

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6308 OF 2013

GOPINATH & ANR.

Appellant(s)

VERSUS

HARISCHANDRA (D) BY LRS. & ORS.

Respondent(s)

WITH

CIVIL APPEAL NO.6309/2013 and

CIVIL APPEAL NO.6310/2013

O R D E R

All these three appeals have been filed against the judgment of the High Court dated 9.11.2006 by which judgment Writ Petition No. 3031 of 1994 filed by Prof. H.P. Gitte has been allowed and the Writ Petition No.5635 of 1995 filed by one Suvalal was dismissed.

2. Brief facts of the case for deciding these appeals are as under:

The respondent No. 1 - hereinafter referred to as Gitte was working in an institution, namely, Vaidhyanath College, Maharashtra State, as Lecturer. In the year 1990, the regular Principal resigned from the post of Principal and there occurred vacancy of permanent Principal. H.P.Gitte was given charge as Incharge, Principal of

Vaidyanath College vide letter dated 10.1.1991. The management forwarded letter appointing him as Principal.

3. The Marathwada University vide order dated 24.1.2019 granted approval to the appointment of H.P.Gitte as Incharge, Principal of Vaidyanath College, for smooth running and day to day work of the College. The Management Committee passed a Resolution on 24.5.1993 confirming services of Gitte w.e.f. 11.1.1993 in the pay scale. When the said resolution was forwarded to the University, vide its order dated 13.7.1993, the University refused to approve the said proposal observing that Gitte was working as Incharge, Principal since he was not selected by the Selection Committee as per the procedure. Gitte continued to work as Principal Incharge.

4. On 29.12.1993 he was terminated from the post of Incharge Principal and sent to the original post of Lecturer in History. In place of Gitte, one S.S Munde was appointed as Incharge, Principal from 30.12.1993. The management forwarded the resolution to the University and vide order dated 31.12.1993, the University approved the appointment of S.S.Munde as Incharge Principal. University, however, directed that appointment of permanent Principal be made through advertisement and Selection Committee.

5. Aggrieved by the termination order, Gitte filed an appeal before the College Tribunal, Dr. Babasaheb Ambedkar Marathwada University Aurangabad. The said Appeal under Section 42 (B) (1) of Dr. Babasaheb Ambedkar Marathwada

University Act, 1974 was decided by the Tribunal vide its order dated 2.9.1994.

6. The Tribunal after considering the appeal of Gitte and hearing the management came to the conclusion that termination of Gitte as Incharge Principal on 29.11.1993 was not valid. The Tribunal, however, while considering the question of grant of relief to Gitte, came to the conclusion that due to subsequent developments, Gitte cannot be reinstated on the said post. Consequently, Tribunal passed the following order awarding amount of compensation equal to six months' pay in following words.

"(a) The appeal is partly allowed and the Impugned Order dated 29.12.1993, written and/or oral, in so far as it relates to removal of the Appellant from the post of Incharge Principal and relieving him of the duties of this post with effect from 30.12.1993 is held illegal and improper and instead of directing the Appellant, his reinstatement to the said post, he is declared entitled to the amount of compensation equal to the sum of six months' pay and all other allowances of the post of Principal, as provided under Clauses (e) and (f) of Sub-Section 2 of Section of Section 42(D) of Dr. Babasaheb Ambedkar Marathwada University Act, 1974.

7. Aggrieved by the order of the Tribunal, both Gitte and Suvalal filed writ petitions in the High Court. High Court did not grant any interim order to Gitte and the writ petition remained pending for more than 11 years and was ultimately decided on 9.11.2006. High Court modified the direction of the Tribunal to the following effect:

