

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12772 OF 2016

The Principal, Pancham Khemraj	]	
Mahavidyalaya, Sawantwadi, District-	]	
Sindhudurg & Anr.	]	Petitioners
Vs.		
Shri Jagannath Ramkrishna Sawant	]	
and others.	]	Respondents

WITH

WRIT PETITION NO. 12773 OF 2016

The Principal, Pancham Khemraj	]	
Mahavidyalaya, Sawantwadi, District-	]	
Sindhudurg & Anr.	]	Petitioners
Vs.		
Shri Krushna Sakharam Desai	]	
and others.	]	Respondents

WITH

WRIT PETITION NO. 12774 OF 2016

The Principal, Pancham Khemraj	]	
Mahavidyalaya, Sawantwadi, District-	]	
Sindhudurg & Anr.	]	Petitioners
Vs.		
Shri Somnath Vishram Dalvi	]	
and others.	]	Respondents

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Mr. Milind Parab i/b Milind Parab & Associates, for petitioners.

Mr. Bakul Bhosale, for respondent No.1.

Mr. A.R. Metkari, A.G.P, for respondents No.2 to 4 in W.P. No.12772 of 2016.

Ms. Jyoti Jadhav, A.G.P, for respondents No. 2 to 4 in W.P. No. 12773 of 2016.

Ms. K.R. Kulkarni, A.G.P, for respondents No. 2 to 4 in W.P. No. 12774 of 2016.

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CORAM : R.G. KETKAR, J.

DATE : 18th JULY, 2017.

P.C.

Heard Mr. Parab, learned Counsel for petitioners, Mr. Bakul Bhosale, learned Counsel for respondent No.1, Mr. Metkari, learned A.G.P, for respondents No.2 to 4 in W.P. No. 12772 of 2016, Ms. Jyoti Jadhav, learned A.G.P for respondents No. 2 to 4 in W.P. No. 12773 of 2016 and Ms. Kulkarni, learned A.G.P for respondents No. 2 to 4 in W.P. No. 12774 of 2016.

2. By these Petitions, under Article 227 of the Constitution of India, the petitioners have challenged the judgments and orders dated 29th September, 2016 passed by the learned Presiding Officer, Bombay University and College Tribunal [for short 'Tribunal'] in Appeals No. 2 of 2015, 3 of 2015 and 4 of 2015. By these orders, the Tribunal allowed the appeals and set aside the order of termination of services of the first respondents and directed the petitioners, hereinafter referred to as 'Management' to reinstate all the appellants [first respondents herein] on their post of 'Laboratory Attendant' with effect from 1st June, 2015 with back wages within two months from the date of the order.

3. In support of these Petitions, Mr. Parab strenuously contended that without following due process of law, first respondents were appointed as 'Laboratory Attendants'. Appointment order dated 22nd July, 2013 was issued by the Secretary of the Management who had no authority under the

Constitution to issue. He submitted that on 4th July, 2013, Divisional Joint Director, Higher Education, Kokan Division, Panvel addressed a letter to the Principal of Khemraj College run by the Management. Clause 7 recited that College has to get Advertisement approved and submit the same to his office. It is only after salary of the newly appointed employees is approved, salary will become payable. He submitted that in the present case, Advertisement issued on 6th July, 2013 was not approved by the University. Though Advertisement dated 6th July, 2013 required candidates to appear for written test and interview, no written test was conducted.

4. Mr. Parab relied on clause 26 of the Constitution which deals with powers of the Managing Council and in particular clause 3 thereof which empowers Managing Council to appoint and promote employees as also impose penalty. He, therefore, submitted that Secretary was not authorized to issue appointment letters to the first respondent. In any case, concerned Secretary was removed in December, 2015.

5. Mr. Parab further submitted that pending the appeals filed by the first respondent, Tribunal had granted stay to the termination orders. That was challenged by the Management by instituting Writ Petitions in this Court. By order dated 26th October, 2015, this Court after noting that after terminating services of first respondents herein, S/o Mr. Vilas Dudhule, Mr. Sadanand Sawant and Mr. Vishnu Bharti [for short 'these persons'] were appointed in the place of the first respondents on 1st June,

2015, granted ad-interim stay to the effect of the order dated 1st October, 2015 passed by the Tribunal and issued notice to the respondents.

6. By order dated 28th March, 2016, this Court allowed the Petitions and vacated order dated 1st October, 2015 staying termination orders. He submitted that though first respondents were aware of appointments of these three persons in their place, they did not implead them in the appeals filed before the Tribunal. Even, on this count also, impugned orders are liable to be set aside.

