
(2015) 04 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 1990 of 2011

Rajendra Waman Rajemane	Vs	APPELLANT
Phaltan Education Society and Others		RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Maharashtra Universities Act, 1994 — Section 24, 27, 57, 57(2)

Citation : (2015) 3 ABR 364 : (2015) 4 ALLMR 277 : (2015) 4 MhLj 260

Hon'ble Judges : M.S. Sonak, J.

Bench : Single Bench

Advocate : Dilip Bodake, for the Appellant; Milind Deshmukh, Advocates for the Respondent

Final Decision : Disposed off

Judgement

M.S. Sonak, J.—This petition challenges the judgment and order dated 8 March 2010, made by the College Tribunal, dismissing the petitioner's appeal against termination of his services by the order dated 2 September 2008.

2. The respondent No. 1 Management has established and administers the following three educational institutions:

- (a) Kiraksal High School, Satara;
- (b) Shrimant Byhayyasaheb Rajemane College, Mhaswadi (Rajemane College); and
- (c) Mudhoji College, Phaltan (Mudhoji College).

3. In June 1992, respondent No. 1 appointed the petitioner as a Junior Clerk at the Kiraksal High School. In June 1997, the petitioner was transferred on promotion to Rajemane College as Head Clerk. Finally, in December 2005, the petitioner was once again transferred on promotion to the post of Office Superintendent at Mudhoji College. There is record that the petitioner's promotion/appointment as Head Clerk at Rajemane College was approved by

respondent No. 6 (University) and the State Authorities (respondent Nos. 7 and 8). There is, however, no clarity with regard to approval for promotion to the post of Office Superintendent at Mudhoji College.

4. The Grievances Committee, in terms of Section 57 of the Maharashtra Universities Act, 1994 (said Act) made an order dated 17 June 2008 finding faults with the promotion of the petitioner to the post of Office Superintendent and the consequent non promotion of respondent Nos. 4 and 5 to the said posts. Based upon the order dated 17 June 2008, respondent No. 1, by the order dated 2 September 2008, terminated the services of the petitioner.

5. The petitioner instituted Writ Petition No. 6661 of 2008, impugning the orders dated 17 June 2008 and 2 September 2008. By judgment and order dated 18 December 2008, this Court set aside the order dated 17 June 2008, but relegated the petitioner to the remedy of appeal insofar as termination order dated 2 September 2008 is concerned. Further, liberty was also granted to Grievances Committee to make a fresh order in the matter, after furnish an opportunity of hearing to all affected parties including the petitioner.

6. The petitioner instituted an appeal before the College Tribunal on 28 April 2009. During pendency of such appeal, the Grievances Committee, in pursuance of liberty granted by this Court, made order dated 7 November 2009. There is some issue as to whether the order dated 7 November 2009 has been made by the Grievances Committee or by the Management Council of the University. However, this aspect shall be adverted to later in the course of this judgment and order. The petitioner, amended the memo of appeal and challenged the order dated 7 November 2009 before the College Tribunal.

7. The College Tribunal, by the impugned order dated 8 March 2010 has dismissed the petitioner's appeal against the termination order dated 2 September 2008, mainly on the ground that the petitioner's initial appointment as Junior Clerk and subsequent promotion as Head Clerk, was itself illegal. The College Tribunal refused to interfere with the order dated 7 November 2009, on the ground that it had no jurisdiction to do so. Hence, the present petition, challenging the termination order dated 2 September 2008 as confirmed by the impugned order dated 8 March 2010 and the order dated 7 November 2009, which, in a sense (together with earlier order dated 17 June 2008) is the basis for termination order dated 2 September 2008.

8. Mr. Dilip Bodake, the learned counsel for the petitioner, made the following submissions in support of the petition:

(a) That the subject matter before the College Tribunal was only the termination of the petitioner's services from Mudhoji College. The College Tribunal consequently exceeded its jurisdiction in adversely commenting upon the petitioner's appointment as Junior Clerk in Kiraksal High School and as Head Clerk in Rajemane College, since more particularly such appointments had not been challenged by any one, at any stage;

(b) Consequent upon this Court setting aside the Grievances Committee order dated 17 June 2008, the termination order dated 2 September 2008, which was based thereon, ought to have been set aside by the College Tribunal. In any case, if it is regarded that the order dated 7 November 2009, had revived the earlier decision dated 17 June 2008, then the termination order dated 2 September 2008 was required to be set aside, because the order dated 7 November 2009 was itself illegal, null and void;

