



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7962 OF 2019

Kaviraj S/o Bhagirath Wagh
Age 45 years, Occu. Service,
R/o. Belapur, Tq. Shrirampur,
District : Ahmednagar

.. Petitioner

Versus

1] The State of Maharashtra
Through the Joint Director of Education,
Central Building,
Pune – 411 001

2] Anna S/o Dada Ohal,
Age : 56 years, Occu. : Service,
R/o. Umbargaon, Tq. Shrirampur,
District : Ahmednagar

3] Belapur Education Society,
Tq. Shrirampur, District : Ahmednagar
Through its Chairman / Secretary,
Belapur, Tq. Shrirampur,
District : Ahmednagar

4] The Principal,
Arts & Commerce College,
Belapur, Tq. Shrirampur,
District : Ahmednagar

.. Respondents

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Mr. U.R. Awate, Advocate h/f. S.B. Talekar and Talekar Associates for petitioner

Mr. R.S. Wani, AGP for the respondent no. 1

Mr. V.D. Salunke, Advocate for respondent no. 2

Mr. Vijay B. Jagtap, Advocate for respondent no. 3

Mr. Sandip R. Sapkal, Advocate for respondent no. 4

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 20 JUNE 2024

ORDER (MANGESH S. PATIL, J.) :

Heard both the sides finally at the stage of admission.

2. Rule. Rule is made returnable forthwith. Learned AGP and learned advocates for the respective respondents waive service.

3. The petitioner claims to have been appointed as a peon in the respondent no. 4 college being run by respondent no. 3 - society since 21-06-2003. The university had granted approval to his appointment. He was orally terminated on 21-08-2006. He preferred appeal no. 4 of 2007 before the University and College Tribunal. By the order dated 19-03-2009, the Tribunal set aside his termination and directed him to be reinstated with full backwages.

4. It is the stand of the petitioner that in view of such direction for reinstatement, he was allowed to join the duty on 01-06-2009 and was paid regular salary till October 2010.

5. Respondent no. 2 preferred writ petition no. 3930 of 2009 challenging the judgment and order of the University and College Tribunal passed in petitioner's appeal no. 4 of 2007. The writ petition was allowed by the judgment and order dated 27-09-2010 holding that the order of the University and College Tribunal was not sustainable and that respondent no. 2 who was the petitioner therein was held to have been appointed against the same post of peon by following due process and directed the salary to be released in his favour.

6. The petitioner challenged the decision of the learned Single Judge in writ petition no. 3930 of 2009 by preferring Letters Patent Appeal (**LPA**) no. 283 of 2010. By the order dated 28-10-2010, the parties were directed to maintain *status quo*. The LPA was ultimately dismissed on 30-01-2019. The petitioner's challenge to it before the Supreme Court also failed.

7. Learned advocate for the petitioner would vehemently submit that there was a direction of the College Tribunal for petitioner's reinstatement and he was allowed to resume on 01-08-2009 and was even paid salary till October 2010. In view of the order of *status quo* passed by the division bench in the LPA on 28-10-2010, the respondents ought to have treated the petitioner to have continued in the employment till the date LPA was dismissed on 30-09-2019. However, he has not been paid salary for that period. Hence, this petition.

8. Learned AGP, learned advocates for the respective respondents would oppose the petition. They would not dispute the afore-mentioned facts and circumstances. However, they would deny that the petitioner is entitled to any salary as is being prayed for. They would refer to the affidavit in reply of respondent no. 2 as also one filed on behalf of respondent no. 1 by the Joint Director of Education. They would submit that the petitioner and respondent no. 2 are staking

claim against the same post of peon. The decision having ultimately been in favour of respondent no. 2, he has been paid salary. The petitioner cannot claim salary for the period. Mere passing of the order of *status quo* would not be sufficient to demonstrate about he having actually worked during that period between 28-10-2010, when the *status quo* was directed, till the LPA was decided on 30-01-2019. They would advert our attention to the observations of the learned Single Judge in the order whereby the writ petition of respondent no. 2 was allowed, referring to the affidavit in reply filed in the petition by the principal, respondent no. 4 who was also arrayed therein as respondent no. 4 and a direction was given to the management to release the salary of respondent no. 2 herein.

