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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5878 OF 2024

Vasantdada Patil Pratishthan Throu. The
Registrar & Anr.

...Petitioners

Versus

Bharati Ashok Mandhare & Anr.

...Respondents

Mr. Anil Sakhare, Senior Counsel i/b Mr. Shailesh S. Pathak for
Petitioner.

Ms. Trupti V. Chavan a/w Mr. Omkar Mandhare for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 5, 2026

JUDGEMENT :

1. Rule. By consent of parties, made returnable forthwith and taken up for final hearing.

Context and Factual Background:

2. The core question presented for consideration by the Petitioners, Vasantdada Patil Pratishthan (“**Employer**”) and Vasantdada Patil Pratishthan’s College of Engineering and Visual Arts (“**College**”), is whether Respondent No.1, Bharati Ashok Mandhare (“**Employee**”) could

at all have invoked the statutory entitlement to challenge termination of employment under the Maharashtra Public Universities Act, 2016 (*“Universities Act”*) having invoked earlier, the statutory entitlement to question allegedly unfair labour practices under The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (*“MRTU & PULP Act”*).

3. A secondary question is whether the judgement and order dated January 25, 2024 (*“Impugned Order”*) passed by the University and College School Tribunal, Mumbai (*“School Tribunal”*) setting aside a dismissal order dated October 11, 2023 (*“Dismissal Order”*) is faulty on the ground that the School Tribunal ought to have inexorably remanded the matter for reconsideration by the Petitioners without entering upon the merits of the accusations and setting aside the Dismissal Order.

4. The Employer is a registered public trust which runs the College, which is affiliated to Respondent No.2, University of Mumbai (*“University”*). The Employee had joined the College as a Clerk on *ad hoc* basis on April 1, 1991. With subsequent transfers and elevations, eventually the Employee was functioning as an Accounts Officer as on the date of the Dismissal Order.

5. The Employee was accused of failure to submit financial statements and ensuring other compliances, and was served with a Show Cause Notice on July 1, 2015. The Employee was transferred on August 5, 2015 and in the new role as Exam Superintendent, on July 26, 2019, the Employee was served with a memo for wrongly uploading marks relating to communication skills instead of applied chemistry II in respect of 65 students in the First Year of the Engineering College. The Employee is said to have admitted to a *bona fide* inadvertent mistake and requested a lenient view.

6. Eventually, the Employee was suspended from employment on March 23, 2022. A statement of allegations was issued by the Employer to the Employee on April 28, 2022. The allegations are said to have included those for which action had already been taken. On June 24, 2022, the Employee invoked the MRTU & PULP Act challenging the suspension as an unfair labour practice before the jurisdictional Industrial Court.

7. On January 7, 2023 the Industrial Court held that it cannot be ruled out that the Employee was carrying out clerical duties and could eventually be regarded as a workman. The Industrial Court rejected the request for an outright denial of jurisdiction as claimed by the

Employer, and also on merits, did not think it necessary to stall the enquiry proceedings and permitted them to continue.

8. The Employer conducted proceedings, which culminated in a report and findings on October 7, 2023, which led to the Dismissal Order being passed on October 11, 2023.

9. The Employee challenged the Dismissal Order before the School Tribunal. By the Impugned Order, the School Tribunal held that the appeal was indeed maintainable; that the enquiry was vitiated; that the employee was being punished twice for the same allegations; and that the Employee was not guilty of wilful negligence; and the allegation of making allegedly wild allegations about the management did not warrant the Dismissal Order.

10. The Impugned Order held that the Dismissal Order deserved to be quashed and set aside. The Employer and the College were directed to reinstate the Employee with back wages until reinstatement with costs in the sum of Rs. 15,000. The University was directed to ensure compliance by the Employer within three months.

Contentions of the Parties:

11. I have heard Mr. Anil Y Sakhare, Learned Senior Advocate on behalf of the Employer and Mr. Mahesh Menon and Ms. Trupti Chavan on behalf the Employee. With their assistance, I have examined the record.

12. The core contentions on behalf of the Employer are that:-

(a) Having chosen to invoke the jurisdiction of the Industrial Court under the MRTU & PULP Act, the Employee could not invoke the jurisdiction of the School Tribunal under the Universities Act;

(b) Without first going before the Grievances Committee under the Universities Act, the Employee could not have approached the School Tribunal;

(c) If the School Tribunal were of the view that the inquiry had been vitiated, it could have only directed that the inquiry be conducted afresh with due process and not directly ask for reinstatement; and

(d) The School Tribunal erred in not directing payment of a lumpsum cost considering the bad blood between the Employer and the Employee instead of directing reinstatement.