(c) There is no clarity as to whether the order dated 7 November 2009 is the Report of the Grievances Committee or the decision of the Management Council. If it is the Report of the Grievances Committee, then respondent No. 1 had no jurisdiction to act on the basis of the same. If it is the decision of the Management Council, then since the Management Council had not afforded any opportunity of hearing to the petitioner, such decision is null and void;

(d) In any case, the order dated 7 November 2009, had only recommended reversion of the petitioner from the post of Office Superintendent. The petitioner, therefore, at the highest and without prejudice, could have been reverted to the post of Head Clerk in any of the institutions administered by respondent No. 1. In the garb of implementation of the decision of the Grievances Committee decision dated 17 June 2008 or 7 November 2009, there was no question of terminating the services of the petitioner; and

(e) The impugned termination order dated 2 September 2008 casts a stigma upon the petitioner. Therefore, prior to the issuance of same, respondent No. 1 was duty bound to hold an enquiry and comply with principles of natural justice and fair play. This having not been done, the impugned termination order is, therefore, illegal, null and void;

9. Mr. Milind Deshmukh, the learned counsel for the respondent No. 1 Management defended the impugned order by submitting that the College Tribunal was right in concluding that the very initial appointment of the petitioner as a Junior Clerk in the Kiraksal High School was void ab initio. Such conclusion was based upon records, including inter alia, the orders dated 17 June 2008 and 7 November 2009 made by the Respondent No. 6 University. Further, such conclusion was arrived at after afford of adequate opportunity to the petitioner. In the light of such conclusion, the petitioner can have no legitimate grievance with regard to the termination of his services. Mr. Deshmukh, further pointed out that the decisions of the Grievances Committee/University were binding upon the respondent no. 1 in terms of Section 57(2) of the said Act. The challenge to the order/communication dated 7 November 2009 was barred by delay and laches. For all these reasons, Mr. Deshmukh submitted that the petition, as filed, was liable to be dismissed.

10. Mr. V.K. Bodhare, the learned counsel, was earlier appearing for the respondent Nos. 4 and 5. Consequent upon demise of the respondent No. 4, the said respondent has been deleted from the array of parties. Accordingly, Mr.

Bodhare appearing for respondent No. 5 adopted the submissions made by and on behalf of the respondent No. 1 and submitted that no relief may be granted to the petitioner.

11. Mr. Amit Borkar, the learned counsel appearing for the respondent No. 6 University submitted that the University Grievances Committee was really concerned with the promotion of the petitioner to the post of the Office Superintendent. This promotion having been found to be contrary to law, the Grievances Committee was justified in recommending reversion of the petitioner. Mr. Borkar submitted that before such decision was taken, opportunity of hearing was duly afforded to the petitioner. Further, the College Tribunal was right in not interfering with the Grievance Committee's decision dated 7 November 2009, since the College Tribunal lacked jurisdiction to do so.

12. Ms Aparna Vhatkar, the learned AGP for the respondent Nos. 7 and 8 submitted that the approvals granted to the appointment/promotion of the petitioner, were on the basis of information supplied. If ultimately, it is found that the initial appointment of the petitioner was not legal, then this Court should not grant any relief to the petitioner.

13. Rival contentions now fall for determination.

14. Since the respondent No. 1, mainly bases its action upon the orders/decision of the Grievances Committee/University dated 17 June 2008 and 7 November 2009, it would be appropriate to first consider the petitioner's challenge to the decision/order of the Grievances Committee/University dated 7 November 2009.

15. There is no merit in the objection that the challenge to the order/decision dated 7 November 2009 is barred on the ground of delay and laches. This is because, the petitioner had already challenged such order/decision dated 7 November 2009 in the appeal instituted before the College Tribunal. Although, the College Tribunal was right in not entertaining the challenge on the ground that it lacked jurisdiction to do so, nevertheless, it cannot be said that the petitioner was indolent in the matter of challenge to the said order/decision dated 7 November 2009. The termination order dated 2 September 2008, which the petitioner had challenged before the College Tribunal, was, in terms, based almost entirely upon the order/decision dated 17 June 2008 made by the Grievances Committee. By the time, the appeal came to be instituted before the College Tribunal, this Court by its judgment and order dated 18 December 2008, had already set aside the order/decision dated 17 June 2008, but liberty had been granted to the Grievances Committee to make fresh orders, after afford of an opportunity of hearing to the petitioner. Such fresh order was made / communicated vide decision/order dated 7 November 2009. The order/decision dated 7 November 2009 merely reiterated the earlier order/decision dated 17 June 2008. In these circumstances, no fault can be found with the petitioner in attempting to challenge the order/decision dated 7 November 2009 before the College Tribunal. Such challenge cannot be said to be either malafide or