9. Learned AGP and the learned advocate for the respondents would also advert our attention to the observations of the division bench of this Court in Civil Application no. 7794 of 2019 in Review Application (Stamp) no. 18667 of 2019 dated 09-07-2019 wherein also a similar stand of the present petitioner who was seeking review of the decision in the matter of LPA, wherein it was expressly observed that as the learned Single Judge had held respondent no. 2 to be entitled to hold the post of peon, the petitioner who was also simultaneously staking claim to that post but only respondent no. 2 was entitled to claim the salary.

10. Lastly, the learned AGP and the learned advocates for the respondents would also advert our attention to the order passed by the learned Single Judge in the Contempt Petition no. 28 of 2011 taken out by the petitioner, dated 14-11-2011.

11. We have considered the rival submissions and perused the papers including the affidavits in reply.

12. As can be discerned, there has been not much of dispute about the chronology of the events and the decisions mentioned herein-above. The question that falls for consideration is as to whether in view of the order of *status quo* passed in the LPA preferred by the petitioner one can reach a conclusion about he having rendered the service during the period the LPA was pending so that he can be held entitled to claim the salary for that period.

13. In our considered view, when the respondents have been expressly denying the fact about the petitioner having worked during that period as a peon, one cannot *ipso facto* reach a conclusion as is being sought to be claimed by the petitioner about having worked during that period. It is a factual dispute which cannot be decided within the limited jurisdiction under Article 226 of the Constitution of India.

14. Independently, it was incumbent for the petitioner to have demonstrated that in view of the order of *status quo* granted in the LPA, he was allowed to and continued to work on the post of peon till the LPA was dismissed. Rather, there were contrary observations of the learned Single Judge not only in the order passed in Writ Petition no. 3930 of 2009 about respondent no. 2 having worked on the post of peon and was entitled to claim the salary during that period, but even while even passing the order in the Contempt Petition no. 28 of 2011 initiated by the petitioner. Following were the observations made in paragraph no. 5 :-

"5) It is informed by the respondent / management that pursuant to the directions in Writ Petition No.3930/2009, said Anna is working as a peon in the management or the college. However, the petitioner – Kaviraj is manipulating the record and creating it to show that he is working as a peon, as he is signing some registers maintained by the persons, who claim parallel management. It is informed in the affidavit of Pralhad Patil filed on behalf of the Respondent Nos. 1 and 2 that the petitioner – Kaviraj was not working as peon even at the time of writ petition No. 3930/2010, that has been specifically so stated in the writ petition."

It is necessary to bear in mind that by filing contempt proceedings, the petitioner was alleging wilful disobedience of the order of *status quo* passed in the LPA on 28-10-2010.

15. Since the learned Single Judge had expressly observed indicating that there was no disobedience and that the petitioner was not working as a peon even during pendency of Writ Petition no. 3930 of 2009, it is well nigh clear that the petitioner's stand about having

worked during pendency of the LPA falls to the ground. It was already agitated and decided by the learned Single Judge not once but twice, while deciding the Writ Petition no. 3930 of 2009 and also while disposing of the Contempt Petition no. 28 of 2011.

16. It is, therefore, abundantly clear that the petitioner's grievance about having worked during pendency of the LPA and claim to the salary for that period was expressly agitated, commented upon and decided by the learned Single Judge in Contempt Petition which was decided as back as on 14-11-2011. The petitioner cannot be allowed to re-agitate the issue in the form of present writ petition which he has filed almost 8 years after the order was passed in the contempt proceedings. The issue about he having worked or otherwise during the period the LPA was pending and his claim to salary for the period having been put to rest by the afore-mentioned observations in Contempt Petition no. 28 of 2011, the petitioner is not entitled to any relief.

17. The writ petition is dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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