



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 925 OF 2018

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Sabir Hussain s/o Fazal Hussain Attar,
age 60 yrs, Occ. Service as Principal of
Shri Bhagwan College of Pharmacy,
R/o Plot No.27-B, N-12, Professor Colony,
Opposite Himayat Baugh,
Aurangabad.

Petitioner

Versus

1. The State Of Maharashtra
through its Principal Secretary,
Technical Education, Mantralaya,
Mumbai – 32.
2. The Joint Director,
Technical Education,
Office at adjacent to Government
Polytechnic, Usmanpura,
Aurangabad.
3. Dr. Babasaheb Ambedkar,
Marathwada University,
Aurangabad through
It's Vice Chancellor,
4. Bhagwan Shikshan Prasarak Mandal,
Through it's Secretary, Dr. Y.S. Khedkar,
Office at Dr. Y.S. Khedkar Marg,
N-6, Cidco, Aurangabad.

Respondents

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Petitioner : Mr. Party In Person
AGP for Respondent nos. 1,2 : Mr. P.S. Patil
Advocate for Respondent no.3 : Mr. A.N. Kakade
Advocate for Respondent no.4 : Mr. A.M. Karad

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**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

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Reserved on : 08th February, 2024

Pronounced on : 22nd February, 2024.

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JUDGMENT :- (Per S.G. Chapalgaonkar, J.)

1. Rule. Rule made returnable forthwith. With consent of the parties, heard finally at admission stage.

2. The petitioner impugns the order of break in his service w.e.f 30.8.2017 to 9.9.2017 and seeks further directions against respondent no.4 to treat the said break in service as “spent in service”. The petitioner further seeks directions against respondent no.4 to accept his resignation dated 5.12.2017 and relieve him from the post of Principal of Bhagwan College of Pharmacy, Aurangabad w.e.f. 5.3.2018 and release salary by treating his service on probation w.e.f. 1.9.2016 to 31.8.2017 and further services till acceptance of his resignation. The petitioner has also prayed for declaration that the communication dated 16.3.2019 issued by the respondent no.4 is null and void in view of his notice for resignation.

3. The petitioner-party in person submits that he is qualified as M.Pharm, Ph.D and served as Principal of Kamala Nehru Poly-Technique (Pharmacy) College, Aurangabad and Principal of Y.B. Chavan College of Pharmacy. In view of vast experience and qualification, he was appointed by respondent no.4 as Principal at Shri Bhagwan College of Pharmacy,

Aurangabad w.e.f 1.9.2016 on adhoc basis in the pay scale of Rs.37,400 to 67,000/- with basic of Rs.52,210 and academic grade pay of Rs.10,000/- with DA, HRA and other allowances. The petitioner joined his service on 1.9.2016. He discharged his duties with great sincerity and commitment. However, vide communication dated 29.8.2017 the Secretary of Respondent no.4 declared break in service of the petitioner for the period from 30.8.2017 to 9.9.2017. The petitioner made several representations and requests to withdraw the said communication, however, no reply was given. On 4.9.2017, the petitioner forwarded reminder. Thereafter, petitioner has continuously served as Principal till he tendered notice of resignation dated 5.12.2017 and made request to the Secretary of Respondent no.4 to relieve him from the post of Principal w.e.f. 5.3.2018. However, his correspondence was not replied. The petitioner discharged his duties till 5.3.2018.

4. The petitioner contends that although he has been paid salary from October, 2016 till August, 2017, it is not in accordance with pay scale prescribed or applicable as per Government Resolutions regarding fixation of salaries. He would further submit that since September, 2017 till 5.3.2018 no amount is paid towards his salary.

5. Respondent no.4 filed affidavit-in-reply contending that the petitioner was appointed as a Principal vide order dated 29.8.2016. During his tenure, a communication was issued from respondent no.2 on 3.6.2017 indicating that the petitioner has made communications to his

office, which were not happily worded. Further, his conduct was not up to the mark for the post of Principal. Therefore, he was warned vide letter dated 29.8.2017 and given break in service for the period from 30.8.2017 to 9.9.2017. Although, petitioner made representation dated 4.9.2017 to the Management, after 9.9.2017 he did not turn up to the College and filed present petition. It is further contended that services of the petitioner have been terminated w.e.f. 29.8.2017 as per decision in the meeting of the Executive Committee dated 14.3.2019. It appears that one more affidavit-in-reply has been filed on behalf of respondent no.4 thereby raising objection to maintainability of this petition, in view of alternate efficacious remedy to redress his grievances.

6. We have heard the petitioner party-in-person, Mr. A.M. Karad, learned advocate appearing for the respondent no.4 as well as learned AGP appearing for respondent nos.1 and 2. Record of the proceedings in this case shows that vide order dated 12.3.2019 and 12.4.2019 alongwith the order dated 18.9.2019 the parties were permitted to approach the Joint Director of Technical Education, Aurangabad/respondent no.2 to examine grievance of the petitioner for payment of arrears of salary. The respondent no.2 was directed to hear the petitioner and Management and take decision upon grievance of the petitioner on it's own merit. In pursuance of the aforesaid directions, hearing was conducted before the respondent no.2. But, he did not ascertain actual salary dues of the petitioner. In conclusion he recorded that appointment of the petitioner was on ad-hoc basis and it was not approved

by the University. Therefore, petitioner is not entitled for fixation of the salary or payment of wages in terms of the Government Regulations. We find that the aforesaid order passed by the respondent no.2 is not in tune with the directions given by this Court.