misconceived. In such circumstances, the petitioner is entitled to set off the period during which the petitioner was pursuing the matter before the College Tribunal, in the matter of consideration of the issue of delay or laches. Besides, it cannot be said that any parallel rights have arisen in respondent No. 1, on account of any alleged delay. This petition, was instituted on 8 February 2011. In the context of challenge to the decision/order dated 7 November 2009, it cannot be said that the delay is either inordinate or unexplained. For all these reasons, the contention that the challenge to the order/decision dated 7 November 2009 is barred by delay and laches, is hereby rejected.

16. There is no clarity as to whether the order/decision dated 7 November 2009 is the report of Grievances Committee or whether the same is decision of the Management Council. If we proceed on the basis that the order/decision dated 7 November 2009 is the report of the Grievances Committee, then the same cannot be faulted for noncompliance with the principles of natural justice and fair play. This is because, the Grievances Committee, in pursuance of judgment and order dated 18 December 2008 in Writ Petition No. 6661 of 2008 has afforded an opportunity of hearing to the petitioner. However, in that case, the Report per se of the Grievances Committee cannot be regarded as any decision binding upon the respondent No. 1 in terms of Section 57(2) of the said Act. The Report of the Grievances Committee had to be placed before the Management Council as constituted under Section 24 and 27 of the said Act. Thereafter, it was for the Management Council to take such action as it deems fit and it is such decision of the Management Council upon the Report of the Grievances Committee, which has been accorded a statutory finality by Section 57(2) of the said Act. Further, as has been held by the Division Bench of this Court in case of Shri Saibaba Gramin Vikas Sanstha and Another Vs. Rashtrasant Tukdoji Maharaj Nagpur University and Others, , the Management Council before taking any action/decision, was required to afford an opportunity of hearing to the parties likely to be affected.

17. If therefore, we proceed on the basis that the order/decision dated 7 November 2009 is the order /decision of the Management Council in terms of Section 57(2) of said Act, then the same is clearly infirm, because the same was never preceded by afford of an opportunity of hearing to the petitioner. There is no substance in the contention faintly urged that the Management Council as referred to in Section 57(2) of the said Act, is nothing but the College Management itself. Section 24 of the said Act provides for the Authorities of the University, which include inter alia, the "Management Council". Section 27 of the said Act provides that the Management Council shall be the principal executive authority to formulate statutes and forward the same to the Senate for approval and make Ordinances to administer the affairs of the university and it shall carry out all such duties which are not specifically assigned to any other authority. The Management Council shall consist of the Vice Chancellor, Pro Vice Chancellor, Dean, nominee of the Chancellor, Secretary, Higher Education or his nominee, Director of Technical Education or his nominee, one Head or Director to be

nominated by the Senate, the Director, Board of College and University Development, two principals, one teacher and so on. It is clear therefore that the term "Management Council" is not to be confused with the management of a college or an institution.

18. Section 57 of the said Act which provides for the constitution of the Grievances Committee therefore postulates that it shall be lawful for such Grievances Committee to entertain and consider grievances or complaints of teachers and other employees of the university, colleges, institutions and recognised institutions and to make a report to the Management Council as contemplated by Section 27 of the said Act. Thereafter, it is for the Management Council to take a decision upon such report of the Grievances Committee. In case of Shri Saibaba Gramin Vikas Sanstha, Gadchiroli and Anr (supra), the Division Bench of this Court, in the context of the provisions contained in Section 57(2) of the said Act has held that the Grievances Committee is only empowered to hear the grievance of the employees and make a report. It may or may not afford hearing depending upon the nature of the controversy and the facts. The Grievances Committee after preparing the report must forward the same to the Management Council which alone has been empowered to take final decision and may pass such orders as it may deem fit. Since the Management Council is conferred with this responsibility, it is clear that the Management Council can exercise such power only after hearing the parties.

