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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 572 OF 2003

1. The Principal

Rizvi College of Arts, Science
and Commerce, Rizvi Complex,
Off Carter Road, Bandra (West),
Mumbai-400 050

2. Chairman/President/Managing Trustee

Rizvi Education Society, C/o. Rizvi College of
Arts, Science & Commerce, Rizvi Complex, Off
Carter Road, Bandra (W), Bombay 400 050

...Petitioners

Versus

1. Mrs. Hasina Hafiz Shaikh

residing at 19-D, 1st floor,
Bazar Road, Bandra (W),
Mumbai-400 050

2. The Registrar

University of Mumbai
M.G. Road., Mumbai - 400 032

3. Ms. Maria Gour

C/o Rizvi College of Arts, Science &
Commerce, Rizvi Complex,
Off Carter Road, Bandra (West).
Mumbai-400 050

4. Joint Director

Higher Education, Mumbai Regional
Office at Elphinstone Technical School
Compound 3, Mahapalika Marg,
Mumbai – 400 001

...Respondents

Mr. Swaraj Jadhav a/w Saikiran Mergu i/b Mr. Zakir Basha for the
Petitioners.

Ms. Panthi Desai i/b M/s. M.P. Vahi and Asso. for Respondent No.1.

Mr. Mohd. Monis i/b Mr. Rui Rodrigues for Respondent No.2.

CORAM : M.M. SATHAYE, J.
DATE : 16th SEPTEMBER, 2026

JUDGMENT :

1. Invoking Article 227 of the Constitution of India, the Petitioners (College and Management) are challenging order dated 19.07.2002 passed by Presiding Officer, Mumbai University and College Tribunal ('the Tribunal' for short) in Appeal No.68 of 2001 filed by Respondent No. 1. By the said impugned order, the Appeal of Respondent No. 1 is allowed thereby quashing and setting aside termination order dated 27.04.2001 and directing the Petitioners to reinstate the Respondent No. 1 on original post of full time lecturer in Sociology and to pay her monthly salary regularly and also pay arrears of salary from 09.06.2000 till her reinstatement. Respondent No. 4 Joint Director of Education is directed to reimburse to the Petitioners, the salary payable under the impugned order and the University was directed to send the application of the Petitioners for approval of appointment of Respondent No. 1 for taking final decision regarding grant / non-grant of exemption for NET/SET examination.

2. Respondent No.1 filed the said Appeal contending *inter alia* as under.

2.1. That being fully qualified for appointment as lecturer in Sociology (except clearing NET/SET), she was appointed as lecturer by order dated 06.08.1998. That the appointment was after selection by the local selection committee. That by letter dated 15.04.1999, the appointment was terminated w.e.f. 21.04.1999. That thereafter by letter/ appointment order dated 16.06.1999, Respondent No. 1 was again

appointed as full time lecturer in Sociology w.e.f. 16.06.1999 to 20.04.2000. That both appointments were approved by the University. That on 18.04.2000, she was terminated w.e.f. 21.04.2000.

2.2. That thereafter on 26.06.2000, Respondent No. 1 appeared before duly constituted Selection Committee and her third appointment was made under appointment order dated 01.07.2000 till 30.04.2001.

2.3. That by letter dated 02.03.2001, the University informed the Principal of the College that appointment of Respondent No. 1 cannot be approved as per applicable Government Resolution ('GR' for short) and University circular as she has not cleared NET/SET examination.

2.4. That thereafter, the Management / College has issued impugned termination order dated 27.04.2001. In such circumstances, Respondent No. 1 filed appeal under Section 59 of Maharashtra Universities Act, 1994, which was numbered as Appeal No. 68 of 2001.

3. The Petitioners argued before the Tribunal that the case has nothing to do with NET/SET qualification or exemption in respect thereof. It was submitted that Respondent No. 1 was appointed for a temporary period on temporary basis and therefore, her services have been rightly terminated. It was contended that Respondent No. 1 has no right to continue in view of the terms of appointment accepted by Respondent No. 1.

4. After hearing both sides and after considering the material on the record, the Tribunal has allowed the appeal as explained above.

5. The petition was admitted on 31.03.2003 and impugned order was stayed. Learned counsel for the Petitioners at that time, stated that

in case if any vacancy occurs and workload is available in future, the case of Respondent No. 1 shall be considered sympathetically.

6. It appears from record that thereafter, by order dated 16.12.2005 passed in Civil Application No. 2147 of 2003, the interim stay was vacated (holding that the Petitioners have not acted as per assurance given) and Petitioners were directed to reinstate Respondent No. 1 subject to result of this petition.

7. Record further shows that by order dated 16.03.2006 Review Petition (St) No. 3139 of 2006 filed by Petitioners seeking review of order dated 16.12.2005, was also rejected. However, this Court permitted the Petitioner-Management to forward the proposal of Respondent No.1 to University to seek relaxation and/or regularization from UGC. In this order, there was no direction about payment of arrears. It was clarified that since UGC is not party no directions can be issued to UGC.

