

(2023) 12 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No.4920, 4921 Of 2023

Dhananjay Bhagwandas Devi And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 22-12-2023

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Act, 1977 — Section 2(21), 2(23), 2(24)
Dr. Babasaheb Ambedkar Technological University Act, 2014 — Section 86

Citation : (2023) 12 BOM CK 0055

Hon'ble Judges : A.S. Chandurkar, J; Firdosh P. Pooniwalla, J

Bench : Division Bench

Advocate : C.G. Gavnekar, Ashutosh Gavnekar, Rohit Parab, V.M. Mali, T.R. Yadav, Divya Wadekar, Avinash Jalisatgi, Anjali Helekar, N.V. Bandiwadekar, Milind Deshmukh

Judgement

A.S. Chandurkar, J

1. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the parties.

2. Since similar issues arising in these Writ Petitions, they are being decided together by this common judgment. Both the petitioners came to be appointed as Associate Professors at the College of Engineering and Polytechnic that is being conducted by the 4th respondent – Society. By an order dated 20th February 2023, both the petitioners were transferred from Karmaveer Bhaurao Patil College of Engineering, Satara to Karmaveer Bhaurao Patil Polytechnic, Varye, Panmalewadi, Satara on administrative grounds. The petitioners are aggrieved by the said order of transfer principally on the ground that the College of Engineering, where they were serving as Associate Professors, is affiliated to the 8th respondent – All India Council of Technical Education (AICTE), while the college where they have been so transferred is a Polytechnic College, that falls within the purview of the 2nd respondent – Director of Technical Education and is

recognized as a "School" under Section 2(24) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The transfer is thus not on an equivalent post. During pendency of the Writ Petitions, the services of both the petitioners came to be placed under suspension pending enquiry by the orders dated 2nd May 2023. By amending the Writ Petitions, the petitioners seek to raise a challenge to the orders of suspension.

3. Mr. C.G. Gavnekar, learned counsel for the petitioners raised two fold contentions. Insofar as the orders of transfer are concerned, it was submitted that as the petitioners were serving on the post of Associate Professor at the College of Engineering and Polytechnic, Satara, their services were liable to be transferred at any of the Sanstha's colleges. This would mean that the petitioners' transfer could be effected on an equivalent post in any college where such posts of Associate Professor were available. Since the impugned orders of transfer require the petitioners to discharge duties at the Polytechnic College, which is a "school", under Section 2(24) of the Act of 1977, on a post that was not equivalent, the orders of transfer are liable to be set aside. The justification sought to be given by the Management that the orders of transfer were effected in accordance with the terms of appointment of the petitioners, cannot be accepted. Referring to paragraph 5 of the affidavit-in-reply filed on behalf of the Society, it was pointed out that the petitioners' transfers were permissible at any of the colleges run by the Society and not at any school run by it. On this count, it was submitted that the orders of transfer were liable to be set aside.

. As regards the orders of suspension dated 2nd May 2023, it was submitted that the same were issued in exercise of vindictive power by the Society. Merely because the petitioners had made certain complaints and were protesting against the manner in which the affairs of the college were being conducted, they had been placed under suspension. Though reliance was placed on Clause 10.66 of the Statutes for Classification, Appointments and Governing the Terms and Conditions of Service of Teachers in Affiliated Colleges and Recognized Institutions (for short, "the Statutes"), it was clear that the suspension of the petitioners was not justified in the facts of the present case. Period of more than 90 days had expired since the petitioners were placed under suspension and on this count too, this Court ought to interfere in exercise of writ jurisdiction.

4. It was further submitted that there was no alternate remedy available to the petitioners to raise their grievances as sought to be raised in the Writ Petitions. The Engineering College was affiliated to Dr. Babasaheb Ambedkar

Technological University and no Grievance Committee had been constituted, as required by Section 86 of the Dr. Babasaheb Ambedkar Technological University Act, 2014 (for short, "the Act of 2014"). The Grievance Redressal Cell referred to by the Society was not similar to the one required to be constituted under Section 86 of the Act of 2014. Reference in this regard was made to the order passed in Writ Petition No.2292 of 2023 (Chandrakant S/o. Gundiba Katwate Vs. The Registrar, Dr. Babasaheb Ambedkar Technological University and Ors.), dated

14th September 2023, to urge that the constitution of the Grievance Redressal Cell pursuant to the Notification dated 11th September 2023 issued by Dr. Babasaheb Ambedkar Technological University, Lonere-Raigad, (for short, "the University"), did not amount to constituting Grievance Redressal Cell as required by Section 86 of the Act of 2014. Hence, there being no other efficacious remedy, the petitioners had approached this Court.

5. The aforesaid submissions were opposed by Mr. N.V. Bandiwadekar, learned Senior Advocate for the Society. According to him, in the orders of appointment issued to both the petitioners, a specific condition of service was incorporated stating that the services of the petitioners were transferable to any of the Sanstha's colleges. By virtue of Resolution dated 16th February 2023, the services of the petitioners were transferred and it was made clear therein that the petitioners would continue to receive the same pay scale that they were receiving prior to the order of transfer. Since no financial loss was being caused to the petitioners and transfer being an incident of service, there was no reason to interfere with the order of transfer.

. As regards the orders of suspension, it was submitted that on 23rd February 2023, the Society had issued show cause notices to both the petitioners seeking their explanation as regards their unacceptable conduct. The show cause notices were replied by both the petitioners and since such reply was not found satisfactory, it was resolved to hold a departmental enquiry against the petitioners. For that reason, they were placed under suspension by the orders dated 2nd May 2023. The learned Senior Advocate referred to Clause 10.60 of the Statutes to submit that on the allegations of misconduct, disciplinary proceedings were being held. The orders of suspension having been passed in accordance with Clause 10.66 of the Statutes, there was no reason to interfere with the same. There being a power of suspension with the Society, the same had been exercised in the overall interest of administration of the colleges run by the Society. It was, therefore, submitted that there was no case made out by the petitioners to interfere in exercise of writ jurisdiction.