13. The contentions on behalf of the Employee are that:

(a) The approach to each of the Industrial Court and the School Tribunal was independently within jurisdiction in the pursuit of the respective statutory entitlement that enables each respective challenge;

(b) Without prejudice, to avoid any confusion, in the proceedings before the Industrial Court to prove adoption of unfair labour practices, no prayer for reinstatement shall be pressed;

(c) The Employee had already been punished for the breaches which were once again laid at her doorstep in the proceedings that led to the Dismissal Order; and

(d) The Impugned Order rightly finds that not only did the manner of conduct of inquiry vitiate the Dismissal Order but also, on merits, the Dismissal Order was untenable.

Therefore, there is nothing wrong with the direction to reinstate and to pay costs.

ANALYSIS AND FINDINGS:

Jurisdictional Challenge Untenable:

14. To consider the core issue of jurisdiction on which this Petition has been canvassed, it would be appropriate to extract Section 81(1) of the Universities Act, which is set out below:

81. Right of appeal.

1. Notwithstanding anything contained in any law or contract for the time being in force, any teacher or other employee in the university governed by this Act or in affiliated college or recognized institution of any of these universities, other than that managed and maintained by the State Government, Central Government or a local authority, who is-

(a) dismissed or removed or whose services are otherwise terminated or who is compulsorily retired or who is reduced in rank by the university or management and who is aggrieved; or

(b) aggrieved by the decision of the Grievances Committee established under this Act;

shall have a right of appeal and any appeal against any such order or decision shall lie to the Tribunal:

*Provided that ******

2. to 4. *****

[Emphasis Supplied]

15. Even a plain reading of the foregoing would show that there are two rights to appeal covered by the provision – one, the grievance about a dismissal and termination of service; and another, the grievance by a decision of the Grievances Committee. The two are separated by the use of the word “or” and each is a distinct statutory right to appeal. The second right is on a grievance against a decision of the Grievances Committee while the first right is a substantive right to challenge termination of employment, with no reference to the Grievances Committee. Therefore, at the threshold, it is clear that the second objection of the Employer i.e. that the Employee ought to have first gone to the Grievances Committee is untenable.

16. It is also clear that Section 81(1) is a non-obstante provision that overrides any other law for the time being in force. Therefore, this statutory right to appeal overrides anything stated in any other law in force. Therefore, it is the intention of the legislature to confer this right over and above any other provision that may exist. Therefore, in my opinion, in the absence of any ouster of jurisdiction of the School Tribunal, what Mr. Sakhare would like the Court to hold i.e. an implied ouster of this precious right to appeal to the School Tribunal on the ground that an earlier stage, the suspension had been questioned before

the Industrial Court on the ground of unfair labour practice, does not lend itself to acceptance.

17. That apart, whether the practice adopted by the Employer is an unfair labour practice is a separate cause of action that the Industrial Court has jurisdiction to examine. That would not take away the explicit right to appeal against a dismissal conferred by Section 81(1) of the Universities Act, which clearly is intended to override anything else stated in any other law for the time being in force, which expression would also include the MRTU & PULP Act.

18. Yet another element is that Section 81(1) is an entitlement to challenge a dismissal, while the grievance taken to the Industrial Court was the allegedly unfair labour practice adopted at the stage of suspension. At that stage, there was no dismissal of the Employee, for the theory of an election of jurisdiction to have any basis. It was not as if the Employee had been dismissed for a choice to be made between the Universities Act and the MRTU & PULP Act (even assuming that an election between the two was tenable).

19. Therefore, in my opinion, as and when the Dismissal Order was passed, the Employee was fully entitled to exercise her statutory right to appeal before the School Tribunal. The challenge in this

Petition on the premise of the jurisdiction of the Industrial Court having been chosen by the Employee, thereby binding him to that forum to the exclusion of a statutory entitlement under Section 81(1) of the Universities Act, must necessarily fail.