8. Record further shows that on 04.12.2025, after a long lapse of 20 years, this Court raised a query as to whether failure to reinstate the Respondent No. 1 would result in breach of this Court's order.

9. Thereafter, the Petitioners have filed additional affidavit of the present Principal of the College affirmed on 08.07.2026 contending *inter alia* as under.

9.1 That after the interim stay dated 31.03.2003, there was a vacancy in Petitioner No. 1-College for which advertisement was published and 5 people were interviewed including Respondent No. 1 and since she was not found suitable and qualified for the post, she was not appointed. They contended that Respondent No. 1 having

participated in the subsequent selection process, cannot be permitted to now contend that she must be reinstated.

9.2 They further contended that on going through all the papers and proceedings available with the office of the Petitioners and after due search and inquiry with the co-employees, it is found that after this Court vacated the interim relief on 16.12.2005, Respondent No. 1 never presented herself or reported for resuming duties and has not even submitted any application or covering letter seeking resumption of duties. It is further stated that the deponent has been informed by the staff and the then Principal that instructions were issued to staff that in the event Respondent No. 1 appears for resuming duties, all her formalities were to be completed immediately in view of order of this Court vacating interim stay. The deponent has stated that from date of his joining as Principal of the College till date, Respondent No. 1 has never presented/reported herself for resuming duties. It is stated that if Respondent No. 1 had presented herself, the Petitioners would have immediately allowed her to resume the duties as they have highest regards for the order of this Court. It is stated that by conduct, Respondent No. 1 has waived her services by not resuming/ reporting for duty over a period of more than 10 years and therefore, the petition deserves to be allowed.

9.3 It is further stated that Respondent No. 3 who was appointed in the place of Respondent No. 1 way back in 2003, who has continued on the post and has been receiving salary from grant-in-aid and has been discharging her duties diligently with all sincerity. It is therefore urged that Respondent No. 3 ought not to be disturbed.

SUBMISSIONS

10. Learned counsel for the Petitioners, Mr. Jadhav submitted as under.

10.1. That Respondent No. 1 has not challenged the rejection of her approval under communication by the University dated 02.03.2001.

10.2. That the terms of the appointment orders clearly stated that Respondent No. 1 was appointed on temporary basis and with last date of service already stated in the appointment order. Having accepted such appointments on temporary basis, Respondent No. 1 cannot be permitted to make grievance.

10.3. That there is no grievance against Respondent No. 1 and the termination letter does not cast any stigma.

10.4. That Petitioner is a minority institute, who has right to choose appropriate persons for appointment.

10.5. That this is not a case where Respondent No. 1 has been appointed for a long time. That impugned termination, Respondent No. 1 has participated in fresh selection process, but she did not succeed and Respondent No. 3 has been appointed. Therefore Respondent No. 1 could not have filed the appeal challenging the termination.

10.6. He relied on following Judgments in support of his case :

(i) Secretary, State of Karnataka and Ors. v/s. Umadevi and Ors. (2006) 4 SCC 1.

(ii) Hindustan Education Society and Anr. v/s. Sk. Kaleem Sk. Gulam Nabi and Ors. (1997) 5 SCC 152.

11. On the other hand, learned Counsel for Respondent No. 1, Ms. Desai submitted as under.

11.1. That despite contact details of the employee being available, no letter was sent by the Petitioner-Management and no effort was made to reinstate Respondent No. 1. That even today, Respondent No. 1 is about 54 years old and can be re-instated.

11.2. That since there was clear vacancy available, Respondent No.1 was duly covered under Government Resolution dated 22.12.1995 and therefore could not have been terminated. That even one month's notice was not given.

11.3. That the issue regarding Petitioners being minority institute was not raised before the Tribunal and therefore it should not be considered for first time in writ petition.

11.4. That rejection of approval cannot be the ground for termination.

11.5. That even selection by local selection committee is within the provisions under applicable Statutes and therefore the appointment ought to have been considered as 'not on temporary basis'.

11.6. She relied on following Judgments in support of her case.

(i) J.H. Podar High School and Another v/s. State of Maharashtra and Ors. 2004 (2) Mh.L.J. 713.

(ii) St. Ulai High School and Anr. v/s. Devendraprasad Jagannath Singh and Anr. 2007(1) Mh.L.J. 597.

12. Learned counsel for the Petitioners submitted in rejoinder that the benefit of G.R. can be given only if the appointment is by prescribed selection committee under applicable Statutes.