7. It can be gathered that there are certain undisputed facts surfaced during course of hearing of this writ petition. Admittedly, the petitioner was appointed w.e.f. 1.9.2016 and he tendered notice of resignation dated 5.12.2017 and proposed to demit his office w.e.f. 5.3.2018. Admittedly, there is no reply to the aforesaid correspondence from management. Although, it is sought to be contended on behalf of respondent no.4 that the petitioner never turned to the College since 30.8.2017. Such contention is not supported by the record. On the other hand, the petitioner has made communication on 4.9.2017 to treat his absence from 4.9.2017 as leave till he joins. Communication dated 29.8.2017 issued by respondent no.4 indicates that the petitioner was given break in service from 30.8.2017 to 9.9.2017. In absence of any reply to the resignation notice dated 5.12.2017 tendered by the petitioner, there is no reason to discard contention of the petitioner that he served with the respondent at least till 5.12.2017. The observations in the report of inquiry by respondent no. 2 dated 10.12.2019 shows that Management could not produce any record to indicate that they have replied to the notice of resignation submitted by the petitioner or rejected such notice.

8. Apparently, the respondent Management in their affidavit-in-reply is coming with a case that in meeting dated 14.3.2019 committee decided to terminate services of the petitioner w.e.f. 29.8.2017 and such an order is issued to the petitioner on 16.3.2019. Pertinently, such decision of the Management is coming during pendency of this petition and after more than 15 months of notice of resignation tendered by the petitioner. Therefore, such a decision of the Management is invalid and ineffective. In this background, when respondent no.4 Management has failed to reply the notice of resignation dated 5.12.2017, it shall be presumed that, on expiry of three months period, resignation of the petitioner is deemed to have been accepted.

9. Turning back to appointment order of the petitioner, it is apparent that the petitioner was appointed on the post of 'Principal' and his appointment was subject to prevailing rules and regulations of AICTE of Dr. B.A.M.U. University, the Trust. Minimum service period was two academic years. The resignation of appointee was on condition that he shall deposit three months salary before being relieved. The appointment was in pay scale of Rs.37,400-67,000/- with basic pay Rs.52,210/- and academic grade pay of Rs.10,000/- with DA, HRA and other allowances as per rules of Government of Maharashtra. One month salary was required to be kept in deposit with respondent no.4. At this stage, Mr. Karad, learned advocate appearing for the respondent no.4 would submit that services of any employee during probation or extended period of probation are liable to

be terminated by the Managing Committee without assigning any reason. We may give reference to clause nos.4 and 5 of service rules for Staff framed by respondent no.4.

“4. Services of an employee during probation or extended period of probation may be terminated by the Managing Committee without assigning any reason by giving one month's notice in writing or one month's salary including all allowances in lieu of the notice period.

5. If any employee desires to be relieved during the period of probation, it will be necessary for him to give three months notice in writing or three months salary including all allowances unless and otherwise the Managing Committee permits relaxation under special circumstances.”

10. The harmonious interpretation of the aforesaid service rules alongwith the terms incorporated in the appointment order issued to the petitioner makes it clear that the employee on probation is entitled to resign from service by giving three months advance notice. The resignation letter dated 5.12.2017 given by the petitioner is sufficient compliance of the aforesaid clause. Resultantly, in absence of any contrary material on record, it will have to be presumed that the petitioner rendered his services with respondent no.4 during period from September, 2016 to 5th March, 2018.

11. It is not in dispute that the petitioner has received salary from September, 2016 till August, 2017. The petitioner has not raised any grievance in respect of the amount of salary till his resignation. Therefore, we are not inclined to entertain contentions of the petitioner that payment of salary till August,

2017 was not in accordance with rules and, therefore, any difference is payable to him for that period. However, since the petitioner is not in receipt of salary from September, 2017 onwards, we are inclined to accept case of the petitioner to issue directions against respondent no.4 to release his salary till 5th March, 2018 as per pay scales that is applicable to the post of Principal. The payment of the salary shall be in accordance with the AICTE Rules and Government Resolutions holding the field as on 1.9.2017. We are, therefore, inclined to direct respondent no.2 to undertake the exercise to work out the exact amount of the salary payable to the petitioner from 1.9.2017 till 4.3.2018 treating services of the petitioner to be continuous without any break. We find that, although, there is objection regarding alternate efficacious remedy, in view of the undisputed facts on record and the fact that present petition is pending since 2018, We deem it proper to exercise our writ jurisdiction under Article 226 of the Constitution of India for the purpose of issuing appropriate directions against the respondents. Accordingly, we proceed to pass the following order.

ORDER

- i. Writ Petition is hereby partly allowed.
- ii. The respondent no.2 Joint Director of Technical Education, Aurangabad is hereby directed to work out the salary payable to the petitioner for the period from 1.9.2017 to 4.3.2018 in terms of appointment order coupled with Rules and Regulations governing

payment of salary to the post of 'Principal' within the period of two (2) months from the date of this order.

iii. The petitioner as well as respondent no.4 shall appear before the respondent no.2 on 11th March, 2024 and submit necessary record/requisite documents for quantification of salary dues of the petitioner.

iv. The respondent no.4 after receipt of quantification of the dues from respondent no.2, release such amount to the petitioner alongwith the interest @ 6% p.a. from 6.3.2018 till realization of the amount.

v. Rule is made absolute in the aforesaid terms.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

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