

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12004 OF 2016

Samaj Shikshan Mandal & Anr. ... Petitioners
Vs.
Shri. Ghodake Dattatray Nivrutirao & Ors. ... Respondents

....
Mr. D.S. Mhaispurkar with Mr. Sameer M. Mangaonkar for the
Petitioners.
Mr. C.R. Sadasivan i/b Mr. N.M. Ganguli for the Respondent No. 1.
Smt. M.S. Bane 'B' Panel Counsel for the Respondent No. 3.

...
CORAM : A.A. SAYED, J.
DATE : 16 DECEMBER 2016

P.C.:

- 1 Heard.
- 2 Rule.
- 3 Mr. C.R. Sadasivan waives service on behalf of the Respondent No. 1. Learned AGP waives service on behalf of the Respondent No. 3.

ON INTERIM RELIEF:

4 Heard learned Counsel for the Petitioners and the learned Counsel for the Respondent No. 1 employee and the learned AGP on interim relief.

5 The operative part of the impugned judgment of the College Tribunal reads as follows:

ORDER

- 1) *The Appeal is allowed.*
- 2) *The order of termination of services of the appellant dated 10-1-2015 is hereby set aside.*
- 3) *The Respondents No. 1 and 2 are directed to reinstate the appellant with full back-wages and continuity of service w.e.f. 10-1-2015, within two months from the date of this order.*
- 4) *If in future the work-load is not available, the management would be at liberty to apply to the University and the Government for declaring the appellant as surplus.*
- 5) *In the circumstances, no order as to cost.*

6 The Respondent No. 1-employee/original Appellant having qualifications of M.A. (Economics), and M.Phil and has cleared National Eligibility Test (NET). He is from physically challenged category. After an advertisement and interview he was selected by duly constituted selection committee for the post of Assistant Professor in Economics.

7 In the impugned order of the College Tribunal in para 10 it is held as follows;

10 It is an admitted position that out of the four teachers including the Principal, one Prof. Kamble was under the order of suspension when services of the

Appellant were terminated. So, in his absence, his workload of aided subject was available for the Appellant. So that could have been allotted to the Appellant. However, without following the procedure the Management terminated his services. Not only that, in the termination order there is no mention that his services have been terminated on the ground of reduction in workload.

In such circumstances, termination of his services cannot be termed as legal and proper. So the Appellant will be entitled to relief of reinstatement. If according to the Respondents, the workload is not available, then in that case, the proposal to declare him surplus is required to be sent to the University and the Government so that if there is any suitable vacancy on the said post in any other college affiliated to the University, the Appellant would be eligible for that appointment on a suitable post. But without following the procedure, they cannot terminate his services, he being a confirmed teacher.

8 Though it is sought to be contended on behalf of the Petitioner that the termination was also on the ground that there was no workload available and the Respondent No.1-employer was therefore terminated as he was on probation and was the junior-most employee, it is however an admitted position before the Court that so far as the termination order is concerned, nothing is stated therein as regards reduction of workload.

9 The College Tribunal after examining the material on record and hearing the parties has held that at the time of his appointment the Respondent No. 1-employee had the required qualifications and was selected by duly constituted selection committee for the post of Assistant Professor (Economics) and he was appointed on a clear vacancy and on full time basis on probation and joined duty on 15 January 2013 and his appointment was approved by the University of Pune with effect from 15 January 2013. The Tribunal has held that the probation period was one year as per UGC Notification of 2010, which the Respondent No. 1-employee has completed and was a permanent teacher and the procedure required to be followed for termination of a permanent employee has not been followed.

10 Learned Counsel for the Petitioner sought to argue that there was a fraud by practiced the Principal in the appointment of the Respondent No. 1. He relied upon the case of **District Primary School Council, West Bengal Vs. Mritunjoy Das and Others, (2011) 15 SCC 111**. In that case the employee was involved in the fraud. Such is not the case here. In any case the termination order does not speak of any fraud committed by the Principal in the appointment of the Respondent No. 1- employee. No ground of fraud is alleged even in the present Petition. The Tribunal has provided in operative part of the impugned order that

if the workload is not available, the Management would be at liberty to apply to the University and the Government for declaring the Appellant-Respondent No. 1-employee as surplus.

11 In the circumstances, I am not inclined to stay the impugned order. The request for stay shall stand rejected.

(A.A. SAYED, J.)