

pvr

7-wp 12604-22

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12604 OF 2022

CHAIRMAN DR. D Y PATIL EDUCATION
ENTERPRISE CHARITABLE TRUST AND ANR

... Petitioners

Versus

SMT. SOMA SERIAC AND ORS

... Respondents

Mr. Anil. V. Anturkar, Senior Advocate with Mr.Sugandh Deshmukh with Deepali Swamy with Mr.Harshvardhan Suryavanshi with Mr.Atharva Date, for the Petitioners.

Smt.Soma Cyriac - Respondent No.1 in person present.

Mr.Rajendra Anbhule, for Respondent No.2.

CORAM: G. S. KULKARNI, J.
DATED: FEBRUARY 14, 2023

ORAL JUDGMENT

1. Rule. Returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. This petition under Article 226 of the Constitution is filed challenging an order dated 30 June 2022 passed by the Grievances Committee of the Savitribai Phule, Pune University - respondent no.2, whereby an application of respondent No.1 Smt.Soma Seriac has been granted in terms of the following order:-

(Official Translation of a photocopy of a DECISION, being a marked portion, typewritten in Marathi).

“DECISION

The Institute/College viz. Dr. D.Y. Patil School of Engineering and Technology, Dr. D.Y. Patil Knowledge City, Charholi (Budruk), Lohgaon, Pune, shall give to the Complainant Smt. Soma Seriac, the following things, within a period of two months from the date of receipt of this Order.

- 1) Pay salary for the period from the date 10th August, 2010 up to the date 31st May, 2021, due and payable to her as per the rules as well as the amount of Gratuity that has remained in arrears.
- 2) Hand over to the Complainant, the Service Book for the period of service from the date 10th August, 2010 up to the date 31st May, 2021.
- 3) Issue Pay Slips for the period from February, 2020 up to May, 2021, to the Complainant.
- 4) Issue a copy of Form No.16, for the Financial Year 2020-2021, to the Complainant.

(Signature)

Dr. Parag Kalkar, (Member)

Rajesh Pande (Member)

Dr. Prafulla Pawar,
Registrar (Member)

(Signature)

Principal, Dr. Devidas Waidande
(Member)

(Signature)

Vivek Buchade (Member)

(Signature)

Babanrao Udhane (Member)

(Signature)

Madhav Nagesh Godbole, (Chairman)
Retired District Judge.”

3. I have heard Mr.Anturkar, learned Senior Counsel for the petitioners, Respondent No.1 appearing in person and Mr.Anbhule, learned Counsel appearing for respondent No.2-University. Respondent No.3 is the Presiding Officer of the Tribunal.

4. When this matter was heard on the earlier occasion, Mr. Anturkar, in assailing the impugned order had raised an issue of a legal infirmity in the Grievances Committee passing the impugned order. His

contention was to the effect that the impugned order passed by the grievance committee needs to be held to be invalid inasmuch as the Grievances Committee which has taken the impugned decision did not have the statutory quorum and/or was not presided over by all its members, as Section 79(3) of the Maharashtra Public Universities Act, 2016 (for short the “**Act**”) would mandate. It was submitted that Mr. Praful Pawar, Registrar and another designated member of the Grievances Committee Mr. Rajesh Pande were not present in the meeting which took the decision, consequently they had not signed the decision. Mr. Anturkar’s contention is that the decision of the Grievances Committee could be taken only on a deliberation by all members of a lawfully constituted Grievances Committee as Section 79 of the Act would contemplate. Learned Counsel for the University could not dispute the contention as urged by Mr. Anturkar that all members of the Grievances Committee were not present when the impugned decision was taken.

5. In the above circumstances, when such issues were discussed, the Court had passed the following order:-

“1. Stand over to **14 February 2023**, to enable learned Counsel for the University to take instructions as to whether the Grievance Committee can be constituted considering the contentions as urged by Mr. Anturkar, learned Senior Counsel for the petitioners, that the impugned order has been passed by the Grievance Committee with

only five members of the committee being present in taking the impugned decision. According to Mr.Anturkar, such a decision of the Grievance Committee which is not constituted as per law, would be illegal.

2. Respondent No.1 appearing in person would contend that if the matter is remanded to the Grievance Committee, it would cause a further delay. She states that as the election process is going on, the Grievance Committee is not available.

