

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7850 OF 2013

Kolhapur Institute of Technology,
Kolhapur & Anr.

.... Petitioners

Vs.

The State of Maharashtra & Ors.

.... Respondents

Mr. N.V. Bandiwadekar for the Petitioners.

Mr. B.V. Samant, Asst. Government Pleader, for
Respondent Nos.1 & 2.

Mr. Rajdeep S. Khadapkar for Respondent No.3.

Mr. Manoj Patil for Respondent No.4.

Mr. Manik P. Kadam, Deputy Registrar, Affiliation,
Shivaji University, present.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : NOVEMBER 29, 2017

ORAL ORDER (Per Shri S.C. DHARMADHIKARI, J.):

1. By this petition under Article 226 of the Constitution of India, the petitioners are challenging an order dated 15-6-2013 passed by the third respondent. Relief is sought in terms of prayer clause (b), which reads as under:-

“[b] By a suitable writ, order, direction, this Hon'ble High Court may be pleased to quash and set aside the impugned order dated 15.6.2013 issued by the Respondent No.3 informing the Petitioners about the Resolution passed by the Grievance Committee in its meeting and which is said to be approved by the Management Council of the University, thereby directing the Petitioners to pay salary to the Respondent No.4 by applying the pay scales of Rs.1400-2300 [4th Pay Commission] and Rs.4500-7000 [5th Pay Commission].”

2. It is contended on behalf of the petitioners that the first petitioner is an educational institution registered under both the Bombay Public Trusts Act, 1950 and the Societies Registration Act, 1860. The second petitioner is a College of Engineering and Technology which is administered and managed by the first petitioner. The College is affiliated to the third respondent-University established under the Shivaji University Act, 1974. Later on it was governed by the Maharashtra Universities Act, 1994. Though the second petitioner is recognised by the Government, but it is a non-aided College. It is not receiving any grant-in-aid from the State Government in respect of the salary payable to its employees. The other respondents to this petition are the State Government

and its Director of Technical Education.

3. Thus, the State Government through the Department of Higher & Technical Education and its Director are sued but what we find is that the *lis* is essentially between the fourth respondent to this petition and the petitioners.

4. The fourth respondent was appointed on 16-11-1988 as Assistant Librarian in the second petitioner-College. The entire tenure and the post which the fourth respondent held, so also all details pertaining thereto are set out in para 3 of this petition.

5. Thereafter, it is stated that the fourth respondent was placed under suspension on 23-3-2000. An inquiry was held and he was found guilty of misconduct. On 29-11-2003, the fourth respondent came to be dismissed from service. Against this order of punishment, he approached the College Tribunal at Pune by filing Appeal No.21 of 2003, but that appeal was dismissed on 13-4-2007. A writ petition was filed in this Court

being Writ Petition No.8890 of 2007. That writ petition is admitted and still pending.

6. The petitioners state that when the fourth respondent was working as an Assistant Librarian in the College, he was paid salary and allowances which he did not dispute. After he was placed under suspension, allegations were made by the fourth respondent against the Management that he is not paid salary by the Management. The fourth respondent, however, disputes this position and says that by a representation made on 9-4-1999 he had raised a protest and it is then narrated in the petition as to how the Management justified its act of paying the particular amount as salary whereas the fourth respondent maintains that it was not commensurate with the pay scale that the post carried and in any event, the benefits of the Pay Commissions were denied.

7. It is common ground that the fourth respondent and some other employees approached, what is styled as Grievances Committee of the third respondent. Since that application before

the Grievances Committee was not decided, the fourth respondent filed Writ Petition No.8715 of 2007 in this Court. On 9-4-2008 that writ petition came to be disposed of by directing the University to decide the representation and to fix the pay scale as per law.

8. Then, there was a Two Member Committee appointed to look into the grievances of not just the fourth respondent but also of two other employees working in the petitioner No.2-College. This Committee then paid a visit to the College and from the present petition what we can deduce is that, on 23-9-2008 the petitioners were informed by the third respondent-University that in the meeting of the Grievances Committee held on 11-7-2008, a Resolution has been passed and which has been approved by the Management Council of the University as per Section 57(2) of the Maharashtra Universities Act, 1994.

9. As per this Resolution, the fourth respondent should be paid salary in the pay scale of Rs.1400-2300 (4th Pay

Commission) and Rs.4500-7000 (5th Pay Commission) in terms of the order passed by this Court in the above writ petition.

10. After this order was received, the petitioners requested for a copy of the same to be furnished and equally the order of this Court, to which the petitioners were not a party. Then, the further events have transpired and what the petitioners state is that after obtaining the documents and particularly all the relevant ones, the petitioners were surprised to discover that another writ petition was filed by this fourth respondent in this Court being Writ Petition No.7787 of 2011. That was seeking a direction against the petitioners to pay an amount of Rs.3,91,175/- to the fourth respondent and also interest thereon at 15% from 1-6-1989.

