

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8008 OF 2015

The Chairman, Sree Narayan Mandira Samiti & anr.	...	Petitioners
V/s. The University of Mumbai & others	...	Respondents

Mr. M.V. Jogalekar i/b. Mr. R.D. Oak for the petitioner.
Mr. Rui Rodrigues for respondents 1 to 4.
Respondent no.5 Mr. A.P. Kadam present in person.

**CORAM : NARESH H. PATIL AND
M.S. SONAK, JJ.**

4th January, 2016.

P.C.

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The respondent no. 5 was appointed as a lecturer by the petitioner in the year 2003. By an order dated 30th April, 2012 the respondent no. 5 was suspended on account of violation of code of conduct as prescribed in the statute. On 30th May, 2012 a charge-sheet was issued by the petitioner management to the respondent no.5 along with the statement of allegations. It is submitted by the petitioner that on 3rd July, 2012 order of suspension and charge-sheet was finally served to respondent no.5. On 21st July, 2012 domestic enquiry was commenced and was concluded

on 12th August, 2013. It is alleged that respondent no.5 did not remain present and participate in the enquiry inspite of intimation of dates of the enquiry proceedings. On 31st October, 2012 the enquiry officer submitted his report and findings. On 7th November, 2012 respondent no.5 was issued a second show-cause notice. On 19th January, 2013 respondent no.5 filed reply to the show-cause notice and prayed for reopening the enquiry. Accordingly, enquiry was reopened. Between 19th January, 2013 and 12th August, 2013 respondent no.5 participated in the enquiry. Respondent no.5 raised an issue regarding payment of subsistence allowance. The grievance of respondent no.5 is that subsistence allowance was not paid to him in time and the payment was delayed purposely. He had addressed a communication to the management in this regard.

3. The Counsel appearing for the petitioner submits that finally the petitioner was dismissed from service by an order dated 13th April, 2015. Respondent no.5 challenged the said order by filing appeal in the College Tribunal. That appeal is still pending.

4. In the meanwhile, the respondent no. 5 raised a grievance before the Grievance Committee in the matter of short payment of subsistence allowance. The Grievance Committee, recommended payment of subsistence allowance at the rate of 75%. This recommendation of the Grievance Committee was accepted by the Management Council by the impugned communication dated 11th June 2015.

5. The Learned Counsel appearing for the petitioner submits that

Management Council did not hear the petitioner. It was obligatory for the Management Council to hear the petitioner before passing impugned order while accepting the recommendation of the Grievance Committee. The Learned Counsel placed reliance on Division Bench judgment of this Court at Nagpur in the case of ***Shri Saibaba Gramin Vikas Sanstha, Gadchiroli & anr. v/s. Rashtrasant Tukdoji Maharaj Nagpur University & others*** in LPA 114/09, 115/09, 116/09 and 118/09 dated 9th March, 2011 in support of his submissions.

6. The learned counsel for the petitioner further submitted that the petitioner has addressed a representation to the University of Mumbai in the matter of denial of hearing by the Management Council. The University of Mumbai has however informed the petitioner that the Management Council has been dissolved since 31st August 2015 and hearing would be afforded to the petitioner as and when the Management Council is reconstituted. The said communication is taken on record and marked as 'X' for the purposes of identification.

7. Mr. Rodriques, the learned counsel who appears for the University accepts the aforesaid position and submits that as and when the Management Council is constituted, the petitioner and the respondent no. 5 would both be heard before any final decision is taken in the matter.

8. Respondent No.5 party-in-person Mr. Anant Piraji Kadam is present. He submits that he has not been paid the subsistence allowance in accordance with the statutes and rules framed therein. The payment was delayed deliberately to harass him and place him under

financial difficulties.

9. We have perused the record placed before us and the judgment cited supra. It seems that the Management Council did not hear the petitioner before accepting the recommendation of the Grievance Committee. On this short point we are inclined to remand the matter back to the Management Council.

10. The party-in-person submits that he has not been paid subsistence allowance in accordance with the recommendation of the Grievance Committee. At the same time the Counsel appearing for petitioner submits that in case petitioner-management is asked to pay the balance of the subsistence allowance as recommended by the Grievance Committee to the respondent no.5, the purpose of approaching this Court would get diluted. We have to strike a balance. We pass following order:

ORDER

1) The Writ Petition is allowed in following terms;

(i)The communication dated 11th June, 2015 addressed by Registrar, University of Mumbai (Exhibit 'M' to the petition) is quashed and set aside.

(ii) The matter is remanded back to the Management Council.

(iii) As and when the Management Council is formed, it is directed that appropriate notices be issued to the petitioner and respondent no.5 in respect of the subject issue. After hearing the concerned parties, the Management Council may take appropriate decision at the earliest.

(iv) The aforesaid relief is subject to the petitioner depositing the balance of the subsistence allowance in accordance with the recommendation made by the Grievance Committee with the Registry of the College Tribunal, Mumbai within two weeks from today to the account of the appeal instituted by the respondent no. 5 before the College Tribunal challenging the dismissal order dated 13th April 2015.

(v) In case the amount is deposited, we direct the Registry of College Tribunal to invest the same in a fixed deposit scheme of a nationalized bank for a short period with a renewal clause. In case however the amount is not deposited within a period of two weeks from today, the relief as aforesaid, shall be deemed to have been declined to the petitioner.

(vi) Upon the Management Council communicating its decision, the parties are at liberty to approach the College Tribunal for appropriate orders in respect of the

aforesaid deposited amount.

(vii) All issues on merits are kept open. However, the Management Council is directed to dispose of the proceedings as expeditiously as possible and in any case within four months from the date of its constitution.

(viii) Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(M.S. SONAK, J.)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.