7. On the other hand, Mr. Bhosale submitted that by communication dated 6th January, 2016, Divisional Joint Registrar, Higher Education, Ratnagiri had faulted promotions given by the Management to these persons which were contrary to the provisions of law which is highly objectionable and serious. He submitted that promotions given to these persons were not approved by the Divisional Joint Registrar. He further submitted that though Management claims to have promoted these persons on 1st June, 2015, said contention was not even raised in the written statement filed on 14th September, 2015.

8. Mr. Parab submitted that against communication dated 6th January, 2016, Management has made representations. That apart, in para 2 of the additional written statement filed by the Management, Management has specifically contended that these persons had applied for promotion vide letters dated 3rd November, 2014 and 28th April, 2015. Respondent No.2, Executive Chairman

by his letter dated 3rd May, 2014 promoted these persons. In other words, he submitted that said plea was specifically raised in the written statement filed by the Management.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The main contention advanced by Mr. Parab is that first respondents were appointed without following due process of law. This aspect was considered in detail by the Tribunal from paragraph 4 onwards of the impugned order. The Tribunal noted that first respondents appeared for interview. They were selected by the Committee consisting of Mr. Mohan Dattaram Desai, Chairman, Mr. Bhurmal, Principal and Mr. P. U. Desai, Member. Out of 24 candidates, who appeared for interview, first respondents were selected on 13th July, 2013. Under signature of the Secretary, appointment letters were issued on 22nd July, 2013. It was also noted that resolution was passed on 9th March, 2013 for obtaining no objection certificate from the Higher and Technical Education Department and Government of Maharashtra. On 23rd May, 2013, Principal had submitted proposal for obtaining no objection certificate. Director of Higher and Technical Education issued no objection certificate on 4th July, 2013. Reference was made to Sr. No.4 which noted that three posts of Laboratory Attendant are to be filled in from open category either by direct appointment or by promotion.

10. In pursuance of appointments of the first respondents, Principal of College submitted proposal for pay fixation which was

accepted by Joint Director Higher and Technical Education by order dated 22nd May, 2014.

11. The Tribunal also noted that resolution filed on record reveals that by resolution No.6 dated 9th March, 2013, Managing Committee had directed the Principal to take steps for obtaining no objection certificate for appointment of staff. Thus, Managing Committee had accepted appointment procedure as proper and approved the same and passed resolution that the appointed employees after completing 180 days of service be made permanent. The Tribunal, therefore, recorded a finding that decision to make appointments was taken by the Managing Committee and Principal was directed to take steps. The Tribunal also referred to clause 26 of the Constitution and held that decision was taken by the Management and Principal was directed to take steps. Thus, mere contention that appointments were not made as per prescribed procedure or rules was not sufficient. Management has subsequently approved the appointments made. In other words, decision for appointing the first respondents was ratified by the Management. The Tribunal also noted that the first respondents were appointed on 22nd July, 2013 and they have completed one year when their services were terminated on 30th May, 2015. The Tribunal, therefore, held that termination is vitiated as also it was stigmatic.

12. Mr. Parab submitted that in the place of the first respondents, these persons were appointed. This aspect was also considered by the Tribunal in paragraphs 10 and 12 of the

impugned order. In paragraph 12, the Tribunal noted that these persons were appointed and their promotions were not approved by the Joint Director as they were appointed without obtaining no objection certificate.

13. That apart, Management came with a case that these persons were appointed with effect from 1st June, 2015. No such contention was raised in the written statement dated 14th September, 2015 filed by the Management. In view thereof, and for the reasons recorded by the Tribunal, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India. The Management was not in a position to demonstrate that findings recorded by the Tribunal are contrary to the evidence on record. In other words, Management has not demonstrated that findings recorded by Tribunal are perverse. Merely because on the basis of evidence on record, another view is possible that itself is not a ground for invocation of powers under Articles 227 of the Constitution of India. Hence, Petitions fail and the same are dismissed.

14. At this stage, Mr. Parab prayed for continuation of ad-interim order for a period of six weeks. He assures that he will not apply for further extension of ad-interim order. By order dated 26th April, 2017, this Court recorded statement made on behalf of the first respondents that they will not press hearing of the Contempt Petition before the Tribunal till next. Mr. Bhosale submitted that Management may be directed to deposit entire back wages or at least, 50% back wages as the first respondents were out of

employment since last two years.

15. Having regard to the fact that after hearing both the sides, ad-interim order was passed on 26th April, 2017 as also that order was continued by order dated 4th July, 2017. I find that request made by Mr. Parab is reasonable as Management intends to challenge this order before the higher Court.

16. In view thereof, notwithstanding dismissal of the Petitions, Contempt Petitions filed by the first respondents before the Tribunal shall not proceed for a period of six weeks from today with express understanding that Management will not apply for further extension of time. Order accordingly.

[R.G. KETKAR, J.]