

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2979 OF 2013

1. Jai Durga Bhavani Krida Mandal,
Mehrun, Tq. And Dist. Jalgaon,
Through its President -
Sunil S/o Supadu Mahajan,
Age-37 years, Occu-President and
Corporator,
R/o : Vithal Mandir Chowk,
Mehrun, Tq. And Dist. Jalgaon,

2. The Principal,
Jai Durga Bhavani Krida Mandal's
Om Sai Shikshanshastra Mahavidyalaya,
Shirsoli, Tq. And Dist. Jalgaon

PETITIONERS

VERSUS

1. The North Maharashtra University,
Jalgaon,
Through its Registrar,

2. Vaishali Jagannath Korde,
Age-Major, Occu-Service,
R/o Jalgaon, Dist. Jalgaon,

3. Subhash S/o Baba Vasave,
Age-Major, Occu-Service,
R/o Jalgaon, Dist. Jalgaon,

4. Gokul S/o Ramesh More,
Age-Major, Occu-Service,
R/o Jalgaon, Dist. Jalgaon,

5. Naresh S/o Pitambar Sawant,
Age-Major, Occu-Service,
R/o Jalgaon, Dist. Jalgaon

RESPONDENTS

Mr.S.R.Barlinge, Advocate for the petitioners.
Mr.A.B.Girase, Advocate for respondent No.1.
None appeared for respondent Nos. 2 to 5.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/06/2015

PER COURT :

1. I have heard Mr.Barlinge and Mr.Girase, learned Advocates for the petitioners and respondent No.1 University, respectively.

2. Respondent Nos. 2 to 5, despite having been served by Court Notice, have not chosen to cause an appearance either through an Advocate or in person. This petition is pending from 08/04/2013 and therefore I do not intend to keep it pending in the hope of respondent Nos. 2 to 5 causing an appearance of their own volition. It is, in this backdrop, that I have heard the learned Advocates.

3. The impugned order dated 05/03/2013 is delivered by the Grievance Redressal Committee (For short, G.R.C.) of the Respondent University u/s 57 of the Maharashtra Universities Act, 1994. The issue of termination of respondent Nos. 2 to 5 at the hands of the petitioners in March 2012 has been considered by the G.R.C.

4. Mr.Barlinge raises a serious grievance as regards the G.R.C. having overstepped its jurisdiction and usurped jurisdiction vested in

the University and College Tribunal u/s 59 of the Universities Act.

He, therefore, submits that the impugned order of the G.R.C. is unsustainable purely on the count of there being no jurisdiction vested in the G.R.C. to consider the factum of termination.

5. Mr.Girase, learned Advocate submits that Section 57 and Section 59 of the Universities Act are indicative of the jurisdiction vested in the G.R.C. and the University and College Tribunal. He further submits that the matters pertaining to orders of dismissal, removal, otherwise termination of service or reduction in rank were subject matter to be dealt with by the said Tribunal. In contra distinction, the G.R.C. was to consider the grievances, which do not fall within the ambit of the Tribunal.

6. Section 57, 58 and 59 under Chapter VII of the Maharashtra Universities Act, 1994 read as under :-

“Section 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 Grievances Committee shall consist of the following members viz.,

(a) The Pro-Vice-Chancellor, where there is no Pro- Chairman
Vice-Chancellor; a Member of the Management
Council nominated by the Management Council-

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Vice-Chancellor; a Member of the Management
Council nominated by the Management Council-

³[(ba) two members of the Senate, nominated by Members
the Members of the Senate from amongst
themselves, one of them being the woman
representative of the Management and one shall
be a teacher;]

(bb) [two members nominated by the members of Members
the Academic Council from amongst themselves
one of them being the Principal, and one shall be
a teacher.]

(c) The Registrar Members

[4] ⁴[* * *] Secretary;

Section 58 - University and College Tribunal :-

(1) Subject to the provisions of Section 66, there shall be one or more University and College Tribunals for ¹[one or more Universities] in the State of Maharashtra for adjudication of disputes between the employees of the universities and their respective university and between the employees of the affiliated college or recognised institutions and their respective managements, with regard to the matters specified in sub-section (1) of Section 59.

(2) The State Government shall, by notification in the Official Gazette, constitute one or more Tribunals to be called University and College Tribunals, for adjudication of disputes or difference between the teachers and employees and the university, management of any affiliated college or recognised institution (other than that managed and maintained by the State Government, Central Government or local authority) connected with, or arising out of, the matters specified in sub-section (1) of Section 59.

