

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.295 OF 2015

DISTRICT : MUMBAI

Shri Sanjay Prabhakar Khot.)
Age : 47 yrs, CHB Lecturer in the I.Y.)
College, Mumbai and residing at)
Room No.1, Ramanath Chawl, Behind)
Gumphaddarshan Society, Samarth)
Nagar, Jogeshwari (E), Mumbai 400 060.)...**Applicant**

Versus

1. The Government of Maharashtra.)
Through the Principal, Ismail Yusuf)
College of Arts, Science & Commerce)
Jogeshwari (E), Mumbai.)
2. The State of Maharashtra.)
Through the Secretary,)
Higher & Technical Edu. Department)
Mantralaya, Mumbai.)
3. The Director.)
Directorate of Higher Education,)
Central Building, Pune - 411 001.)...**Respondents**

Applicant in Person.

Shri A.J. Chougule, Presenting Officer for Respondents.



CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 17.06.2016

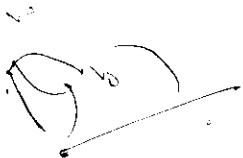
PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) is brought by a Lecturer who was working on Clock Hourly Basis (CHB hereinafter) in the Ismail Yusuf College of Arts, Science & Commerce being Respondent No.1 seeking directions from the Respondents to pay to the Applicant the pending salary as he put it, as detailed in the synopsis and he further seeks directions to the Respondents to accommodate him in what has been described as substitute appointment to other equivalent post in the I.Y. College.

2. We have perused the record and proceedings and heard the Applicant in person and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

3. The 2nd and 3rd Respondents are the State of Maharashtra in Higher & Technical Education Department and Director of Higher Education respectively.



4. The Applicant argued the matter in person and it seems he has drafted the application also. It is possible that representing himself before the judicial forum may not be easiest of things to be done and this is reflected in the language which the OA is coached in. We had to work harder to decipher as to what the Applicant precisely wanted to convey. This aspect of the matter will have to be borne in mind as we proceed further.

5. It is not seriously disputed that the Applicant served I.Y. College not in the regular capacity, but on what is known as CHB. There the Lecturers deliver lectures and the remuneration is paid on the basis of the periods that they engaged and in that sense perhaps it is called Clock Hourly Basis. In the application, the Applicant has apparently given vent to his disappointment, ranker. or even anger against the Principal and some other members of the teaching staff. He has tried to summarize as to how in the manner of speaking he was ill-treated by them perhaps with a view to cause prejudice to him. Now, if this was aimed at making out a case for a mandate to re-engage him on CHB basis or even on some higher footing that the prayer clause (b) seeks to convey namely substitute appointment, we are very clearly of the opinion that such an affirmative mandate aimed at, "employing"



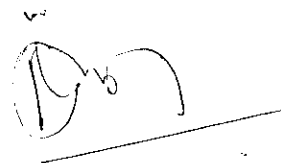
the Applicant cannot be made within the scope of this OA. Now, as a matter of fact, it would not be a common place order to be made even otherwise by a judicial forum like the present one under the elementary tenets of the administrative law. That is not just a matter of technicality, but of substance. It is, therefore, very clear that neither in law nor on facts has the Applicant been able to make out a case for, "re-appointment" or any such relief. The relief sought in prayer clause (b), therefore, has to be and is hereby rejected.

6. We may now turn to the prayer clause (a) which essentially envelopes within itself the relief of the allegedly held-up "salary". The Applicant himself at Serial No.7 in the synopsis has mentioned that an amount of Rs.76,125/- was outstanding out of which an amount of Rs.50,500/- was paid as a part payment. The amount of Rs.25,625/- is due to be recovered from the I.Y. College, so claims the Applicant.

7. In Para 4 of the Affidavit-in-reply of Dr. Mrs. Pratima S. Jadhav, the Principal of I.Y. College in dealing with this aspect of the matter, it is pleaded *inter-alia* that the question of making the payment of Rs.25,625/- does not arise. In that behalf, a letter dated 25.4.2014

addressed to the Principal by the Head of the Department of Commerce is relied upon. It is pleaded *inter-alia* that from July, 2013 to February, 2014, the total amount payable was Rs.50,500/- and the said amount was paid which is indisputable on Applicant's own showing also and there is a receipt signed by the Applicant, a copy of which is at Page 139 of the OA. However, in ink after the typed portion, the Applicant has mentioned that the amount of Rs.50,500/- was part payment and an amount of Rs.25,625/- remained pending, as it were.

8. It is, therefore, quite clear that in fact, both the sides could have but have not cared to fortify their respective cases by documents. As per the elementary principles of law even if we were to keep the theoretical principles of burden of proof and onus apart, the Applicant should have produced documents or by any other means proved his case. That is one aspect of the matter. It is, however, very clear that even the Respondents would be having the documents to fortify their case that Rs.50,500/- was the only amount due which was admittedly paid. Although the present Principal of the I.Y. College appeared before us twice, but in the ultimate analysis, this tangle could not be unknotted. In **Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif, AIR 1968 SC 1413** (Haji Malang's



case), it is held by the Hon'ble Supreme Court that the party in possession of the best evidence must produce the same without insisting on the abstract theory of burden of proof. That being the state of affairs and regard being had to the fact that out of the parties before us, the Respondent - I.Y. College was in a better position to place before us convincing evidence and they have failed in that behalf, we are of the opinion that directions will have to be given to them to make sure as to whether they have, on the basis of their documents, to pay an amount of Rs.25,625/- to the Applicant or not because that is a conclusion to be drawn on documents and not on a mere say so of the H.O.D of Commerce of his letter to the Principal. Necessary directions in this behalf will have to be given in the concluding Paragraph.

9. As far as the payment of the other amounts like for the examination related work, etc., it is very clear that the Applicant has not been able to establish either the liability of I.Y. College or the quantum. That is because as per common knowledge, these payments are to be made by the authorities other than the College and may be the University.

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10. In view of the foregoing, the Respondent No.1 – I.Y. College is hereby directed to examine as to whether an amount of Rs.25,625/- is due to be paid by them to the Applicant and for that they would go by their documents and not a mere say so of H.O.D, Commerce. In case, they find that the Applicant is entitled thereto, then only the payment be made to him. This entire exercise be completed within a period of two months from today and due intimation be given to the Applicant within one week thereafter. The claim for all other reliefs is rejected and the Original Application is disposed of in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
17.06.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
17.06.2016

Mumbai
Date : 17.06.2016
Dictation taken by :
S.K. Wamanse.