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Before Shri. V. P. Shetve, Presiding Officer, College Tribunal,

Goa University, Taleigao Plateau

College Appeal No. 2 of 2013

Maria De Souza Cormoli

.....Appellant

Behind S.F.X. Sports Club,

H. No. 9, Portais,

Panaji- Goa.

V/s

1. The Vice Chancellor,
Goa University,
Taleigao Plateau.
2. Fr. Antimo Gomes,
Principal, St. Xavier's College,
Mapusa, Bardez-Goa.
3. The Management,
St. Xavier's College,
Mapusa, Bardez-Goa.
4. The Secretary,
Government of Goa,
Department of Higher Education,
Secretariat, Panaji-Goa.
5. The Director of Higher Education,
Junta House, 5th Floor,
Panaji-Goa

.....Respondents

Advocate Shri. J. A. Lobo for the Appellant

Advocate Smt. A. A. Agni for the Respondent No.1

Advocate Shri. J. Godinho for the Respondent Nos. 2 & 3

Advocate Shri. G. D. Kirtani for the Respondent Nos. 4 & 5

JUDGEMENT

This is an appeal by a teacher in a college directed against a letter dated 25/6/2001 sent by the Ex-Principal of the college i.e. Respondent No. 2, advising the Appellant not to visit the college for the purpose of giving lectures, etc as her appointment was purely temporary on year to year basis as she did not possess NET/SET qualification and that if she enters the college campus she would be considered as trespasser and dealt with accordingly.

I will briefly state the case of the Appellant as the controversy in this appeal is now reduced or narrowed down to a few points.

The Appellant was appointed as a lecturer at the St. Xavier's College at Mapusa as on 1/7/1998 by the appointment order at Exh "A" and the appointment was upto 20/6/2001. During this period the Appellant was not even issued any memo or given any adverse remarks. On 3/4/2001 Respondent No. 2 (Ex-Principal) wrote her a letter (Exh "E") claiming to be a notice stating that there may not be work load for the Appellant for the academic year 2001-02 and also stating that the Appellant may try and seek employment elsewhere, in her personal interest. According to the Appellant she was subjected to victimization and constant harassment on account of which she wrote a letter dated 22/6/2001 (Exh "H") to the Vice Chancellor (Respondent No. 1) giving facts and drawing his attention to the letter at Exh "E" and further informing the Respondent No. 1 that the number of students for the academic year 2001-2002 had gone up tremendously and that two divisions have already been constituted in the first year B.Sc on the reopening of the college in 2001, having a combined strength of 98 students.

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It is the case of the Appellant that the conduct of Respondent No. 2 (Ex-Principal) to restrain her from taking lectures was an attempt to create a break in her service. By letter dated 25/6/2001 (Exh "J") Respondent No. 2 (Ex-Principal) had informed the Appellant that she had been appointed purely on temporary, (year to year) basis, as she did not possess NET/SET qualification and that her application dated 30/4/2001 had not been considered and that the same would be considered if the work load improved. In Exh. "J" it is further stated that until she was informed, she should not come to the college and in case she enters the college campus it will be considered as trespass and dealt with accordingly.

The Appellant replied to the letter (Exh. "J") on 26/6/2001 (Exh. "K") to the Respondent No. 2 (Ex-Principal) that none of the lecturers in the department of Botany possess NET/SET qualification and that it was incorrect that her appointment was on temporary basis from year to year and that she had continued her service for the last 3 years i.e. from 1/7/1998 to 20/6/2001. It has further been the Appellant's case that though there were sufficient students in the F.Y. B.Sc and though there were sufficient lectures for the seven lecturers in the department including the Appellant, the allegations of Respondent No. 2 (Ex-Principal) that there is no work load is incorrect and it goes to show that Respondent No. 2 (Ex-Principal) has made false statement with the sole motive to force the Appellant out of the college by oblique means without giving a proper show cause notice or terminating the service of the Appellant within the provisions of the law.

It has been further case of the Appellant that a circular issued by the Respondent No. 1 dated 2/5/2001 (Exh. "N") which has clearly instructed to all Principals of Non Government of affiliated colleges that lecturers who have been appointed on or after 1/9/1996 or thereafter and who have completed 3 years of their appointment shall not be terminated in case they did not possess NET/SET qualification. According to the Appellant this circular at Exh. "N" was grossly

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ignored by the Respondent No. 2 (Ex-Principal) and the Appellant therefore preferred an appeal (Exh. "O") before the Respondent No. 1, on 3/7/2001. There has been grievance of the Appellant against the Respondent No. 1 also that her said appeal was not properly heard i.e. she was not given a hearing in the matter and it was disposed off by the Respondent No. 1 by sending her a letter dated 14/9/2001 (Exh. "W") stating that Respondent No. 2 has been directed to grant extension to the appointment of the Appellant.

The Appellant having felt aggrieved by the said decision of the Respondent No. 1 as contained in Exh. "W", moved the Hon'ble High court of Bombay at Goa by means of a Writ Petition bearing No. 381/2001 and it came to be disposed off on 7/1/2002, granting leave to the Appellant to file an appeal before the College Tribunal.

