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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7523 OF 2003

Mrs. Sudarshana Suhas Pathak)
Residing at B-2/12, Purbi Apartment)
Shanti Park, Upnagar, Nashik 422106.) ...Petitioner

Versus

1. Secretary, Gokhale Education Society,)
Prin. T.A. Kulkarni Vidyanagar, H.P.T.)
Campus, Nashik 422 005.)
2. The Principal, Gokhale Education)
Society's Arts, Commerce & Science)
College, Srivardhan, Raigadh, 402 110.)
3. Registrar, University of Mumbai,)
M.G. Road, Mumbai.)
4. Jt. Director, Higher Education,)
Elphinstone Technical School Compound)
3, Mahapalika Marg, Mumbai 400 001.)
5. State of Maharashtra, through the)
Department of Higher & Technical)
Education, Mantralaya, Mumbai 400032.)
6. P.U. Ahire, G.E.S. Arts, Commerce)
& Science College, Srivardhan,)
Raigadh 402 110.) ...Respondents

Dr. Uday P. Warunjikar a/w Mr. Sudhanva Bedekar for the Petitioner.
Mr. Graham Francis i/b Mr. V.S. Talkute for the Respondent Nos. 1
and 2.
None for the Respondent No.3.
Ms. Kavita Solunke, Addl. G.P. a/w Mr. S.L. Babar, AGP for the
Respondent/State.

CORAM : M.M. SATHAYE, J.

DATE : 31st AUGUST, 2026

JUDGMENT :

1. The Petitioner was a lecturer in Respondent No.1-Educational Institute. Respondent No. 2 is the Principal of the College.

2. The Petitioner is challenging Order dated 23.04.2003 passed by Presiding Officer, Mumbai University and College Tribunal (‘the Tribunal, for short) in Appeal No.98 of 2002, dismissing the appeal filed by the Petitioner. The Petitioner had challenged in the said appeal, termination of her services by oral Order dated 16.10.2002.

BRIEF BACKGROUND

3. According to Petitioner, she was appointed as a lecturer in Marathi initially as part-time lecturer at Jawahar College run by Respondent No.1, affiliated to University of Mumbai w.e.f. 01.08.1994 till 20.04.1995 and continued in the said post till 20.04.1996. That she was appointed through duly constituted Selection Committee and the appointment was approved by the University. That thereafter, she was appointed in the College at Nashik Road run by Respondent No.1, which was affiliated to Pune University. Later on she was appointed at H.P.T. College at Nashik as full-time lecturer on probation for 2 years on 16.07.1996, till the end of academic year 1997-98. This appointment was also through duly constituted Selection Committee. That she was then appointed at Respondent No. 2 College at Srivardhan, Raigad as full-time lecturer in Marathi w.e.f. 17.07.1998 and she continued to hold the said post

till her oral termination.

4. It appears from record that Petitioner was terminated on 12.03.1998, which termination, she had challenged in the Tribunal belatedly after 5½ years, but the Tribunal refused to condone delay. This refusal was challenged by the Petitioner by filing Writ Petition No. 10682 of 2004, which came to be dismissed on 21.10.2005.

5. In the meantime, her appointment was converted from full-time to clock hour basis from 16.06.2001. Being aggrieved by the said order, the Petitioner had filed Appeal No.73 of 2001 before the Tribunal. This appeal was compromised and an order was passed on 31.07.2002 by which the Respondent-Management agreed to continue the Petitioner in the post which she was holding. However, it was agreed that it will not prevent the Respondent-Management from appointing a person from Scheduled Tribes (ST) category to the post held by Petitioner by following due procedure and on such appointment, the Petitioner's services shall come to an end. It was agreed that in case her services are brought to an end in the manner agreed, it shall be open to the Petitioner to challenge the termination and contentions and grounds raised in the appeal were kept open.

6. Respondent Nos. 1 and 2 had already issued an advertisement dated 27.06.2002 calling for walk-in-interview pursuant to which present Respondent No. 6 has been appointed in the post held by the Petitioner. Respondent No. 6 belongs to ST category and is fully qualified for being appointed to the post in question.

7. According to Petitioner, pursuant to the compromise, in view of

appointment of Respondent No. 6, the Petitioner was prevented from resuming duties on 16.10.2002 and it led to filing of the present Appeal No. 98 of 2002 in question.

8. The Respondent-Management appeared in Appeal No. 98 of 2002 and contested the same.

9. After hearing both sides and on appreciation of evidence, the Tribunal held that it does not have jurisdiction to decide which post should be reserved for which category. It however held that the post in question was reserved for ST candidate and therefore, appointment of Respondent No. 6 is not required to be disturbed and ultimately dismissed the appeal.

