
(2021) 10 BOM CK 0105
In the Bombay High Court
Case No : Writ Petition No. 1202 Of 2017

Chitra Anant Salunke

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 22-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 10 BOM CK 0105

Hon'ble Judges : R.D. Dhanuka, J;Abhay Ahuja, J

Bench : Division Bench

Advocate : Atul G. Damle, Sahil Mahajan, Kedar Dighe, Rui A Rodrigues

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari for passing and setting aside the impugned order dated 25th November, 2016 and seeks order and directions against the respondents to pay an amount of Rs.27,46,079/- as arrears of salary and back wages with interest.

2. Some of the relevant facts for the purpose of deciding this petition are as follows :-

3. The petitioner is a practicing Lawyer and was erstwhile Vice-Principal of the Siddharth College of Law. The petitioner passed LLM from the Mumbai University in the year 2002 with 57% marks and was appointed as Full Time Lecturer in the subject of Law w.e.f. 14th January, 2003 during the period between 13th January, 2003 and 21st March, 2003. In the year 2003, the petitioner appeared for NET/SET examination and cleared the said examination.

4. It is the case of the petitioner that on 5th March, 2004, the respondent no.5- University issued a circular that the candidate from reserved category without

NET/SET may also apply for the post of lecturer and if they are selected they will be appointed on consolidated salary of Rs.8,000/- on contractual basis. They have to complete NET/SET within two years, failing which their services would be terminated and if they complete NET/ SET within two years, their appointment will be regularized on regular basis.

5. It is the case of the petitioner that on 15th April, 2004, the respondent no.4 informed the Vice Chancellor of University of Mumbai that the appointment of the petitioner was confirmed as per the Government Circulars and no further procedure was required for regularization of her services.

6. On 25th April, 2006, the petitioner informed the Vice Chancellor of the University of Mumbai that she had received a interview call from the Principal of Siddharth College of Law on 25th April, 2006 for the post of full time lecturer in the said college. It is the case of the petitioner that the University of Mumbai informed the Principal of Siddharth College of Law that it would not be proper to call the petitioner for interview for the post of lecturer. The petitioner made a complaint to the respondent no.6 on 25th April, 2006 that though the petitioner had cleared NET Examination in 2003 was not getting the salary as per UGC Scale. The respondent no.6 informed the respondent no.3 to pay the salary to the petitioner as per UGC Scale.

7. The Registrar of Mumbai University addressed a letter to the Member Secretary and Chairman of People's Education Society to conduct an inquiry under the Statute 439B(1) against the petitioner and appointed a retired City Civil Court Judge as Inquiry Officer. The said Siddharth College of Law terminated the services of the petitioner. The petitioner filed an Appeal bearing Appeal No. 11 of 2009 before the University and College Tribunal. The said appeal came to be dismissed by the said Tribunal on 20th January, 2010. A learned Single Judge of this Court dismissed the Writ Petition bearing No. 2060 of 2010 filed by the petitioner impugning the said order passed by the University and College Tribunal. A Division Bench of this Court by order dated 18th December, 2012 in Appeal (lodging) No. 91 of 2011 was pleased to quash and set aside the order passed by the leaned Single Judge and the University and College Tribunal and directed the Management to reinstate the petitioner with full back wages.

8. The said Siddharth College of Law filed Special Leave Petition before the Hon'ble Supreme Court. By an order dated 26th March, 2014, the Hon'ble Supreme Court disposed of the Special Leave Petition (Civil) No. 1480 of 2013 in terms of consent terms filed by the petitioner and the said Siddharth College of Law. In accordance with the said consent terms, the said Siddharth College of Law reinstated the services of the petitioner as full time teacher (Vice-Principal) of the said college on 28th March, 2014. The petitioner resumed on duty in the said college. On 6th May, 2014 the petitioner tendered her resignation letter dated 31st March, 2014 to the respondent no.4 in accordance with the said consent terms. The said resignation was accepted by the respondent no.4. By its letter the respondent no.4 put up the claim of the petitioner before the

respondent no.6. The respondent no.4 submitted all the documents on 16th July, 2014 as required by the respondent no.6. The petitioner by her letter dated 18th August, 2014 called upon the respondent no.6 to pay the arrears of the salary and back wages of the petitioner at the earliest. The petitioner requested the respondent no.6 to pay an amount of Rs.27,36,462/- by letter dated 11th September, 2014.

9. It is the case of the petitioner that instead of paying the said amount, the respondent no.6 once again called for the documents from the respondent no.4 vide letter dated 22nd September, 2014. The respondent no.4 submitted all the documents on 18th October, 2014. The respondent no.7 informed the State Government on 31st December, 2014 and asked for approval to pay an amount of Rs.27,46,079/- to the petitioner as per Grant. The petitioner filed the Writ Petition bearing No. 1419 of 2015 in this Court for various reliefs. On 27th September, 2016, this Court disposed of the said writ petition and directed the respondent no.2 to consider and take appropriate decision on the pending proposal in regard to the claim made by the petitioner without being influenced by the stand taken in the reply in the said writ petition. By an order dated 25th November, 2016, the respondent no.2 rejected the claim of the petitioner on various grounds and held that the State Government was not liable to pay any salary and other allowances to the petitioner. Being aggrieved by the said decision, petitioner filed this writ petition.