"The petitioner shall be reinstated as Principal of the college within a period of two months. he shall be paid 50% of the difference of pay from the date of his removal/reversion i.e. 30.12.1993 till the date of his reinstatement, as may be admissible to the post of Principal from time to time and to the post of Lecturer, during the aforesaid period, along with the incidental benefits like D.A. etc. the payment shall be made by Management of the college from its own funds and the Management would be at liberty to recover such amount from the properties of Late Suvalal, through the legal process as may be permissible, if it so decides to do the reinstatement and appointment of the petitioner shall be on adhoc basis as Principal subject to his selection by the duly constituted Selection Committee as per statute No.219. The Selection Committee shall be constituted within a period of two months after reinstatement of the Petitioner and that the process of selection shall be conducted within two months thereafter, allowing the Petitioner - Prof. H.P.Gitte and other equally placed/eligible candidates to participate in the process of selection. The University would be at liberty to consider relaxation of NET/CET qualification to the extent of the Petitioner if it is so permissible under the Rules. If he is not selected by the duly constituted Committee, then the College Management shall be at liberty to revert him to the substantive post as Lecturer. He is entitled to recover costs of Rs.10,000/- from the respondent Nos.1 and 2.

8. Aggrieved by the judgment of the High Court these three appeals have been filed. Civil Appeal No.6308/2013 has been filed by the management of the Institution. C.A.No.6309/2013 has been filed by one Dr.Ramchandra Kishanrao Ipper who was appointed in the meantime as regular Principal of the institution by appointment order dated 24.3.2006 in pursuance of which he was working on the post of Principal. C.A.No.6310/2013 has been filed by Gitte

questioning the order of High Court in so far as it granted only 50% back wages to Gitte.

9. We have heard the learned counsel for the parties and perused the records.

10. Learned counsel for the management submits that Gitte was given appointment as only Incharge Principal and he was never paid salary on the post of Principal, no kind of selection took place when Gitte was appointed. He had no right to the post. He submits that by order dated 29.12.1993, another person was appointed as Incharge, Principal in place of Gitte who continued to work thereafter. He further submits that during the pendency of the writ petition, two regular selection process took place. In first selection, which took place in the year 2001, one Dr.A.R.Kurme was selected by the Selection Committee on 13.8.2001 as regular Principal. Kurme died on 27.12.2005, again causing regular vacancy on the post of Principal. On 10.1.2006, advertisement was issued for filling up the post of Principal and in pursuance of the regular selection, Dr.Ramchandra Kishanrao Ipper was appointed on 24.3.2006, who is appellant in C.A.6309/2013. Learned counsel submits that since Gitte was working only as Incharge, Principal, there was no question of termination of his services and he did not hold any post. He has relied upon a judgment of this Court in 1993 Suppl(3) SCC 252 titled State of Haryana vs. S.M.Sharma & Ors.

11. Learned counsel appearing for Gitte (who died during the pendency of these appeals and is represented through his LRs.) submits that appointment of Gitte on the post of Principal was confirmed by the management, hence, he was entitled both for the salary and the post. He submits that Gitte could not have been terminated on the post without following the procedure prescribed under the law. He further states that order terminating services of Gitte was stagmatic and could not have been passed without holding an enquiry. Learned counsel however does not dispute that regular selection took place in between. He has also pointed out to the interim order passed by this Court on 4.1.2007 where this Court directed that regular selected Principal Dr.Ramchandra Kishanrao Ipper will continue to function as Principal which shall be subject to final outcome of this appeal. Order directed Gitte to hand over charge to Dr.Ramchandra Kishanrao Ipper.

12. Learned counsel submits that the termination of Gitte not being in accordance with law, High Court ought to have reinstated Gitte on the post of Principal with full back wages. He submits that High Court erred in not granting full back wages.

13. We have considered submission on behalf of the parties. The facts as disclosed above indicate that the appointment of Gitte was only appointment of Incharge Principal which is clear from the terms of the appointment dated 10.1.1991 which is extracted below:

"Jawahar Education Society,  
Parli Vaijnath - 431515

Outward No.P/90-91/976

Dated 10.01.1991.

To

Sh. H.P.Gitte,  
Vaidyanath College,  
Parli-Vaijnath.

Subject: - Appointment as Incharge Principal.

