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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2070 OF 2016

Shree Yeshwant Shikshan Prasarak Mandal & Another	...Petitioners
V/s.	
Sadashiv D. Raktade & Ors.	...Respondents

WITH
WRIT PETITION NO.3310 OF 2016

Shree Yeshwant Shikshan Prasarak Mandal & Another	...Petitioners
V/s.	
Ajit G. Lokare & Ors.	...Respondents

WITH
WRIT PETITION NO.3849 OF 2016

Sadashiv D. Raktade	...Petitioner
V/s.	
The Secretary, Shree Yeshwant Shikshan Prasarak Mandal & Ors.	...Respondents

WITH
WRIT PETITION NO.3855 OF 2016

Ajit G. Lokare	...Petitioner
V/s.	
The Secretary, Shree Yeshwant Shikshan Prasarak Mandal & Ors.	...Respondents

Mr.Meelan Topkar for the Petitioners in Writ Petition Nos.2070 of 2016 and 3310 of 2016 and for the Respondent No.1 in Writ Petition Nos.3849 of 2016 and 3855 of 2016.

Mr.C.G. Gavnekar for the Petitioners in Writ Petition Nos.3849 of

2016 and 3855 of 2016 for the Respondent No.1 in Writ Petition Nos.2070 of 2016 and 3310 of 2016.

Ms.M.S. Bane, A.G.P. for the Respondent No.3 in Writ Petition Nos.2070 of 2016 and 3310 of 2016 and for the Respondent No.4 – State in Writ Petition Nos.3849 of 2016 and 3855 of 2016.

CORAM : R.D. DHANUKA, J.
DATE : 20TH JUNE, 2016.

P.C. :-

1. By consent of parties and in view of the identical facts, all the aforesaid four writ petitions were heard together and are being disposed of by a common order.

2. Writ Petition Nos.2070 of 2016 and 3310 of 2016 are filed by the management under Articles 226 and 227 of the Constitution of India thereby impugning the common judgment in Appeal Nos.4 of 2013 and 5 of 2013 passed by the Presiding Officer, Bombay University and College Tribunal filed by the two professors, who were working in the college run by the petitioner nos.1 and 2 thereby allowing the appeals filed by those two professors i.e. respondent no.1 respectively in both these writ petitions partly and thereby setting aside the order of their dismissal and directing the petitioners management to reinstate them on their original posts within two months from the date of the said order. Writ Petition Nos.3849 of 2016 and 3855 of 2016 are filed by those two professors respectively (original appellants) under Articles 226 and 227 of the Constitution of

India thereby impugning part of the order passed by the Presiding Officer, Bombay University and College Tribunal partly rejecting the appeals filed by them i.e. Appeal Nos.4 of 2013 and 5 of 2013 respectively thereby refusing to grant back wages and withholding of two increments for two years and one year respectively with effect on future increments. Some of the relevant facts for the purpose of deciding these four writ petitions are as under :

3. The petitioner in Writ Petition No.3849 of 2016 had passed his master degree and was appointed full time lecturer in Hindi in the college run by the petitioner nos.1 and 2 on probation on 28th September, 1994. He possessed M.Phil degree in "A" grade in 1997-1998 and was confirmed as a lecturer on 11th November, 1997. His permanent appointment was approved by Shivaji University.

4. On 3rd March, 2004, the said petitioner applied for a loan to the Bank of India, Kodoli Branch for purchasing a four wheeler and approached the college run by the petitioner no.1 for issuing a salary certificate. It was the case of the petitioner that as the post of principal was then vacant, the In-charge Principal directed the office to prepare a salary certificate of the petitioner which was prepared by the office. The said salary certificate was signed by the senior most lecturer Mr.Ajit Gopalrao Lokare, described himself as In-charge Principal, who is the petitioner in Writ Petition No.3855 of 2016.

5. On 26th May, 2012, the management issued a show cause notice to the petitioner alleging that his salary certificate was obtained by preparing the false documents. The petitioner replied to the said show cause notice on 28th May, 2012. The management thereafter constituted a preliminary enquiry committee. The said enquiry committee recorded the finding on 25th June, 2012 that the petitioner had alleged to have mis-conducted by obtaining a salary certificate and forwarded the report to the management. The petitioner was thereafter charge-sheeted by the management on 8th November, 2012. The management thereafter conducted an enquiry through the enquiry officer - Mr.Ranjeet Sardesai, Advocate. The said enquiry officer conducted the enquiry against the petitioners in Writ Petition Nos.3849 of 2016 and 3855 of 2016 and submitted a report holding that the petitioner is guilty of misconduct and held that the petitioner had failed to prove that the charge was levelled against him by the management due to demand made by him for the payment on regular basis. The management dismissed the petitioners in Writ Petition Nos.3849 of 2016 and 3855 of 2016 from the college run by the petitioner no.1 with effect from 12nd February, 2013. The said order of dismissal was impugned by both these petitioners by filing two separate appeals before the University and College Tribunal on 6th March, 2013.