3. Learned Counsel for the University shall appraise the Court of the situation on the adjourned date of hearing.

4. Stand over to **14 February 2023. High On Board.**

5. If respondent No.1 wants to address the Court by Video Conferencing, the Office shall provide her "Video Conferencing Link" and the matter can be accordingly heard. However, it is open to respondent no.1 to address the Court in physical hearing."

6. Respondent no.1 has appeared in person. She supports the decision of the Grievances Committee. Insofar as Mr.Anturkar's submission that the Grievances Committee lacked the requisite forum to take lawful decision, she would submit that it was sufficient that a decision of the Grievances Committee was taken by a majority, hence absence of two members of the Grievances Committee would not render the decision invalid. To support such contention, she has placed reliance on sub-section (5) of Section 69 of the Act to contend that this provision would mandate that a decision of "the authority" of the University can be taken by a majority.

7. To appreciate such contention as urged by respondent no.1, it is

necessary to examine the purport of Section 69 of the Act. Section 69 provides for 'Meeting of authorities'. As to how the Act defines "Authorities of the University", is also required to be noted, and then the applicability of Section 69 to the meeting of such authorities, can be considered. Section 26 defines 'Authorities of the University' which reads thus:

"26. Authorities of university:- The following shall be the authorities of the university, namely:

- (1) the Senate;
- (2) the Management Council;
- (3) the Academic Council;
- (4) the Faculty;
- (5) the Board of Deans;
- (6) the Board of Sub-campus of the university;
- (7) the Board of Studies;
- (8) the Board of University Departments and Inter-disciplinary studies;
- (9) the Board of Post-Graduate Education in Colleges;
- (10) the Board of Lifelong Learning and Extension;
- (11) the Board of Examinations and Evaluation;
- (12) the Board of Information Technology;
- (13) the Board of National and International Linkages;
- (14) the Board for Innovation, Incubation and Enterprise;
- (15) the Board of Students' Development;
- (16) the Board of Sports and Physical Education;
- (17) the Board of Research;
- (18) such other bodies of the university as are designated by the Statutes, to be the authorities of the university."

8. Section 69 provides for 'Meeting of authorities' which reads thus:

"69. Meeting of authorities.- (1) Save as otherwise provided by this Act, all matters, with regard to the conduct of meetings of the authorities, bodies or committees, if any, constituted by the university, shall be such as may be prescribed by the Statutes.

(2) A meeting of an authority or body shall be convened on the date determined by the Chairperson by a notice issued by its Secretary.

(3) Except as otherwise provided, the quorum for a meeting shall ordinarily be one-third of the number of the sitting members. If there

is no quorum, the meeting shall be adjourned by the Chairperson to a specific time on the same day, or on a later date and no quorum shall be necessary for such adjourned meeting. No quorum shall be necessary on the following day of the continued meeting.

(4) Where no provision is made by or under the Statutes for a President or Chairperson to preside over a meeting of any authority or body of the university or when the President or the Chairperson so provided for is absent and no provision is made for any other person to preside, the members present shall elect a person from amongst themselves to preside at the meeting.

(5) Save as otherwise provided, all items, questions, matters or proposals on the agenda shall be decided by a majority of votes of members present. The Chairperson shall have a vote. In case of equality of votes, the Chairperson shall have the casting vote. The secretary, if not a member, shall have the right to participate in the deliberations but shall not have the right to vote.”

9. It would also be necessary to note the provisions of Section 79 which provide for constitution of the Grievances Committee. The said provision reads thus:-

“79. Grievances Committee.- (1) There shall be a Grievances Committee in each university to deal with all types of grievances; except grievances against the State Government including its officials, of teachers and other employees of the university, affiliated and autonomous colleges and recognized institutions, other than those managed and maintained by the State Government, Central Government or a local authority ; which are not within the jurisdiction of the University and College Tribunal.

(2) The university shall establish a Grievances Redressal Cell headed by the officer of the university not below the rank of the Assistant Registrar for providing administrative assistance to the Grievances Committee.

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

- (a) retired Judge not below the rank of the District Judge, nominated by the Vice-Chancellor – Chairperson;
- (b) one Dean, nominated by the Vice-Chancellor;
- (c) Chancellor's nominee on the Management Council;
- (d) Registrar;
- (e) one teacher belonging to Scheduled Castes or Scheduled Tribes or Denotified Tribes (Vimukta Jatis) or Nomadic Tribes or Other Backward Classes and one non-teaching employee

nominated by the Senate from amongst its members;
(f) Law Officer of the University - Member-Secretary.

