

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10612 OF 2016
AND
CIVIL APPLICATION NO. 14073 OF 2016

Suresh Renukadas Halhalli
Age 49 years, Occ. Service
as Incharge Principal,
M.S.Bidwe Engineering College,
Latur.

..Petitioner

Versus

1. Bashwaraj Vishwanathappa Dharne
Age 48 years, Occupation Service
as a Incharge Principal,
M.S.Bidwe Engineering College,
Latur.

2. The Registrar,
Swami Ramanand Teerth Marathwada
University, Vishnupuri, Nanded.

3. The Director,
Board of College and University
Development, Swami Ramanand
Teerth Marathwada University,
Vishnupuri, Nanded.

4. Shri Manmathappa Pandappa
Lokhande, Age 83 years,
Occupation Business,
R/o Subhash Chowk, Latur.

5. Bhalchandra Gulshidappa
Khichadi, Age 57 years,
Occupation Service as
Associate Professor,
M.S.Bidwe Engineering College,
Latur.

6. Mahatma Basweshwar Shikshan
Sanstha, Latur, through its
Secretary, Madhav Hanumantrao
Patil -Taklikar, Age 48 years,

Occupation Business, R/o
Sai Sadan, Laxmi Colony,
Old Ausa Road, Latur.

..Respondents

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Advocate for Petitioner : Shri Thombre S.S.

Advocate for Respondent 1 : Shri Sabnis A.N.

h/f Shri Kodale V.G.

Advocate for Respondents 2 & 3 : Shri Aghav A.D.

Advocate for Respondent 4 : Shri Gunale V.D.

Advocate for Respondent 5 : Shri Choudhari S.S.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: October 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 petitioner is aggrieved by the order dated 13.10.2015, delivered by the University Tribunal in Appeal No. SRTMU/05/2016, thereby concluding that the taking away of a temporary charge of an "In-charge Principal" would amount to termination from service and the appeal would be maintainable under Section 59 of the Maharashtra Universities Act, 1994.

5. These litigating sides were before this Court earlier in Writ Petition No.9369 of 2016. By judgment dated 16.9.2016, I had framed the following issues, so as to enable the University Tribunal to decide the same after hearing all the sides:-

“[a] Whether the appointment of a senior most eligible professor as an in-charge Principal would amount to the termination or reduction in rank of the earlier in-charge Principal.

[b] Whether the issue raised in the appeal would lie before the Grievance Redressal Committee of the concerned University and whether the University Tribunal would have jurisdiction u/s 59 to entertain the dispute raised in Appeal No. SRTMU-05/2016.”

6. Having framed the above two issues, I had expected the University Tribunal to decide each of them.

7. I have heard the submissions of the learned Advocates for the litigating sides for quite some time.

8. There is no dispute that respondent No.1 was earlier officiating as “In-charge Principal” of the concerned Engineering College w.e.f. January 2015 till 4.7.2016. It is not in dispute that the

petitioner herein has been given the temporary charge of a Principal from 5.7.2016 for a period of six months by taking away the temporary charge as “In-charge Principal” from respondent No.1.

9. Under the Maharashtra Universities Act, 1994 read with the Statutes and Ordinances framed under Sections 51 and 53, read with the Government Resolution dated 15.3.2012, it is settled that amongst the senior Professors, the senior-most is to be given the temporary charge of the Principal by embarking upon the exercise of selecting a regular Principal for making a substantive appointment to the post of Principal. There can be no dispute that if the senior-most Professor declines to hold the temporary charge, the next in seniority list is invited to take the said charge. In the facts of this case, respondent No.1 is undisputedly at serial No.8, the petitioner herein is at Sr. No.5 and respondent No.5 is at Sr. No.2 in the seniority list. The Professor, who is senior-most, has not been made a party / respondent, either before the University Tribunal or before this Court. Professor R.R.Sattar is the senior-most person.