Sir,

The resignation given by the Principal of Vaijnath College by name M.T.Gore has been accepted and you are appointed as Incharge Principal.

You are requested to kindly accept the charge of Incharge Principal."

Yours faithfully,

President  
(Shridharrao Gitte Patil)  
Jawahar Education Society  
Parli - Vaijnath."

14. The University granted approval on 24.1.1991 for appointment of Gitte as Incharge, Principal of Vaidhyanath College for smooth running and day to day work of the College.

15. It is noted in the order of the Tribunal that Gitte was not paid the salary of Principal and he continued as Lecturer, which post he was substantively holding. At this stage, we may also notice one of the submissions made by the learned counsel appearing for Gitte that management has

confirmed his services as Principal by letter dated 24.5.1993 by which order the appointment of Gitte was confirmed w.e.f. 11.1.1993 in the pay scale of Rs,4500-6300/-. A perusal of the order dated 13.7.1993 of the University makes it clear that in reference to letter forwarded praying approval for confirmation of Gitte on the post of Principal in the pay scale, university sent following reply:

**"MARATHWADA UNIVERSITY**

**Ref.No.Academic/Affiliation/93-94/8956**

**Dated 13th July, 1993.**

**Shri Babasaheb Jivanrao Deshmukh,  
Vice-President,  
Jawahar Education Society,  
C/o Vaidhyanath College,  
Parli-Vaijnath,  
District Beed.**

**Sub: Regarding accord of approval to Shri  
H.P.Gitte as Permanent Principal of  
Vaidhyanath college, Parli Vaijnath.**

**Sir,**

With reference to the above subject and in response to your letter dated 07.06.1993, I am to inform you that Shri H.P.Gitte is working as Incharge Principal and he cannot be accorded approval as Permanent Principal since he was not selected by the Selection Committee as per the procedure.

**Yours faithfully,**

Sd/-

for Registrar."

16. The above makes it clear that Gitte was never appointed on the post and he was only Incharge Principal. The letter dated 13.7.1993 noted that Gitte was never appointed by Selection Committee as per selection procedure. Tribunal had already returned a finding that the termination was illegal. The management did not file an appeal against the order of Tribunal. Therefore, those findings still go in favour of Gitte and we need not enter into the said issues since the Tribunal has already held that termination was not valid. We proceed on the premise that the termination of Gitte on 29.12.1993 was not in accordance with law. As the order of Tribunal having not been challenged by the Tribunal, the said order cannot be questioned before us.

17. Gitte had filed the appeal before the Tribunal under Section 42 (D) of the Marathwada University Act, 1974, in which powers of Tribunal to give appropriate relief and directions have been given. It is useful to notice the provision under Section 42 (D) Sub Section 2 which is to the following effect:

"42D.(1) On receipt of an appeal, where the Tribunal, after giving reasonable opportunity to both parties of being heard, is satisfied that the appeal does not pertain to any of the matters specified in Section 42B or is not maintainable by it, or there is no sufficient ground for interfering with the order of the Management, it may dismiss the appeal.

(2) Where the Tribunal, after giving reasonable opportunity to both parties of being heard, decides in any appeal that the order of dismissal, removal otherwise termination of service or reduction in rank was in contravention of any law, contract or conditions of service for the time being in force or was otherwise illegal or improper, the Tribunal may set aside the order of the Management, partially or wholly, and direct the Management,-

(a) to reinstate the employee on the same post or on a lower post as it may specify;

(b) to restore the employee to the rank which he held before reduction or to any lower rank as it may specify;

(c) to give arrears of emoluments to the employee for such period as it may specify;

(d) to award such lesser punishment as it may specify in lieu of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be;

(e) where it is decided not to reinstate the employee or in any other appropriate case, to give such sum to the employee, not exceeding his emoluments for six months, by way of compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereafter, as it may specify; or

(f) to give such other relief to the employee and to observe such other conditions as it may specify, having regard to the circumstance of the case.

