

(2000) 06 BOM CK 0107
In the Bombay High Court
Case No : Writ Petition No. 327 of 1989

Madhukar Baburao Achari

APPELLANT

Vs

Shikshak Smarak Sanstha and another

RESPONDENT

Date of Decision : 29-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 12, 226, 227, 32
Industrial Disputes Act, 1947 — Section 10(1), 2(5), 25
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 9
Poona University Act, 1974 — Section 42

Citation : (2000) 4 BomCR 796 : (2000) 86 FLR 825

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : A.S. Shelke for S.K. Shelke, for the Appellant; S.P. Deshmukh, for the Respondent

Judgement

R.J. Kochar, J.—The petitioner has challenged the award dated 23-7-87 given by the Labour Court, Ahmednagar, rejecting the Reference (I.D.A.) No. 28/85 referred by the State Government for adjudication of the industrial dispute raised by the petitioner against the respondent College praying for reinstatement with full backwages and continuity of service. The Labour Court has rejected the reference for want of jurisdiction to entertain the industrial dispute in view of the other independent remedy available to the petitioner under the Poona University Act of 1974.

2. The facts are in a very narrow compass. By an order dated 7-1-1982 the petitioner was appointed as a peon in the prescribed scale with effect from 1-7-1981 on purely temporary basis and the appointment was subjected to approval of the Director of Education. It was also stipulated that his services were liable to be terminated without any notice and without assigning any reasons. It is an admitted position that he continued to be employed till he was

terminated by an order dated 24-4-1984 with effect from 1-5-1984 on the ground that the Director of Higher Education did not accord his approval to the petitioner's appointment being in excess of the staffing pattern proposed by the Government. Being aggrieved by the said order of termination he raised the present industrial dispute and challenged the legality and propriety of the termination order and prayed for reinstatement with full backwages and continuity of service. Both the parties filed their pleadings before the Labour Court. The respondent-management raised a preliminary point of jurisdiction and maintainability of the reference before the Labour Court. The College management questioned the powers of the State Government to refer such an industrial dispute for adjudication to the labour Court and also questioned the jurisdiction of the Labour Court to adjudicate such a dispute on the ground that the petitioner employee was governed by the Poona University Act, 1974 and that u/s 42-A he had to file an appeal before the College Tribunal under the said Act. In view of the provisions of the said Act the remedy of the petitioner was restricted to the said Act and that he had no right to raise an industrial dispute under the provisions of the Industrial Disputes Act, 1947. By the impugned award the Labour Court accepted the preliminary objection of the College management and held that the jurisdiction of the Labour Court was ousted in view of the provisions contained in section 42-B to 42-E of the Poona University Act, 1974. The reference was thus rejected.

3. The petitioner is challenging the said award and order of the Labour Court under Article 227 of the Constitution of India. Shri Shelke, the learned Advocate for the petitioner has submitted that the remedy under the Poona University Act, is an additional remedy and that the petitioner being a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947, he was entitled to raise an industrial dispute to challenge the propriety and legality of the termination order under the provisions of the I.D. Act. It was submitted by the learned Advocate that since the College continued to be an industry as defined under the I.D. Act, and the petitioner being a workman was entitled to raise an industrial dispute against the respondent employer i.e. the College management. He further submitted that there was no implied or express bar under the Poona University Act, to resort to any other alternative remedy available to the petitioner and it was his choice to prefer a forum and therefore, the findings of the Labour Court were not sustainable. Shri Shelke further submitted that the order of termination was in contravention of section 25-F and 25-G of the Industrial Disputes Act, 1947 and therefore, it was illegal and void ab initio for want of compliance of the mandatory provisions of the Act. It was further submitted that the respondent College was getting 100% grant from the Government and hence it was a State instrumentality within the meaning of Articles 12 and 226 of the Constitution of India and therefore, it was amenable to the writ jurisdiction of this Court and therefore, instead of remanding the matter back to the Labour Court or requiring the petitioner to approach the College tribunal, this Court itself should decide the dispute as 17 years have passed from

the date of the termination. The learned Advocate has also relied on a decision of a learned Single Judge of this Court (B.H. Marlapalle, J.) in *Satyawadi Ganpatrao Pimple and others v. Aruna Ganpatrao Narwade and another*, 2000(3) BC.R. 322 : 2000(2) MLJ 322. The learned Advocate has submitted that the point before the learned Judge was similar as the controversy in that case was whether a suit u/s 9 of the C.P.C. would lie or appeal provided u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 alone would be available. My pointed attention was drawn by the learned Advocate to the following portion of the judgment.