19. In the aforesaid circumstances, the position which emerges is as follows:

(a) If the decision/order dated 7 November 2009 is to be regarded as the Report of the Grievances Committee, then there is no reason to set aside the same. However, no action can be taken on the basis of the same, unless such Report is considered by the Management Council after afford of opportunity of hearing to the affected parties, including the petitioner; and

(b) If the order/decision dated 7 November 2009, is to be regarded as the order/decision of the Management Council, then the same is required to be set aside, as the Management Council failed to afford opportunity of hearing to the affected parties, including in particular, the petitioner herein.

20. In either of the contingencies however, the termination order dated 2 September 2008, is rendered vulnerable. If the respondent No. 1 Management has proceeded on the basis that the decisions / orders dated 17 June 2008 and 7 November 2009 constitute decisions/orders by the Grievances Committee, then such decisions were not at all binding upon the respondent No. 1, unless they were placed before the Management Council and the Management Council were to have taken a decision thereon. There is no merit in the feeble contention raised on behalf of the respondent No. 1 that the term "Management Council" referred to in Section 57 of the said Act, means and implies the management of a college or an institution. If however, the orders/decisions dated 17 June 2008 and 7 November 2009 are to be regarded as the decisions of the Management

Council, then such decision is itself vitiated for non compliance with principles of natural justice, because the petitioner was not at all afforded an opportunity of hearing by the Management Council prior to arriving at such order/decision. Therefore, in either contingencies, the termination order dated 2 September 2008, which is almost entirely based upon the orders/decisions dated 17 June 2008 and 7 November 2009, is required to be interfered with.

21. Besides, even the respondent No. 1, did not afford any opportunity of hearing to the petitioner, before the termination order dated 2 September 2008 was issued. The termination order dated 2 September 2008, by reference to the decision/order dated 17 June 2008 notes the following :

(A) The attendance register indicates the name of the petitioner separately and several signatures appear to have been made thereon at one and the same time;

(B) The service book appears to be new and filled in at one and the same time;

(C) In the Kiraksal High School's Office, there is reference to additional post of the Clerk. However, such post is not found to be in existence;

(D) By order, the petitioner was recorded as promoted from the High School to the Senior College to the post of Head Clerk. This entry appears to be fake and there is no provision for effecting such promotion.

22. The aforesaid, is undoubtedly stigmatic and the respondent No. 1 could not have terminated the services of the petitioner on the basis of such a stigmatic order, without afford of opportunity of hearing to the petitioner. The respondent No. 1 has proceeded on the basis that the decision dated 17 June 2008, binds the respondent No. 1 in terms of Section 57(2) of the said Act. Factually, the decision dated 17 June 2008 has already been set aside by this Court in its judgment and order dated 18 December 2008, in Writ Petition No. 6661 of 2008. That apart, it is only the decision of the Management Council which is accorded finality by the provisions of Section 57(2) of the said Act. Further, in terms of the decision of this case in the case of Shri Saibaba Gramin Vikas Sanstha (supra), the Management Council, before taking any action/decision in terms of Section 57(2) of the said Act, is required to afford an opportunity of hearing to the parties likely to be affected. For all these reasons, the termination order dated 2 September 2008 is liable to be set aside.

23. Normally, the corollary to the setting aside of termination order dated 2 September 2008 would be the reinstatement of the petitioner to the post of Office Superintendent at Mudhoji College. However, in the peculiar facts and circumstances of the present case, the grant of such relief is not really warranted. This is because there is really no material produced on record by the petitioner which would even prima facie justify his promotion from the post of Head Clerk at Rajemane College to the post of Office Superintendent at Mudhoji College, which are two separate institutions, though established and managed by the respondent No. 1. Further, the promotion of the petitioner to the post of

Office Superintendent was challenged by late respondent No. 4 and respondent No. 5, on the ground that the same infringed their rights to be considered for promotion to the said post. The grievance of late respondent No. 4 and respondent No. 5 was accepted by the Grievances Committee. Consequent upon the termination of the petitioner's services, the respondent No. 4 was in fact promoted to the post of the Office Superintendent. Thereafter, the respondent No. 5 was also promoted to the post of the Office Superintendent. In these circumstances, although there is infirmity in issuance of the termination order dated 2 September 2008, it would not be proper to restore the petitioner to the post of Office Superintendent in Mudhoji College.

