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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.773 OF 2025

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Vidyavikas Mandal

... Petitioner

V/s.

Prashant Gaurishankar Rajmane & Ors.

... Respondents

Mr. N. V. Bandiwadekar Senior Advocate i/by Mr. I. M. Khairdi for the petitioner.

Mr. Y. B. Lengare with Aditya K. Gaikwad for respondent No.1.

Ms. Aloka A. Nadkarni, AGP for the State-respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 5, 2025

P.C.:

1. The present writ petition, filed under Articles 226 and 227 of the Constitution of India, assails the legality, validity, and propriety of the order rendered by the learned College Tribunal, Pune, in Appeal No.2 of 2018, whereby the appeal preferred by respondent No.1 was allowed, holding that the communication dated 12 August 2015 issued by the petitioner-Management through respondent No.2 amounted to an 'otherwise termination' and consequently directing reinstatement of respondent No.1 along with full back wages.

2. The factual matrix giving rise to the present proceedings may briefly be delineated as follows:

3. Respondent No.1 was appointed as a Junior Clerk in the petitioner-Management institution by an appointment order dated 3 May 1999. His services were governed by the Standard Code Rules, 1985, and other applicable ordinances and regulations. Upon his initial appointment, respondent No.1 was placed on probation for a period of one year, and upon successful completion thereof, he claims to have been deemed confirmed in service as a Junior Clerk. It is the case of respondent No.1 that he remained in continuous service until the impugned communication dated 12 August 2015 was issued by the Management.

4. It is further asserted by respondent No.1 that while he was initially appointed on a non-grant post, at a subsequent stage, the Regional Joint Director of Higher Education granted approval for his transition from a non-grant to an aided post. However, the said approval was subsequently revoked, whereupon he was reverted to a non-grant post, leading to a reduction in his salary from Rs.12,700/- to Rs.5,000/-. According to respondent No.1, on 12 August 2015, the petitioner-Management informed him that, owing to his alleged absence, another individual had been appointed in his place. Aggrieved by this action, respondent No.1 instituted Appeal No.2 of 2018 before the College Tribunal, Pune.

5. The learned College Tribunal, upon an exhaustive appreciation of the material placed before it, arrived at the conclusion that the communication dated 12 August 2015, in

effect, amounted to an 'otherwise termination' of respondent No.1's service. The Tribunal observed that even assuming the case of the petitioner-Management to be correct—that respondent No.1 remained absent without leave or intimation—the Management was still under an obligation to conduct a disciplinary inquiry prior to dispensing with his services. Holding that no such inquiry was conducted, the Tribunal proceeded to direct the reinstatement of respondent No.1 with full back wages and continuity of service.

6. Mr. Bandiwadekar, learned Senior Advocate appearing on behalf of the petitioner, strenuously contended that the communication dated 12 August 2015, by no stretch of legal interpretation, could be construed as a termination order, and consequently, the appeal preferred by respondent No.1 before the College Tribunal was not maintainable. He invited the attention of this Court to the provisions of Section 81 of the Maharashtra Public Universities Act, 2016, to submit that the jurisdiction of the College Tribunal is confined to examining the legality of termination orders, and in the absence of a formal order of termination, the Tribunal could not have exercised its jurisdiction so as to direct reinstatement of respondent No.1. He further contended that the College Tribunal erred in mechanically awarding full back wages without considering the factual matrix in its entirety. According to the learned Senior Advocate, the Management was compelled to issue the impugned communication solely due to respondent No.1's unauthorized absence, and in such circumstances, the Tribunal ought to have, at the very least, reduced the quantum of back wages, keeping in

mind the conduct of respondent No.1.

7. Per contra, Mr. Lengare, learned Advocate appearing for respondent No.1, vehemently opposed the submissions advanced on behalf of the petitioner-Management. He contended that at no point before the College Tribunal did the Management take the plea that respondent No.1 was absent from service and that such absence led to the impugned action. He submitted that had the Management taken such a plea before the Tribunal, the matter could have been resolved then and there by recording the Management's statement that respondent No.1's services were never terminated, which would have entitled respondent No.1 to continue to discharge his duties as a Junior Clerk without hindrance.

