

(2018) 11 BOM CK 0050

In the Bombay High Court

Case No : Writ Petition No.11906 Of 2016, 1561, 1671, 2014, 4779, 4798 Of 2017

Prakash Sambhaji Waghmare

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 02-11-2018

Acts Referred:

Maharashtra Universities Act, 1994 — Section 57, 57(2)
Legal Services Authorities Act, 1987 — Section 20, 20(3)
Maharashtra University of Health Sciences Act, 1998 — Section 53

Citation : (2018) 11 BOM CK 0050

Hon'ble Judges : S. V. Gangapurwala, J; S. M. Gavhane, J

Bench : Division Bench

Advocate : Ganesh A. Gadhe, S. P. Sonpawale, U. S. Malte, N. B. Khandare

Final Decision : Dismissed

Judgement

S. V. Gangapurwala, J

1. Rule. Rule made returnable forthwith. With consent of the parties, matter is taken up for hearing at admission stage.

2. Writ Petition Nos.11906 of 2016, 1561 of 2017, 1671 of 2017 and 2014 of 2017 seek implementation of the order passed by the grievance

committee and confirmed by the management council. Whereas, Writ Petition Nos.4779 of 2017 and 4798 of 2017 assailed the order passed by the

management council on the basis of the recommendation of the grievance committee. All these writ petitions are based on similar set of facts and

involved common question of law. To avoid rigmarole they are decided by common judgment. The institution/employer assail the order passed by the

management council on the recommendation of the grievance committee. The employees seek implementation of the order passed by the

management council on the basis of the recommendation of the grievance committee.

3. The institution has basically assailed the order of the management council based on the recommendation of the grievance committee on the ground

that the orders passed by the management council and the grievance committee cannot be enforced under law. It does not have a binding force.

4. Mr. Khandare, learned counsel for the institution submits that under Section 57 of the Maharashtra Universities Act, 1994, the grievance committee

is constituted. Section 57 of the Maharashtra Universities Act, 1994 never intended to confer adjudicatory powers on the committee. The grievance

committee under Section 57 of the Maharashtra Universities Act is not empowered to adjudicate upon the dispute between the parties and render the

decision as adjudicatory process is not contemplated. The grievance committee is supposed to settle the grievances and if the parties to dispute arrive

at amicable settlement, then only grievance committee can make recommendation to that effect to the management council. If no settlement is arrived

at, the orders cannot be passed by the grievance committee. The word settlement in Section 57 of Maharashtra Universities Act cannot be read as

having an adjudicatory power. The learned counsel relies on the judgment of the Apex Court in a case of State of Punjab and Others Versus Phulan

Rani and Another reported in (2004) 7 Supreme Court Cases 555 and in a case of State of Punjab and Others Versus Ganpat Raj reported in (2006) 8

Supreme Court Cases 364 so also in a case of State of Punjab and Others Versus Jalour Singh and Others reported in (2008) 2 Supreme Court Cases

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5. The learned counsel submits that the grievance committee as provided and constituted under Section 57 of the Maharashtra Universities Act, 1994,

is not a committee of Appeal and invested with power of hearing of Appeals and committee is not a Tribunal constituted under the Universities Act.

Under the scheme of the Act, there cannot be two Tribunals for adjudication of the disputes and therefore, the grievance committee cannot make any

decision by usurping quasi judicial powers. The decision rendered by the committee is without authority of law and outside the purview and scope of

the provision of Section 57 of the Maharashtra Universities Act. The same cannot be enforced. It deserves to be set aside.

6. The learned counsel further submits that the respondent no.1 in the petition filed by the petitioner was continuously absent from the duties without leave from 2/3.4.2013 to 30.06.2013. They were absent without leave and permission from the Principal. The proposal made to submit leave application for the said period was not accepted by the respondents/employees. The dispute involved in the present matter is only to that extent. The respondent no.1 in both the petitions filed by the institution approached the grievance committee. The learned counsel submits that the complaints filed by the respondents/employees were factually incorrect. The respondent no.1 in both the petitions filed by the institution voluntarily abstained from the duties and they were habituated to that effect. Their behaviour was arrogant with the Principal and others. Indiscipline approach was the modus of the respondents/employees. The respondents/employees were absent from 2/3.04.2013 to 30.06.2013. They did not submit any leave application. The work of University examination as Chief Superintendent for the center was entrusted to Dr. P. S. Waghmare, respondent no.1 in Writ Petition No.4779 of 2017. However, without notice he abruptly remained absent, thereby the work of examination was totally disturbed and at the eleventh hour the work was required to be entrusted to another person. The absenteeism of said Mr. Waghmare was time to time informed to the Joint Director of Higher Education, B.C.U.D., Controller of Examination, Registrar of University and Vice Chancellor. He was not residing at the head quarter. All these aspects are not considered. The observation of the grievance committee that the salary from the 01.07.2013 was paid and therefore he was present in the college from 01.07.2013 is irrelevant for resolving the dispute, so also the respondent no.1 in Writ Petition No.4798 of 2017 Mr. Kadam was absent. His absence was also communicated to the authorities. He did not submit leave application. He was relieved on 23.03.2013 from duties for attending practical examination to be held during 24.03.2013 to 31.03.2013. He was supposed to report to the duty on 01.04.2013. He signed the register though he was relieved to attend practical examination and he was on duty leave. He was given a letter that he left the examination half way and also was asked to submit joining report which he refused to accept. He since then did not attend college. The grievance committee made some irrelevant observation not relating to the issue involved. He was also not residing at the head quarter. The said decision deserves to be set aside.

