Industrial Court dismissed the said complaint on 7.08.2013 by holding that the employer did not commit any unfair labour practice by issuing the said advertisement. This order was not challenged any further by the petitioner.

5. On 31.05.2018 the Government College of Engineering terminated the services of the petitioner. This was in terms of notice issued under Section 25F of the Industrial Disputes Act 1947. The petitioner being aggrieved by the aforesaid order of termination challenged the same by filing Original Application No. 448/2018. The Tribunal by its order dated 22.01.2019 dismissed the Original Application on the ground that the petitioner had not challenged the order passed by the Industrial Court dated 07.08.2013. The Tribunal therefore granted liberty to the petitioner to challenge that order of the Industrial Court and thus dismissed the Original Application. The Review Application preferred by the petitioner was also dismissed on 25.06.2019. Being aggrieved, the petitioner has challenged the orders passed by the Tribunal in this writ petition.

6. We have heard the learned Counsel for the parties and we have also perused the documents placed on record. Perusal of the impugned orders indicate that the only reason for dismissing the Original Application is that the petitioner failed to challenge the order passed by the Industrial Court dated 07.08.2013 in the complaint preferred before the Industrial Court. It is seen that the said adjudication by the Industrial Court was pursuant to the challenge raised to an advertisement dated 19.08.2009 that was issued for filling the post

of Laboratory Assistant. Merely because that complaint was dismissed by holding that the challenge to the said advertisement was not legally permissible, the same would not have any bearing on the challenge to the order of termination dated 31.05.2018. What was challenged in the Original Application was the correctness of the order of termination and the Tribunal was required to examine the prayers made in the Original Application. Even if the complaint challenging the advertisement dated 19.08.2009 was dismissed, the same would not be a reason for not examining the correctness of the order passed by the employer terminating the petitioner's services. The Tribunal has therefore failed to adjudicate upon the prayers made in the Original Application.

7. On this short ground that the Tribunal has failed to examine the validity of the order of termination dated 31.05.2018 on an incorrect premise, the order dated 22.01.2019 passed in Original Application No. 448/2018 is liable to be set aside. Consequently the order passed on the Review Application would not survive.

8. In the light of the aforesaid discussion, we pass the following order:-

- i. Order dated 22.01.2019 in Original Application No. 448/2018 as well as order dated 25.06.2019 passed in Review Application No. 16/2019 is set aside.

ii. Original Application No. 448/2018 is restored for fresh consideration before the Maharashtra Administrative Tribunal.

iii. The Original Application shall be decided on merits and in accordance with law. All points on merits are kept open.

9. Rule is made absolute in the aforesaid terms with no order as to costs.

10. Civil Application (CAW) Nos. 1587/2021 and 1431/2021 are also disposed of.

JUDGE

JUDGE

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