(3) It shall be lawful for the Tribunal to recommend to the State Government that any dues directed by it to be paid to the employee may be deducted from the grant payable to the Management and be paid to the employee direct.

(4) Any direction issued by the Tribunal under sub-section (2) shall be communicated to both parties in writing and shall be complied by the Management within the period specified in the direction, which shall not be less than two months from the date of its receipt by the Management."

18. A perusal of the above said provision indicates that

when the Tribunal comes to conclusion that termination was in contravention of any law, contract or condition of service, the Tribunal is empowered to reinstate the employee or to award any lesser arrears or emoluments to employee for such period as it may specify. The Tribunal chose to exercise its power under section 42 (D) sub-Section 2 and has directed for payment of compensation instead of reinstatement. The Tribunal stated in its order that due to subsequent development Incharge Principal was appointed who has already been approved by the University, reinstatement of the petitioner as Incharge, Principal cannot be made.

19. The order of the Tribunal was challenged by Gitte and Suvalal as noted above. The High Court in its judgment has proceeded on mis-conception that the appointment of Gitte was confirmed as a result of resolution passed by the management committee and he was placed on regular scale. High Court further noticed that the fact that Gitte was not regularly selected was procedural lapse on the part of the management. In this context, observations made by High Court in para 15-16 are noteworthy:

"15. The contention of learned counsel for the contesting respondents/interveners is that though, order of reversion could be branded as illegal and late Suvalal had no legal authority to issue the same yet, the petitioner -Prof. H.P.Gitte cannot claim reinstatement for the reason that he was not appointed by Selection Committee constituted under statute No.219. I am unable to persuade myself to go along this line of argument. The appointment

of Prof. H.P.Gitte was confirmed as a result of the resolution passed by the Managing Committee and he was accordingly informed by letter dated 24.5.1993(Exh.A). he was placed in regular pay scale of Principal. The letter does not indicate that his such appointment was made subject to approval by the University. The said letter does not show that it was adhoc appointment. On the other hand, the letter referred to above would show that his services as Principal came to be regularized and confirmed. There is difference between "irregular appointment" and "void abinitio appointment". The appointment to the post of Principal is required to be made by the Managing committee of the college after adopting regular procedure. The candidate is required to undergo selection procedure and Selection Committee is to be constituted as per statute No.219. The appointment of petitioner -Prof. H.P. Gitte was quite irregular since he was not selected by the Selection Committee. This was procedural lapse committed by the Management committee of the college. The Petitioner himself was not responsible for such an irregularity. In case of ram Sarup Vs. State of Haryana and Ors. (AIR 1978 Supreme Court 1536) the Apex Court held that irregular appointment could be regularized as and when the candidate would acquire the necessary qualifications to hold the post. The Apex court observed as under:

"...The question then arises as to what was the effect of breach of Cl(1) of R.4 of the Rules. Did it have the effect of rendering the appointment wholly void so as to be completely ineffective or merely irregular, so that it could be regularised as and when the appellant acquired the necessary qualifications to hold the post of Labour-cum-Conciliation Officer. We are of the view that the appointment of the appellant was irregular since he did not possess one of the three requisite qualifications but as soon as he acquired the necessary qualification of five years' experience of the working of labour laws in any one of the three capacities mentioned in Cl.(1) of R.4 in any higher capacity, his appointment must be regarded as having been regularised.

16. The irregularity committed by the management of the college could be cured after allowing the

Petitioner Prof. H.P.Gitte to undergo selection procedure as required under statute No.219. The appointment could not be regarded as totally void. There are lapses which can be condoned by the University within its discretion. The provisions of statute No.219 would set out methodology for selection to the post of Principal. The Petitioner - Prof. H.P.Gitte was then duly qualified and experienced for such appointment. The requirement of added educational qualification as NET/CET was subsequently introduced. At the relevant time such educational qualification was not a condition precedent for appointment to the post of Principal. The illegal deprivation of the petitioner - Prof. H.P.Gitte from the post of Principal has surely caused a stigma as well as humiliation to him. the approval of the University to such appointment could be sought by the management after making a request to constitute Selection Committee under statute No.219."