7. The learned counsel for the petitioner/employees supports the order and submits that the grievance committee is constituted under the statute and the order of the management council on the basis of the recommendation of the grievance committee is final. The same is enforceable. The learned counsel relied on the judgment of the Division Bench of this Court in the case of Wamanrao Gangaram Jagtap Versus Dr. Babasaheb Ambedkar Marathwada University and Ors.

dated December 3, 2013. According to the learned counsel the institution was harassing the petitioners. The petitioners approached the grievance committee in view of the liberty granted by the High Court in the petitioner filed by them. The committee was also constituted to enquire into the grievances made by the petitioners/employees.

The report of the committee substantiates the case of the petitioners and the same has been rightly considered. The employer is bound to implement the orders of the committee.

8. We have considered the submissions canvassed by the learned counsel for the respective parties.

9. Before we advert to the arguments canvassed by the learned counsel for the respective parties, it would be appropriate to refer to the relevant provision. Section 57 of the Maharashtra Universities Act, 1994:

Maharashtra Universities Act, 1994

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57. (1) There shall be a grievances committee in each university to deal with the grievances of the teachers and other employees of the university, colleges, institutions and recognised institutions and to hear and settle grievances as far as may practicable within six months, and the committee shall make a report to the Management Council.

(2) It shall be lawful for the grievances committee to entertain and consider grievances or complaints which are not within the jurisdiction of the Tribunal and report to the Management Council to take such action as it deems fit and the decisions of the Management Council on such reports shall be final.

(3) The Grievances Committee shall consist of the following members, namely:

(a) The Pro-Vice-Chancellor, where there is no Pro-Vice-Chancellor, a member of the Management Council nominated by the Management

Council.....Chairman,

(b) 2[Two] members of the Management Council nominated by the Management Council from amongst themselves [one of them belonging to the

Scheduled Castes or Scheduled Tribes or De-notified Tribes (Vimukta Jatis) / Nomadic Tribes or Other Backward Classes, by

rotation].....Members;

1[(ba) two members of the Senate nominated by the members of the Senate, from amongst themselves, one of them being the woman representative

of the management and one shall be a teacher;

(bb) two members, nominated by the members of Academic Council, from amongst themselves, one of them being the principal and one shall be a

teacher.

(c) The Registrar.....Member-Secretary.??

10. The Apex Court in a case of State of Punjab and Others Versus Phulan Rani and Another (supra), in a

case of State of Punjab and Others Versus Ganpat Raj (supra) and in a case of State of Punjab and Others Versus Jalour Singh and Others (supra)

relied by the learned counsel for employer interpreted the meaning of term 'settlement' vis-à-vis Section 20 of the Legal Services Authorities Act.

The Apex Court observed that 'settlement' is termination of legal proceedings by mutual consent. In sub-section 3 of Section 20 of the Legal Services

Authority Act it is observed that where any case referred to a Lok Adalat under sub-section

(1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a

compromise or settlement between the parties. It is in that context the Apex Court observed that the settlement is termination of legal proceedings by

mutual consent. The Apex Court in a case of Bimal Kumar and Another Versus Shakuntala Debi and Others reported in (2012) 3 Supreme Court

Cases 548 observed that the term 'compromise' essentially means settlement of differences by mutual consent.

11. In the present case we are concerned with the phrase 'to hear and settle grievances'. The phrase 'settle grievances' has varied connotation

depending upon the context. The phrase “to settle grievances” would not have restricted meaning to settle by consensus of the parties. The

settlement in Lok Adalat would mean the settlement by consent of parties. However the settlement by arbitration would mean the process by which

an arbitrator appointed by parties or by the Court adjudicates the disputes between the parties to the Suit and passes an Award as has been observed

by the Apex Court in a Case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India reported in (2005) 6 SCC 344.

12. Under Section 57 of the Maharashtra Universities Act, 1994 the grievance committee is constituted in each university to deal with the grievances

of the teachers and other employees of the university, colleges, institutions to hear and settle the grievances and to make a report to the Management

Council. After hearing the parties the grievance committee does not take a final decision, but, only submits a report to the Management Council and

based on the report the Management Council takes the decision. The decision of the Management Council on the report of the grievance committee is

final as per sub-section 2 of Section 57 of the Maharashtra Universities Act, 1994.