(3) A Tribunal shall consist of one person only, to be appointed by the State Government.

(4) A person shall not be qualified for appointment as a Presiding Officer of a Tribunal, unless.--

(a) he is or has been a Judge of High Court; or

(b) he is qualified to be appointed as a Judge of High Court:

Provided that a person to be appointed under clause (b) shall be from amongst the panel of three persons recommended by the Chief Justice of High Court of Judicature at Bombay.

(5) The appointment of a person as a Presiding Officer of a Tribunal shall be on a full time basis, and for such period or periods, but not exceeding three years in the aggregate, as the State Government may, from time to time, in each case decide.

(6) The remuneration and other conditions of service of the Presiding Officer shall be as determined by the State Government.

(7) The university shall make available to a Tribunal such ministerial staff as may be necessary for the discharge of its functions under this Act.

(8) All expenditure on account of the remuneration, pension, provident fund contribution, leave allowance and other allowances and facilities which may be admissible to the Presiding Officer and the staff placed at his disposal, shall be met from the university fund.

(9) If any vacancy, other than a temporary vacancy, occurs in the office of the Presiding Officer of a Tribunal, the State Government shall, as soon as may be possible but in any case within three months, appoint another qualified person to fill the vacancy. Any proceedings pending before the former Presiding Officer may be continued and disposed of by his successor from the stage at which they were when the vacancy occurred.

Section 59 - Right of appeal :-

(1) Notwithstanding anything contained in any law or contract for the time being in force, any employee (whether a teacher or other employee) in any university, ¹[* * *] college or recognised institution (other than that managed and maintained by the State Government, Central Government or a local authority), who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank by the university or management and who is aggrieved, shall have a right of appeal and any appeal against any such order ²[shall] lie to the Tribunal:

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court or Tribunal of competent jurisdiction or is pending before such Court or Tribunal on the date of commencement of this Act or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the management at any time before the date on which this Act comes into force and in which case the period for filing an appeal has expired.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of services, or reduction in rank, as the case may be:

Provided that, where such order was made before the date of commencement of this Act, such appeal may be made if

the period of thirty days from the date of receipt of such order has not expired.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of four hundred rupees which shall not be refundable and shall be credited to the university fund:

Provided that it shall be lawful for the State Government to revise, by notification in the Official Gazette, such fees as it may deem fit from time to time."

9. In the light of the above, it is apparent that the G.R.C. should not have and could not have dealt with the grievances of respondent Nos. 2 to 5, which pertain to their termination.

10. It appears that the G.R.C. has also directed the petitioners to pay salary to respondent Nos. 2 to 5 for the months of May 2012 till December 2012. Mr.Barlinge seriously contends that the date of termination of these respondents is 27/03/2012. When the services of the said respondents has been terminated on 27/03/2012, issue of payment of salary from May 2012 till December 2012 is non-existent.

11. Considering the above, I am of the view that respondent Nos. 2 to 5 had approached a forum which had no jurisdiction to deal with their termination and effects consequential thereto. This could have been gone into by the University Tribunal.

12. In this backdrop, the petition deserves to be allowed. Nevertheless, I am of the view that the respondent Nos. 2 to 5 cannot be rendered remediless and the option of voicing their grievances, needs to be kept open so as to enable them to approach the appropriate forum, which is the Tribunal, lest the doors of justice would be closed on them.

13. The impugned order dated 05/03/2013 at Exh.F, delivered by the Grievance Redressal Committee and as communicated by respondent No.1 University vide their letter dated 05/03/2013 is quashed and set aside. Respondent Nos. 2 to 5 are at liberty to raise a grievance before the University Tribunal for challenging their termination dated 27/03/2012. In the event their appeal is filed before the University Tribunal within 6 (six) weeks from today, the pendency of their grievance before the G.R.C. and the pendency of this petition from 08/04/2013 till passing of this order, shall be a ground for seeking condonation of delay.

14. Mr.Girase, learned Advocate submits that the issue of respondent Nos. 2 to 5, having worked from May 2012 to December 2012 and their entitlement for unpaid salary, needs to be answered. Needless to state, the said respondents will have to establish that they had worked till December 2012 and were terminated thereafter. This issue, as to whether they were terminated on 27/03/2012 or in December 2012 will be gone into by the Tribunal and the issue of unpaid salary will also be looked into by the same Authority.

15. The writ petition is allowed in the above terms.

(RAVINDRA V. GHUGE, J.)