

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6369 OF 2008

Vandana Harishchandra Bhalerao	 Petitioner
V/s.	
Sangopan Shikshan Sanstha, Thane (West) & Ors.	 Respondents

ALONG WITH

WRIT PETITION NO.5893 OF 2008

Sangopan Shikshan Sanstha, Thane (West) & Anr.	 Petitioners
V/s.	
Vandana Harishchandra Bhalerao & Ors.	 Respondents

Mr. Mihir Desai for the Petitioner in Writ Petition No.6369 of 2008 and for Respondent No.1 in Writ Petition No.5893 of 2008

Mr. N.V. Bandiwadekar for the Petitioners in Writ Petition No.5893 of 2008 and for Respondent Nos.1 and 2 in Writ Petition No.6369 of 2008.

Mr. Mandar Limaye for Respondent No.2 in Writ Petition No.5893 of 2008.

Mr. A.I. Patel, A.G.P., for Respondent No.5-State.

CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 7TH MARCH 2016.

P.C. :

1. Writ Petition No.6369 of 2008 is filed by the Shikshan Sevak and Writ Petition No.5893 of 2008 is filed by the School Management. The

Shikshan Sevak is aggrieved by the order of termination. He accordingly approached the Grievance Committee of the University of Mumbai, which directed reinstatement of the Shikshan Sevak with 1/4th back-wages.

2. The Shikshan Sevak has approached this Court being aggrieved by refusal of 3/4th back-wages and Management has approached this Court being aggrieved by the reinstatement order of the Shikshan Sevak with 1/4th back-wages.

3. Mr. Desai, learned Senior Counsel appearing on behalf of Shikshan Sevak, invited attention of this Court to the decision of the Apex Court in **Secretary, A.P.D. Jain Pathshala & Ors. Vs. Shivaji Bhagwat More & Ors., (2011) 13 SCC 99**, wherein the Apex Court has considered the following issues :-

- (i) *Whether the High Court can direct the State Government to create a quasi-judicial forum; and whether creation of such a forum by an executive order, by the State Government, in pursuance of such a direction, is valid?*
- (ii) *Whether the High Court could, by a judicial order, exclude the jurisdiction of civil courts to entertain any suits or applications in respect of disputes raised by Shikshan Sevaks?*
- (iii) *Whether the High Court was justified in holding that when the Grievance Committee holds that the order of termination is bad or illegal, it does not amount to*

ordering reinstatement, but the Shikshan Sevak would as a result continue to be in the employment of the employer?

(iv) Whether the orders dated 2-5-2008 and 5-8-2008 of the High Court call for interference?

4. The Apex Court ultimately held that the constitution of the Grievance Committee as a Public Adjudicatory Forum, whose decisions are binding on the parties to the disputes, by an executive order of the Government is impermissible. The Apex Court further held that the High Court cannot have the judicial power to interfere with the jurisdiction of the Civil Courts vested under the Code of Civil Procedure. It was held that any such Grievance Committee created by an executive order, either on the direction of the High Court or otherwise, can only be fact-finding bodies or recommending bodies, which can look into the grievances and make appropriate recommendations to the Government or its authorities, for taking necessary actions or appropriate reports to enable judicial tribunals to render decisions.

5. In the light of this decision, Mr. Desai, learned Senior Counsel, submits that the impugned decision of the Grievance Committee can be treated as only recommendations and Education Department of the State Government may be directed to pass any appropriate order. Mr. Bandiwadekar, learned counsel for the School Management, submits that the State Government may be directed to give an opportunity to his client before taking any final decision. He submits that the decision of the Grievance Committee is illegal, firstly, because the case of Shikshan

Sevek itself shows that he completed three years service as Shikshan Sevak and, therefore, his remedy was to approach the School Tribunal and secondly, the 2007 Amendment to the Employees of Private Schools Act treating Shikshan Sevak as the employee is retrospectively in operation. We are not going into that aspect as it is open to the parties to agitate the said issue before the State Government and the State Government thereafter may pass an appropriate order.

6. In the circumstances, both the above Petitions are disposed of by passing following order :-

“ORDER”

- (i) The impugned order in the above Petitions shall be treated as recommendations and the Education Department of the State Government shall take appropriate decision, after giving an opportunity of hearing to both the parties, in the light of the decision of the Apex Court in **Secretary, A.P.D. Jain Pathshala & Ors. (supra)**, as expeditiously as possible and preferably within a period of eight weeks from the date of receipt of this order.
- (ii) The Petitioner-employee shall approach the concerned Department of the State Government along with copy of this order and copy of the impugned order.

- (iii) Needless to mention, in addition to the above, the Shikshan Sevak employee is also at liberty to seek appropriate relief against the order of termination.
- (iv) All contentions of the parties are kept open.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]