



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6848 OF 2017

The State Of Maharashtra
Through The Joint Director
Higher Education, Jalgaon.

...Petitioner

VERSUS

1. Bapurao Dhondu Desai
Age “ 57 years, Occu. Nil,
R/o.-1, Zilla Parishad Colony,
Near Shiv College Stop, Jalgaon
Dist: Jalgaon.

2. North Maharashtra University
Jalgaon, Through Vice Chancellor.

3. North Maharashtra University,
Jalgaon Through its Registrar.

...Respondents

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Mr. P. P. Dawalkar, AGP for Petitioner-State.

Mr. Pramod S. Gaikwad Advocate for Respondent No.1.

Mr. P. N. Kutti Advocate for Respondent Nos. 2 and 3.

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CORAM : KISHORE C. SANT, J.

DATE : 12th FEBRUARY 2025

ORDER :-

1. Herd the learned Advocates for the parties.
2. Rule. Rule made returnable forthwith with consent of the parties heard finally.
3. The petitioner is the State Government, who has challenged the order dated 20th April 2016 passed by the learned Presiding Officer, University and College Tribunal, Aurangabad in Appeal No.NMU-9 of 2008 thereby holding respondent No.1 entitled to receive back-wages from the date of termination w.e.f. 24th November 2008 till the date of his reinstatement in service.
4. The facts, in short, are that the respondent No.1 was working as Head of the Department with Respondent Nos.2 and 3 i.e. North Maharashtra University. When he was in service, he was charged with the allegations of misconduct, corruption and sexual harassment. An inquiry was held and after holding inquiry, he came to be terminated. The respondent No.1 challenged the said order by filing an Appeal before the University and College Tribunal, Aurangabad bearing Appeal

No.NMU-9 of 2008. The said appeal came to be dismissed by the learned Tribunal. The Respondent No.1 therefore, approached this Court by filing a Writ Petition No.9988 of 2010. The said writ petition was partly allowed. The appeal came to be remanded back for fresh decision by following due procedure. After remand, the learned Presiding Officer of the Tribunal set aside the termination order and directed to reinstate the respondent No.1. The claim of back-wages was not allowed on the principle of “no work no pay”.

5. Respondent No.1 therefore again filed a Writ Petition bearing No.4718 of 2011 in this Court only to the extent of non-granting of back-wages. This Court partly allowed the said writ petition and remanded the matter back only for consideration of the back-wages. Paragraph No.5 of judgment dated 15th November 2011 passed by this Court in Writ Petition No. 4718 of 2011, reads as under:-

“5. With the assistance of the learned counsel I have perused the judgment delivered by the learned Presiding Officer, University Tribunal, Aurangabad. The learned Presiding Officer, has come to the conclusion that the enquiry conducted against the petitioner is vitiated. It has also come to the conclusion that the evidence recorded in the departmental enquiry does not support the order of dismissal of present petitioner. In the operative part though the order of termination is quashed and set aside, the learned Presiding Officer has further directed that the appellant is not entitled for

the back-wages in view of the decision of the Supreme Court of India, but has nowhere discussed about the said judgment of the Apex Court in the body of the judgment and as to how the same is applicable in the present matter. In the whole body of the judgment nowhere transpires that the learned Presiding Officer has discussed about the entitlement or non entitlement of back-wages to the petitioner. In such circumstances, the order to the extent of back-wages deserves to be quashed and set aside.”

6. It was specifically observed that, the learned Presiding Officer has not discussed anything about the entitlement or non entitlement of back-wages to the petitioner.

7. Till this time, the State was not a party to the appeal before the Tribunal. Since there was question of liability to pay the back-wages, the learned Joint Director of Higher Education, Jalgaon, came to be added as party Respondent in the appeal. After hearing the parties, now, by way of impugned judgment and order, the Presiding Officer has directed the Government to pay the amount of back-wages. The University is directed to calculate the back-wages of the respondent No.1 and forward the proposal to the Joint Director of Higher Education, Jalgaon for consideration and payment of the back-wages. The payment was directed immediately. It is this order which is now challenged in this writ petition by the Government.

8. At the outset, the learned Advocate for the Respondent No.1 points out an order dated 21st December 2022 passed by this Court wherein the AGP was directed to take instructions as to whether the State would release the back-wages of the respondent No.1 and in the event, the petitioner succeeds in this petition then petitioner would be entitled to recover the amount from respondent No.2 and 3. He submits that, in view of this order, it is clear that it is the Government, who has to pay the amount of back-wages and after determining the liability, it is open to the Government to recover the amount from respondent-University. He thus submits that, this Court has framed an opinion that the respondent No.1 is entitled to receive back-wages and the question as to who is liable to pay the amount is only to be considered. In view of the same, he submits that now, nothing remained in this writ petition and the same deserves to be dismissed. This Court will consider this submission after the discussion.