11. This writ petition as also another writ petition filed by the petitioners being Writ Petition No.11019 of 2011 essentially questioned the order of the Grievances Committee dated 23-9-2008. The Division Bench of this Court heard both the petitions together and by a common order, set aside the

order of the Management Council. The Division Bench in its order dated 17-9-2012 points out that the Management Council of the University did not give any opportunity of personal hearing to the petitioners before accepting the report of the Grievances Committee. Thus, the order of the Management Council was in breach of the principles of natural justice.

12. From the record it is apparent that pursuant to the liberty granted by this Court, the fourth respondent made a representation dated 4-12-2012 (Annexure-M) to the Grievances Committee seeking the very same reliefs, as stated in para 15 of the petition, as to how the Grievances Committee proceeded to issue notice after receipt of this representation, the response of the petitioners pursuant to such notice and later on what transpired is that the Grievances Committee made its recommendations and which recommendations/report were placed before the Management Council of the third respondent. The Management Council intimated the petitioners on 25-6-2013 that an order was passed on 15-6-2013. That order recites that opportunity was given to the petitioners to make

oral submissions before the Grievances Committee of the University. In such circumstances, the Management Council decided to approve the recommendations of the Grievances Committee.

13. The petitioners protested by pointing out that the Management Council could have accepted the recommendations of the Grievances Committee but before that heard the petitioners, noted their objections and should have dealt with them. That having not been done, its order does not bind the petitioners. However, finding that the petitioners may be visited with some civil consequences that they have decided to file this writ petition.

14. On this writ petition, the fourth respondent-employee, after receiving notice, filed an affidavit in reply. He has accused the Management of dilatory tactics in order to defeat his just and legitimate claim. Even during the course of the arguments the same plea was raised by the fourth respondent. His counsel would submit that there was an

agreement between the petitioners and the fourth respondent. However, the petitioners have not abided by the same. In such circumstances, no useful purpose will be served by giving any further opportunities to the petitioners to make their submissions before the Management Council of the third respondent-University by remitting the case back to it. In other words, Mr. Patil, appearing for the fourth respondent, would submit that this Court should not set aside the order of the Management Council and remit the matter back to it for a fresh consideration or to pass an order after hearing both the petitioners as also the fourth respondent. Mr. Patil would submit that the fourth respondent has been running from pillar to post but justice has eluded him till date.

15. There is a rejoinder affidavit filed by the petitioners in which all the contents of the affidavit in reply of the fourth respondent have been denied and those in the writ petition have been reiterated.

16. Mr. Bandiwadekar, appearing on behalf of the

petitioners, would submit that the impugned order deserves to be quashed and set aside on the sole ground that the Management Council has failed to abide by the principles of natural justice. There is a serious prejudice caused to the petitioners, for the petitioners have been directed to part with huge sums and for a claim which is *ex facie* time barred or alternatively, old, stale and by now dead. Such claims have been revived at the instance of an employee like respondent No.4 who has been held guilty of serious misconduct and punished by the Management. He has not been able to get this punishment quashed or set aside. Therefore, no benefits accrue to him in equity as well. Thus, Mr. Bandiwadekar would submit that the matter, if at all it has to go, must be with a specific direction that the petitioners should be heard before any order is passed by the Management Council. The primary contention of Mr. Bandiwadekar is that the petitioners must succeed as the impugned order should be quashed and set aside entirely, namely, on merits as well, as there is no substance in the grievance, as made by the fourth respondent.

17. Pertinently, the third respondent-University has instructed its lawyer to make a statement that the Management Council is ready and willing to recall its order impugned in the petition and hear the parties again. It will pass a fresh order even though, in the meanwhile, the Maharashtra Public Universities Act, 2016 has intervened and the Maharashtra Universities Act, 1994 is no longer on the statute book. It stands repealed but the repeal does not, in any manner, affect the pending proceedings or the authority of the Management Council.

18. We have heard both sides in great detail and perused with their assistance the petition and the annexures thereto. After hearing all the parties, we posed a query to Mr. Patil, appearing for the fourth respondent, as to how the Grievances Committee could have been approached with a representation by the fourth respondent when his grievance was that the petitioners, an unaided institution, has not paid him the money due and payable by it in terms of the recommendations of the

4th and the 5th Pay Commissions, set up by the Government of India. Thus, his pay for the period when he was working as an Assistant Librarian should be recomputed and refixed and the benefits of these Pay Commissions recommendations should be included after crystallising and determining the final amount in this manner. The petitioners be directed to pay the money along with interest at such rate as was prevailing at the relevant time including the bank rate. We inquired from Mr. Patil as to how the authorities are making recommendations virtually amounting to a money decree. After the provisions of the Maharashtra Universities Act, 1994 were perused by us, we find that in Chapter VII thereof, Section 57 deals with the Grievances Committee. That provision reads as under:-

“57. Grievances Committee:- (1) *There shall be a grievances committee in each university to deal with the grievances of teachers and other employees of the university, colleges, institutions and recognised institutions and to hear and settle grievances as far as may be practicable within six months, and the committee shall make a report to the Management Council.*

(2) *It shall be lawful for the grievances committee to entertain and consider grievances or complaints which*

are not within the jurisdiction of the Tribunal and report to the Management Council to take such action as it deems fit and the decisions of the Management Council on such reports shall be final.

