

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

WRIT PETITION NO. 11062 OF 2021

- 1) Sanjivani Gramin Shikshan Society,
Sahajanandnagar, Post. Shingnapur,
Tq. Kopargaon, District Ahmednagar,
Through its Secretary.
- 2) Sanjivani Gramin Shikshan Society's
College of Engineering
Sahajanandnagar, Post. Shingnapur,
Tq. Kopargaon, District Ahmednagar,
Through its Principal.

**...PETITIONERS
(Orig. Resp. Nos. 1
& 2)**

VERSUS

- 1) Sachin s/o Rambhau Wagh,
Age; Major, Occ; Nil,
R/o; Saidham, Ambikanagar
Kopargaon, Tq. Kopargaon,
District; Ahmenagar.
- 2) The Registrar,
Savitribai Phule Pune University,
Ganeshkhind, Pune.

..(Orig. Appellant)

...(Orig. R. No. 3)

...Respondents.

.....
Advocate for the Petitioners : Mr.V.D.Hon (Senior Advocate) i/b Mr.
A.V. Hon.
Advocate for Respondents : Mr.Vinod P. Patil
.....

CORAM : KISHORE C. SANT, J.

Date of Reservation : 27.07.2023

Date of Pronouncement : 06.10.2023

JUDGMENT [PER : KISHORE C. SANT, J.] :

1. A Society running a college of engineering, has filed this petition, challenging judgment and order passed by the Presiding Officer, Savitribai Phule, Pune, Shivaji and Solapur University and College Tribunal, Pune, (for short “the University and College Tribunal”) dated 13.12.2019, granting reinstatement of respondent No. 1, by setting aside the oral termination dated 03.10.2012. The back wages are also granted from the date of oral termination.

2. Respondent No. 1 was the employee of the petitioners as appointed as peon. Respondent No. 2 is the Registrar of the University and College Tribunal. Respondent No. 1 was orally terminated by the petitioners. Respondent No. 1, therefore, initially approached the Industrial Tribunal. However, lateron he approached the University and College Tribunal. It is the case of respondent No. 1 that he was appointed to the post of peon, by following due procedure, on sanctioned post by order dated 20.11.2006. However, thereafter, suddenly original respondent No.

1 started paying his salary through vouchers only, show that he was appointed through a contractor. Though, his job was permanent and his work is regular, since he joined union by vindictive action he came to be orally terminated by the management. Initially under protest and after long gap he approached the Industrial Court. However, on realizing that the jurisdiction is with the University and College Tribunal, he withdraw ULP complaint and filed an appeal in the year 2017 and the same came to be allowed.

3. It is the case of the petitioners that the respondent No. 1 was never appointed as regular employee. He was only given the work of peon through the Contractor. Since he was appointed through Contractor, he is not entitled to any service benefits. Deliberately respondents approached the Industrial Court and almost for four years did nothing and thereafter, approached the University and College Tribunal. The University and College Tribunal has not considered all the facts. The University and College Tribunal has also granted back wages without there being any averments and evidence to show that respondent No. 1 was not a gainful employee after his termination. It is further submitted that before the Industrial Tribunal the respondents were made as

parties and thus respondent No. 1 was aware that he was a contract labour and on realizing that he may not get relief from the Industrial Court, he approached the learned College Tribunal and this fact is not properly considered by the University and College Tribunal. It is further submitted that an appeal was barred by the limitation as it is filed almost after five years from the date of oral termination.

4. The University and College Tribunal should not have entertained an appeal. On this submission, this Court has to consider as to whether an appeal was time barred. Whether respondent No. 1 was a contract labour or a regular employee of the petitioners. Whether the University and College Tribunal has rightly directed to pay the back wages to respondent No. 1.

5. the University and College Tribunal has considered the averments in the ULP complaint before the Industrial Court and held that respondent No. 1 was a regular employee of the petitioners. He was shown working through the contractor after few years of joining services only for the purpose of depriving him from the benefits. The University and College Tribunal held that he was regular employee of the petitioners. It is specifically held that respondent No. 1 was not a contract labour on the basis of

documents produced by respondent No. 1. The documents are in the nature of appointment letter, the distribution of work, leave applications and salary slips etc. sanctioned by the petitioners.

6. The University and College Tribunal did not believe in the documents produced by the petitioners i.e. the certificate of registration of respondent No. 1 as a contract labour etc. The said work was shown for a period from 01.01.2012 to 31.12.2012 i.e. for one year only. There are documents showing that some payments were also made to the contractor by the petitioners, however, it is held that it is not clear from those documents, as to whether respondent No.1 was a worker appointed through the labour contractor. By considering record since 2006 till 2012 it is held that respondent No. 1 proved that he is a regular employee of the society. There are copies of salary statements on record showing deduction of the Provident Fund etc.

7. After considering all these aspects, this Court finds that the University and College Tribunal has not committed any mistake in accepting that respondent No. 1 was a regular employee of the petitioners. About the limitation the learned Member answered that initially respondents had approached the Industrial Court under wrong advise, however, lateron he filed an appeal in the University

and College Tribunal and the appeal is rightly entertained.

8. The only question needs to be considered is of grant of back wages, this Court finds that there was no averment showing that respondent No. 1 was not in gainful employment after termination. He also did not produce anything to show that he was not gainfully employed.

9. The learned Advocate Mr. Patil, for respondent No. 1 submits that before the University and College Tribunal there are no averments showing that respondent No. 1 was not in gainful employment. As already stated this Court also finds that there are no averments to that effect. In the judgment of the University and College Tribunal, this Court finds that there is no discussion about the back wages. In rejoinder though the learned Advocate for the petitioners stated that in view of the judgment of the Tribunal, it was necessary for respondent No. 1 to specifically make averments about the gainful employment. It was also, therefore, necessary for the learned Member of the University and College Tribunal to discuss as to how respondent No. 1 is entitled to get back wages for the entire period from the date of termination till the order of reinstatement. This was necessary also for the reason that for years a complaint was pending before the Industrial Court.

10. In this view, this Court holds that respondent No. 1 would not be entitled to the back wages till the decision of an appeal. He will be entitled to the salary from the date of the order of reinstatement as though there was an order of reinstatement, the respondent No.1 has not reinstated as per order of the Tribunal. Though there was stay granted by this Court the respondent No. 1 was not at fault.

11. In view of the above discussion following order :

ORDER

- (a) The petition is partly allowed.
- (b) The order of the University and College Tribunal is maintained to the extent of quashing and setting aside the oral termination dated 03.10.2012 and the order of reinstatement.
- c) The Respondent No. 1 shall be entitled to receive back wages only from the date of order passed by the University and College Tribunal i.e. from 13.12.2019.

**(KISHORE C. CHANT)
JUDGE**