13. The grievance committee under Section 57 of the Act can entertain and consider only those grievances or complaints which are not within the

jurisdiction of the Tribunal constituted under the Act. The Tribunal is constituted under the Act of 1994 to deal with the aspect of the dismissal,

removal or reduction in rank of an employee at the hands of University or Management Council. For addressing the grievances of the employees other

than the dismissal, removal or reduction in rank, the statute has provided for constitution of grievance committee. The grievance committee and the

Management Council is an in house mechanism provided by the statute for the redressal of the grievances of the employees. The connotation “to

hear and settle grievances” cannot be read in narrow compass as is sought to be agitated by the learned counsel for the Institution. More over it is

not the grievance committee that takes a final decision. It only submits report and on the basis of the report submitted the Management Council takes

the final decision. The decision of the Management Council is made final. As finality is attached to the decision of the Management Council, the same

would be binding on the parties.

14. More over the grievance committee is constituted not under the executive instructions, but is a creature of statute. The powers are bestowed on

the grievance committee and the Management Council under the statute. The statute has made the decision of the Management Council on the report

of the grievance committee final. As finality is attached to the decision given, the same would be binding on the parties.

15. The similar provision for constitution of grievance committee and empowering Management Council to take final decision upon report of the

grievance committee as provided under Section 57 of the Maharashtra Universities Act, 1994 also appears in Maharashtra University of

Health Sciences Act, 1998. Section 53 of the Maharashtra University of Health Sciences Act, 1998 is *pari materia* to Section 57 of the

Maharashtra Universities Act, 1994. Section 53 of the Maharashtra University of Health Sciences Act, 1998 reads thus:

“(1) There shall be a Grievances Committee in the University to deal with the grievances of teachers and other employees of the University,

Colleges, institutions and recognised institutions and to hear and settle grievances as far as may be practicable within six months, and the committee

shall make a report to the Management Council.

(2) It shall be lawful for the Grievances Committee to entertain and consider grievances or complaints and report to the Management Council for

taking such action as it deems fit and the decisions of the Management Council on such report shall be final.

(3) the Grievances Committee shall consist of the following members, namely:

(a) The Pro-Vice-Chancellor Chairperson

(b) Four members of the Management Council nominated by the Management Council from amongst themselves Members;

Member-Secretary (4) The Registrar shall not have a right to vote.”

16. Placing both the provisions viz. Section 53 of the Maharashtra University of Health Sciences Act, 1998 and Section 57 of the

Maharashtra Universities Act, 1994 in juxtaposition it is clear that provisions are similar and *pari materia*. The Apex Court in a

case of Maharashtra University of Health Sciences and others V/s. Satchikitsa Prasarak Mandal & Others in Civil Appeal No.2050 of 2010

considered the scope of

Section 53 of the Maharashtra University of Health Sciences Act, 1998. The Division Bench of the High Court had observed that the forum of the

grievance committee is not available to the teachers whose services are not approved. The Apex Court set aside the

judgment of Division Bench of the High Court and under judgment and order dated 25.02.2010 observed thus:

36. The purpose of setting up the Grievance Committee under Section 53 of the Act is to provide an effective grievance redressal forum to

teachers and other employees. Any interpretation of 'teachers' under Section 2(35) of the Act which denies the persons covered under Section 2(35)

an access to the said forum completely nullifies the dominant purpose of creating such a forum. It goes without saying that unapproved teachers need

the protection of this forum more than the approved teachers. By creating such a forum the University virtually exercised its authority and jurisdiction

as a *loco parentis* over teachers both approved and unapproved and who are working in various colleges affiliated with it. The idea is to give such

teachers and employees a protection against any kind of harassment which they might receive in their work place. The creation of such a forum is in

tune with protecting the 'dignity of the individual' which is one of the core constitutional concepts.

17. In light of the above, the institutions cannot contend that they are not bound to obey and follow the decision of the Management Council.

18. On factual matrix also it would appear that an enquiry committee was constituted. The enquiry committee has given detail report. The one

member committee constituted has submitted the report in favour of the employees stating that they were present. The grievance committee

considered the report of the enquiry committee. After considering the various documents on record, the grievance committee has submitted the report.

On the basis of the report of the grievance committee, the Management Council has taken a decision giving direction to the institution. This Court

would not sit as an Appellate Authority over the report of the enquiry committee and the decision taken by the Management Council based on the

report of the grievance committee. The decision making process has been properly adhered to. The institution and the employees were heard before

the grievance committee.

19. In light of the above the Writ Petitions bearing Nos.4779 of 2017 and 4798 of 2017 filed by the institution are dismissed. The Writ Petitions bearing Nos. 11906 of 2016, 1561 of 2017, 1671 of 2017 and 2014 of 2017 filed by the employees stand allowed and the institution shall implement the decision of the Management Council based on the recommendation of the grievance committee as prayed in the writ petitions filed by the employees within six (06) weeks. Rule made absolute in Writ Petitions bearing Nos. 11906 of 2016, 1561 of 2017, 1671 of 2017 and 2014 of 2017 in above terms and Rule is discharged in Writ Petitions Nos.4779 of 2017 and 4798 of 2017.

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