

(2013) 12 BOM CK 0190
In the Bombay High Court
Case No : Writ Petition No. 1496 of 2012

Wamanrao Gangaram Jagtap

APPELLANT

Vs

Dr.Babasaheb Ambedkar

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2014) MCR 451

Hon'ble Judges : R.M. Borde and A.I.S. Cheema, JJ.

Bench : Division Bench

Advocate : Mr. R.J. Godbole, Advocate, for the Petitioner; Mr. R.P. Phatake, A.G.P, for the Respondents No. 1 to 5; Mr. M.M. Ambhore, Advocate, for the Respondents No. 6 and 7

Final Decision : Disposed Off

Judgement

R.M.Borde, J. (Oral) - Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2. The petitioner, who is a retired employee of Respondent No.7-Institution, is seeking enforcement of the decision passed by the Grievance Committee on 20.08.2010, which has been approved by the Management Council vide its decision dated 16.03.2011, as communicated vide letter dated 7th April, 2011, issued by the Registrar of the University.

3. The Grievance Committee has issued direction to the Management to consider services rendered by the petitioner from 03.07.1972 to 01.07.1977 as full time service; and it has further directed to submit necessary proposal to the concerned authority. The decision taken by the Grievance Committee was placed before the Management Council of the University and said decision came to be approved on 16.03.2011.

4. The petitioner makes a grievance that Respondent Institution has not acted in pursuance to the decision rendered by the Grievance Committee and that the proposal for extending monetary benefits in pursuance to the decision of the

Grievance Committee has not been forwarded to the Joint Director, Higher Education. As a result of failure on the part of Respondent Institution to tender proposal to the Joint Director, Higher Education, petitioner is deprived of the monetary benefits, such as revised pension, gratuity and other post-retiral benefits. In this view of the matter, according to the petitioner, Respondent Institution needs to be directed to forward proposal to the Joint Director and the Joint Director, in turn, needs to be directed to consider such proposal and take appropriate decision.

5. Learned Counsel appearing for Respondents No.6 & 7, placing reliance on the decision of the Supreme Court in the matter of Secretary, A.P.D. Jain Pathshala & others v. Shivaji Bhagwat More & others, reported in (2011) 13 SCC 99, contends that the decision of the Grievance Committee is not enforceable and writ, seeking enforcement of the said order, need not be entertained.

6. In the above cited matter before the Apex Court, direction was sought by a Shikshan Sevak to enforce the decision rendered by the Grievance Redressal Committee constituted under the scheme formulated by the Government on 27.04.2000. The Grievance Redressal Committee is merely a mechanism to hear grievances of Shikshan Sevaks and give its recommendation to the Education Department for facilitating the Department to take appropriate action. The Grievance Committee, constituted under the Shikshan Sevak Scheme is not intended to be a quasi judicial forum as is evident from the following:

(a) The Committee is constituted only to consider the grievances of the Shikshan Sevaks by giving them an opportunity of putting forth their grievances.

(b) The Scheme does not contemplate issue of notice to the employer, nor hearing both parties, nor rendering any adjudicatory decision.

(c) The Committee is a departmental committee with only the officers concerned as members.

7. The objection taken to the decision directing enforcement of the order passed by the Grievance Committee constituted under the Shikshan Sevak Scheme was accepted by the Supreme Court and in paragraphs no.30, 31 & 32 of the judgment, it is observed thus:

"30 Therefore, we hold that constitution of a Grievance Committee as a public adjudicatory forum, whose decisions are binding on the parties to the disputes, by an executive order of the Government is impermissible. Secondly, the High Court cannot in exercise of judicial power interfere with the jurisdiction of the civil courts vested under the Code of Civil Procedure. Any such Grievance Committee created by an executive order, either on the direction of the High Court or otherwise, can only be fact finding bodies or recommending bodies which can look into the grievances and make appropriate recommendations to the Government or its authorities, for taking necessary actions or appropriate reports to enable judicial tribunals to render decisions.