"The employees in private schools may consist of teaching and non-teaching and so far as non-teaching employees are concerned, they may have a remedy of a dual nature inasmuch as to approach the school tribunal u/s 9 in respect of the matters provided thereunder or any other grievance and alternatively, to approach the Labour Court/Industrial Court, under the provisions of the M.R.T.U. & P.U.L.P. Act. 1971."

4. Shri Deshmukh, learned Advocate for the College Management has supported the decision of the Labour Court. He submitted that the Poona University Act, 1974 is a complete Code in itself and it provides for every contingency arising in the management of the College in every respect including the relationship with the employees, teaching or non-teaching. In the submissions of Shri Deshmukh, all the rights and liabilities created under the special statute which governs both the parties. He further laid stress on the point that all the conditions of service are stipulated and are governed by the said Act. Shri Deshmukh, also pointed out that not only the rights and liabilities are created under the said statute but a special forum is also created for redressal of the grievances of the employees and there is finality attached to the decisions given by the College Tribunal which alone is a competent authority and which alone has jurisdiction to decide all the questions which arise between the management and the staff teaching or non teaching. According to Shri Deshmukh, the Industrial Disputes Act, 1947 or the M.R.T.U. and P.U.L.P. Act, 1971 did not apply to the College or institution which is governed under the Poona University Act. According to him the provisions of the Industrial Disputes Act, cease to apply to the employees who in turn ceased to be the workmen as defined u/s 2(s) of the Act and therefore, such an employee if he is aggrieved by any action or decision of the College management has to resort to the remedy and forum provided under the Poona University Act only. Shri Deshmukh, submits that jurisdiction of all other forums is ousted by the provisions of the said Act. Shri Deshmukh, has relied on the following judgments.

(1) *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*,

(2) *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*,

(3) *AIR 1979 Supreme Court State of Punjab v. The Labour Court, Jullundur and others*.

(4) Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another,

(5) State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others,

5. To appreciate the controversy it would be appropriate to read the preamble of the Poona University Act, which was enacted in the year 1974 to consolidate and amend the law relating to the University of Poona. The whole Preamble of the Act reads as under :---

"An Act to consolidate and amend the law relating to the University of Poona Whereas, the Government of both the Union and the State have appointed Divers Committees to consider the recommend measures for the better governance of Universities and the reorganisation of higher education;

And whereas, taking into account the recommendations of those Committees and in order to introduce uniformity in the several laws relating to the various Universities in the State; to promote a more equitable distribution of facilities for higher education in the different areas of the State; to provide for more efficient administration and financial control, and better organisation of teaching and research; to ensure faithful observance of the law in all matters, including the selection and appointment of teachers and other employees; to give representation to student on certain bodies; to provide for wider representation to teachers, and by all such means, generally to improve the governance of the University and the facilities it provides for higher education; it is expedient to consolidate and amend the law relating to the University of Poona; it is hereby enacted, in the Twenty-fifth year of the Republic of India, as follows :--"

It is clear that the present piece of legislation was brought into force after considering the Divers Committee's report and its recommendations for the better governance of Universities and the reorganisation of higher education. It was introduced to bring uniformity in the several laws relating to the various Universities in the State. The whole purpose of the Act was to improve the governance of the University and to have more efficient administration. It appears that prior to the said enactment there were number of other independent enactments and therefore, there was lack of uniformity in the field of higher education. By the present Act all the enactments, rules and statutes came to be consolidated and were put into the present form. If we read carefully the whole Act, it is clear that it provides for all the aspects which arise in the field of education. It also provides for various authorities and their powers. It has neatly demarcated the jurisdiction and powers of various authorities. Chapter VI deals with the conditions of service of employees in the Colleges and the recognized institutions. In my opinion it is a complete Code to determine the relationship between the management and its employees. From recruitment to termination, all the provisions are found in this enactment. Chapter VI has provided for constitution of Tribunals for adjudication of certain disputes or

