

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9699 OF 2016

1. The R.C.Patel Educational Trust
Shirpur, Dist. Dhule, through
its Secretary.

2. The principal,
R.C.Patel Arts, Commerce and
Science College, Shirpur,
Dist. Dhule

..Petitioners

Versus

Dilip Suklal Borse
Age 59 years, Occ. Service
R/o Vidhya Varddhani Colony,
Shirpur, District Dhule.

..Respondent

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Advocates for Petitioners : Shri Bagul D.S.
Advocate for Respondent : Shri Talhar Ajay

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 19, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioners are aggrieved by the order dated 2.8.2016 passed by the University Tribunal, thereby declining to frame a preliminary issue with regard to whether the departmental enquiry conducted by the petitioners against the respondent was fair and proper.

5. Shri Bagul, learned Advocate for the petitioners strenuously submits that akin to industrial jurisprudence, the University Tribunal is required to frame an issue as to whether the enquiry conducted by the petitioners is vitiated or not and whether the findings of the enquiry committee are perverse or not. If the enquiry is vitiated for any reason whatsoever, the petitioners have a right to conduct a *de novo* enquiry before the Tribunal. It is further submitted that the petitioners have specifically reserved their rights to conduct a *de novo* enquiry in their written statement, in the light of the ratio laid down by the Honourable Supreme Court (Five Judges' Bench) in the matter of Karnataka State Road Transport Corporation Vs. Laxmidevamma & another [AIR 2001 SCW 1981].

6. Shri Bagul further submits that Sections 60 and 61 of the Universities Act, 1994 vests the Tribunal with the powers to record evidence. As such, if the enquiry is vitiated, the management can prove the charges by conducting a *de novo* enquiry before the University Tribunal. He has placed reliance upon the judgment of

this Court in the matter of Sheshrao Wankhede's 56th Birthday Foundation and others Vs. Pratibha Uttamrao Gadwe [2005 (3) Mh.L.J. 304], to support his contention that this Court has ruled under the Universities Act that once the enquiry is held to be vitiated, the management should be allowed to conduct a *de novo* enquiry before the University Tribunal.

7. Shri Talhar, learned Advocate for the respondent has opposed the petition. Contention is that Industrial jurisprudence cannot be made applicable to the University Tribunals, which exercises powers as an appellate Court and not as a trial Court. He submits that the learned Division Bench of this Court in the matter of Gurumaharaj Shikshan Prasarak Mandal Vs. Jalindar Mahadeo Kedar [2006 (2) Mh.L.J. 748], has concluded that the School Tribunal under the MEPS Act cannot be equated with the Labour Court and the Tribunal cannot be said to be a trial Court to record oral evidence by permitting the management to conduct a *de novo* enquiry.

8. He further submits that the final arguments in the matter before the University Tribunal have already commenced. During the course of advancing final submissions, the petitioners have filed the application which has been rightly rejected by the University Tribunal.

9. I have considered the submissions of the learned Advocates and I have gone through the reports cited. The proceedings before the University Tribunal are at the stage of advancing final submissions. In fact, the appellant has already commenced advancing final submissions. In this backdrop, I deem it proper to permit the litigating sides to canvass all contentions so as to enable the Tribunal to decide the same while deciding the appeal.

10. As such, this petition is disposed off with liberty to the litigating sides to raise all legal contentions and canvass their respective averments set out in their pleadings so as to enable the University Tribunal to decide the appeal in the light of their contentions. Needless to state that this Court has not dealt with the merits of the matter and the University Tribunal shall decide the same on its own merits.

11. Rule is discharged accordingly.

(RAVINDRA V. GHUGE, J.)

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