

(2016) 06 BOM CK 0086

In the Bombay High Court

Case No : Writ Petition No. 5785 of 2014

President, Janata Shikshan Prasarak Mandal

APPELLANT

Vs

Sayyad Sadique

RESPONDENT

Date of Decision : 06-06-2016

Acts Referred:

Contempt of Courts Act, 1971 — Section 2(c)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28
Maharashtra Universities Act, 1994 — Section 57

Citation : (2016) 150 FLR 866 : (2016) 3 LLJ 226

Hon'ble Judges : Z.A. Haq, J.

Bench : Single Bench

Advocate : Shri C.V. Jagdale, Advocate, for the Appellant; Shri U.J. Desphande, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Z.A. Haq, J.(Oral) - Heard learned advocates for the respective parties.

2. RULE. Rule made returnable forthwith.

3. The employee had filed complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 before the Industrial Court contending that the employer indulged in unfair labour practise by not granting permanency and not paying the emoluments accordingly. The Industrial Court allowed the complaint, by the order dated 25th November, 2011 and directed the employer to grant permanency to the employee from 29th September, 2001 and to make available to him all the emoluments accordingly. The order passed by the Industrial Court was challenged before this Court in Writ Petition No. 375 of 2012. One of the challenge was that the employee should have approached the Grievances Redressal Committee of the University under Section 57 of the Maharashtra Universities Act, 1994 (hereinafter referred to as "the Act of 1994") and the

Industrial Court had no jurisdiction to entertain the complaint filed by the employee. This Court by the order dated 11th February, 2013 disposed the petition recording that if the employee approaches the Grievances Committee within four weeks, the application/representation of the employee should be considered by the Grievances Committee according to law.

After the above order was passed by this Court, the employee filed application under Section 57 of the Maharashtra Universities Act, 1994 before the Grievances Committee on which the impugned order is passed, upholding the claim of the employee for permanency and emoluments. The employer being aggrieved by the order passed by the Grievances Committee has filed this petition.

4. Shri C.V. Jagdale, advocate for the employer has submitted that the Grievances Committee has recorded that it has no jurisdiction to entertain the application filed by the employee under Section 57 of the Act of 1994 and therefore, the Grievances Committee could not have granted relief to the employee. It is further submitted that the Grievances Committee could not have reopened the matter and could not have endorsed the order passed by the Industrial Court upholding the claim of the employee. It is submitted that the impugned order is bad in law and be set aside.

5. Shri U.J. Deshpande, learned advocate for the employee has submitted that the employee had been in the employment of the employer since 21st September, 1996 as Laboratory Peon/Attendant and though he was in continuous employment his services were not regularised and permanency was not conferred on him and therefore, he made representation to the management and the President of the society administering the college recommended that the claim of the employee be considered. It is submitted that the Industrial Court had considered all the relevant aspects in details and passed the order dated 25th November, 2011 and as the Grievances Committee found that the findings recorded by the Industrial Court were proper, it adopted those findings and passed the impugned order granting relief to the employee. It is further submitted that the Grievances Committee has jurisdiction to entertain and decide the application filed by the employee and it cannot be said that the Grievances Committee is not having jurisdiction to entertain and decide the application filed by the employee.

6. The learned advocate for the respondent No.2 has supported the impugned order.

7. With the assistance of the learned advocate for the respective parties, I have examined the documents filed on the record and examined the legal submissions.

Section 57 of the Maharashtra Universities Act, 1994 reads as follows :

"57. Grievances Committee.

(1) There shall be a grievances committee in each 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 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 provisions of Section 57(1) and (2) of the Act of 1994 confers the jurisdiction on the Grievances Committee to deal with the complaints of the teachers and other employees of the university, colleges, institutions and recognised institutions, if the complaints are not in respect of the matters which are within the jurisdiction of the Tribunal constituted as per Section 58 of the Act of 1994. Section 59 (1) of the Act of 1994 lays down that an employee of any university, college or recognised institution (other than that managed and maintained by the State Government, Central Government or Local Authority) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank and who is aggrieved shall have right of appeal before the Tribunal. Thus, the Grievances Committee will not have jurisdiction to entertain any grievance relating to dismissal, removal, termination or reduction in rank of the employee.

In the present case, the grievance of the employee is regarding regularisation of his services and conferral of permanency and grant of consequential benefits. The claim of the employee does not fall under the grievance contemplated by Section 59 of the Act of 1994 and the employee could not have filed appeal under Section 59 of the Act of 1994. The learned advocate for the petitioner has not been able to point out any bar which prohibited the Grievances Committee from considering the application of the employee. It cannot be said that the Grievances Committee had no jurisdiction to entertain and decide the application filed by the employee under Section 57 of the Act of 1994.

8. The Grievances Committee has committed an error in recording that it lacked jurisdiction to entertain and decide the complaint filed by the employee. Furthermore, Amravati University was respondent in Writ Petition No. 375 of 2012 and it accepted the order passed by this Court granting liberty to the employee to file application under Section 57 of the Act of 1994. Of course, if the adjudicating authority is not having jurisdiction to entertain and decide the grievance/complaint, the jurisdiction cannot be conferred on it even by the order/judgment of this Court. But in the present case, it cannot be said that the Grievances Committee lacked jurisdiction to entertain and decide the application filed by the employee.

9. As far as merits of the matter are concerned, I find that it is undisputed that the employee had been in continuous employment since 21st September, 1996

and the President of the Management administering the college recommended for regularisation of his services. The employer has not been able to point out any legal impediment because of which the services of the employee cannot be regularised and he cannot be conferred with permanency and consequential benefits. In view of the above, I find no reason to set aside the impugned order.

The petition is dismissed with costs quantified at Rs. Ten Thousand to be paid by the petitioner No.1 to the respondent No.1 within one month.

10. The Grievances Committee could not have recorded that it had no jurisdiction to entertain and decide the complaint of the employee, under Section 57 of the Act of 1994. I find that the Grievances Committee has recorded that it had no jurisdiction to entertain and decide the application filed by the employee to overreach the conclusions of this Court and to scandalise and lower the authority of this Court. If at all the Grievances Committee was of the opinion that it had no jurisdiction to entertain and decide the application filed by the employee under Section 57 of the Act of 1994, the Grievances Committee could have approached this Court by filing review application or the Grievances Committee could have challenged the order passed by this Court in Writ Petition No. 375 of 2012 on 11th February, 2013. It goes unexplained as to why the Grievances Committee has not adopted proper course.

11. Considering the conduct of the Grievances Committee, prima facie I find that the members of the Grievances Committee are liable for action for commission of "criminal contempt" as defined under Section 2(c) of the Contempt of Courts Act, 1971.

12. Office shall register this contempt proceedings separately and place before the appropriate bench for appropriate orders.

CAW NO. 3216 of 2014.

13. In view of disposal of the main petition, the application for dispensing with filing of true translation of the Marathi documents does not survive, hence, it is disposed of.