

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.7769 of 2019

The Principal G.S. College and Anr. Vs. Grievance Committee, RTM, Nagpur
University and Another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Ritu P. Jog, Advocate for the petitioners
Mr. P. B. Patil, Advocate for the respondent No.1.
Respondent No.2 in person.

CORAM : MANISH PITALE, J.

DATED : FEBRUARY 11, 2020

By this writ petition, the petitioners (College and Management) have approached this Court and challenged order dated 17/10/2019, passed by the Grievance Committee of the Nagpur University i.e. respondent No.1, whereby, the petition filed by the respondent No.2 was disposed of by partly allowing the petition.

2. The respondent No.2 was working as Associate Professor in the petitioner No.1 – College. On 30/11/2017, he was placed under suspension and departmental enquiry was initiated against him. Upon being placed under suspension, the respondent No.2 was paid subsistence allowance amounting to 50% of his salary. Such payment continued till 30/05/2018 i.e. period of six months and thereafter, during pendency of enquiry from 01/06/2018, admittedly, the respondent No.2 is being paid full salary.

3. On 15/11/2017, the respondent No.2 filed petition before the Grievance Committee i.e. the respondent No.1 raising certain grievances regarding the amount of subsistence allowance paid to him for the period 30/11/2017 to 30/05/2018 and as regards alleged frivolous charges levelled against him by the petitioners. It was claimed that some of the charges levelled against the respondent No.2 were unwarranted and that harassment was caused to the respondent No.2 as a consequences of the actions of the petitioners. This petition was resisted by the petitioners before the Grievance Committee.

4. After taking into consideration the material available before it, the Grievance Committee partly allowed the petition filed by respondent No.2, on 17/1/2019 and it was held in the impugned order as follows :

“(a) The grievance application is partly allowed. It is declared that the Management was at fault in raising few charges against the applicant as discussed above, which are prima facie baseless and thereby indulged in causing harassment to him.

(b) The Non-applicants are directed to release balance 50% of salary by way of subsistence allowance to the Applicant for the period of suspension from 30.11.2017 to 30.05.2018.

(c) The arrears be calculated and it be credited to the Applicant's salary account in authorized Bank through RTGS, within a period of two months from today.

(d) In the event the Applicant is held guilty of all / any of charges levelled against him in a pending disciplinary proceedings, the Management will be at liberty to consider this aspect and to pass

appropriate order regarding recovery (or no recovery) of the balance 50% amount of subsistence allowance to be paid to the Applicant as directed above.

(e) In case the order is not complied within the time stipulated as above, the Applicant will be at liberty to approach the appropriate forum / authority by taking legal recourse.

(f) The Non-applicants are directed to permit the applicant to join the post of Associate Professor to render the service. The office order in this behalf be issued immediately.

(g) The Management is directed to ensure expeditious disposed of pending inquiry against applicant and to issue necessary instructions to the Enquiry Officer in this behalf.

(h) The office is directed to issue authenticate copy of this order to both the parties at the earliest, for taking appropriate steps in the matter.

(i) In the facts and circumstances of the case, the parties are directed to bear their respective costs of this proceedings.

(j) This order is issued / pronounced today, in presence of the parties / their representatives.”

5. Aggrieved by the said order passed by the Grievance Committee, the petitioners filed the present petition, in which notice was issued on 26/11/2019 and ad-interim stay of the impugned order was granted. It is significant that this Court did not grant any stay of the enquiry initiated against the respondent No.2.

6. The learned counsel appearing for the petitioners submitted that the impugned order passed by the Grievance Committee was well beyond its jurisdiction

under the provisions of the Maharashtra Public Universities Act, 2016 and that there was no power in the Grievance Committee to have virtually set aside the order of suspension and granting direction to pay balance 50% of the subsistence allowance for the period 30/11/2017 and 30/05/2018, as the same was in the teeth of the relevant rules and regulations. It was further submitted that certain observations were made in the impugned order, which were prejudicial to the departmental enquiry initiated against respondent No.2 and adverse findings were rendered against the petitioners, even when the enquiry proceedings were yet to culminate into a final report. It was submitted that, as per the settled position of law, even the Courts or Tribunals could interfere in orders of suspension and orders issuing show cause notice in rare circumstances and the Grievance Committee certainly did not have jurisdiction to pass an order in the nature of the impugned order passed in the present case. On this basis, it was submitted that the impugned order deserved to be set aside.

7. On the other hand, the learned counsel appearing for respondent No.1 – University submitted that the pendency of the enquiry for a period of more than two years was an aspect taken into consideration by Grievance Committee while passing impugned order. It was submitted that the manner in which the petitioners had proceeded in the enquiry gave an impression to the Grievance Committee that the respondent No.2 was deliberately being harassed and, therefore, the impugned order was passed.

8. The respondent No.2 appearing in person, submitted that the petitioners had acted in a manner which demonstrated that they had malice against him and the fact that the actions of the petitioners amounted to continuous mental harassment to him. It was submitted that full salary was indeed being paid to the respondent No.2, from 01/06/2018, and yet no work was taken from him, which was causing great inconvenience to the research scholars, who were pursuing Ph.D. programme in the petitioner institution. It was submitted that the backdrop in which the impugned order was passed by the Grievance Committee needs to be appreciated while considering the contentions raised on behalf of the petitioners.