6. We have heard the learned counsel for the parties and with their assistance, we have also perused the documents on record. We have thereafter given due consideration to their respective submissions. At the outset, we may consider the objection raised by the learned Senior Advocate for the Society that under Section 86 of the Act of 2014, a statutory remedy of approaching the Grievance Committee is available to the petitioners. In this regard, reference can be made to the affidavit-in-reply filed on behalf of the 7th respondent – Registrar of the University. In the said affidavit, reference has been made to the Notification dated 11th September 2023 seeking to constitute a Grievance Redressal Cell under Section 2(23), read with Section 86 of the Act of 2014. It has been further stated that this Notification was the subject matter of consideration by the Division Bench in Chandrakant S/o. Gundiba Katwate (supra) and by the order dated 14th September 2023, it has been held that the

Grievance Redressal Cell, as constituted by the Notification dated 11th September 2023, is not equivalent to a Grievance Committee as required to be constituted under Section 86 of the Act of 2014. From the aforesaid, it is clear that, at present, there is no Grievance Committee constituted for considering any grievance of employees of colleges affiliated to the University. In that view of the matter, we do not find that the petitioners have any alternate remedy to raise the grievances that they have sought to raise in these Writ Petitions. This objection, therefore, does not deserve acceptance.

7. Coming to the challenge to the orders of transfer dated 20th February, 2023, it is seen that the services of the petitioners have been transferred from the College of Engineering to the Polytechnic College run by the Society. It is not in dispute that the College of Engineering is affiliated to the University while the Polytechnic College is, in fact, a Junior College that is not affiliated to the University. When the petitioners were transferred, they were holding the post of Associate Professor in the subjects of Electrical and Electronics respectively. These posts are not shown to be available at the Polytechnic College, where they have been transferred. It is to be further noted that the services of the petitioners are presently governed by the Act of 2014 and the Statutes framed thereunder. The Polytechnic College, where the petitioners have been transferred, falls within the definition of the term "School", as defined by Section 2(24) of the Act of 1977. The Polytechnic College is recognized by the Director of Technical Education in accordance with Section 2(21) of the Act of 1977.

. From the aforesaid, it becomes clear that the petitioners have been transferred not to any college where the post of Associate Professor is available but have been transferred to the Polytechnic College wherein the post of Associate Professor is not available. Clause 8 of the appointment order of both the petitioners stipulates that their services were transferable to any of the colleges run by the Society. This would mean that such transfer would be permissible at any college where such equivalent post is available. The Society seeks to justify the order of transfer by contending that the services of the petitioners could be transferred to any of the branches of the Institutes. Such stand has been taken in paragraph 5 of the affidavit-in-reply filed on their behalf. It is seen that this stand is not in consonance with the order of appointment issued to the petitioners. It is thus clear that the petitioners have been transferred to the Polytechnic College where the post of Associate Professor is not available. The transfer has been effected from a college affiliated to the University to a Polytechnic Institute, which answers the definition of "School" under Section 2(24) of the Act of 1977. On the ground that the petitioners have been transferred not on an equivalent post, a case for interference has been made out. It is thus held that the transfer orders dated 20th February 2023 issued to the petitioners by the Society are not in accordance with law.

8. Coming to the challenge to the orders of suspension dated 2nd May 2023, it is seen that the same have been issued with a view to conduct a disciplinary

enquiry against the petitioners. While there can be no quarrel with the proposition that a Master is competent to place the services of its servant under suspension, we find that an order of suspension for indefinite duration falls foul of the law laid down by the Hon'ble Supreme Court in *Ajay Kumar Choudhary Vs. Union of India and Anr.*, (2015) 7 SCC 291. It has been held therein that the currency of a suspension order should not extend beyond three months if within this period the Memorandum of Charges / Charge Sheet is not served on the delinquent. If the Memorandum of Charges / Charge Sheet is served, a reasoned order has to be passed for extending the period of suspension. It is seen that the period of more than three months has since elapsed from 2nd May 2023, when the petitioners were placed under suspension. It has not been pointed out that any Charge Sheet has been served on the petitioners within a period of three months or that if the same has been served thereafter, a reasoned order has been passed for extending the period of suspension. Hence, on the ground that a period of more than five months has elapsed since the petitioners have been placed under suspension, a case for interference to that limited extent of curtailing the period of suspension has been made out. Thus, while holding that the Society was within its rights in placing the petitioners under suspension pending initiation of a departmental enquiry, we find that continuation of the orders of suspension for an indefinite period is unwarranted. It would, therefore, be necessary to interfere with the continued suspension of the petitioners.

9. In the light of the aforesaid discussion, the following order is passed :-

(a) The orders of transfer dated 20th February 2023, transferring the services of the petitioners from the College of Engineering to the Polytechnic College, are set aside.

(b) While upholding the power of the Society to place the petitioners under suspension, it is held that the continued suspension of the petitioners beyond a period of three months is unwarranted. The orders of suspension dated 2nd May 2023 would cease to operate from 26th December 2023.

(c) Needless to state that in case the Society desires to extend the period of suspension, it would have to comply with the observations in paragraph 21 of the decision of the Hon'ble Supreme Court in *Ajay Kumar Choudhary* (supra).

(d) It is clarified that this Court has not gone into the reasons assigned for placing the petitioners under suspension.

(e) It would be open for the petitioners to raise all defences available in the disciplinary proceedings which shall be conducted in accordance with law.

10. Rule is made absolute in the aforesaid terms with no order as to costs.