24. Instead, consequent upon setting aside of termination order dated 2 September 2008, in the peculiar facts and circumstances of the present case, it would be appropriate if the petitioner is directed to be reinstated to the post of Head Clerk in Rajemane College or in any other institutions administered by respondent No. 1. This is because, at no stage, was there any challenge to the petitioner's promotion to the post of the Head Clerk at Rajemane College. In fact, there is prima facie material which indicates that the petitioner's promotion to the post of Head Clerk in Rajemane College was approved by the University as well as the State Authorities.

25. In case the respondent No. 1, the University or the State Authorities are of the opinion that circumstances and grounds exist for the termination of the petitioner, then it is always open to them to comply with the provisions of law as well as the prescribed procedures and thereafter take appropriate action as they deem fit and proper in the matter. Naturally, before such action is taken, the Authorities shall ensure that there is compliance with the principles of natural justice and fair play. The interference in the present matter, with the actions of the respondent Nos. 1 and 6 is mainly on account of the failure on their part to comply with the prescribed procedures and adhere to the principles of natural justice and fair play. In the result, even though the direction of reinstatement of the petitioner is being issued, consequent upon such reinstatement, the respondent Nos. 1 and 6 shall always be at liberty to take appropriate action against the petitioner, as aforesaid.

26. In so far as the issue of backwages is concerned, since the termination order is set aside mainly on the grounds that there was failure on the part of the respondents to comply with principles of natural justice and fair play, there is no warrant to award backwages for the entire period commencing from 2 September 2008. The Full Bench of this Court in the case of Saindranath Jawanjal Vs. Pratibha Shikshan Sanstha and The Presiding Officer (Additional), School Tribunal, has held that termination of services based upon a defective enquiry can be set aside, but normally the management is required to be afforded opportunity to conduct enquiry from the stage where the error crept in. Further, though, the employee concerned can be directed to be reinstated, the issue of backwages should ordinarily be left for determination in terms of the result of the

enquiry. Of course, all this depends upon the magnitude of the charge and other relevant facts and circumstances. Applying such principles to the present case, ends of justice would be met if the respondent No. 1 Management is directed to award backwages for a period of two years to the petitioner. This is because, it is the respondent No. 1, which had chosen to promote the petitioner to the post of Head Clerk and Office Superintendent. From the year 1992 till the year 2008, the respondent No. 1 had not raised any issues with regard to either the qualifications possessed by the petitioner or the mode of the petitioner's appointment/promotions. The petitioner has been litigating since the year 2008. The respondent No. 1 Management has nowhere alleged that the petitioner was gainfully employed elsewhere. In these peculiar facts and circumstances, it is only appropriate that the petitioner is paid backwages for a period of two years in the scale of Head Clerk, to which post, the petitioner is directed to be reinstated.

27. Accordingly, the present petition is disposed of by the following order :

(A) The impugned judgment and order dated 8 March 2010 made by the College Tribunal is set aside;

(B) The impugned termination order dated 2 September 2008 issued by the respondent No. 1 is set aside;

(C) If the respondents regard order/decision dated 7 November 2008 as one made by the Management Council under Section 57(2) of the said Act, then the same is set aside. However, the Management Council shall be at liberty to afford the petitioner and other affected parties hearing in the matter, and thereafter take appropriate decision upon the report, if any, of the Grievances Committee;

(D) If the respondents regard order/decision dated 7 November 2009 as the order/decision of the Grievances Committee, then liberty is granted to place such order/decision before the Management Council. The Management Council shall thereafter afford opportunity of hearing to all the affected parties, including the petitioner and thereafter take appropriate decision in the matter under Section 57(2) of the said Act;

(E) The respondent No. 1 is directed to reinstate the petitioner to the post of Head Clerk at Rajemane College or in any other institutions administered by respondent No. 1, within a period of six weeks from today;

(F) The respondent No. 1 is directed to pay to the petitioner backwages for a period of two years in the scale of Head Clerk within a period of six weeks from today. In case, the arrears of backwages are not paid within a period of six weeks from today, then the same shall carry interest at the rate of 7% per annum. In case, the respondent No. 1 is entitled to be reimbursed by the respondent Nos. 7 and 8, the respondent No. 1 may apply for the same. However, this shall not be a reason available to the respondent No. 1 to either deny or delay payment of backwages to the petitioner within a period of six

weeks; and

(G) It is made clear that the respondents, consequent upon the reinstatement of the petitioner, shall be entitled to take such action against the petitioner, as may be permissible in law upon due compliance with the legal provisions, procedures and principles of natural justice and fair play.

28. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

29. All parties to act on basis of authenticated copy of this order.