(1998) 11 BOM CK 0140

Bombay High Court (Aurangabad Bench)

Case No: Contempt Petition No. 187 of 1998

Madhusudan Kashirao Deshpande		APPELLANT
	Vs	
Ankushrao Nanasaheb Kadam and others		RESPONDENT

Date of Decision: Nov. 18, 1998

Acts Referred:

- Contempt of Courts Act, 1971 - Section 6(2)

Citation: (1999) 3 BomCR 28 : (1999) 81 FLR 356

Hon'ble Judges: R.J. Kochar, J

Bench: Single Bench

Advocate: S.K. Kulkarni, for the Appellant; R.S. Deshmucj, A.G.P. and N.B. Khandare, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.J. Kochar, J.
Heard Shri S.K. Kulkarni, the learned Advocate for the petitioner and Shri Khandare, the learned Advocate for the respondents Nos. 1 and 2. Shri Deshmukh, the learned A.G.P. appeared for the respondent No. 3, the State of Maharashtra.

2. Perused the contempt petition and the affidavits and rejoinder filed by the parties. The case of the petitioner in brief is that the University and College Tribunal, Aurangabad, had directed the respondents Nos. 1 and 2 to continue the services of the petitioner till the regularly selected candidate would be appointed and pay him the honorarium carried by his post of Associate Professor in the Psychiatry Department. This order was passed by the Tribunal as an equitable relief as invited by him to be an ad hoc arrangement during the interval. It may be mentioned that the petitioner was appointed initially from 13-12-1993 only as an ad hoc arrangement as a qualified candidate for the post of Professor in the said

Department was not available. He filed an Appeal before the Tribunal when he received a letter dated 6-8-96 from the Dean of the Hospital that he would be relieved from the services from 16-8-96 on the basis of his resignation letter submitted by him in December, 1995. He termed the said action of the Dean as an illegal order of termination. In the aforesaid circumstances, the case of the respondents was that the petitioner''s appointment was only on temporary basis and was not even approved by the University. It is to be noted that it was the petitioner''s case that he could not claim any permanent post as his initial appointment itself was not lawful. He, therefore, prayed for continuance till the selected candidate is appointed. It appears from the Affidavits filed on behalf of the respondent Nos. 1 and 2 that a selected candidate Dr. Rakesh Ghaldiyal has been appointed as a Professor in the Department and, therefore, the petitioner stood discontinued with effect from 28-8-98 and that Dr. Ghaldiyal has joined also.

3. The petitioner has field this contempt petition against the respondents on the ground that no "Associate Professor" in his place was appointed and therefore, the action of the said respondents violates the order of the Tribunal and hence they are under contempt. According to him the respondents have appointed a Professor and not an Associate Professor and therefore, he is entitled to continue as an Associate Professor till another Associate Professor is selected and appointed. In reply, the respondents have filed an affidavit to clarify and explain that as per the norms prescribed by the M.C.I. they are permitted one Professor/ Associate Professor/ Reader for one unit of 30 beds. It is their case that since a qualified Professor was available they have appointed him and now they cannot appoint anyone either Associate Professor or a Reader as they can appoint only one from the above three alternative posts. They have, therefore, submitted that they have not committed any contempt of Court and have not violated the order of the Tribunal.

4. In the aforesaid circumstances, it is not at all acceptable that the respondents are under Contempt for violation of the order of the Tribunal. The respondents have selected a qualified candidate for the post of a Professor in the Department and now they do not have to fill the post of the Associate Professor, since all three posts are given as an alternative to each other as only one post is permissible to them in the concerned Department. The petitioner cannot, therefore, be continued as an Associate Professor and, therefore, he was rightly discontinued after the regular selected candidate was appointed.

5. It is crystal clear that the petitioner, besides being illegally appointed, was only an ad hoc employee, he is trying to pressurise the respondents keeping them under the sword of the contempt of Court. Firstly, he begged for continuation of his services till regularly selected candidate was appointed by way of "an equitable relief (?). Now he is trying to take undue advantage of the Tribunal''s order by stretching the things too far. Indeed, his action itself is contemptuous.

6. For the reasons above, the contempt petition is dismissed with cost which is quantified at Rs, 500/-.

7. Petition dismissed.