9. Heard learned counsel for rival parties and respondent No.2 in person. A perusal of the impugned order shows that the Grievance Committee has come to a conclusion that the petitioners have acted in such a manner that the respondent No.2 has suffered harassment and that, therefore, certain directions deserve to be granted against the petitioners. It has been observed by the Grievance Committee in the impugned order that the manner in which the petitioners have proceeded against the respondent No.2 shows that continuous suspension of the respondent No.2, during pendency of the enquiry was neither in the interest of the students nor the Management itself, particularly when full salary was paid to the respondent No.2 from 01/06/2018 onwards. On this basis, the Grievance

Committee has come to a conclusion that since enquiry has not been completed within a period of six months, it can be said that suspension was deemed to have been revoked. The Grievance Committee has further concluded that the charges levelled against the respondent No.2, *prima facie*, appear to be baseless, which has also caused harassment to the respondent No.2. The question is, as to whether the Grievance Committee could have made such observations and whether it has jurisdiction to pass the directions contained in paragraph 22 of the impugned order while partly allowing the petition filed by the respondent No.2. The Grievance Committee is constituted under Section 79 of the aforesaid Act. As per Section 80 of the said Act, the University and College Tribunal has been established and the right of appeal to an aggrieved employee is provided under Section 81 of the Act. A perusal of Section 79 shows that the Grievance Committee is empowered to deal with all types of grievances, except grievances against the State Government or its officials and other such institutions which are not within the jurisdiction of the College and University Tribunal. Sub-section 3 of Section 79 of the said Act shows that the Chairperson of such Grievance Committee is a retired Judge not below the rank of District Judge, nominated by the Vice-Chancellor. Even if the words "all types of grievances" are used in the said provision, it needs to be examined as to whether the Grievance Committee in the present case was justified in making adverse observations against the petitioners during pendency of the enquiry against respondent No.2 and in

granting positive directions as contained in paragraph 22 of the impugned order.

10. It is an admitted position that for the period 30/11/2017 and 30/05/2018 (six months), after issuance of order of suspension and initiation of enquiry against the respondent No.2, the petitioners paid subsistence allowance amounting to 50% of salary to respondent No.2. It is an admitted position that this action on the part of the petitioners was in consonance with the relevant Rules and Regulations. It is also an admitted position that from 01/06/2018, the petitioners have been paying subsistence allowance amounting to full salary to respondent No.2 during pendency of the enquiry. Therefore, on the face of it, the observations made by the Grievance Committee and subsequent directions given in the impugned order on the question of entitlement of subsistence allowance of the respondent No.2, are unsustainable. This is because the Rules and Regulations specify that subsistence allowance amounting to 50% of the salary shall be payable during pendency of the enquiry and that the enquiry shall be completed within a period of six months. This does not *ipso facto* mean that when an enquiry continued beyond the period of six months, suspension would stand revoked automatically and that the employee would be entitled to rejoin his services. The petitioners in the present case have admittedly paid subsistence allowance amounting to full salary immediately after the period of six months of the suspension period was over.

11. As regards the nature of charges levelled against the respondent No.2, the same are subject matter of pending departmental enquiry and the Grievance Committee could not have made observations against the petitioners by stating that such charges appeared to be baseless and that, therefore, even issuance of chargesheet containing such charges amounted to harassment of respondent No.2. Such observations made by the Grievance Committee certainly adversely affect the pending enquiry proceedings and the jurisdiction of the Grievance Committee as discernible from the aforesaid Act does not empower the Committee to interfere or to make observations that would tend to interfere with the pending enquiry initiated against respondent No.2. Therefore, all such adverse observations made against the petitioners in the impugned order are without jurisdiction. It is surprising that in Clause (f) of paragraph 22 of the impugned order, the Grievance Committee has given a positive direction to the petitioners to permit the respondent No.2 to join his post of Associate Professor to render services, further directing that the office order in that behalf shall be issued immediately. This clearly amounts to setting aside the order of suspension passed against the respondent No.2. It is settled law that even Courts or Tribunals would be extremely slow in passing such orders and in these circumstances, it was inappropriate that the Grievance Committee passed such an order against the petitioners. The order suspending the respondent No.2 did not specify

any particular period of suspension and the said order clearly indicated that the suspension would operate during pendency of the enquiry against the respondent No.2. In the face of such material available on record, the Grievance Committee ought not to have issued the direction in Clause (f) of paragraph 22 of the impugned order.

12. The only direction in the impugned order that is sustainable is Clause (g) in paragraph 22 of the impugned order, whereby the petitioners were directed to expeditiously dispose of the pending enquiry against the respondent No.2 and to issue directions to the Enquiry Officer in that behalf. The continued suspension, the difficulties and inconvenience faced by the respondent No.2 would stand answered by such a direction with which this Court concurs.

13. But, as noted above, the Grievance Committee traveled beyond its jurisdiction in giving wide ranging directions against the petitioners and also by making observations that were clearly prejudicial to the pending enquiry against respondent No.2. Hence, it is found that except Clause (g) of paragraph 22 of the impugned order, all other directions given therein deserve to be set aside.

14. Accordingly, the writ petition is partly allowed.

15. The impugned order is set aside except Clause (g) of the paragraph 22 of the impugned order.

16. The said direction is reiterated by this Court and the petitioners are directed to immediately take steps to complete the enquiry proceedings against respondent No.2. The proceedings shall be completed and the Enquiry Officer shall submit report positively within four weeks from today.

17. It is made clear that the Enquiry Officer shall proceed in the matter without being influenced by the observations made by this Court in the present order. This is to ensure that the Enquiry Report is prepared in an objective manner, based on the material on record and that pendency of such an enquiry would no longer cause further inconvenience to the respondent No.2.

18. The writ petition is disposed of in above terms.

19. In view of disposal of the writ petition, all pending applications stand disposed of.

JUDGE