

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1808 OF 2016

The President, D. Y. Patil Prathisthan,
Kolhapur And Anr

...Petitioners

Versus

Dinkar Ganpat Kumbhar
And Ors

...Respondents

....

Mr.Sandeep S. Koregave, Advocate for the Petitioners.

Mr.Sandesh Shukla a/w. Santosh Sawant, Advocate for
Respondents No.1 to 5, 9 to 11, 13 to 18, 21 to 26 and 28 to 30.

....

CORAM : R. G. KETKAR, J.

DATE : 10th JULY, 2017

P.C.

1. Heard Mr.Sandeep Koregave, learned counsel for the petitioners and Mr.Sandesh Shukla, learned counsel for respondents No.1 to 5, 9 to 11, 13 to 18, 21 to 26 and 28 to 30, at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 15.12.2012 passed by the learned Member, Industrial Court No.2, Kolhapur (for short, 'Tribunal') in Complainant (U.L.P.) No.82/2001 instituted by respondents

No.1 to 30 (for short, 'complainants') against the petitioners (respondents No.1 and 2 in the complaint), respondent No.3 Vice Chancellor, Shivaji University Kolhapur (respondent No.31 in the complaint) and respondent No.4 Deputy Director of Technical Education (respondent No.32 in the complaint) under Section 28 read with Items 9 and 10 of Schedule IV of Maharashtra Recognition of Trade Unions and Protection of Unfair Labour Practices Act, 1971 (for short, 'Act'). By the impugned order, the Tribunal partly allowed the complaint and declared that the petitioners herein have committed unfair labour practices under Items 9 of Schedule IV of the Act and directed the petitioners to cease and desist from engaging in unfair labour practice forthwith. The petitioners were also directed to pay the arrears of 5th Pay Commission to the complainants from January, 1996 to August, 2000 after the complainants submit their undertakings as per Government Resolution and thereafter within 90 days from the submission of undertakings. The complaint against respondents No.3 and 4 therein (Shivaji University, Kolhapur and Deputy Director of Technical Education) was dismissed.

3. In support of this Petition Mr. Koregave strenuously

contended that the complaint instituted under Section 28 read with Items 9 and 10 of Schedule IV of the Act itself is not maintainable. He relied upon Section 59 of the Maharashtra Universities Act, 1994 (for short, 'Universities Act'). He submitted that Section 59 of the Universities Act provides right of appeal before the Tribunal. He also relied upon Section 57 of the Universities Act to contend that if at all the complainants have any grievances, namely, non-implementation of the 5th Pay Commission as also non-payment of arrears of 5th Pay Commission w.e.f. 1.1.1996 to 31.8.2000, they should have approached the Grievances Committee constituted by respondent No.31 Shivaji University, Kolhapur. In other words, he submitted that Section 57 of the Universities Act bars the complaint under Section 28 of the Act.

4. He further submitted that the complainants were accepting salary as per the 5th Pay Commission from September, 2000 onwards. He invited my attention to the cross-examination of the complainant's witness Dinkar Ganpat Kumbhar. He submitted that he was aware of the Government Resolution dated 4.10.2000 by which the Government modified earlier Government Resolution dated 18.12.1999. By resolution dated

4.10.2000, the Government directed to pay arrears from 1.8.2000. The witness admitted that the petitioners herein implemented 5th Pay Commission w.e.f. 1.1.1996 and the employees accepted the benefits w.e.f. 2000. He further admitted that said implementation was accepted by the employees without any objection and that the complaint was filed subsequent to acceptance of benefits of 5th pay Commission. Relying upon this part of the evidence, Mr. Koregave submitted that the complainants are precluded and are estopped from claiming the arrears as per the 5th Pay Commission from 1.1.1996 to 31.8.2000. Mr. Koregave further submitted that the witness of the complainants admitted that he did not file on record the authorization given to him by other complainants to depose on their behalf. In short, he submitted that the evidence adduced by witness Dinkar Ganpat Kumbhar was not for and on behalf of other complainants. The Tribunal was, therefore, not justified in treating the evidence of said witness as evidence on behalf of other complainants.

5. On the other hand, Mr. Shukla supported the impugned order. He submitted that rest of the complainants are similarly situated with witness Dinkar Ganpat Kumbhar. He

submitted that the question whether in view of the notification issued by AICTE, the Government has authority to issue Government Resolution dated 4.10.2000 directing the concerned authorities to pay the arrears from 1.8.2000. He relied upon unreported decisions of this Court in:

(i) *Rangnath Vishnu Raskar and 5 others v. The State of Maharashtra and 5 others*, dated 27.1.2015 in W.P. No.3528/2001 decided by Division Bench of this Court (Coram:A.V. Nirgude and V.K. Jadhav,JJ.), and in particular paragraphs- 14 onwards.