10. It is revealed from the facts of this case that respondent No.3 / Director of the Board of College and University Development ("BCUD") is said to have made telephonic calls to a few Professors. It is informed that the petitioner who is at Sr. No.5 consented to take the temporary charge and hence, when the stage for fresh handing

over of temporary charge arose, the Director / respondent No.3 directed the petitioner to take the temporary charge of Principal. It was on these premises, that respondent No.1 preferred his appeal before the University Tribunal, claiming termination from the post of Principal.

11. By the impugned order passed by the Tribunal, it is concluded that the withdrawing of temporary charge from respondent No.1 would amount to termination from the post. I find such a conclusion to be surprising and astonishing. A substantive appointment necessarily means making a regular appointment on a particular post as a full time appointment. In the case of a Principal, a substantive appointment would necessarily mean that a person has been selected by following the due procedure of law and has been appointed as a full time Principal. If such a Principal is terminated, it would amount to termination from the post of a Principal.

12. It is settled law that taking away of a temporary charge does not amount to terminating a person from the post. When handing over of a temporary charge is in itself a temporary arrangement and is not a substantive appointment, withdrawal of such charge, consequentially, would not amount to termination since there was no substantive appointment. This aspect has not been dealt with by the University Tribunal, who in my view, has mis-directed itself by

considering the facts of this case and yet not being able to deal with the issue, as to whether the taking away of the temporary charge would amount to a termination from the post of a Principal.

13. Section 59 of the Universities Act gives a right of appeal against the action of dismissal, removal or otherwise termination of the services of a person from a post held by him or who is reduced in rank. Section 59 reads as under:-

“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.”

14. Section 57 of the Act provides for the formation of a Grievances Committee, which is commonly known as the Grievances Redressal Committee. Said committee can deal with all grievances of the Teachers and other employees of the University, Colleges,

institutions and recognized institutions. Section 57(2) clarifies that grievances which do not fall within the jurisdiction of the University Tribunal under Section 59 can be dealt with by the Grievances Committee.

15. Section 57 of the Act reads 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 Chairman
no Pro-Vice-Chancellor; a Member of the
Management Council nominated by the
Management Council-

or [Two] members of the Management Council nominated by the Management Council from amongst themselves [one of them belonging to the Scheduled Caste or Scheduled Tribes or De-notified Tribes (Vimukta Jatis) / Nomadic Tribes or Other Backward Classes, by rotation].

[(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;]

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

(c) The Registrar Member”

16. The second issue that remains to be adjudicated upon is whether a cause of action, which would not lie before the University Tribunal under Section 59 of the Act, could be entertained by the Grievances Committee under Section 57 of the Act. Considering the language of Section 57 and especially Section 57(2), a cause of action which is not tenable before the Tribunal under Section 59 can, therefore, be considered by the Grievances Committee.

17. As such, the impugned order dated 13.10.2016, passed by the

University Tribunal is quashed and set aside. The application filed by the petitioner, contending that the Appeal is not maintainable, stands allowed. Appeal No. SRTMU/05/ 2016, therefore, stands dismissed as being tenable.

18. In the light of the above, respondent No.1 is at liberty to approach the Grievances Committee under Section 57 and raise a grievance which can be considered by the Committee within its powers set out in the Act.

19. In the light of the above, the impugned order is perverse, erroneous and is unsustainable. This petition is, therefore, allowed and Rule is made partly absolute in the above terms.

20. At this stage, respondent No.1 states that presently, the Grievances Committee is not constituted for respondent No.3 / University. Learned Advocate for the University now submits that the Grievances Committee is in existence. As such, if respondent No.1 submits his Grievances within 15 days from today, the Grievances Committee shall accordingly, deal with the said grievances as per the 1994 Act, Statutes and Ordinances applicable, as expeditiously as possible.

21. Needless to state, the constitution of the Grievances

Committee is explicit under Section 57 and this Court trusts that the Vice-Chancellor of the said University would do the needful in accordance with the procedure for constituting a Grievances Committee, if it is not in existence.

22. Needless to state that the pendency of the proceedings before the Grievances Committee shall not be an impediment for the University to ensure that the law applicable and so also the Government Resolution for appointing the senior-most Professor as in-charge Principal is followed

23. Pending Civil Application, if any, stands disposed off.

(RAVINDRA V. GHUGE, J.)

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