10. In these circumstances, the Petitioner has filed present petition challenging the dismissal of her appeal by impugned order dated 23.04.2003. Notice before admission was issued by this Court on 11.11.2003. However, no interim relief was granted.

11. On 30.11.2004, it was brought to the notice of the Court that during pendency of the petition, the grievance committee constituted under Section 57 of Maharashtra Universities Act, 1994 ('the said Act' for short) has given a report dated 29.04.2004 on the Petitioner's application / grievance, recommending that the post on which Petitioner was working was wrongly reserved. It has come on record that this recommendation of the grievance committee was placed before the management council of the University who accepted the recommendation on 31.07.2004 and it was informed to the Respondent-Management on 03.09.2004.

12. In view of such situation, this Court was informed that the Respondent-Management has not yet considered the recommendation and therefore Advocate for the Respondent-Management sought time. On 10.06.2005, the petition was admitted.

13. Advocate for the Respondent-Management placed on record additional compilation of documents in December 2016, which compilation is considered by consent of learned counsel of both the parties.

14. On 12.12.2004, the Respondent No. 1 in its governing body meeting resolved that it is not possible to accept the recommendation of grievance committee.

SUBMISSIONS

15. Learned counsel Dr. Warunjikar, appearing for the Petitioner submitted as under.

15.1. That the grievance committee's report and its due acceptance by the management council of the university has given finality to the recommendation, which is not challenged by the Respondent-Management.

15.2. That since the grievance committee has recommended in favour of the Petitioner which recommendation is accepted by the management council of the University, it attains finality under Section 57(2) of the said Act and it is not open for the Management to resolve not to implement it.

15.3. That during pendency of the petition, the Petitioner has attained the age of superannuation on 19.08.2022 and therefore there is no question of reinstatement.

15.4. That since the contentions in the earlier Appeal No. 73 of 2001 was kept open, it is not open for the Respondent-Management to simply resolve in its governing body meeting that it is not possible for the Management to accept the recommendations.

15.5. That the scope of the present petition has been already enlarged by order of this Court dated 30.11.2004 and therefore, the petition be allowed setting aside impugned order and by setting aside the termination thereby granting full back wages.

15.6. He relied on **Shri Prakash S/o Sambhaji Waghmare Vs. The State of Maharashtra & Ors. (Writ Petition No. 11906 of 2016 and other Petitions, Judgment dated 02.11.2018)**, in support of his contention that since the grievance committee is not constituted under executive instructions and is a creature of statute and its recommendation accepted by management council becomes final decision binding on the parties.

16. On the other hand, Mr. Francis appearing for the Respondent-Management submitted as under.

16.1. That the Petitioner has accepted appointment in various colleges under various appointment orders and scope of this petition is not at all expanded.

16.2. That the first order of termination dated 12.03.1998 was challenged belatedly in Writ Petition No. 10682 of 2004, which was dismissed by order dated 21.10.2005, recording that after the order of earlier termination, the Petitioner had sought and granted fresh appointment against a reserved post and the fresh appointment was also terminated which is challenged before University Tribunal. Reference is made to the present petition which was pending at the relevant time.

16.3. That therefore, even though the contentions are kept open, the act of the Petitioner accepting subsequent appointment against reserve post, will disentitle her from seeking implementation of the grievance committee's recommendations.

16.4. That Respondent No. 6 has been appointed by following due procedure and it is approved and it will not be just and proper to disturb that appointment after lapse of long time of 24 years.

16.5. That the Tribunal has already held under Issue No. 2 that post in question was reserved for ST candidate which is in conflict with the recommendation given by grievance committee. In such situation, those recommendations cannot be implemented in the present petition.

16.6. Relying on an affidavit filed by the Petitioner during pendency of the petition, he submitted that Petitioner has worked during pendency of the petition on temporary posts in many other institutes and received salary.

16.7. Lastly he prayed for dismissal of the petition, underlining limited scope of interference.

REASONS AND CONCLUSION

17. I have considered the rival submissions and perused the record.

18. At the outset, it is necessary to note that the order dated 30.11.2004 passed by this Court cannot be considered as expanding the scope of the petition. For the purpose of clarity, the said order is reproduced below:

"CORAM : D.B. BHOSALE, J.

DATE : 30th November, 2004.

