

(2016) 01 BOM CK 0115

In the Bombay High Court

Case No : Writ Petition No. 1908 of 2014

Yeshwant Shikshan Prasarak Mandal and Others

APPELLANT

Vs

Sadashiv Balkrishna Raktade and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Universities Act, 1994 — Section 27, Section 28, Section 57, Section 57(2)

Citation : (2016) 2 ALLMR 393 : (2016) 3 BCR 687 : (2016) 2 MhLJ 236

Hon'ble Judges : N.H. Patil and G.S. Kulkarni, JJ.

Bench : Division Bench

Advocate : M.S. Topkar, for the Appellant; C.G. Gavnekar, for the Respondent

Final Decision : Allowed

Judgement

G.S. Kulkarni, J.—1. Rule Returnable forthwith. Heard finally by consent of the parties. By this petition under Article 226 of the Constitution of India, the Petitioners assail the communication dated 19th October, 2013 issued by Respondent No. 2 - Shivaji University, whereby the Petitioners are informed that the Grievances Committee has taken a decision that the Petitioners shall make payment of all arrears to Respondent No. 1 as per the Rules within one month from the date of the said letter and submit a report of compliance to the University. The communication also records that this decision of the Grievances Committee has been approved by the Management Council under Section 57(2) of the Maharashtra Universities Act, 1994 (for short "the Act").

2. The Petitioner No. 1 is an educational institution conducting the Petitioner No. 2 - B.Ed. College. It is the case of the Petitioners that Respondent No. 1 was appointed as a Lecturer in Education (Hindi) in Petitioner No. 2 College in the pay scale of Rs. 2200-4000. The appointment was continued and thereafter, a further order dated 18th June, 1996 was issued appointing Respondent No. 1 on probation for a period of one year from 20th June, 1996 to 20th April, 1997. The

appointment of Respondent No. 1 was approved by the Shivaji University.

3. Respondent No. 1 alongwith other staff members has raised a grievance about pay and other service conditions. A meeting was held between the employees and the Management. An agreement came to be executed between the Management and the Staff members on 25th August, 2003 and it was agreed that the staff members shall be extended benefits of 5th Pay Commission with effect from 1st January, 1996 based upon their basic pay in the 4th Pay Commission and consequent D.A. thereon. However, the actual pay and D.A. as per the said Commission would be payable with effect from 1st June, 2004. At the request of the Management, the staff members had voluntarily given up the claim of arrears payable as per 5th Pay Commission.

4. Respondent No. 1, however, approached the Grievances Committee of the University constituted as per the provisions of Section 57 of the Act, claiming salary and arrears thereof, as per the 5th Pay and 6th Pay Commission from the date of his appointment. The Grievances Committee entertained the complaint of Respondent No. 1 by calling upon the Petitioners to submit their reply which was submitted by the Petitioners. The Grievances Committee had fixed various meetings to hear the parties. It is stated that the Grievances Committee submitted its report to the Management Council. Thereafter, the impugned Communication dated 5th October, 2013 was received by the Petitioners informing the above decision of the Management Council on the report of the Grievances Committee.

5. Learned Counsel for the Petitioners submits that the decision of the Grievances Committee as contained in the impugned communication is illegal inasmuch as no hearing was granted to the Petitioners by the Management Council of the University as per the requirements of Section 57 of the Maharashtra Universities Act, 1994. It is submitted that it was mandatory for the Management Council to hear the Petitioners before taking the decision, to accept the recommendations of the Grievances Committee, which is admittedly not done before issuing the impugned communication. In support of his submissions, learned Counsel for the Petitioners has relied on the decision of the Division Bench of this Court in "Saibaba Gramin Vikas Sanstha & Anr. v. Rashtrasant Tukdoji Maharaj Nagpur University & Ors., (, 2011(6) Bom.C.R. 582)". in which it is held that under Section 57(2) of the Act the Grievances Committee is empowered to hear the grievances of teachers and employees of the University, Colleges or institutions, and prepare a report on the said grievance and that the Management Council is alone empowered to take a final decision and pass an appropriate order. It is held that since the Management Council is conferred with this responsibility, the Management Council should exercise this power only after hearing the parties, failing which it will amount to breach of principles of natural justice.

6. On the other hand, the learned Counsel for the Respondent - University, at the outset, conceded to the position that no hearing was granted to the Petitioners

before issuing the impugned communication to directing the Petitioners to implement the recommendations of the Grievances Committee. He submits that the University would be bound by the decision of this Court in the case in "Saibaba Gramin Vikas Sanstha & Anr." (supra).