10. Mr. Damle, learned senior counsel for the petitioner invited our attention to the letter of appointment dated 14th January, 2013 from the respondent nos. 3 and 4 appointing the petitioner as a full time lecturer in the subject of law in Siddharth College of Law for a period of two years. He submits that the said appointment was a regular appointment on the permanent post. He invited our attention to the circular issued on 30th April, 2003 by the University of Mumbai that if the teacher is working on full time basis i.e. more than 12 periods, he/she had to be given salary as full time lecturer instead of clock hour basis. He submits that the petitioner had completed NET/SET examination in the year 2003. He invited our attention to various orders referred in earlier paragraphs of this judgment.

11. Learned senior counsel submits that under the said consent terms, the respondent nos.3 and 4 agreed to submit bills for arrears of salaries and other legitimate dues inclusive of salaries payable to the petitioner, to the Joint Director, Higher and Technical Education, Mumbai Division, Government of Maharashtra. The petitioner agreed to tender her resignation within a period of two days from the date of the order passed by the Hon'ble Supreme Court by taking consent terms on record. The petitioner rendered an undertaking to the Hon'ble Supreme Court that she will not claim any further right to continue in service in Siddharth College of Law, Mumbai. Both the parties agreed to withdraw all civil and criminal proceedings filed against each other within one week from the date of the said order.

12. It is submitted by the learned senior counsel that since the petitioner was reinstated in service pursuant to the said order passed by the Hon'ble Supreme Court, the State Government could not have refused to pay the dues of the petitioner. He invited our attention to the impugned order dated 25th November, 2016 passed by the State Government and would submit that the said order is totally erroneous. He submitted that each and every reason recorded by the State Government in the said impugned order is based on the wrong factual premise. He submits that the State Government had never raised the issue of appointment of the petitioner before this Court. The petitioner is thus entitled to recover the amount of Rs.27,46,079/- with interest.

13. Mr. Dighe, learned A.G.P. for the State Government invited our attention to the averments made by the respondent no.6 in the affidavit in reply filed before this Court affirmed on 27th July, 2018 and would submit that admittedly the State Government was not a party to the consent terms filed before the Hon'ble Supreme Court. He submits that the said consent terms were filed between the petitioner and the respondent nos. 3 and 4 and thus the said consent terms are not binding. He submits that the petitioner was appointed by the management without obtaining requisite approval and thus the State Government is not liable to pay any dues allegedly payable to the petitioner.

14. It is submitted that the University also in its letter had clearly stated that mandatory procedure was not followed when the petitioner was appointed to the said post of lecturer. The appointment of the petitioner was made on year to year basis. There was no approval from Mumbai University to her appointment since the academic year 2006. He invited our attention to the letter dated 29th September, 2015 from the University of Mumbai to the Deputy Secretary, Government of Maharashtra, Higher and Technical Education Department and would submit that by the said letter the University of Mumbai had clearly informed the State of Maharashtra that the University had approved the appointment of the petitioner made by the College as a lecturer (law) on Clock Hour Basis for the academic year 2003-2004 and on temporary on year to year basis for the academic year 2004-2005 and 2005-2006. The said post was not filled as per prescribed rules. The University has not given any kind of approval as a lecturer (law) after 2005-2006.

15. Mr. Rodrigues, learned counsel for the University invited our attention to the averments made by the University in its affidavit in reply dated 3rd August, 2018. It is submitted that the respondent no.3 had forwarded a Local Selection Committee Report vide letters dated 5th July, 2004, 28th February, 2006 and 5th April, 2006 for the academic years 2004-2005, 2005-2006 and 2003-2004 respectively, for approval of the appointment of the petitioner on Clock Hour Basis on the basis of temporary appointment. He submits that the appointment of the petitioner was accordingly approved for the post of lecturer in law on Clock Hour Basis and full time on temporary basis for the academic years 2004-2005, 2005-2006 and 2003-2004 and communicated to the respondent no.3 vide

letters dated 3rd February, 2006, 23rd June, 2006 and 23rd June, 2006 respectively.

16. It is submitted by the learned counsel that the respondent nos. 3 and 4 had not followed the regular selection procedure to fill up the post of lecturer in law in the college by publishing the University approved advertisement so as to inter alia meet the Government NOC requirements. He strongly placed reliance on the Statute 417 prescribing the manner and mode of selection of appointment of teacher in college and would submit that the said mandatory procedure was not at all followed by the respondent nos. 3 and 4 while appointing the petitioner on the said post in the said law college.

17. Mr. Damle, learned senior counsel for the petitioner in his rejoinder argument submits that the respondent nos.3 and 4 vide their letter dated 15th April, 2006 to the University of Mumbai had recommended that the appointment of the petitioner on probation be approved. There was no reply sent by the Mumbai University to the said letter dated 15th April, 2006. The appointment of the petitioner was thus deemed to have been approved.