PC:

1. Heard the learned counsel for the parties.

2. Pending hearing and final disposal of this petition, the Grievance Committee has passed the order in the application filed by the petitioner by which they have recorded a finding that the post on which the petitioner was working all these years, was wrongly reserved for reserved category and have recommended to the Respondent-Institution that the petitioner be treated as confirmed. The respondent-Institution has not yet considered the recommendations made by the Grievance Committee. In view of this, Mr. Mehere, learned counsel for the respondent-Institution, seeks eight weeks time.

3. Stand over for eight weeks."

19. It is therefore clear that on being informed about the decision of the grievance committee, this Court only granted time to the advocate for the Respondent-Institution to respond. This Court has not expressed any opinion on the said decision of the grievance committee nor any indication is made that such decision of the

grievance committee was made subject matter of this petition.

20. It is also important to note that after decision of the grievance committee accepted by the management council and its communication to the Respondent-Institution in September 2004 and further the stand of the Respondent-Institution taken in December, 2004 that it is not possible to accept the recommendation, the Petitioner has not amended the petition for last 22 years, nor pleadings/prayers are added seeking implementation of the said decision of the grievance committee. Nothing is brought to the notice of this Court that any independent petition is filed by Petitioner seeking implementation of the decision of grievance committee.

21. In that view of the matter, the request made at the time of final hearing after a period of 22 years that *mandamus* be issued directing implementation of the grievance committee report, suffers from laches and long delay. No explanation is given for such delay.

22. In **Shri. Prakash S/o Sambhaji Waghmare (Supra)** relied upon by learned counsel for the Petitioner, the Division Bench of this Court was considering a batch of petitions filed specifically seeking implementation of the order of the grievance committee duly accepted by management council. While considering such specific prayer/s, as this Court has held that the grievance committee is a creature of statute, making the decision of management council final and since there is finality attached to the decision, same would be binding on the parties.

The facts of the present case are clearly different and distinguishable, because such prayer for implementation of the

grievance committee report, is neither made in the petition nor any amendment is sought to that effect, nor any separate petition is filed for such prayer. In that view of the matter, the said judgment will not help the Petitioner.

23. Hence, assuming that the management council of the University has accepted the recommendations in favour of the Petitioner, since the Petitioner has not taken any action and steps for its implementation for such 22 years, writ of mandamus cannot be issued belatedly, after a long lapse of time.

24. Even though liberty was reserved by the Petitioner while compromising earlier appeal before the Tribunal, that liberty would apply to the contentions raised in Appeal No.73/2001 and such liberty cannot be directly imported or taken benefit of in subsequent Appeal No. 98/2002, which is subject matter of the present petition.

25. It is a matter of record that Petitioner has accepted subsequent appointment against the post reserved for ST category as also accepting under compromise that on ST candidate being appointed by following due procedure, the Petitioner's service were to come to an end. Having so accepted, the Petitioner cannot be permitted to turn around and contend in this petition (arising out of a different subsequent appeal) that reinstatement be issued. This factual position is also taken note of by this Court under earlier order dated 21.10.2005 passed in Writ Petition No.10682 of 2004. This Court, in the said order at the relevant time, clearly observed that *"after the earlier order of termination, the Petitioner sought and was granted fresh appointment inter alia against a post reserved for the Scheduled*

Caste".

26. Viewed in the light of what is observed above, when the impugned order is perused, it is seen that the Tribunal has taken note of the earlier compromise in Appeal No. 73 of 2001. The Tribunal has considered that by following procedure, Respondent No.6 has been appointed who belongs to ST category as per reservation. On appreciation of material on record, the Tribunal has clearly held that records have not been tampered while showing the post as reserved, as contended by the Petitioner. The Tribunal has also taken note of the fact that in the appointment letters issued to Petitioners, it is mentioned that if backward class candidate is appointed, Petitioner will have to leave her services. The Tribunal has rightly observed that omission on the part of the University to mention 'the aspect about appointment being against reserved post' will not change or alter the conditions accepted by the Petitioner under the appointment order. The Tribunal has also considered that this conditional appointment has been also recognized in the earlier compromise order passed in Appeal No. 73 of 2001. The Tribunal has also found that Respondent No.6 has been appointed by a duly constituted selection committee.

27. It has come on record by way of Petitioner's affidavit filed during pendency of the petition, that she has worked in various institutes and has received remuneration for the same.

28. In the aforesaid facts and circumstances and for reasons indicated above, the impugned order does not suffer from any perversity or jurisdictional error. No case for interference is made out.

29. **The Writ Petition is accordingly dismissed. Rule is discharged.**

No order as to costs.

30. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J)