7. Learned Counsel for Respondent No. 1, however, opposed the petition on the ground that the decision of the Division Bench in "Saibaba Gramin Vikas Sanstha & Anr." does not lay down the correct legal position inasmuch as Section 28 of the Act which deals with the powers and duties of Management Council has not been taken into consideration by the Division Bench. It is submitted that Section 28 of the Act which deals with the various powers and duties of the Management Council does not include any power to hear and decide the complaints as recommended in a report made by the Grievances Committee. After the learned Counsel for Respondent No. 1 has made this submission, the learned Counsel for the University states that he would also support this submission as made on behalf of Respondent No. 1.

8. Having heard the learned Counsel for the parties and examining their respective submissions, we are of the clear opinion that this Writ Petition is required to be allowed, for the reasons as we would set out.

9. Sub-section (1) of Section 57 of the Act provides for the constitution of a "Grievances Committee" 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 and to make a report to the Management Council. Sub-section 2 of Section 57 provides that it shall be lawful for the Grievances Committee to entertain and consider grievances or complaints, which are not falling within the jurisdiction of the Tribunal and make a report to the Management Council, to take such action as it deems fit. The decision of the Management Council on such report shall be final. A plain reading of this provision makes it clear that the Grievances Committee within its specified jurisdiction is required to undertake a fact finding exercise on the grievances of the teachers and the employees by undertaking a procedure of hearing the parties so involved. On the conclusions the Grievances Committee would arrive at, the Grievances Committee is required to make a report of the same to the Management Council, which would be in the nature of its recommendations, on such grievances and complaints. The Management Council is required to take a final decision on these recommendations or take such action as it deems fit. It is, therefore, clear that a decision which is required to be taken is by the Management Council. When a decision is to be taken by the Management Council and if its decision is to affect any party adversely, it is well settled that the principles of natural justice are required to be followed and thus, a hearing before the Management Council becomes imperative. We are in complete agreement with the view as taken by the Division Bench in its decision in "Saibaba Gramin Vikas Sanstha & Anr." (supra) in which on the principles of law as laid down by the Hon'ble Supreme Court holds that a hearing is required to

be given by the Management Council before taking a decision.

10. We do not agree with the submissions made on behalf of Respondent No. 1 that the decision in the case "Saibaba Gramin Vikas Sanstha & Anr." does not lay down the correct position in law on the ground that Section 28 of the Act does not contemplate any power vested in the Management Council to grant a hearing and take a decision on the report as made by the Grievances Committee. The fallacy in this submission is two fold. Firstly, the submission completely overlooks the provisions of Section 27 which categorically provides that that the Management Council shall be the principal executive authority of the University and that the Management Council shall carry out all such duties which are not specifically assigned to any other authorities. It would be appropriate to extract opening provisions of Section 27 which provides for the said duties of the Management Council, which read thus:--

"27. Management Council.

(1) 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 shall carry out all such duties which are not specifically assigned to any other authority. It shall be consist of the following members, namely:--"

(emphasis supplied)

It is, therefore, clear that the Management Council is required to carry out duties which are not specifically assigned to any other authority of the University. It is not the case of the Respondents that any other authority under the Act, than the Management Council is conferred with the power under the Act to decide on the report of the Grievances Committee.

11. The other fallacy is that the submission militates against the plain language of Section 57(2) of the Act which categorically confers power and authority on the Management Council to take such decision as it deems fit on the report of the Grievances Committee, and the decision of the Management Council on the said report would be final. It is thus explicitly clear that the Management Council is empowered to take decision on the report of the Grievances Committee under Sub-section (2) of Section 57 of the Act. A plain language of sub-section (2) of Section 57 of the Act would be rendered meaningless or would stand defeated if the submissions made on behalf of Respondent No. 1 are accepted. We, therefore, have no hesitation to reject the objection raised on behalf of the Respondents.

12. In the present case admittedly the impugned communication has been issued without granting to the Petitioners an opportunity of being heard by the Management Council which is mandatory.

13. Accordingly, we set aside the impugned communication dated 19th October, 2013, and direct the Respondent No. 2-University to grant a hearing to the

Petitioners on the report made by the Management Council and take a final decision on the same in accordance with law. All contentions of the parties are expressly kept open.

14. Writ Petition is allowed in the aforesaid terms. No order as to costs.