9. Learned AGP vehemently argued that this Court has made very clear that the Tribunal has to consider the entitlement of the respondent No.1 by considering legal position. However, there is no discussion or

findings recorded by the learned Tribunal except saying that “no work no pay” principle is not applicable in the present case as the respondent No.1 is not a workman.

10. The learned AGP relied upon the judgment in the case of ***Mohan Moreshwar Agashe Vs. The Managing Director, Maharashtra State Electricity Distribution Company Ltd. And Anr.*** passed by this court at Principal Seat in Writ Petition No.7763 of 2013 dated 3rd March 2017. His second submission is that, It was for the respondent No.1 to show that he was not gainfully employed. There is nothing produced on record by the respondent No.1, except argument to show that he was not gainfully employed. Such burden could not have been shifted on the petitioner. In support of his submission, he relied upon the order dated 12th November 2024 passed by this Court in Writ Petition No.1959 of 2022 in the case of ***Pandurang Tukaram Dhumse Vs. Shri Saibaba Sansthan Vishwasta Vyavastha.*** His third submission is that, the Government i.e. State was not a party in the proceeding before the Tribunal. The Government was added only after the second remand. When only question was of back-wages that was to be decided. He relied

upon the judgment of this Court in the case of ***The President, Bhagwan Shikshan Prasarak Mandal, Georai Dist. Beed and Anr. Vs. Dr.Shrihari Ramrao Dhond and Ors.*** passed in Writ Petition No.333 of 2021 dated 18th August 2021. On relying on these judgments, he submits that, it is a fit case to remand the matter back to the learned University and College Tribunal, Aurangabad for decision afresh on the aspect of back-wages by keeping in view the direction passed by this Court in Writ Petition No.4718 of 2011 and more particularly in view of paragraph No.5. The learned AGP also shows that for some period, the respondent No.1 was working with one College namely, Kamalakka Patil Art, Science and Commerce College, Amlaner, Dist Jalgaon. He was even in-charge principal of this College for a period of 02.08.2010 till 26.02.2011 and thereafter again from 01.05.2012 to 31.07.2012. This clearly shows that, he was gainfully employed.

11. The learned Advocate for the respondent No.1 argued that the petitioner was very much a party before the Tribunal when the question of back-wages was to be decided. The post on which the respondent No.1 was working was a sanctioned post and thus it is the liability of the

Government to pay the salary to Respondent No.1. The learned Advocate further submits that though he was shown to have worked, the said period is only on nine months whereas the period of termination is of 29 months. The post where he was working as in-charge principal was in a College which was not receiving grants. He was only working on honorary basis and was not getting complete salary. He thus submits that the present writ petition deserves to be dismissed.

12. Mr.Kutti, the learned Advocate for the Respondent Nos.2 and 3-University submits that the fair opportunity ought to have been given to the parties in view of the judgment passed by this Court in Writ Petition No. 4718 of 2011.

13. Looking to the order passed in Writ Petition No.4718 of 2011, this Court had specifically directed to consider the matter of back-wages in the light of the questions referred in the judgment. It is seen from the order that, this Court finds that the observations that the Respondent No.1 is not a workman and therefore, the principle of “no work no pay” would not be applicable certainly is perverse. The principle of “no work

no pay” is well accepted principle in the service law. So far as the other issue is concerned, this Court finds that wrongly a burden was placed on the petitioner to show that the respondent No.1 was not gainfully employed. In fact, it is for the concerned person to specifically show that he was not gainfully employed. As rightly pointed out the learned AGP that there is no pleading to the effect that the respondent No.1 was not gainfully employed. That issue is raised for the first time in the argument. The learned Presiding Officer failed to appreciate even this aspect. Now, the respondent has submitted that though he was working in some other College for some period, he was not getting salary. This argument can hardly be accepted. The person cannot work on two post at the same time and thus this argument suffers from fallacy.

14. This Court thus, in all, finds that the directions given in paragraph No.5 of the judgment in Writ Petition 4718 of 2022 were not properly considered by the learned Presiding Officer. Even after remand, the learned Presiding Officer has not considered this aspect specifically.

15. Considering all these aspects, this Court finds that the petition deserves to be partly allowed. The matter is therefore remanded back for decision afresh. So far as back-wages is concerned, the learned Presiding Officer shall decide this question keeping in view the judgment passed by this Court on 15th November 2011 in Writ Petition No.4718 of 2011 and more particularly in paragraph No.5.

16. With this, writ petition is partly allowed.

17. As the parties are in litigation since long, the learned Presiding Officer is expected to decide this question within three months after remand of the matter.

18. The learned Presiding Officer shall also keep in mind that it is liability of the respondent No.1 to show that he was not gainfully employed.

19. Rule is accordingly made absolute in above terms.

20. Civil Applications, if any, also stand disposed off.

[KISHORE C. SANT, J.]