

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2828 OF 2024

Savitribai Phule Pune University thr.

The Registrar and Anr.

... Petitioners

Versus

Alok Shivaji Salve

... Respondents

Mr. Ram Apte Senior Advocate *i/b thr. V.C. Dr. Rajendra Anbhule Adv. for Petitioners.*

Mr. Jaydeep Deo, *Adv for Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATE : 17th December, 2024.

P.C. :

1) **Rule.** Rule made returnable forthwith. With the consent of learned counsel appearing for parties, the petition is taken up for hearing and disposal.

2) By this petition filed by Savitribai Phule Pune University, the Award dated 7 March 2022 passed by the Presiding Officer Labour Court No. 4 Pune in Reference IDA No. 346 of 2015 has been challenged. By the impugned Award, the Labour Court has directed the Petitioners to reinstate the Respondent-employee in service together with 25% back wages and

consequential benefits along with 9% interest in addition to payment of Rs. 5,000/- towards costs.

3) I have heard, Mr. Apte, the learned senior counsel appearing for Petitioner-University and Mr. Deo the learned counsel appearing for Respondent-employee.

4) It appears that, Pune Municipal Corporation decided to introduce a scheme for imparting training to students from backward communities for preparing them for competitive examinations conducted by Maharashtra Public Service Commission and Union Public Service Commission and accordingly entered into an agreement with the Pune University for imparting training to such students by incurring cost of Rs. 17,000/- per student. The project was to be implemented for a period of three years. By letter dated 13 December 2011, the Municipal Corporation wrote to Pune University conveying the decision taken by the Municipal Corporation vide the resolution adopted by general body of the Municipal Corporation on 15 November 2011. It appears that an agreement was executed between Pune Municipal Corporation and Pune University on 31 March 2012 for impart of such training for a period of three years from 1 February 2012 to 31 January 2015.

5) It is the case of Respondent-employee that he was engaged by the Petitioner-University since June, 2011 on salary of Rs. 6,000/- per month which was progressively increased to Rs. 10,000/- per month. He claims that his services were orally terminated on 1st December, 2015. The Respondent-employee however did not disclose in his Statement of Claim as to how his services came to be engaged from July 2011 as alleged.

6) During the course of evidence, Respondent-employee admitted that no advertisement prior to his engagement in the Petitioner-University. He further admitted no selection process was conducted before selecting him

for engagement in service. He further admitted non-issuance of any appointment order in his name.

7) Perusal of averments made in Paragraph No. 3 of the Statement of Claim would indicate that the Respondent-employee has referred to various projects implemented by the Petitioner-University and has admitted that his appointment was made against one such projects. Thus there appears to be some admission on behalf of the Respondent in the Statement of Claim itself that he was engaged against a project. According to Mr. Apte, the services of the Respondent were utilized only for the purpose of fulfilling the obligations of Pune University arising out of the agreement dated 31 March 2012 executed with Pune Municipal Corporation, tenure of which was only for three years from 1 February 2012 to 31 March 2015. Mr. Deo would seek to counter this contention by submitting that while the contract commenced from 1st December 2012, the engagement of the Respondent was made in July 2011. He would invite my attention to the admission given by witness examined by Petitioner-University that Respondent worked from 2011 to 2016 in the University. He would submit that since the engagement of the Respondent was made much prior to the execution of the agreement, his appointment cannot be linked to the said agreement. I am unable to agree. According to the admission given by the Respondent himself, he is engaged against a project. Apart from making a bald statement that he was engaged in July 2011, no documentary evidence is produced by him to prove his appointment on the establishment of the University since July 2011. So far as the admission given by the witness of Petitioner-University is concerned, the admission merely shows that Respondent worked from 2011 to 2015. Petitioner-University does not really dispute the fact that Respondent did work with the University on the project in question. The issue is here whether any right got created in

favour of the Respondent to remain in continuous service of the University, after the project ended.

8) Perusal of the findings recorded by the Labour Court would indicate that the relief of reinstatement with 25% back wages is granted by relying on provisions of Section 25F of the Industrial Disputes Act, 1947 on account of Respondent completing 240 days of service in a calendar year. However, what the Labour Court has completely ignored is the judgment of Division Bench of this Court in the ***Municipal Council, Tirora Vs. Tulsidas Baliram Bindhade***, 2016 (6) Mh.L.J 867. The Division Bench of this Court has held that Courts and Tribunals do not have jurisdiction to create posts on establishment of Instrumentality of State. Petitioner is an University and it would be impermissible for the Labour Court to direct that Respondent must be continued in its service in absence of any sanctioned post. Direction issued by the Labour Court for reinstatement of the Respondent would indirectly mean creation of post on the establishment of University, which power the Labour Court does not have as per the law enunciated by Division Bench of this Court in ***Municipal Council, Tirora*** (supra).

9) In the present case, there is not even an averment in the Statement of Claim that the appointment of Respondent was made against a duly sanctioned vacant post on the establishment of the University. Admittedly, he did not participate in any selection process nor was issued any appointment order. His engagement itself was *dehors* the procedure established for effecting regular appointments on the establishment of the University. Since his services were utilized purely for the purpose of execution of the project in association with Pune Municipal Corporation, in my view, Respondent did not have any right to remain in service of the Petitioner-University after the project came to an end. The Labour Court has completely misdirected itself in awarding the relief of reinstatement

with 25 % back wages. The impugned Award passed by the Labour Court is unsustainable and is liable to be set aside. Writ petition accordingly succeeds. Award dated 7 March 2022 passed by the Labour Court Pune in Reference IDA No. 346 of 2015 is set aside. Writ petition is allowed. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]