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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.9685 OF 2012

Balaji Uttam Mogale	...Petitioner
vs.	
The State of Maharashtra & Ors.	...Respondents

ALONG WITH
WRIT PETITION NO.9690 OF 2012

Pradip Manohar Shitole	...Petitioner
vs.	
The State of Maharashtra & Ors.	...Respondents

ALONG WITH
WRIT PETITION NO.10808 OF 2012

Haridas Manifnath Baraskar	...Petitioner
vs.	
The State of Maharashtra & Ors.	...Respondents

Mr.S.G.Kudle for the Petitioner in all petitions
Ms M.P.Thakur, AGP for the respondent Nos.1 and 2.
Mr.Sanjay Thokade for respondent No.3

CORAM : A.S.OKA AND P.D.NAIK, JJ.
DATE ON WHICH THE JUDGMENT IS RESERVED: MAY 6, 2016
DATE ON WHICH JUDGMENT IS PRONOUNCED: AUGUST 3, 2016

JUDGMENT: (PER A.S.OKA,J.)

1 With a view to appreciate the submissions canvassed across the bar, it will be necessary to make a brief reference to the facts of the case. Writ Petition No.9685 of 2012 is preferred by a petitioner who was appointed under the order dated 1st December 2009 as a Full Time Teacher in Sojar

Arts and Commerce Mahavidyalaya, Barshi. The said college is run by the fourth respondent-trust. It is the case made out in the petition that the appointment of the petitioner was made on the basis of the selection made by the Selection Committee duly constituted by the Solapur University. It is contended that the appointment of the petitioner was made as a probationer. On 13th June 2011, the Solapur University granted approval to the appointment of the petitioner as a probationer under the letter of the same date addressed to the Principal of the College. On 1st July 2012, an order was made by the Solapur University directing withdrawal of the affiliation of the said college (Sojar Arts and Commerce Mahavidyalaya, Barshi). The letter provided for withdrawal of the affiliation in a phase wise manner. A direction was issued not to admit the students to the said college to the First Year from the academic year of 2012-2013. On the ground that not a single student was admitted in the year 2012-2013, the fourth respondent terminated the appointment of the petitioner by a letter dated 30th July 2012. The petitioner is relying upon the Government Resolution/Order dated 30th October 1996. The prayer in this petition under Article 226 of the Constitution of India is for issuing a writ of mandamus directing the State Government to absorb the petitioner in any other senior college in the State Government as per the Government Resolution dated 30th October 1996.

2 There is a reply filed to this petition by Dr.Aruna Vinchurkar, Regional Joint Director, Higher Education, Solapur Region, Solapur on behalf of the State Government. By relying upon the circular dated 24th March 1994, Dr.Vinchurkar contended that it is the responsibility of the fourth respondent to absorb the petitioner. There is a further affidavit filed by the same Officer on 19th July 2016 for pointing out the corrigendum dated 21st March 1997 which records that the Government Order dated 30th October 1996 will not apply to the colleges run on "No Grant-in-aid basis". It was contended that the college in which the petitioner was employed was permitted to be opened on permanent "no Grant-in-aid basis". There is a rejoinder dated 19th September 2014 filed by the petitioner dealing with the said reply. There is an affidavit filed by Shri S.K.Mali, the Registrar of the Solapur University contending that the relief of absorption cannot be claimed by the petitioner against the University.

3 There is common affidavit filed in these three petitions by Shri Satish Deshpande Regional Joint Director, Higher Education of the Government of Maharashtra. Reliance is placed in the said affidavit on the order passed by this Court dated 17th September 2013 in Writ Petition No.7333 of 2013. Lastly, there is another affidavit in all the three petitions by Dr.Siddharth Kharat, the Deputy Secretary, Higher and Technical Education Department of the Government of Maharashtra. He relied upon the Corrigendum dated 21st March 1997 issued by the

Government which is already relied upon in the affidavit of Dr.Vinchurkar.

4 Writ Petition No.9690 of 2012 is filed by a petitioner who was employed in the said college of the fourth respondent under the letter of appointment dated 14th July 2009. His appointment was approved by the University of Solapur on probation basis. As in case of the petitioner in Writ Petition No.9685 of 2012, the employment of the petitioner was terminated by the fourth respondent by a letter dated 30th July 2012 on the ground that there have been no admissions of fresh students in the college. There is a similar affidavit in reply filed by Dr.Aruna Vinchurkar, Regional Joint Director, Higher Education, Solapur Region, Solapur to which a rejoinder has been filed by the petitioner.