(3) The Grievances Committee shall consist of the following members, namely:-

*(a) The Pro-Vice Chancellor, where there is no Pro-Vice Chancellor, a member of the Management Council nominated by the Management Council
..... Chairman;*

(b) Two members of the Management Council nominated by the Management Council from amongst themselves one of them belonging to the Scheduled Castes or Scheduled Tribes or De-notified Tribes (Vimukta Jatis)/Nomadic Tribes or Other Backward Classes, by rotation members;

*(ba) two members of the Senate nominated Members
by the members of the Senate, from
amongst themselves, one of them being
the woman representative of the
managements and one shall be a
teacher;*

*(bb) two members nominated by the members Members
of Academic Council, from amongst
themselves, one of them being the
Principal and one shall be a teacher.*

*(c) The Registrar Member
Secretary”*

19. A perusal of this provision would indicate that the Committee can take note of the grievances and draw and settle

the same as far as may be practicable and it shall make a report to the Management Council.

20. As far as the Management Council is concerned, its powers are well-defined. Equally the term "Management Council" has been defined in Section 27 of the Maharashtra Universities Act, 1994 Its powers are set out in Section 28 thereof. It is defined to mean the principal executive authority to formulate statutes and forward the same to the Senate for approval and make Ordinances to administer the affairs of the University and shall carry out all such duties which are not specifically assigned to any other authority. It may by several Clauses of Section 28 deal with academic matters but we do not find in the scheme of the Act that it has any powers to direct the petitioners to make payment of monies, as demanded by the fourth respondent. In the facts and circumstances of this case, even if the matter is to go back or is required to be sent back to the Management Council, we do not think that it can take any effective steps to redress the grievance of the fourth respondent. Even if it once again decides to accept the recommendations of

the Grievances Committee, we do not think that in the scheme of the Maharashtra Universities Act, 1994 the Management Council can ensure that the payment is made or that the Act contains provisions otherwise which would enable the fourth respondent to recover the money from the petitioners. At best, he can request or bring to the notice of the authorities the adamant attitude of the petitioners or their inaction or any act of omission or commission on their part so as to invite the consequences under the Act. Beyond that we do not think the monies can be recovered and paid to the fourth respondent under the scheme of this Act by any authority set up thereunder.

21. When this position was brought to the notice of Mr. Patil, appearing for the fourth respondent, he took instructions from the fourth respondent who is present in Court. Mr. Patil submits that the fourth respondent does not insist on the matter being sent back to the Management Council or to the Grievances Committee but he would rely upon the recommendations in the Grievances Committee's report so as to seek substantive reliefs in appropriate proceedings before the

appropriate forum.

22. We specifically invited the attention of Mr. Patil to two events and which have been noted by us. The fourth respondent to this petition has filed Writ Petition No.8890 of 2007. That writ petition is admitted by this Court and is pending. In the event this petition succeeds and the order of dismissal dated 29-11-2003, as confirmed in Appeal No.21 of 2003 by the College Tribunal, Pune by its order dated 13-4-2007 is set aside, the petitioner (fourth respondent herein) can obtain all consequential benefits including monetary reliefs. In that event, he can request this Court to pass a mandatory order and direction in exercise of its power under Articles 226 and 227 of the Constitution of India so that the Management can notionally reinstate the fourth respondent in service with all consequential benefits/including seniority/continuity in service or in some other manner by moulding the relief this Court can issue appropriate direction to ensure that all monetary benefits flowing from the Pay Commissions recommendations are paid to the petitioner to that petition (respondent No.4 herein). That

may be on his notional reinstatement or in lieu thereof. All such reliefs can be obtained by the fourth respondent in that petition. Equally it would be open for the fourth respondent to bring a suit in the competent Civil Court and seek a decree in money, namely, the benefits of the Pay Commissions recommendations admissible to the post of Assistant Librarian and fixation of pay on that basis. In that proceedings the fourth respondent can claim a direction/decreed from the Civil Court so that his pay during the relevant period is re-worked/re-fixed with all attendant benefits.

23. Since Mr. Patil has conceded that his remedy would be as above and the Management Council cannot assist him any longer given the limitation on its power under the scheme of the Act, needless to clarify that the impugned order of the Management Council shall not bind the petitioners and they would not be required to, in any manner, act in furtherance thereof. While we say so, we do not take away the right of the fourth respondent to rely upon the recommendations of the Grievances Committee and the order of the Management

Council while prosecuting appropriate remedies before the appropriate forum. Equally, it would be open for the petitioners to dispute the contents of the recommendations of the Grievances Committee contained in its report or the order of the Management Council impugned in the petition. All contentions in regard to the entitlement of the fourth respondent on the ground of limitation as also on merits available to the petitioners, in law, are kept open.

24. We dispose of the writ petition with the above directions.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)