This appeal has been contested by all the Respondents. However an important development has taken place whereby a confirmation order came to be issued in respect of the Appellant, by the Respondent No. 2 dated 8/6/2007 (Page 174) which is placed on record by the Appellant. In this confirmation order it is stated that whereas the Appellant was appointed w.e.f. 1/7/1998 as full time lecturer in Botany on temporary basis (for not possessing NET/SET qualification) under order No. COL/104/98-99 dated 1/7/1998 which had the approval of Goa University by the letter dated 25/9/1998 and which appointment was, with due approval from Goa University, continued for the academic years 1999-2000 to 2000-2001 and from 2002-2003 to 2006-2007. This confirmation order further states that whereas the Appellant is exempted from passing NET/SET as a special case and as a one-time measure only, vide the Government of Goa State Notification No. 9/5/2001/HE/UCTAG/PT/NET/SET/292 dated 16/2/2007 thereby regularizing the service as non- NET/SET lecturer from the date of appointment. The confirmation order further states that whereas the Appellant has given

undertaking to refund the monetary benefits obtained by her by the virtue of the said Government notification dated 16/2/2007 that if in case any decision of appropriate authority goes against it and whereas the Appellant has completed the probationary period satisfactorily; on behalf of the Governing Council of the St. Xavier's College at Mapusa that the Principal i.e. Respondent No. 2 is pleased to inform her that she is confirmed in the said post w.e.f. 1/7/2000.

It was admitted before me that the Appellant has been working on the said post of the lecturer again from academic year 2002 onwards and that she had not worked for the academic year 2001-2002 on account of the developments as mentioned by the Appellant in her case, as set out in this appeal.

Learned Adv. Shri. J. A. Lobo for the Appellant has advanced his arguments before me to show how the letter issued by the Respondent No. 2 (Ex-Principal) stating that there was no work load for seven full time teachers which includes the Appellant, was incorrect. He also tried to show that the number of students which were given admission for the F.Y. B.Sc for the academic year 2001-2002 and even after the students who left later on are taken away, that there were sufficient number of students enough for seven full time lecturers. According to him therefore the case of Respondent No. 2 (Ex-Principal) that there was no sufficient work load for the Appellant was not based on facts and it was merely to oust the Appellant from her post.

No doubt learned Adv. Shri. J. Godinho for Respondent Nos. 2 & 3, on the other hand tried to show how there was no sufficient work load for the seventh lecturer i.e. to the Appellant. However the facts remains now that the services of the Appellant have been confirmed right from the date 1/7/2000 i.e. her date of first appointment. However the said confirmation order states that the appointment of the Appellant was continued for the academic year 1999-2000 to 2000-2001

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and from 2002-2003 to 2006-2007. It shows that the academic year 2001-2002 is not included. Now since the confirmation order has been from w.e.f 1/7/2000 therefore the order has to be considered to be continuous right upto the date of confirmation order. During course of the arguments it was admitted on behalf of the Appellant and Respondent No. 2 that the Appellant has not been paid salary for the academic year 2001-2002. This has happened because the Appellant was stopped from imparting lectures and enter the college in the academic year 2001-2002 by the Respondent No. 2 (Ex-Principal), therefore she has not been paid for that academic year. The question now is who should pay the Appellant the salary for the academic year 2001-2002 i.e. whether the Respondent Nos. 2 & 3 or Respondent Nos. 4 & 5 i.e. the Government. Therefore the points that arise from my determination in this appeal now are as under:

1. Whether the Appellant is entitled to receive her back wages for the academic year 2001-2002 as a lecturer in the said college.
2. Whether it is the Respondent Nos. 2 & 3 or the Respondent Nos. 4 & 5 together who are liable to pay the amount.

As stated by me above, the confirmation order dated 8/6/2007 clearly states that the Appellant is confirmed in the said post of lecturer in Botany in St. Xavier's College w.e.f. 1/7/2000. Usually confirmation in the post is continuous and it cannot be for different periods. Besides although the second para of the confirmation order makes mention of two different periods for which the appointment of the Appellant was continued, excluding there from the academic year 2001-2002, it is clear from the record that it is because of the (Ex-Principal) Respondent No. 2 who stopped the Appellant from giving lectures and subsequent development there to, that the Appellant could not continue with her duties of lecturer in the said college. In other words, it is not on account of the Appellant's own fault. It is now to be considered whether it was proper for the Respondent No.

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2 to stop the Appellant from giving lectures in the academic year 2001-2002.

There are two aspects which are to be considered:

1. That there was a circular issued by the Goa University (Exh. "N") whereby it was communicated that as an interim measure it was decided that the appointment of such teachers (without NET/SET) made on or after 1/9/1996 and those who have completed 3 years of their appointment in the subsequent years till the completion of the academic year 2000-2001 shall not be terminated, until further orders. Whether this circular was applicable to the Appellant's case.
2. I may have to also consider whether the stand taken by the Respondent Nos. 2 & 3 namely that there was no sufficient work load for the seventh lecturer, was justified.

