

B.D. JADHAVAR

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v.

K.D. BHAGWAN AND ORS.

SEPTEMBER 1, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

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*Service Law :*

*Ad hoc appointment as Lecturer—College not having requisite number of students so as to allow continuance of appointment—Consequential transfer to another college—Instead of reporting for duty ad hoc appointee seeking regular appointment—Decline of such request—Obtaining order for regular appointment from Tribunal—In the meanwhile college making regular appointment—As a result college not in a position to take the adhoc appointee on duty—Held in such circumstances no direction can be issued for appointment of the ad hoc appointee.*

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The appellant was appointed as an *ad hoc* lecturer in the first respondent-college. Since the college did not have the requisite number of students to allow him to continue on that post, it requested the Director of Education to transfer the appellant to some other college. Accordingly he was transferred to the third respondent-college and was directed to report himself for duty. However, instead of reporting for duty he asked for a letter of appointment as a regular teacher which was declined. Thereafter the appellant obtained an order from the Tribunal for appointment as a permanent teacher. Since in the meanwhile a lecturer had already been appointed the third respondent-College was not in a position to take the appellant on duty. Thereafter, the appellant unsuccessfully invoked the writ jurisdiction of the High Court.

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In appeal to this Court it was contended for the appellant that (1) since by virtue of the policy of the Government, the appellant had put in more than two years' service as temporary lecturer, he must be deemed to be a regular lecturer; having been appointed as a lecturer in the first respondent-college he must be deemed to be a regular lecturer in that college; (ii) the omission to take him on duty amounts to dismissal without enquiry.

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**A Dismissing the appeal, this Court**

**B HELD :** In the circumstances of the case the appellant himself is responsible to lose his right to the post of lecturer. Until he is confirmed to any post according to rules, he cannot claim the status as a regularly appointed lecturer. The question of holding enquiry does not arise nor the refusal to allow joining amounts to dismissal. Therefore, it is difficult to give direction to consider him for appointment. [267-H; 268-A-B]

CIVIL APPELLATE JURISDICTION : Civil appeal No. 8380 of 1995.

**C** From the Judgment and Order dated 30.8.93 of the Bombay High Court in W.P. No. 426 of 1985.

V.M. Tarkunde and Ms. M. Karanjawala for the Appellant.

**D** S.V. Deshpande for the Respondents.

The following Order of the Court was delivered :

Leave granted.

**E** We have heard the learned counsel for the parties. Though the appellant was initially appointed as an *ad hoc* lecturer in the first respondent-College which had not had the requisite students to allow the appellant to continue on that post, they had written to the Director of Higher Education to have him transferred to any other college. Consequently, the

**F** Director of Higher Education had written to the Principal of the first respondent-College to have him relieved so that he should be posted and instructed the third respondent-College where there was a vacancy, to have him joined therein. Accordingly, on July 14, 1985, the Principal of third respondent-College had agreed to and the appellant was directed to report for duty immediately in the third respondent-College. Unfortunately,

**G** instead of reporting himself for duty, he went to the College, asked them to give him the letter of appointment as permanent teacher. Since they did not give letter of appointment, he went to the Tribunal and obtained an order to have him posted as regular lecturer. By that time six months time had lapsed. Then he wrote a letter on January 28, 1985 requesting the third

**H** respondent to take him back on duty; a telegram was sent by the third

respondent informing the appellant that he need not come for joining the duty. Then he filed the writ petition in the High Court. The High Court by its order dated August 30, 1993 in C.W.P. No. 426 of 1985 dismissed the writ petition. Thus this appeal by special leave.

Shri V.M. Tarkunde, the learned senior counsel appearing for the appellant, contended that since by virtue of the policy of the Government, the appellant had put in more than two years' service as temporary reserve lecturer, he must be deemed to be a regular Lecturer and he having been appointed as a lecturer in the first respondent-College, must be deemed to be a regular-lecturer in that college. He cannot be transferred elsewhere, but having been posted and gone to report to the third-respondent, he was not taken on duty. He cannot be kept in vacuum and he has lawful right to continue as a lecturer in first respondent-College. The omission to take him on duty amounts to arbitrary deprivation of his right to post to which he is entitled thus amounts to dismissal without enquiry.

Shri S.V. Deshpande, learned counsel appearing for the first and second respondents, contended that though initially the appellant was appointed as temporary lecturer in the first respondent-College, since the College did not have the requisite students to be taught English, they had written to the Director, Higher Education to accommodate the appellant in an appropriate College. Accordingly, he was relieved from the first respondent-College. Therefore, it bears no obligation to take the appellant to a non-existent post.

It would appear that the appellant was kept in List I of the *ad hoc* teacher awaiting regular appointment after confirmation. Though he was appointed initially on *ad hoc* basis, there is no order of appointment confirming him on any post. When he was transferred and posted to the third respondent-College where he was directed to join duty, unfortunately, instead of reporting for the duty, he insisted for his appointment letter as regular lecturer which was rightly declined. Consequently, he approached the Tribunal and came back with order in his hands to report for duty, by which time they already had a lecturer in that college. Under these circumstances, the third respondent-College was not in a position to take him on duty.

- A Accordingly, the appellant himself is responsible to lose his right to the post of lecturer. Until he is confirmed to any post according to rules, he cannot claim the status as a regularly appointed lecturer. The question of holding enquiry does not arise nor the refusal to allow joining amounts to dismissal. It will be difficult, in these circumstances, to give direction to
- B consider him for appointment.

The appeal is accordingly dismissed. No costs.

T.N.A.

Appeal dismissed.