differences between the employees and the management in private affiliated colleges and the recognized institutions. Section 42-B confers on the employees right to appeal to Tribunal against the private affiliated colleges or recognized institutions in certain cases. Section 42-C vests in the Tribunal powers and also prescribes the procedure to be followed by the Tribunal in deciding the appeals. Section 42-D empowers the Tribunals to give appropriate reliefs in the appeals before such Tribunals. Section 42-E stipulates that the decisions of Tribunals would be final and binding. Section 42-F provides for penalty to be imposed on the management for failure to comply with the Tribunal's orders and directions. The Tribunal is also vested with all the powers to do what a Civil Court can do and it does not lack in any authority or power in deciding a dispute before it and in granting the appropriate reliefs to the aggrieved employees. It is significant to note that a Tribunal can pass an order of reinstatement of the employees or to restore them to the rank and to pay them the arrears of their emoluments. The Tribunal is also empowered to reduce the punishment from dismissal etc. and to award such appropriate punishment which it deems fit. It possesses all the powers and jurisdiction which are conferred on the Labour Courts/ Tribunals/ Industrial Courts created under the special Statutes such as Industrial Disputes Act, 1947, the M.R.T.U. and P.U.L.P. Act, 1971 etc. I do not find anything from this Chapter to show that the Tribunal cannot do what the Labour Court or the Industrial Court or the Industrial Tribunal under the aforesaid acts can do. The College Tribunal is vested with all such powers. The Tribunal has the powers vested in an Appellate Court under the Code of Civil Procedure. I cannot agree with the submission of Shri Shelke, for the petitioner that it cannot record oral evidence in the Court. From the aforesaid provisions it cannot be said that the Tribunal lack any such jurisdiction. It can always call upon the parties to prove a fact by adducing proper evidence. In my opinion the College Tribunal is armed with all the powers and is clothed with the entire jurisdiction which is vested in the other courts under the special statutes or even under the Civil Courts. I am in agreement with Shri Deshmukh, that it is a complete Code by itself and the employees who are governed by the Act cannot travel beyond the parameters of the present Act. Whatever grievances the employees have, they will have to resolve them within the four corners of the Act. Since the present Special Act is enacted to bring about uniformity in the field of the higher education and since it provides for all the problems and their solutions and since it creates rights and liabilities and also the enforcement machinery including the judicial forums and a neat and liberal procedure, it is not possible for me to agree with the submission of the learned Advocate for the petitioner that the non-teaching staff has additional and separate remedy under the Industrial Law. If the legislature has thought it proper to enact a special uniform law for the field of higher education, it will have to be given preference as a special enactment over the other general enactments governing the relationship of employer and employee in the industrial field. If we leave the employees or the non-teaching staff to resort to the remedy under the industrial law, the purpose of the present enactment would be defeated. The Legislature very well knew the existence of various Labour Laws

and in that case the provisions which are made under Chapter VI would not have been included in the Act and would have left the employees to the existing machinery provided under the Labour Laws. Knowing fully well the availability of the forums under the Labour Laws still the Legislature has thought it fit and proper to create a machinery or forum for the employees for redressal of their grievances. The provisions do not lack in any manner as from the rights and liabilities to redressal of grievance, all the provisions are made in this enactment. To achieve the purpose of uniformity it will have to be held that a non-teaching staff cannot resort to any remedy other than which is provided under this Act. It is not possible to accept the contention that the petitioner had a choice to resort to the a remedy under the M.R.T.U. and P.U.L.P. Act or I.D. Act. Even otherwise the Special Courts created under the Labour Laws are overburdened while the Special Courts created under the Poona University Act, are not at all burdened. The disputes or appeals before such forums get resolved much earlier than the matters which are pending before the Labour Adjudication Machinery. It is revealed from my enquiry that the total pendency before the College Tribunal at Aurangabad is below 30 appeals as on 30-6-2000 as against the virtual flood of litigation before the Labour Adjudication Forums. It would therefore, be in the interest of the College employees to get their disputes resolved quickly by approaching the College Tribunals which are created specially for them. The nature of the litigation and the number of the litigants are obviously less before such forums and the appeals filed before them are being disposed of as expeditiously as possible and within much lesser period than any other litigation consumes. Had the petitioner approached the College Tribunal, the matter would have been over long, long back within months, if not days. According to me he chose a wrong forum of the Labour Court under the Industrial Disputes Act, 1947.