5 Writ Petition No.10808 of 2012 is filed by a petitioner who was appointed in the same college of the fourth respondent on the basis of the selection made by the Selection Committee. He was appointed as a Director, Physical Education in the same college on full time basis subject to passing NEET examination. The University of Solapur approved the appointment of the said petitioner on probation basis. As in the case of the petitioners in the other two petitions, the fourth respondent by a letter dated 30th July 2012, terminated the employment of the petitioner on the ground that there have been no fresh admissions in the college.

There is is similar affidavit filed by Dr.Aruna Vinchurkar, the Regional Director, Higher Education, Solapur Region, Solapur.

6 The learned counsel for the petitioner submitted that under the Government order dated 30th October 1996, reliance has been placed upon the earlier order dated 24th March 1994 under which it was decided to grant protection to those permanent lecturers who have been rendered surplus on account of reduction of workload by absorbing them in other colleges. He pointed out that under the said order dated 30th October 1996, a direction was issued to absorb the said surplus teachers in other colleges. He pointed out that the said order is applicable to the surplus teachers in aided as well as non-aided colleges. His submission is that the Government Resolution dated 21st March 1997 by which the Government order dated 30th October 1996 was modified is unconstitutional. He submitted that by the said modification, the benefit granted under the Government order dated 30th October 1996 to the permanent teachers in non-aided colleges has been arbitrarily withdrawn. He urged that the State Government cannot make a distinction between the surplus teachers of aided and non aided colleges. He relied upon the decision of the Apex Court in the case of Frank Anthony Public School Employees' Association Vs. Union of India and others¹. He submitted that the said decision holds that the teachers and employees in recognised un-aided

1 1986 4 SCC 707

private schools are entitled to the same pay scale and other service conditions available to their counterparts in Government aided Schools in Delhi. He invited our attention to sub-section (3) of section 8 of the Maharashtra University Act, 1994 (for short 'the said Act') and submitted that it is the duty of the State Government to take a policy decision and prescribe a standard Code providing for mode of selection, appointment, absorption of teachers rendered surplus etc and without exercising the powers under section 8(3), the State Government cannot issue a Government Resolution modifying the order dated 30th October 1996. He relied upon the decision of the Division Bench of this Court in the case of Malti d/o Deoram Vs. State of Maharashtra and others².

7 The learned AGP submitted that the petitioner has not challenged the subsequent corrigendum dated 21st March 1997 which excludes the teachers in the non-aided colleges from the benefits under the Government Order dated 30th October 1996. She would urge that in absence of a challenge to the said GR, the petitioners have no case as admittedly, the college in which they are employed was permitted to be opened on permanent "No Grant Aid basis". Her submission is that the relief of absorption will have to be sought by the petitioners against the fourth respondent. The learned counsel for the third respondent (University of Solapur) submitted that no relief can be granted against the said

respondent and the remedy of the petitioners, if any, is against their own college or the management i.e the fourth respondent.

8 We have carefully considered the submissions.

Sub-section 3 of section 8 of the said Act reads thus:

“(3) The State Government may in accordance with the provisions contained in this Act for the purpose of securing and maintaining uniform standards, by notification in the Official Gazette, prescribe a Standard Code **providing for the classification, manner and mode of selection and appointment, absorption of teachers and employees rendered surplus,** reservation of posts in favour of members of the Scheduled Castes, Scheduled Tribes, [Denotified Tribes (Vimukta Jatis), Nomadic Tribes] and other Backward Classes duties workload, pay, allowances post-retirement, benefits, other benefits, conduct and disciplinary matters and other conditions of service of the officers, teachers and other employees of the universities and the teachers and other employees in the affiliated colleges and recognised institutions (other than those managed and maintained by the State Government, Central Government and the local authorities). When such Code is prescribed, the provisions made in the Code shall prevail, and the provisions

made in the Statutes, Ordinances, Regulations and Rules made under this Act, for matters included in the Code shall, to the extent to which they are inconsistent with the provisions of the Code, be invalid."