20. We have already noted above that the resolution of management confirming the services of Gitte as Principal in regular scale dated 24.5.1993 was disapproved by the University which was communicated vide its letter dated 13.7.1993 extracted above. High Court was in error in not considering the true nature of the appointment of Gitte as Incharge, Principal. It is also relevant to notice that during pendency of the writ petition, regular selections on post of Principal took place twice. In regular selection which was held in 2001 after due advertisement Dr.A.R. Kurme was appointed. In the said selection Gitte did not participate. Dr.Kurme was appointed on 13.8.2001 who subsequently died on 27.12.2005. After death of Dr. Kurme, fresh advertisement was issued on 14.1.2006 for regular Principal. Dr.Ramchandra Kishanrao Ipper one of the

appellants who has filed appeal against the order of the High Court was regularly selected and appointed as Principal on 24.03.2006, i.e. before the judgment of High Court.

21. It is also relevant to notice that there was no challenge to the regular selections made during the pendency of the writ petition by Gitte or anyone else. When two regular principals have already joined and worked during the period when the writ petition remained pending, High Court committed error in directing for reinstatement of Gitte with 50% back wages. Direction of reinstatement itself was unfounded. Looking to the very nature of the appointment of Gitte who was only an Incharge, Principal in view of the subsequent development as noticed above, there was no question of direction of reinstatement of Gitte on the post of Incharge Principal. We are thus of the view that the judgment of the High Court is unsustainable and deserves to be set aside. We have already noticed that the order of the Tribunal dated 12.9.1994 was not challenged by the management. The Tribunal has already directed for payment of compensation to the extent of salary for the period of six months as noticed above. We direct that in the event the payment of compensation as directed by Tribunal 2.9.1994 has not been paid to Gitte, the same shall be paid by the management to the legal heirs of Gitte, within a period of two months from today.

22. We notice that Tribunal has exercised its jurisdiction and there was no error in exercise of the jurisdiction of

the Tribunal in granting compensation, the High Court erred in interfering with the order of the Tribunal without there being any valid ground.

23. Appeal Nos.6308/2013 and 6309/2013 are allowed. C.A.No.6310/2013 is dismissed. The judgment of the High Court is set aside, the writ petition stand dismissed.

.....J.  
(ASHOK BHUSHAN)

.....J.  
(K.M. JOSEPH)

NEW DELHI;  
24th January, 2019

ITEM NO.101

COURT NO.13

SECTION III

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).6308/2013

GOPINATH &amp; ANR.

Appellant(s)

VERSUS

HARISCHANDRA (D) BY LRS. &amp; ORS.

Respondent(s)

WITH

C.A. No. 6310/2013 (III)

C.A. No. 6309/2013 (III)

Date : 24-01-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN

HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s) Mr. Sudhanshu S.Choudhari,Adv.  
Ms. Surabhi Guleria,Adv.  
Mr. Yogesh Kolte,Adv.

Ms. Chandan Ramamurthi, AOR  
Mr. Sunil Kumar Verma, AOR  
Mr. Naresh Kumar, AOR

For Respondent(s) Mr. Ajay Majithia,Adv.  
Mr. Shekhar Kumar, AOR

Mr. Nishant R. Katneshwarkar,Adv.  
Ms. Deepa M, Kulkarni,Adv.  
Mr. Anoop Kandari,Adv.

Mr. P. V. Yogeswaran, AOR  
Ms. Chandan Ramamurthi, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Appeal Nos.6308/2013 and 6309/2013 are allowed.  
C.A.No.6310/2013 is dismissed. The judgment of the High  
Court is set aside, the writ petition stand dismissed in  
terms of the signed order.

(B.Parvathi)  
Court Master

(Renu Kapoor)  
Branch Officer

(Signed order is placed on the file)