6. I do not wish to burden this judgment by referring to the case law cited by Shri Deshmukh. A similar controversy had arisen before the Supreme Court in the case of State of Punjab (supra) as to the remedy of an employee to claim gratuity. He had filed a claim u/s 33-C(2) of the Industrial Disputes Act, 1947 while the employer had raised a similar preliminary point that the gratuity can be claimed only under the Payment of Gratuity Act, 1971, as it is the complete Code in itself for the purpose of claiming gratuity. Upholding the contention of the employer the Supreme Court has laid down the law as under :

"7. It is apparent that the Payment of Gratuity Act enacts a complete Code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. It creates the right to payment of gratuity, indicates when the right will accrue, and lays down the principles for quantification of the gratuity. It provides further for recovery of the amount, and contains an especial provision that compound interest at nine per cent per annum will be payable on delayed payment.

For the enforcement of its provisions, the Act provides for the appointment of a controlling authority, who is entrusted with the task of administering the Act. The

fulfilment of the rights and obligations of the parties are made his responsibility, and he has been invested with an amplitude of power for the full discharge of that responsibility. Any error committed by him can be corrected in appeal by the appropriate Government or an appellate authority particularly constituted under the Act.

8. Upon all these considerations, the conclusion is inescapable that Parliament intended that proceedings for payment of gratuity due under the Payment of Gratuity Act must be taken under that Act and not under any other. That being so, it must be held that the applications filed by the employees respondents u/s 33-C(2) of the Industrial Dispute Act did not lie, and the Labour Court had no jurisdiction to entertain and dispose of them. On that ground, this appeal must succeed."

There has been a frequent controversy between the Civil Court's jurisdiction and the Special forums created under the Industrial Disputes Act and the other "sister enactments". In a very recent judgment the Supreme Court has conclusively resolved the often arising question in the case of Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others,

"35. We may now summarise the principles flowing from the above discussion :

(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in Civil Court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of section 2(k) or section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 which can be called "sister enactments" to Industrial Disputes Act-and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of section 2(k) or section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a

reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly i.e., without the requirement of a reference by the Government-in case of industrial disputes covered by section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to Civil Courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

I am fully fortified in the view which I have taken in respect of the exclusive remedy for the College employees provided under the Poona University Act, by the following observations of the Supreme Court to explain the legislative philosophy to enact several statutes to meet the litigative explosion and concentration in the Civil Courts. To decentralise the judicial powers is a device in public interest.

"At the same time, we must emphasise the policy of law underlying the Industrial Disputes Act and the host of enactments concerning the workmen made by Parliament and State Legislatures. The whole idea has been to provide a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of Civil Courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedures followed by Civil Courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by

these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and re-make the contracts, settlements, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a Civil Court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislature policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them.

To say pithily it is in the interest of the College employees to approach the College Tribunals if they want to resolve their disputes quickly. There is no crowd of litigants nor are they flooded with the dockets. They would be happy to welcome them and they would not make them wait there for decades, not even months or years.

7. Since both the learned Advocates urged before me to decide the merits of the dispute I have also examined the case on its merits. The respondent No. 1 being fully aided by the State is amenable to the writ jurisdiction of this Court. The impugned order of termination dated 29-4-1984 was passed as the appointment of the petitioner was specifically made subject to the approval of the Director of Higher Education and he having not granted his approval the petitioner's services were terminated accordingly. There are no mala fides or lack of any bona fides. There is no illegality in the order of termination which is strictly in accordance with the terms of the appointment order. The petitioner's challenge to the termination order was on the ground of violation of section 25-F of the Industrial Disputes Act. Since I have held that the petitioner was not governed by the said Act, it is not open to him to urge the illegality of the termination order on the touch stone of violation of section 25-F of the Act. His rights and remedies are confined to the Poona University Act only.

8. In the aforesaid circumstances, I find no illegality or infirmity in the Award of the Labour Court nor do I find any illegality in the order of the termination dated 24-4-1984 terminating the petitioner from employment. The writ petition is misconceived and therefore, the same is dismissed. Rule is discharged with no order as to costs.

9. Petition dismissed.