REASONS AND CONCLUSION

13. I have considered the rival submissions and perused the record.

14. In **Secretary, State of Karnataka Vs. Umadevi (3) (Supra)** it is clearly held that when a person enters temporary employment and engagement is not based on a proper selection as recognized under applicable rules and procedure, he is aware of the consequences and such person cannot invoke the theory of legitimate expectation for being confirmed in the post. This clearly supports the case of the Petitioners.

15. Since the argument about Petitioner-Management being minority institute was not advanced before the Tribunal, the said argument and counter argument is not being considered by this Court for the first time in writ jurisdiction. Therefore, it is not necessary to consider the judgment of **J. H. Podar High School (Supra)** any further.

16. In this backdrop, it is most important to note that even the Tribunal did not consider whether the termination was illegal. Only issue considered was 'whether the Respondent No. 1 is entitled to continue in the services of Petitioner and/or reinstated?'. Therefore let us first consider entitlement of Respondent No. 1 to continue in services, as claimed.

17. It must be noted that under first and second appointment

orders, Respondent No. 1 was appointed on purely temporary basis and end-dates of her service were provided. Admittedly there is no probation provided. On 27.04.2001, Respondent No.1 was terminated. Thereafter she applied again for job on 04.06.2001 and then participated in the selection process. She was not selected and Respondent No. 3 was selected. There is no dispute about these facts. In such situation, Respondent No. 1 has filed appeal. Therefore by conduct, Respondent No. 1 having participated in the subsequent selection process, had accepted the termination. It was only when she was not selected and Respondent No. 3 was selected, she cried foul.

18. It is not disputed that the appointment of the Respondent No.1 was by local selection committee and not by the prescribed selection committee. This aspect is clearly recorded by the Tribunal in paragraph Nos.2 and 17 of the impugned order. Therefore, it is clearly held by the Tribunal that applicable Statute 417(iii) would apply and appointment thereunder can only be temporary and cannot be considered to be giving any right to Respondent No.1 to continue beyond the period of temporary appointment. Factually Respondent No.1 was appointed purely on temporary basis for a particular period with last date of service clearly stated in the appointment order.

19. Respondent No.1 has clearly accepted temporary appointments not once but thrice and none of the appointments were through prescribed selection committee. Perusal of termination letter clearly shows that it is a plain termination without any stigma. None of the appointment orders make a reference to any probation period.

20. The Tribunal proceeded on the condition laid down in GR dated 22.12.1995 (Non-removal of teachers on account of not

qualifying NET/SET) and held that the Respondent No.1's appointment falls in this category. The Tribunal held that estoppel won't apply and her temporary appointment cannot come in her way, because it is provided under said GR that the lecturer is not liable from removal from service only on account of not qualifying the NET/SET examination.

21. Subsequent GR dated 18.10.2001 provided under clause 2(E) that 'those lecturers who did not possess the NET/SET qualification and have been appointed after 11.12.1999, shall not be given the benefit of extended period and their services are required to be discontinued before the completion of the probationary period'. Admittedly, Respondent No. 1 has been last appointed on 01.07.2000 i.e. after 11.12.1999.

22. Hence, so far as protection of GR dated 22.12.1995 is concerned, it is important to note that both the impugned order and Order of this Court dated 16.03.2006 considered the Division Bench Judgment of this Court in **Vishwaprakash s/o Laxman Shirsath Vs. State of Maharashtra – 2003(2) Mh.L.J. 176**. In paragraph 23 of the said judgment, the Division Bench has clinched the issue as under :

“23. The scheme of the 1991 Regulations as well as the 2000 Regulations, as analysed by us, has not aroused any expectations except the relaxation/concession clause under the first proviso to clause 2 thereunder. Similarly, by the amendments carried out in 1995 the Commission granted some concessions in respect of the candidates who possessed the M.Phil./Ph.D. qualifications or who had submitted their thesis before the cut off date. There were no promises of any concession or any relaxation in case of other candidates who did not have the qualifications of M.Phil. or Ph.D. from passing the NET/SET examination and a discretion was vested with the

University in the 1991 Regulations to approach the Commission for approval in advance for obtaining approval in respect of some posts. This concession was subsequently modified in the 2000 Regulations in respect of subjects but the Universities' power to grant such relaxation is removed and the power is now vested with the Commission. The Government of Maharashtra, while adopting these Regulations by the respective resolutions, has not gone beyond the Regulations and none of the Resolutions issued on 11th December, 1999 and thereafter have contemplated any concessions to the candidates similarly placed to the petitioners. The State Government did not hold a promise at any time after 11th December, 1999 to the effect that the candidates not possessing the NET/SET qualifications would be considered for appointment as lecturers in the private aided colleges or in the colleges run by the State Government. The arguments were perhaps based on the premises that the State Government had made some promise of concession but the record does not support this presumption. We, therefore, hold that the doctrine of legitimate expectation is not applicable while deciding the legality of the impugned Resolution dated 18th October, 2001."

