Filed on - 25-07-2019.

Order reserved on - 17-10-2019.

Order pronounced/ issued on - 17-10-2019.

Duration - years 02 months 22 days.

**Rashtrasant Tukadoji MaharajNagpur University,Nagpur**
**BEFORE THE GRIEVANCES COMMITTEE.**

**(Presided over by Shri. Arvind J. Rohee, former District Judge.)**

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**Grievance Petition No. 11/2019.**

**Applicant** : Mrs.Varsha Vinod Awachar,
Age 39 years, occupation – unemployed,
R/o Kumbhare Colony, Kamptee
Tq Kamptee, Dist. Nagpur.

- Versus -

**Non-applicants:** 1. President, Wardhaman Bahuuddeshiya Sanstha,
Behind Madhi Mandir, Ghorpad Rd,
hirpur, Tq.Kamptee. Dist. Nagpur.

2. Secretary, Wardhman Bahuuddeshiya Sanstha, a registered Trust No. MAH-702/2004, Near Dragon Palace, Behind Madhi Mandir, Ghorpad Road (Shirpur), Tq. Kamptee, Dist. Nagpur.

3. Principal, Institute of Technical and Management (ITM college of Engineering), Near Dragon Palace, Behind Madhi Mandir, Ghorpad Road, (shirpur), Tq. Kamptee, Dist. Nagpur.

**ORDER (ORAL)**

(Delivered on 17-10-2019.)

The Applicant approached this Grievances Committee under section 79 (1) of the Maharashtra Public Universities Act, 2016 against the Non-applicants for declaration of his status and existence of relationship of employee and employer between them.

2. The following reliefs are sought namely-

a) Hold and declare that, there exists employer and employee relationship between the complainant and the respondent No.1, 2 and 3;

b) Allow the complaint with costs;

c) Grant any other relief which this Hon'ble committee may just deem it fit in the facts and circumstances of the case.

3. Wardhaman Bahuuddeshiya Sanstha runs Technical & Management College of Engineering at Kamptee, District Nagpur, which is affiliated to RTM Nagpur University. The approval of All India Council for Technical Education (AICTE) is also obtained to run the technical course from the academic year 2010-11. It is stated that the Applicant came to be appointed by the non-applicant on 01-06-2010 as Class IV employee i.e. Peon/Attendant on meagre salary of Rs. 2500/- per month. It is stated that no appointment order was, however, issued under the pretext that approval was awaited. The Applicant, therefore, continued to work as Class IV employee in the

college of Non-applicants, relying, on the aforesaid assurance given by them.

4. The Applicant made oral requests to the Non-applicants from time to time to issue appointment order. However, to his surprise, the services were illegally terminated by oral orders with effect from 01-05-2016 i.e. after rendering six years of service. According to Applicant this termination is illegal. She, therefore, approached the Hon'ble University and College Tribunal, Nagpur by way of appeal challenging his oral termination. In that appeal the Non-applicants raised preliminary objection regarding locus of the applicant to seek any relief, on the ground that there was no jural relationship of employer and employee between them.

5. The Hon'ble University and College Tribunal, Nagpur after hearing both the parties, vide order dated 25-06-2019 while condoning the delay in filing the appeal, directed the Applicant to approach the Grievances Committee for adjudication of his status and the appeal was kept pending for final decision, awaiting decision of this Grievances Committee on the issue referred.

6. According to the Applicant he is the permanent employee of the Non-applicants and hence is entitled to get all the benefits. However, his services came to be abruptly terminated without following due process. The Non-applicants have incorrectly asserted that they used to avail services of casual labour from the private contractor.

According to the Applicant it is incorrectly asserted by the Non-applicants that work order to M/S. Shri Cleaning Services to provide office Peons for college was issued and the Applicant was engaged by the said agency. The Grievance Petition, therefore, needs to be allowed.

7. On notice, nobody appeared for the Non-applicants nor any request is made on their behalf for time to file reply, although they were informed by the office. Since sufficient time was granted to the Non-applicants to appear and to file their defence and since no steps were taken by them in this behalf, the Grievances Committee was constrained to close the matter for orders.

8. Heard the Applicant. The members of the Grievances Committee present have carefully perused the entire case record and also held deliberations and discussion on the issue involved in the matter including the law point.

9. On perusal of record and submissions made by the Applicant the only point that arises for consideration of this Grievances Committee is whether it is established that there exists a jural relationship of employee and employer between the parties and the Applicant is, therefore, entitled to the declaration sought?

10. The Grievances Committee record its finding in the negative for the following reasons-

## - REASONS -

11. It is obvious from perusal of record that the Applicant rendered services to the college as Peon/Attendant from the year 2010. The Applicant, however, failed to produce any office order issued by the college, showing that he has been appointed either on temporary or permanent basis in the vacant post of Peon. No appointment order to this effect issued by the management in favour of the applicant is ever produced on record. When specifically asked about non production of the appointment order, the Applicant stated that the college administration had given assurance that he will be made permanent after getting approval and then appointment order will be issued. It is also stated that few of his colleagues which were engaged as Peon/Attendant were absorbed on regular post and appointment orders were issued to them. However, no appointment order is issued to the Applicant and he bonafide believed on the assurances of the college administration and waited for appointment order to be issued.