31 The Grievance Committee cannot be a public quasi-judicial forum nor can its decisions be made final and binding on the parties, in disputes relating to Shikshan Sevaks. Therefore, it has to be held that any order or opinion of the Grievance Committee on a complaint or grievance submitted by a Shikshan Sevak were only recommendations to the State Government (Education Department) for taking further action and nothing more.

32 Even assuming that the committees constituted under the Shikshan Sevaks Scheme were quasi-judicial tribunals, they cannot direct reinstatement nor direct that the employees are deemed to continue in service by declaring the termination to be bad. It is well settled that the courts would not direct reinstatement of service nor grant a declaration that a contract of personnel service subsists and that the employee even after removal is deemed to be in service. [See S. Dutt v. University of Delhi] The three recognised exceptions to the said rule are:

(i) where a public servant having the protection of Article 311 of the Constitution is dismissed from service is in contravention of the provision;

(ii) where a dismissed workman seeks reinstatement before Industrial Tribunals/Labour Courts under the industrial law; and (iii) where a statutory body acts in breach or violation of the mandatory obligation imposed by a statute. (See Vaish Degree College v. Lakshmi Narain). The direction of the High Court in its order dated 5.8.2008 that when the Grievance Committee holds that the termination is bad, the Shikshan Sevak is deemed to continue on the rolls of the management is therefore erroneous and liable to be set aside."

8. Learned Counsel appearing for the petitioner contends that facts of the instant matter are distinguishable from the facts leading to the decision in the reported matter and as such, ratio laid down by the Supreme Court, in the reported matter, has no applicability to the instant case. It is contended that the Grievance Committee, to hear and settle grievances of the teachers and other employees of the Universities and recognised Institutions, is constituted in accordance with Section 57 of the Maharashtra Universities Act, 1994. Section 57 of the Act reads as under:

57(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 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) [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;

(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;

-Members

(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.

-Members

(c) The Registrar

-Member Secretary

9. It is contended by the petitioner that the Grievance Committee constituted under Section 57 is a creation of statute and is not created by an executive order of the Government as in case of a Grievance Committee under the Shikshan Sevak Scheme. The decision rendered by the Grievance Committee under Section 57 shall have to be reported to the Management Council so as to facilitate the Management Council to take such action as it deems fit and the decision of the Management Council, on such report, has been given finality. The recommendation made by the Grievance Committee under Section 57 and subsequent action in pursuance to such report by the Management Council; and finality of the decision of the Management Council on such report, is statutorily prescribed in Section 57, as contradicted from the decision of the Grievance Committee under the Shikshan Sevak Scheme, which is established under an executive order. In the instant matter, the report/decision of the Grievance Committee was placed before the Management Council and the Management Council has approved same and has directed the Institution to comply with the directions/report of the Grievance Committee. It is obligatory on the part of the Respondent-Institution to comply with the directions issued by the Management Council in pursuance to the report tendered by the Grievance Committee. In the event of non observance of the directives issued by the Management Council, necessary consequences provided under the Maharashtra Universities Act, 1994, shall follow.

10 Learned Counsel appearing for the Respondent-Institution, informs that

Respondent-Institution would forward necessary proposal, in accordance with the report/decision of the Grievance Committee, which has been confirmed by the Management Council, to the Joint Director, Higher Education, Maharashtra State, Pune, within a period of eight weeks from today.

11 In this view of the matter, it is directed to Respondent No.3-Joint Director, Higher Education, Maharashtra State, Pune, to issue necessary orders expeditiously, on receipt of the proposal from Respondent No.7. The monetary benefits receivable by the petitioner shall be disbursed as expeditiously as possible, preferably within a period of twelve weeks from the date of receipt of the proposal by the Joint Director from Respondent No.7- Institution.

12 Rule is accordingly made absolute. There shall be no order as to costs.