(emphasis supplied)

23. Therefore the Respondent No. 1 being appointed after 11.12.1999 can not claim legitimate expectation and the whole foundation of the argument that termination is illegal, appears shaky.

24. The sum and substance of above judgment, as can be seen from paragraph 26 thereof, is that - it would be necessary for the concerned University or the College/Institution to ascertain whether the appointee concerned is covered by the benefit under the first proviso to clause 2 of the 1991 Regulation or the 2000 Regulation before taking the final decision of retention or removal as the case maybe. A

particular university/college/institution may justifiably put up a case before UGC regarding non-availability of adequate facilities for NET/SET examination and/or inadequate number of qualified candidates in a particular subject and more particularly against the posts reserved. These parameters/prevailing conditions could be examined by the Commission which is the final authority and the Commission has retained the discretion for applying its mind to all these ground realities and take appropriate decision of granting concession in favour of such subjects.

25. Ultimately, it is held in Paragraph No. 30 of **Vishwaprakash s/o Laxman Shirsath (Supra)** as under.

“30. In the result, the Petition is rejected summarily subject to our observations that clause 2(b) of the impugned Government Resolution dated 18th October, 2001 is unsustainable and the same is quashed and set aside. We also hold that the cases of candidates appointed from 12th December, 1999 till 18th October, 2001 are required to be examined so as to ascertain the applicability of the first Proviso to Clause 2 of the 1991 Regulations as well as 2000 Regulations before their services are sought to be terminated by the respective universities and/or colleges/institutions.”

26. In such circumstances, it is clear that termination can be said to be illegal only to the extent of not sending proposal of Respondent No.1 to University for consideration by UGC and not giving one month's notice. Proper course was to send proposal of Respondent No. 1 for consideration by UGC, which was directed by the Tribunal as well as this Court.

27. There is no dispute about the proposition of law laid down by the Full Bench of this Court in **ST. Ulai High School (Supra)** that requirement of approval only relates to the disbursal of grant in aid which is a matter between the management and the State and want of approval will not invalidate an order of appointment

CONDUCT AFTER 16.12.2005

28. Petitioner-Management by filing affidavit has taken a clear stand that Respondent No.1 has not reported for reinstatement nor has sent any letter. It is contended that the Management cannot go after Respondent No.1 and make her resume the duties. This stand of the Management is not denied by Respondent No.1. No affidavit in reply is filed. However, a counter-argument is made that the Petitioner-Management had the correspondence address of Respondent No.1 and they should have contacted Respondent No.1 for re-instatement. According to Respondent No.1, the Petitioner-College did not call her to join duties. Therefore, apparently, Respondent No. 1 has not joined her duties or served with Petitioner-Management after her termination. Under last appointment Respondent No. 1 served till 30.04.2001, not thereafter.

29. In the facts of the present case, admittedly Respondent No.1 was not appointed by prescribed selection committee and the appointment was on purely temporary basis with end date of service clearly mentioned. Additionally, such temporary appointments were accepted by Respondent No.1, ultimately participating twice in further selection process, firstly after impugned termination and then even during pendency of the petition.

30. Even though the impugned order was stayed by this Court on 31.03.2003, Respondent No. 1 was actively pursuing her cause by filing CAW/2147/2003 where, stay was vacated on 16.12.2005.

31. But during pendency of the petition, after the interim stay was vacated, Respondent No.1 has not reported to the College and no follow up is shown after 16.12.2005 with the Petitioner-Management for reinstatement. Also nothing is shown to the Court about any further follow up with sending of proposal to UGC. Nothing is brought on record or pointed out to the Court at the time of final hearing, as to whether the Petitioner-Management had forwarded proposal of Respondent No. 1 to the University seeking relaxation and/or regularization from UGC. So, there is no material about her proposal being sent to University for relaxation from UGC. At least no material is placed before the Court to indicate such follow-up. So also, nothing is brought on record to indicate that the order of reinstatement was sought to be executed by Respondent No.1. In such circumstances, it can not be held that Respondent No.1 was not gainfully employed elsewhere during pendency of the petition after 16.12.2005.

32. However, since the matter was *sub-judice*, I am inclined to assume best case in favour of the employee (Respondent No. 1), so far as arrears are concerned and also the date from which payment is directed by the Tribunal. But conduct of Respondent No. 1 after 16.12.2005 will have to be considered, coupled with twice participation in selection process after impugned termination, as explained above.

33. Considering the overall circumstances, equities will have to be balanced. In that view of the matter, at the most, arrears of salary from 09.06.2000 till 16.12.2005 (where-after no follow up is shown) can be

considered.

34. Therefore, the petition is disposed of by directing the Petitioners to pay to Respondent No. 1 her last drawn salary from 09.06.2000 to 16.12.2005 with interest @9% p.a. from 16.12.2005 till payment, within a period of 4 weeks from today.

35. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)