18. Learned senior counsel also invited our attention to the letter dated 24th April, 2006 from the Deputy Secretary, Government of Maharashtra to the respondent no.3 in response to the representation made by the petitioner stating that the probation period granted to the petitioner as a lecturer was over and thus it was necessary to appoint her on permanent basis after completion of the probationary period. He submits that there was no response to the said letter addressed by the Deputy Secretary, Government of Maharashtra to the respondent nos. 3 and 4. Learned senior counsel invited our attention to the letter dated 18th December, 2003 from the Deputy Director, Education, Mumbai to fill up the backlog of the backward class by direct recruitment as per the direction of the State Government. The candidates were called for 'walk in interview'.

REASONS AND CONCLUSIONS

19. Admittedly the services of the petitioner were terminated by the respondent nos. 3 and 4. The proceedings between the petitioner and the respondent nos.3 and 4 reached the Hon'ble Supreme Court by Special Leave Petition filed by the respondent nos.3 and 4 against the judgment delivered by the Division Bench of this Court allowing appeal filed by the petitioner against the order of the learned Single Judge. The petitioner and the respondent nos.3 and 4 filed consent terms before the Hon'ble Supreme Court. Under the said consent terms, the petitioner was reinstated by the respondent nos. 3 and 4 in Siddharth College of Law within one week from the date of the said consent terms. The petitioner had agreed to tender her resignation within two days from the date of the order passed by the Hon'ble Supreme Court. The petitioner also undertook not to claim any dues of her arrears of the salaries from the respondent nos. 3 and 4.

20. In clause (2) of the said consent terms, the petitioner and the respondent

nos. 3 and 4 agreed that the dues or arrears of salaries were payable by the learned Joint Director, Higher and Technical Education, Mumbai Division, Government of Maharashtra as per the prevailing rules applicable in the case of the petitioner. Admittedly, the Joint Director, Higher and Technical Education or the State of Maharashtra were not the parties to the said consent terms arrived at before the Hon'ble Supreme Court. Merely because the petitioner undertook before the Hon'ble Supreme Court not to claim any dues or her arrears of salaries from the respondent nos.3 and 4 herein on the ground that the same were payable by the Joint Director, Higher and Technical Education, the liability cannot be foisted upon the State Government by entering into such consent terms.

21. The State Government has passed a reasoned order rejecting the bills submitted by the respondent nos. 3 and 4 for releasing the payment in favour of the petitioner. The order passed by the Hon'ble Supreme Court was based on the consent terms and not by adjudication on merits. There was no finding in favour of the petitioner that the appointment of the petitioner was made as per procedure prescribed under Statute 417 framed by the University of Mumbai applicable to the appointment of the teachers.

22. A perusal of the said Statute 417 clearly indicates that there shall be a selection committee for making recommendation to the Government body for the appointment of the teachers in the college comprising of various members. Statute 417(II) provides for the procedure for making such appointment of the teachers in a college. Statute 418 provides for the procedure for appointment of probation and confirmation. Learned senior counsel for the petitioner could not demonstrate whether any such mandatory procedure under Statutes 417 and 418 was followed while appointing the petitioner on probation on the post of a lecturer in Siddharth Law College, Mumbai. On the contrary, the record produced by the University of Mumbai including the letter dated 29th September, 2015 addressed by the University of Mumbai to the Deputy Secretary, Government of Maharashtra would clearly indicate that the appointment of the petitioner as a lecturer was approved on Clock Hour Basis for the academic year 2003-2004 and on temporary year to year basis for the academic year 2004-2005 and 2005-2006. The said post was not filled as per the prescribed rules.

23. The University had not given any kind of approval to the petitioner as a lecturer after 2005-2006. The petitioner did not challenge the approval granted by the University to the petitioner as a lecturer on Clock Hour Basis on the academic year 2003-2004 and on temporary year to year basis for the academic year 2004-2005 and 2005-2006 contending that the appointment of the petitioner was on probation on the permanent post after following the mandatory procedure under Statute 417.

24. It is clear that after approval of such Clock Hour Basis or on temporary appointment of year to year basis for three years, the respondent nos. 3 and 4 once again applied for approval to the University of Mumabi vide letter dated

15th April, 2006 for the academic years 2003-2004, 2004-2005 and 2005-2006 without challenging the earlier approval granted by the University of Mumbai on Clock Hour Basis on temporary appointment on year to year basis. There is no substance in the submission made by the learned senior counsel that since there was no response to the said letter dated 15th April, 2006 from the respondent nos. 3 and 4 to the University of Mumbai seeking approval for the academic years 2003-2004, 2004-2005 and 2005-2006, there was deemed approval from the University of Mumbai.

25. In our view, the impugned order passed by the respondent no.2 rejecting the bill submitted by the respondent nos. 3 and 4 is well reasoned order. The appointment of the petitioner was not made on the said post of lecturer after following the requisite procedure under Statute 417 framed by the University of Mumbai. We do not find any infirmity in the said reasoned order passed by the respondent no.2.

26. Writ petition is devoid of merit and is accordingly dismissed. There shall be no order as to costs.