(ii) *Bhartiya Kamgar Sena and 165 others v. The State of Maharashtra and 6 others*, dated 10.2.2012 in W.P. No.11091/2010 and other companion Writ Petitions decided by Division Bench of this Court (Coram:Naresh H. Patil & T.V. Nalawade,JJ.), where the question was whether the notifications issued by All India Council for Technical Education (AICTE) is binding on the Government of Maharashtra and whether Government of Maharashtra can defer its implementation was considered. He submitted that Division Bench of this Court, after considering the Constitution of India and more particularly entry No.66 of Union List as also entry No.25 of Concurrent List of Seventh

Schedule as also provisions of the Universities Act and the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, held that while issuing notification AICTE have recommended implementation of 5th Pay Commission w.e.f. 1.1.1996 and AICTE did not leave any discretion to the State Government in respect of date of implementation of revision in pay-scales. He, therefore, submitted that the petitioners were bound to implement 5th Pay Commission and make payment of salary w.e.f. 1.1.1996. He submitted that estoppel is not applicable in respect of legal provisions.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Mr.Koregave relied upon Section 59 of the Universities Act. Section 59 provides remedy of an appeal only against (1) order of dismissal, (2) removal, (3) termination and finally (4) reduction in rank. In the present case, the complainants have filed complaint under Section 28 of the Act on the ground that though the petitioners have implemented 5th Pay Commission from 1.1.1996, they have not paid the salary as per 5th Pay Commission for the period w.e.f. 1.1.1996 to 31.8.2000 and have paid the salary as per the 5th Pay

Commission thereafter. Section 59 (1) of the Act reads thus :

“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, 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 [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.”

7. In view thereof as also having regard to the grievance of the complainants, it cannot be said that the complainants had a remedy of appeal under Section 59 of the Universities Act.

8. Mr. Koregave submitted that in any case the complainants ought to have approached the Grievances Committee constituted by respondent No.31 Shivaji University

and ventilated their grievances before that Committee. A perusal of Section 57 does not indicate that it begins with non-obstante clause. In other words it cannot be said that in view of Section 57 of the Universities Act, the complaint under Section 28 of the Act is not maintainable. Mr.Koregave was not in a position to substantiate this submission.

9. That brings me to the contention advanced by Mr.Koregave that even otherwise the complainants are estopped from filing complaint as they accepted the benefits without any protest. It is also not possible to accept this submission. In the case of *Bhartiya Kamgar Sena* (supra), the Division Bench of this Court referred to the decision of Apex Court in *State of Tamil Nadu & Anr. v. Adhiyaman Education and Research Institution and others*, (1995) 4 SCC 104. The Apex Court considered entry No.66 of List No.I, entry No.11 of List No.II as also entry No.25 of List No.III of 7th Schedule of the Constitution of India. The Apex Court also considered Articles 246, 248 and 254 of the Constitution of India as also Section 10 of the All India Council for Technical Education Act, 1987 and observed that under Section 10 of A.I.C.T.E. Act, A.I.C.T.E. has powers to lay down norms and standards for courses, staff pattern and staff

qualifications, fixing norms and guidelines for charging fees etc.

10. In view of the decision of Apex Court in the case of **State of Tamil Nadu** (supra) as also decision of Division Bench of this Court in **Bhartiya Kamgar Sena** (supra), the controversy is no longer *res integra*. The Government could not have issued Resolution on 4.10.2000 modifying earlier Government Resolution dated 18.12.1999. Once that ground goes, the submission made by Mr. Koregave that the complainants are estopped as they accepted the benefits cannot be accepted.

11. Mr. Koregave lastly submitted that witness Dinkar Ganpat Kumbhar was not authorized to depose on behalf of rest of the complainants. The petitioners have, however, not disputed that rest of the complainants are similarly situated. In view thereof, I do not find any merit in any of the submissions advanced by Mr. Koregave.

12. The petitioners were not in a position to demonstrate that the findings recorded by the Court below are based upon no evidence or that they are contrary to the evidence on record. Merely because on the basis of the material on record, another

view is possible, that itself is no ground for invocation of powers under Articles 226 and 227 of the Constitution of India. The petitioners were not in a position to show that the findings recorded by the Court below are perverse. Hence, no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)