12 There may be some truth in this contention of the Applicant. However, it is evident that no appointment order is ever issued to the Applicant, otherwise it would have been produced by him. There is also nothing on record to show that any Advertisement was published by the college administration/management inviting applications from the eligible candidates for making appointment of Class IV employees and in pursuance thereof the applicant applied and was selected for the said post. There is also nothing on record to show

that the University granted approval to the applicant's appointment. Virtually the applicant admitted the fact that he was engaged on daily wages/ contract basis as Peon/Attendant and not as temporary or regular Class IV employee.

13. The Applicant in support of his contentions that he is permanent employee, referred and relied on the Attendance Statement of staff for the month of October 2012 and agency Staff Payment details for the month of January 2015 to November 2015, duly signed by the Principal Dr.Hemant Hazare. It is obvious that this may be treated as the agency's staff salary sheet. Thus it cannot be treated extract of their pay roll. As such it cannot be said that the Applicant received salary in the strict sense for the services rendered. The Statements also show number of days in a month, number of days on which the concerned persons were present and the net salary paid to them. However, from this Attendance Statement alone, it cannot be said that the Applicant was in employment of the college. On the contrary it can safely be said that the Applicant and few others were engaged either on daily wages or on contract basis to render the service to the college, it may be said that initially the college itself has so engaged the Applicant. However, thereafter, it appears that the college administration had decided to outsource the work of Peon/Attendant and identified the agency who engaged the Applicant and others to work on daily wages/contract basis. There is nothing on record to show that there is any order of fixation of pay of the Applicant and he received prescribed basic pay for the post of Peon along with

emoluments such as Dearness Allowance, City Compensatory Allowance or Transportation Allowance and that any amount has been deducted from the gross salary towards Profession Tax or Provided Fund. As such it cannot be gathered that there was jural relationship of employer and employee between the parties as alleged by the applicant. We do not find any force in the contention of the Applicant that he was permanent employee of the Non-applicants, in absence of any other material and reliable corraborative piece of evidence in this behalf.

14. It is thus obvious from record that the Applicant was engaged by outsourced agency to work as Peon/ Attendant in the college and he must have received the settled wages /remuneration for the services rendered by him from the said agency, to which consolidated monthly amount of wages of all the persons so engaged was remitted by the college. It is obvious that the defence taken by the Non-applicants in the pending appeal before the Hon'ble University and College Tribunal seems to be reliable, especially in absence of any concrete proof from the Applicant's side to rebut it. As stated earlier simply relying on Attendance Statement of October 2012 and Agency's Staff Salary Sheets for the month of Jaunary 2015 to November 2015, it cannot be said that the applicant was in the employment of the college. On the contrary he was engaged by outsource agency to render service to college. It is obvious that after April 2016 the college administration discontinued to avail the services of the outsource agency and hence the applicant was not continued.

Even if few of his colleagues who were engaged by the outsource agency were absorbed by the college by giving regular appointment to them as stated by the Applicant, It is obvious that the Applicant was excluded. At the relevant time the applicant could have approached the Labour Court for seeking regularization of his previous service rendered on daily wages/contract basis and for a direction to the Non-applicants to absorb in permanent vacant post. It appears that this right has not been exercised by the applicant at the relevant time. This Grievances Committee cannot exercise power and jurisdiction vested in Labour Court to grant any relief to the applicant.

15. Before concluding, it may be stated that the term employee/Non-teaching employee is nowhere defined in Maharashtra Public Universities Act, 2016, although for teaching staff elaborate provisions are made right from their selection. However, in Standard Code, 1984 framed by Government of Maharashtra styled as "Maharashtra Non-agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of Non-teaching Employees) Rules, 1984, the term non-teaching employee is defined under rule 2(27), which reads as under-

> *"Non-teaching employee means a person in employment of the University or be affiliated colleges as the case may be and appointed on time scale of pay other the teacher or teachers of the university"*

16. As stated earlier, there is nothing on record to show that the applicant was appointed in the affiliated college run by the Non-

applicants, after she was duly selected by following the Rules or that her daily wages/contractual service was regularized by the Non-applicants and he was absorbed in the vacant post of Peon. This being so, the Applicant cannot be treated as non-teaching employee of the college. Consequently, it cannot be said there is any jural relationship of employee and employer between the parties. As such the declaration sought by the applicant cannot be granted.

17. In the result, the Grievances Committee do not find any merit in the present Grievance Petition and although services were rendered by the applicant to the college as casual or contractual Peon /Attendant and was engaged by the outsource agency nominated by the college, no relief can be granted to the Applicant. The grievance application, therefore, stands dismissed, however, without there being any order as to payment of costs.

18. Office to issue authenticate copy of this order to both the parties at the earliest and shall also forward it to the Hon'ble University & College Tribunal Nagpur, for consideration in pending appeal of the applicant.

Nagpur.
Dated-17/10/2019.

(Arvind J. Rohee),
Chairman, Grievances Committee,
RTM Nagpur University, Nagpur.