

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.1960 OF 2016

Uttam Ushinkar

...

...Petitioner

v/s.

Rachana Sansad and anr.

...Respondents

...

Mr.C.R.Sadashivan i/b Mr.N.M.Ganguli for the Petitioner.

Mr.S.C.Naidu with Mr.Aniketh Poojari and Ms.Raghavi Raj i/b C.R.Naidu & Co. for the Respondent No.1.

Mr.P.M.Palshikar for the Respondent No.2.

...

CORAM : A.A. SAYED, J.

DATED : 11 JANUARY 2017

P.C.:

The challenge in this Petition filed under Article 226 of the Constitution is to the judgment and order of the Mumbai University and College Tribunal, dated 7 December 2015, whereby the Appeal filed by the Petitioner/original Appellant was dismissed on the ground that the Tribunal has no jurisdiction to entertain the Appeal under section 59 of the Maharashtra Universities Act, 1994 ('MU Act' for short).

2 Respondent No.1 is a Society and Trust, which runs number of degree courses as well as some polytechnical courses. The case of the Petitioner in his Appeal was that he was appointed to the post of Administrative officer in the Respondent No.1-Trust and Society by an appointment letter dated 2 June 2010 with effect from 14 June 2010. The

letter of appointment states that the appointment is on temporary basis for a period of six months and based on the sincerity and ability of the Petitioner, the appointment can be made on yearly contract basis. According to the Petitioner, his services were extended thereafter on year to year basis by showing artificial breaks. The Petitioner's services were terminated with effect from 30 June 2013 vide letter dated 26 April 2013. The Petitioner in his Appeal prayed for quashing the order of termination and sought reinstatement and other reliefs, inter alia, on the ground that he was in the service of the Respondent No.1 since June 2010 on a clear and vacant post and his service was required to be protected.

3 Learned Counsel for the Petitioner submitted that the College Tribunal had jurisdiction to entertain and try the Appeal and the Appeal was wrongly dismissed. He has placed reliance upon the judgment of the learned Single Judge of this Court in **Nikam Tanaji Mahadev vs. Rayat Shikshan Sanstha**, 2000 (1) Mh.L.J. 215, wherein the learned Single judge observed that there cannot be a management without college and a college without management and the Petitioner (therein) being an employee of the management of the affiliated college, he had a right to approach the College Tribunal and the College Tribunal had jurisdiction to entertain the Appeal.

4 On the other hand, the learned Counsel for the Respondent No.1 has pointed out that in the present case we are concerned with sections 58 and 59 of the MU Act and the Petitioner in the case cited (by the learned Counsel for the Petitioner) was governed by sections 42-A and 42-B of the Shivaji University Act, 1974 and the provisions of both the Acts i.e. MU Act and Shivaji University Act are entirely different. It is pointed out that the Petitioner herein was in the employment of the Respondent No.1-Trust and not in employment of any affiliated college or recognized institution or University, and therefore the College Tribunal will have no jurisdiction and the Appeal of the Petitioner is rightly dismissed. He has placed reliance on the judgment of the learned single Judge of this Court in **Nagarkar Ajit Chandrakant v/s. Mulund Gymkhana College**, 2004 (1) Mh.L.J. 470.

5 I have heard the learned Counsel for the parties.

6 At the outset, it needs to be stated that in the Appeal filed before the College Tribunal, the Petitioner had specifically come with a case that he was appointed with the Respondent No.1-Trust. Even before this Court, it is an admitted position now that the Petitioner was not appointed in Mumbai University or affiliated college or recognized institution. It would be apposite to have a look at the provisions of the MU Act and in particular

sections 2(3), 2(26), 2(36), 58(1) and 59 thereof, which read as under:

“2(3) “affiliated college” means a college which has been granted affiliation by the university.

2(26) “recognized institution” means an institution of higher learning, research or specialized studies, other than (a college), and recognized to be so by the university.

2(36)“University” means any of the Universities mentioned in the Schedule.

58(1) Subject to the provisions of section 66 there shall be one or more university and college Tribunals for (one or more universities) in the State of Maharashtra for adjudication of disputes between the employees of the universities and their respective university and between the employees of the affiliated college or recognized institutions and their respective managements, with regard to the matters specified in sub-section (1) of section 59.

59 (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.”

7 From a perusal of the above provisions it would be seen that section 58 of the MU Act provides for establishment of the University and College Tribunal and empowers the Tribunal to receive, entertain and adjudicate the disputes between (i) employees of the Universities and their respective University; (ii) employees of affiliated colleges and their respective managements; (iii) employees of the recognized institutions and their respective managements. Section 58, therefore, envisages establishment of University and College Tribunal and confers jurisdiction as to the type and nature of dispute which it can receive, entertain and try. Further, section 59 discloses that a person who is competent to approach the Tribunal and seeks adjudication of the dispute would have been an employee (i) in any University; (ii) in any affiliated college; and (iii) in any recognized institution. Thus, an employee who has been granted a right to prefer an Appeal under section 59 has necessarily to be in employment of (i) any University, (ii) College affiliated to the University (iii) a recognized institution as defined in section 2(26) of the MU Act. In the present case, the Petitioner is in the employment of the Respondent No.1-Trust, which is neither a University nor a college affiliated to a University. The Respondent No.1 also is not an institution of higher learning, research or specialized

studies other than a college and recognized to be so by the University. The judgment in **Nagarkar Ajit Chandrakant** (supra) also supports the case of the Respondent No.1. In **Nikam Tanaji Mahadev** (supra) relied upon by the learned Counsel for the Petitioner, the learned Single Judge was considering the provisions of section 42-A and 42-B of the Shivaji University Act, 1974, as it then existed and which Act now stands repealed. The said ruling would therefore not apply in the facts of the present case. The impugned order of the College Tribunal has appreciated the provisions of MU Act and has rightly dismissed the Appeal. In these circumstances, no fault can be found in the impugned order and the Petition is liable to be dismissed.

8 It is required to be noted that the Petitioner has been inconsistent in his stand even on the factual position. In the Appeal before the Tribunal, he has stated that he was appointed as an Administrative Officer with the Respondent No.1-Trust and he has specifically averred as follows- "Appellant is employed as Administrative Officer with Respondent No.1 Trust and Society". The College Tribunal by order dated 28 October 2013 dismissed the earlier Appeal of the Petitioner for want of jurisdiction. The Petitioner, thereafter, filed Writ Petition No.826 of 2014 before this Court impugning the said order dated 28 October 2013. In the said Writ Petition,

the Petitioner had curiously averred that he was appointed as an Administrative Officer in the college established by the Respondent No.1-Trust and also impleaded one of the colleges established by the Respondent No.1 as party Respondent No.2. The learned single Judge while remanding the matter back to the Tribunal took cognizance of the conduct of the Petitioner and did not permit the Petitioner to amend the Appeal to implead the College. Despite this, in the present Writ Petition, the Petitioner has again stated that he was appointed in the College of 'Applied Arts & Craft' run by the Respondent No.1-Trust. The Petitioner has, thus, made contradictory statements and changed his stance to suit his convenience to show that the Tribunal would have the jurisdiction. As a matter of fact, the change in stand of the Petitioner prima facie shows that the Petitioner is himself conscious of the position that unless he was employed with a college affiliated to the University, the College Tribunal will have no jurisdiction in the matter.

10. In light of the above discussion, no interference is warranted in the impugned order. The Petition is dismissed. No order as to costs.

(A.A. SAYED, J.)