(4) The nomination of a retired Judge as the Chairperson and of a Dean as the member of the Grievances Committee, shall be for such period, not exceeding three years in aggregate, as the Vice-Chancellor may from time to time, in each case decide.

(5) The retired judge nominated as the Chairperson of the Grievances Committee shall be entitled for remuneration and conveyance charges, as may be determined by the university.

(6) The Grievances Committee shall hear, settle and decide grievances as per the law, as far as may be practicable, within three months, from the date of filing of the complaint.

(7) It shall be lawful for the Grievances Committee to entertain and decide grievances or complaints relating to service of the employees, which are not within the jurisdiction of the Tribunal, after giving reasonable opportunity of being heard to both the parties.”

10. From a cumulative reading of the above provisions, it can be clearly seen that the Grievances Committee is explicitly not included within the definition of ‘Authorities of the University’ as Section 26 postulates. Even if Section 26 sub-section (18) is considered which provides that “such other bodies of the University as are designated by the “Statutes”, to be the “authorities of the university”, no statute as made by the University is brought to the notice of the Court by respondent No.1 by which the Grievance Committee has been designated as an “Authority of the University”, so as to fall within the provisions of Section 26. In my opinion, when the legislation itself creates a Grievances Committee under Section 79, there is no scope for a Statute to be framed for what is expressly provided for in the University

Act. Even otherwise, there can be no logic for framing any independent ‘statute’ to alter the legislative mandate. Thus, for such reasons, respondent no.1’s contention that sub-section (5) of Section 69 would become applicable to the proceedings before the Grievances Committee cannot be accepted.

11. In any event, Section 79 of the Act itself does not provide that a decision can be taken by majority. Thus, to even remotely read into Section 79, as to what has been prescribed in sub-section (5) of Section 69 in regard to the meeting of the committees of the authorities, would in fact amount to reading something in Section 79, which the legislature itself has avoided to provide, and/or would amount to reading something which is alien to Section 79, and what is expressly kept away by the legislature.

12. In my opinion, the object and purpose for which the Grievances Committee is specifically constituted by an independent provision under the Act, is far different from what the other authorities under Section 26 are obliged to meet. None of the functions of the ‘other authorities’ can in any manner be comparable to what the Grievances Committee would discharge in the interest of the persons who are aggrieved. It is for such reason, Section 79 provides that the Grievances Committee needs to be

constituted of persons as specified in sub-section (3) of Section 79. All these members who constitute the Grievances Committee are required to entertain, settle and decide the grievances or complaints relating to service of the employees, which are not within the jurisdiction of the Tribunal, as sub-section (6) of Section 79 expressly mandates. This of course has to be by a meaningful deliberation. Thus, Section 79 does not make any allowance that any decision of the majority members can be recognized. For these reasons, the contention as urged by respondent No.1 that in the absence of two members, it be presumed that the impugned decision is a majority decision of the Grievances Committee, would not meet the test of law.

13. As a result of the above discussion, in the facts of the present case, the decision of the Grievances Committee, which did not have the lawful quorum as Section 79(3) would provide, cannot be held to be legal and valid. The petition hence needs to succeed on this count.

14. Mr. Anbhule, learned counsel for respondent no. 2-University, on instructions, makes statement that in view of the ensuing elections to the various authorities of the university, new nominations on the Grievances Committee would be made. He states that accordingly, the Grievances Committee would be re-constituted within a period of two

months from today. He also states that after the Grievances Committee is re-constituted with such new members, in the very first meeting of the Grievances Committee the application/grievance of respondent No.1 shall be placed for consideration of the Grievances Committee, and with appropriate advance notice to the petitioner and respondent no.1, the Grievances Committee by following the appropriate procedure, shall take decision in accordance with law, within a period of one month from the date the parties appear before the Grievances Committee.

15. The petition is accordingly disposed of by setting aside the impugned order dated 30 June 2022 passed by the Grievances Committee, by accepting the statement as made on behalf of the University.

16. The Court has not examined any issues on merits. All contentions of the parties in that regard, which would fall for consideration of the Grievance Committee, are expressly kept open.

17. Rule is made absolute in the above terms. No costs.

18. Parties to act on the authenticated copy of this order.

(G. S. KULKARNI, J)