(emphasis added)

9 As far as the sub-section (3) of section 8 of the said Act is concerned, the State Government is empowered to make a standard Code providing for classification/manner and mode of selection, appointments, absorption of teachers rendered surplus, reservation of posts, workload, pay and allowances, post retirement benefits, conduct of disciplinary matters and other aspects regarding conditions service. The Code when made by the State Government will apply to the Officers, teachers and other employees of the Universities as well as teachers and employees in the affiliated colleges of the Universities covered by the said Act. In paragraph 6 of the affidavit of Dr.Satish Deshpande, Regional Director of Higher Education, Solapur Region, Solapur filed on behalf of the State Government which is dated 12th October 2015, Dr.Deshpande has accepted that under sub-section (3) of section 8 of the said Act, the State Government is empowered to make a standard Code. In paragraph 7 of the affidavit, he has stated thus:

"7 I say and submit that the Higher and Technical Education Department has not framed the standard Code. However, the absorption

of the teachers which is one of the parts of section 8 (3) of Maharashtra Universities Act, 1994 is governed by the decisions of Government vide G.R dated 24.3.1994, 30.10.1996 and the corrigendum dated 21.3.1997 and thus it does not appear contrary to the provisions of section 8 (3) of Maharashtra Universities Act, 1994."

(emphasis added)

10 We have perused the Government Resolutions/ Orders dated 24th March 1994 and 30th October 1996 as well as the corrigendum dated 21st March 1997. The Government Resolutions/orders do not refer to sub-section (3) of section 8 at all. Thus, what appears to have been done by the said Resolutions is an arrangement pending the exercise of powers under sub-section (3) of section 8.

11 In the present case, the appointment of the petitioners was approved by the University of Solapur. Their appointment was on probation. The termination of employment of the petitioners is made two years after the orders of appointment were issued to them. It is not the case that the petitioners were not found to be suitable to confirm them in their respective posts on completion of the probation period. The orders of the termination issued to the petitioners are on the ground that there was no sufficient workload. But for the said orders, the petitioners would have been in permanent employment.

12 The State Government has not formulated the standard Code for dealing with the absorption of members of the staff/teachers who have rendered surplus. Though the State Government has failed to perform its obligation under sub-section (3) of section 8, on the basis of the Government Resolution/Order dated 30th October 1996, the petitioners could have been absorbed. But the said Government Resolution/Order has been modified on 21st march 1997 by excluding the teachers in the colleges run on "No grant-in-aid basis". What is contemplated by sub-section (3) of section 8 is the preparation of a standard Code. It provides that when such Code is prescribed, the provision of such Code shall prevail and the provisions made in the Statutes, Ordinances, Regulations and Rules to the extent to which the same are inconsistent with the Code will be invalid.

13 A stand is taken in the affidavit of Dr.Satish Deshpande that the corrigendum dated 21st March 1997 to the Government Resolution dated 30th October 1996 is not contrary to sub-section (3) of section 8. There is no statement made by the State Government before the Court as to when it proposes to exercise the power of making a standard Code.

14 In these group of petitions, there is no challenge to the corrigendum dated 21st March 1997 which restricts the applicability of the earlier Resolution dated 30th October 1996 to the colleges

running on grant in aid basis. Therefore, in view of the decision of this Court dated 27th September 2013 in Writ Petition No.7333 of 2013 (Bormalnat Shikshan Sanstha and another Vs. State of Maharashtra and others), a writ as prayed cannot be issued. So long as the corrigendum dated 21st March 1997 is in force, no relief can be granted to the Petitioners by the Writ Court as they were employed in a college run on "No grant-in-aid basis". However, we propose to permit the petitioners to make a representation both to the University of Solapur as well as to the State Government and direct them to consider the same sympathetically. We propose to issue directions to the State Government as regards exercise of powers under sub-section (3) of section 8 of the said Act of 1994.

15 Accordingly, we dispose of the petitions by passing the following order:

- (I) It will be open for the petitioners to make a fresh representation to the Solapur University as well as to the Department of Higher and Technical Education, Government of Maharashtra praying for their absorption in any other College. If such a representation is made within a period of six weeks from today, the same shall be sympathetically decided by the State Government as well as by the Solapur University within a period of three months from the date on which the representation is received;

- (II) We direct the State Government to file an affidavit setting out the outer limit within which the power under sub-section (3) of section 8 of the Maharashtra Universities Act, 1994 will be exercised by prescribing a standard Code;
- (III) We direct the State Government to exercise the said power as expeditiously as possible and preferably within a period of six months from today;
- (IV) The outer limit within which the standard Code will be framed shall be specified by the State Government by filing an affidavit within a period of one month from today;
- (V) Rule is partly made absolute on above terms with no order as to costs.

(P.D.NAIK, J.)

(A.S.OKA, J.)