As far as the first aspect is concerned, as I have stated above the Appellant was appointed to the full time post of lecturer in Botany in the said college w.e.f. 1/7/1998 and she continued as such right till the end of the academic year 2000-2001. Therefore her case is covered within the said circular at Exh. "N" as her appointment was after 1/9/1996 and she had completed 3 years in the subsequent years till the completion of academic year 2000-2001. In that view therefore there was no ground for the (Ex-Principal) Respondent No. 2 or Respondent No. 3 to terminate the services of the Appellant in the manner it was done by them, as the said circular at Exh. "N" squarely covered up the case of the Appellant.


Coming now to the second aspect, firstly it is to be noted that Appellant's appointment was to the full time post of lecturer and this appointment was continued for 3 years. There was no stand taken by the Respondent Nos. 2 & 3 that it was a temporary post which required sanction for its continuation from year to year. Therefore it was a post on regular basis. Further even after the Respondent No. 2 (Ex-Principal) stopped the Appellant from her duties on that post it was not

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their stand that they abolished that post or that later on when the Appellant was allowed to continue her duties on that post that the said post was again created. This clearly goes to show that the said post of lecturer was a regular post and almost a permanent post. There is nothing shown by the Respondents that for such a post if the number of students in F.Y. B.Sc in Botany were to decrease by few numbers that the post has to be discontinued or in other words that the services of one teacher has to be terminated.

Even on the question of decrease of work load in Botany it is seen that under Exh. "R.B. Colly" which has been filed by the Respondent No. 2 himself, work load for Botany for the year 2000-2001 is shown both in column No. 11 i.e. number of teachers required for work load indicated in column No. 10 as seven full time lecturers and in column No. 12 i.e. No. of existing lecturers it shows as seven full time lecturers. The Appellant has filed copies of Attendance sheets of students for Academic year 2001-2001, which shows total number of students as 102 at the beginning of the Academic year and which number should be the criteria for assessing the work load for the requirement of teachers. It is therefore not understood on what bases Respondent No. 2 came to conclusion that there was no work load for the Seventh teacher or lecturer. It is also significant to note that after the grievance made by the Appellant to the Respondent No. 1, that the Respondent No. 2 (Ex-Principal) wrote to the Appellant under letter COL/392/2001-2002 dated 24/8/2001 informing that there is an extra work load of eight and half lectures in the department of Botany. It is not understood as to how suddenly this extra work load came when it has not been in the case of Respondent Nos. 2 & 3 that some new students had enrolled in the department of Botany.

In view of all the facts above, I find that the Appellant has been able to prove that her services as a lecturer in the said college were wrongly stopped by the Respondent No. 2 i.e. the Ex-Principal and on that count she was unable to



continue with the duties as a lecturer in the academic year 2001-2002. As a result in the confirmation order dated 8/6/2007 there was no inclusion of the academic year 2001-2002.

It is an admitted position that the Appellant has not been paid for the entire academic year 2001-2002. As pointed out above, this has happened as she was wrongly stopped to perform her duties as a lecturer by action of the Respondent No. 2 i.e. the Ex-Principal. Since the Appellant has been confirmed under the order dated 8/6/2007, w.e.f. 1/7/2000 therefore obviously the academic year 2001-2002 stands included and the Appellant having not been paid for that period it follows that the Appellant has to be paid her salary for that period.

The question now is who has to bear that amount i.e. Respondent Nos. 2 & 3 or the Respondent Nos. 4 & 5.

The said college is aided by the Government of Goa. In other words college gets grants in respect of the salaries of the teachers from the Government. On a query from this Tribunal, the Respondent Nos. 4 & 5 placed on record two facts namely:

1. That the management has not applied for grants in respect of the post of lecturer in the college for the academic year 2001-2002.
2. That the salary grants in respect of the Appellant were not paid to the college during the said academic year.

This is obviously because the Appellant was stopped from performing her duties for the year 2001-2002 that was by the wrong action taken by Respondent No. 2 i.e. the Ex-Principal and consequently Respondent No. 3. Although it is correct that the said college receives grants in respect of the salaries, etc of the teachers from the Government, but for the reasons mentioned above, I find it

difficult to require the Government to pay the wages of the Appellant for the year 2001-2002. It is also to be noted that the Respondent Nos. 2 & 3 have issued the order of confirmation on 8/6/2007 effective from 1/7/2000. This therefore includes period 2001-2002 and the admitted position is that the Appellant was not paid for that academic year.

However, this does not preclude Respondent Nos. 2 & 3 to try and obtain these wages as grants for the year 2001-2002, from the Government of Goa.

In the result, I therefore pass the following order.

ORDER

The appeal is partly allowed. Respondent Nos. 2 & 3 are hereby ordered to pay jointly or severally to the Appellant her salary for the period for the academic year 2001-2002 as a lecturer in Botany, with 6 % interest thereon w.e.f. 8/6/2007, the date of confirmation order, till payment, within 6 months. In the circumstances of the case there shall be no order as to payment of costs.

Pronounced in Open Tribunal

Dated: 22/4/2015

At Goa University, Taleigao Plateau

(V.P. Shetye)
Presiding Officer
College Tribunal

22/4/2015