8. The learned counsel further submitted that respondent No.1, by way of an affidavit filed before the College Tribunal, categorically stated that he remained unemployed during the pendency of the appeal, and in the absence of any rebuttal by the Management, the Tribunal was justified in awarding full back wages. Drawing the attention of this Court to a communication dated 19 August 2015 addressed by respondent No.1 to the Management, he contended that respondent No.1 had unequivocally expressed his readiness and willingness to sign the muster roll, but he was unlawfully prevented from doing so by the Management under the pretext of pendency of proceedings before this Court. In light of these circumstances, the learned counsel submitted that the College Tribunal's order directing full back wages is just, proper, and in consonance with established legal

principles.

9. Having heard the learned counsel for the parties and upon a careful examination of the record, the principal question that falls for determination is whether the communication dated 12 August 2015 amounts to an 'otherwise termination' of service, thereby attracting the jurisdiction of the College Tribunal under Section 81 of the Maharashtra Public Universities Act, 2016. The secondary issue that arises for consideration is whether, in the facts and circumstances of the case, the direction for reinstatement along with full back wages is legally sustainable.

10. Rival contentions on both sides fall for earnest consideration. The principal contention raised on behalf of the Management is that the communication dated 12 August 2015 cannot be construed as a termination of service under any recognized principle of law. The Management has endeavored to suggest that respondent No.1 continues in service as a Junior Clerk, rendering the appeal itself as misconceived. However, if that were indeed the correct state of affairs, it was incumbent upon the Management, in the proceedings before the learned College Tribunal, to have clearly stated that respondent No.1 had never been terminated. Instead, the Management chose to contest the appeal on merits, thereby allowing the inference to be drawn that the communication dated 12 August 2015 was indeed intended to put an end to the services of respondent No.1. In such circumstances, the learned College Tribunal was justified in recording that the impugned communication amounted to an 'otherwise termination' within the ambit of Section 59 of the Maharashtra Public

Universities Act, 2016.

11. There is no serious dispute that respondent No.1 was appointed in 1999 and, by virtue of completion of his probation, he acquired the status of a deemed permanent employee. The record reveals that he was duly transferred to an aided (grantable) post, only to be reverted later to a non-aided post upon the cancellation of approval by the Regional Director. This resulted in a sharp reduction in his salary from Rs.12,700/- to Rs.5,000/-. As a permanent employee, respondent No.1 was entitled to the due protection of a disciplinary inquiry before any purported termination, whether couched as a communication or otherwise. In the absence of such an inquiry, the order of the learned College Tribunal directing reinstatement cannot be faulted.

12. On the question of grant of back wages, reliance has rightly been placed on the pronouncement of the Hon'ble Supreme Court in *Deepali Gundu Survase vs. Kranti Junior Adhyapak & Ors.*, (2013) 10 SCC 324, wherein the Court has enunciated the principle that an employee whose termination is found to be legally unsustainable is, ordinarily, entitled to full back wages unless the employer establishes that the employee was gainfully employed elsewhere or that there exist other cogent reasons to deprive the employee of such monetary relief. In the present case, respondent No.1 has consistently pleaded that he remained unemployed during the relevant period and was, in fact, prevented from signing the muster on 19 August 2015 under the pretext of pendency of the writ petition.

13. The Management, for its part, has not adduced any concrete or conclusive evidence to show that the absence of respondent No.1 was wilful or that he had secured alternative employment. Hence, there is no material on record to indicate that respondent No.1 was gainfully employed elsewhere or that his absence was deliberate so as to deprive him of back wages. Having regard to the totality of circumstances and the binding precedent in Deepali Gundu Survase (supra), I find no illegality or perversity in the direction of the College Tribunal awarding full back wages. Consequently, the writ petition being devoid of merit stands dismissed. There shall be no order as to costs.

14. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)