6. On 7th April, 2014, the appeals filed by both these petitioners came to be allowed by the learned Presiding Officer of the University and College Tribunal by an order dated 7th April, 2014. The University and College Tribunal was pleased to set aside the dismissal order of the petitioners and directed the management to reinstate the petitioners with continuity of service and payment of back wages. The management impugned the said order dated 7th April, 2014 by filing a writ petition (7465 of 2014) in this Court. By an order dated 11th September, 2014, this Court remanded the matter back to the University and College Tribunal to consider whether the punishment imposed by the management of dismissal of their services was exorbitant and/or to impose suitable punishment on the petitioners in view of the admission of the petitioners that irregularity in obtaining the salary certificate signed by the In-charge Principal other than appointed by the management.

7. On 13th October, 2014, the Presiding Officer of the University and College Tribunal allowed the Appeal Nos.4 of 2013 and 5 of 2013 respectively filed by the petitioners partly thereby directing the management to reinstate the petitioners on their original posts within two months with continuity of service. The University and College Tribunal however, did not grant the relief in respect of back wages and directed withholding of two increments of two years with

effect on future increments and one increment respectively. The management filed Writ Petition Nos.2070 of 2016 and 3310 of 2016, thereby impugning part of the said order dated 13th October, 2015 i.e. the order directing the management to reinstate both these petitioners on their original posts with continuity of service. The two professors (original appellants) impugned part of the said order thereby challenging the refusal of back wages and directing that two increments for a period of two years of the petitioners be withheld.

8. Learned counsel for the management invited my attention to the impugned order passed by the University and College Tribunal and would submit that though the University and College Tribunal had held that the said Sadashiv B. Raktade (petitioner in Writ petition No.3849 of 2016) was aware that the petitioner in Writ Petition No.3855 of 2016 was not In-charge Principal during the relevant period, he finally obtained the salary certificate from the petitioner in Writ Petition No.3855 of 2016. He submits that the University and College Tribunal thus ought not to have granted reinstatement in favour of the said Sadashiv B. Raktade. He submits that the misconduct on the part of the said Sadashiv B. Raktade was proved and thus no relief of reinstatement could have been granted by the University and College Tribunal.

9. It is submitted by the learned counsel for the petitioners

that insofar as Mr.Ajit G. Lokare, the petitioner in Writ Petition No.3855 of 2016 is concerned, he had not given any satisfactory reply before the enquiry officer. He submits that the enquiry committee had held that the said Mr.Ajit G. Lokare is guilty of misconduct of breach of statutory section 211(3)(ii) and thus the action of termination of his services by the petitioners was valid and justified. He submits that the University and College Tribunal thus could not have set aside the order of termination and could not have granted reinstatement to the said Mr.Ajit G. Lokare (the petitioner in Writ Petition No.3855 of 2016).

10. Learned counsel for the petitioner in Writ petition No.3849 of 2016 submits that though the University and College Tribunal had rightly come to the conclusion that the punishment of dismissal was not warranted, the University and College Tribunal erroneously did not grant relief of back wages and has directed the management to withhold the increments for two years. He submits that refusal of the back wages and withholding the increments is disproportionate to the alleged mis-conduct committed by the petitioner and thus no such relief could have been refused by the University and College Tribunal. He submits that by obtaining the said salary certificate signed by the In-charge Principal, neither the petitioner nor the said teacher had been benefited or had secured any undue advantage. The University

and College Tribunal thus ought to have granted relief of full back wages and ought not to have directed to withhold increments for a period of two years.

11. Insofar as Writ Petition No.3855 of 2016 is concerned, it is submitted by the learned counsel for the petitioner that though the University and College Tribunal had rightly set aside the order of termination and had ordered reinstatement of the petitioner, the University and College Tribunal erroneously refused to award back wages and directed withholding the increment for a period of one year. He submits that the punishment must be commensurate to the act of mis-conduct, however, in this case the punishment was totally disproportionate. He submits that by signing a salary certificate as In-charge Principal, neither the petitioner nor the said teacher had been benefited. He submits that the enquiry was not properly conducted.

12. A perusal of the order passed by the University and College Tribunal indicates that the petitioner in Writ Petition No.3855 of 2016, had applied for a loan of Rs.2,50,000/- from the bank and applied for a salary certificate to enable him to apply for a loan. The said certificate was issued by the petitioner in Writ Petition No.3855 of 2016. The said certificate was signed by the said petitioner in Writ Petition No.3855 of 2016 as In-charge Principal. The petitioner in Writ Petition No.3855 of 2016 was not In-charge Principal admittedly. In

the enquiry conducted by the management, both the professors were found guilty of mis-conduct. Based on the said enquiry report, the management terminated the services of both the professors and inflicted major penalty.

13. It was the case of the professors that they were working with the college for quite some time and there was no grievance of any nature whatsoever against them in their entire career except the incident in question. It was the case of the petitioner in Writ Petition No.3855 of 2016 that he was senior most teacher and had signed the certificate on the earlier occasions also in view of administrative exigency. He had tendered apology for signing the salary certificate as In-charge Principal. It was the case of the petitioners that since they were demanding their wages as per rules, the management had grudged against them. Though there was no loss to the management or the college, the management had inflicted major penalty which was totally disproportionate.

14. A perusal of the order passed by the University and College Tribunal indicates that the University and College Tribunal after considering the evidence on record held that the petitioners had unblemished record, the punishment of dismissal was not warranted. It was not the case of the management that the contents of the salary certificate issued to the petitioner in Writ Petition No.3849 of 2016,

who had applied for the said salary certificate were incorrect. He had addressed a letter to the Principal for the said certificate. It is held by the University and College Tribunal that though the petitioner in Writ Petition No.3855 of 2016 was not In-charge Principal, he had signed the said certificate as In-charge Principal. According to the management, Mr.V.R. Patil was In-charge Principal at that time. The University and College Tribunal accordingly held that the said petitioner in Writ Petition No.3855 of 2016 himself had not prepared the certificate but the same was got prepared by him. The University and College Tribunal opined that the said petitioner in Writ Petition No.3855 of 2016 had no intention to deceive anybody. There was no wrongful loss caused to the management due to the said petitioner in Writ Petition No.3855 of 2016 signing such certificate as In-charge Principal.

15. Insofar as the petitioner in Writ Petition No.3849 of 2016 is concerned, the University and College Tribunal rendered a finding that he had filed the application for certificate on 3rd March, 2012 and on the same day In-charge Principal had made an endorsement thereon directing the staff members to prepare the certificate. The certificate was also issued on the same day. It is held by the University and College Tribunal that since the endorsement was made by Mr.V.R. Patil, In-charge Principal on his application, the

petitioner could not have asked Mr.Ajit Lokare i.e. the petitioner in Writ Petition No.3855 of 2016 to sign the said certificate. The University and College Tribunal therefore, having found the punishment of the petitioner as disproportionate, has set aside that part of punishment inflicted by the management.

16. Insofar as the relief of back wages and withholding of increments is concerned, a perusal of the said order passed by the University and College Tribunal indicates that considering the involvement of both the parties in applying the petitioner in Writ Petition No.3849 of 2016 for insisting the petitioner in Writ Petition No.3855 of 2016 to sign such salary certificate though he was not In-charge Principal and the conduct of the petitioner in Writ Petition No.3855 of 2016 in signing the salary certificate as In-charge Principal knowing well that he was not the In-charge Principal, the University and College Tribunal though was pleased to set aside the order of dismissal, rightly deprived the petitioners of back wages and of two and one increments respectively in Writ Petition No.3849 of 2016 and 3855 of 2016.

17. In my view, the University and College Tribunal has considered all the relevant aspects and also the evidence before the enquiry committee and has rightly come to the conclusion that insofar as the major punishment i.e. punishment of dismissal inflicted by the

management is concerned, the same was disproportionate to the mis-conduct committed by the petitioners in Writ Petition No.3849 of 2016 and 3855 of 2016. There was no loss of any nature whatsoever caused to the management due to the said mis-conduct committed by the petitioners. In my view, the finding rendered by the University and College Tribunal thereby setting aside the order of dismissal in the facts of this case, is not perverse and no interference with that part of the order is warranted.

18. Insofar as the refusal to grant back wages and withholding of increments is concerned, in my view, the finding rendered by the University and College Tribunal that both the petitioners had committed mis-conduct however, considering the fact that both the professors were working with the college for quite some time and had unblemished record, in my view the University and College Tribunal had rightly exercised their discretion by depriving the petitioners of back wages and had rightly withheld two increments and one increment respectively for a period of two years. In my view, the said part of the order also passed by the University and College Tribunal is reasonable in the facts and circumstances of this case. The findings rendered by the University and College Tribunal are not perverse and thus cannot be interfered with by this Court under Articles 226 and 227 of the Constitution of India.

19. In my view, all the aforesaid four writ petitions are devoid of merits. I therefore, pass the following order :-

a). Writ Petition Nos.2070 of 2016, 3310 of 2016, 3849 of 2016 and 3855 of 2016 are dismissed. No order as to costs.

(R.D. DHANUKA, J.)