20. It would also be necessary to state that while Section 81 of the Universities Act is a non-obstante provision, there is no competing ouster provision or a *non-obstante* provision in the MRTU & PULP Act that would support the Employer's contention of an elective choice that is purported to have been made. There is neither any express provision nor any provision that leads to such a position by way of necessary implication. Section 28 and 30 of MRTU & PULP Act are reproduced and extracted below :-

28. *Procedure for dealing with complaints relating to unfair labour practices.—*

(1) Where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or any Investigating Officer may, within ninety days of the occurrence of such unfair labour practice, file a complaint before the Court competent to deal with such complaint either under section 5, or as the case may be, under section 7, of this Act:

Provided that, the Court may entertain a complaint after the period of ninety days from the date of the alleged occurrence, if good and sufficient reasons are shown by the complainant for the late filing

of the complaint.

(2) *The Court shall take a decision on every such complaint as far as possible within a period of six months from the date of receipt of the complaint.*

(3) *On receipt of a complaint under sub-section (1), the Court may, if it so considers necessary, first cause an investigation into the said complaint to be made by the Investigating Officer, and direct that a report in the matter may be submitted by him to the Court, within the period specified in the direction.*

(4) *While investigating into any such complaint, the Investigating Officer may visit the undertaking, where the practice alleged is said to have occurred, and make such enquiries as he considers necessary.* He may also make efforts to promote settlement of the complaint.

(5) *The Investigating Officer shall, after investigating into the complaint under sub-section (4) submit his report to the Court, within the time specified by it, setting out the full facts and circumstances of the case, and the efforts made by him in settling the complaint. The Court shall, on demand and on payment of such fee as may be prescribed by rules, supply a copy of the report to the complainant and the person complained against.*

(6) *If, on receipt of the report of the Investigating Officer, the Court finds that the complaint has not been settled satisfactorily, and that facts and circumstances of the case require, that the matter should be further considered by it, the Court shall proceed to consider it, and give its decision.*

(7) *The decision of the Court, which shall be in writing, shall be in the form of an order. The order of the Court shall be*

final and shall not be called in question in any civil or criminal court.

(8) *The Court shall cause its order to be published in such manner as may be prescribed. The order of the Court, shall become enforceable from the date specified in the order.*

(9) *The Court shall forward a copy of its order to the State Government and such officers of the State Government as may be prescribed.*

[Emphasis Supplied]

30. Powers of Industrial and Labour Courts.—

(1) **Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order—**

(a) **declare that an unfair labour practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;**

(b) **direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;**

(c) **where a recognised union has engaged in or is**

engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all or any of its rights under sub-section (7) of section 20 or its right under section 23 shall be suspended.

(2) In any proceeding before it under this Act, the Court may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision :

Provided that, the Court may, on an application in that behalf, review any interim order passed by it.

(3) For the purpose of holding an enquiry or proceeding under this Act, the Court shall have the same powers as are vested in Courts in respect of—

- (a) proof of facts by affidavit;
- (b) summoning and enforcing the attendance of any person, and examining him on oath;
- (c) compelling the production of documents; and
- (d) issuing commissions for the examination of witnesses.

(4) The Court shall also have powers to call upon any of the parties to proceedings before it to furnish in writing, and in such forms as it may think proper, any information, which is considered relevant for the purpose of any proceedings before it, and the party so called upon shall thereupon furnish the information to the best of its knowledge and belief, and if so required by the Court to do so, verify the same in such manner as may be prescribed.

[Emphasis Supplied]

21. It will be seen that the aforesaid provisions which form the basis of intervention under the MRTU & PULP Act, are evidently regulatory provisions backed by remedial power to prevent the adoption of unfair labour practices. In aid of such prevention, interlocutory directions may also be issued. Indeed, these provisions empower the Industrial Court to declare that a certain practice is an unfair labour practice; to issue binding directions to cease and desist from carrying out such unfair labour practice; and such power includes the power to reinstate an employee if the dismissal were an unfair labour practice.

22. Evidently, the reinstatement power is attendant to a finding of unfair labour practice having been indulged in. The policy intent of the legislation being regulatory intervention into addressing the prevention of unfair labour practice, this legislation indeed presents an added option for remedies but not an exclusive framework that ousts other statutory entitlements available to an employee. On the other hand, the Universities Act, as seen above, presents an explicit statutory appellate remedy notwithstanding anything contained in any other law (including the MRTU & PULP Act), which is not ousted.

23. The Employee sought a declaration from the Industrial Court that the approach of the Employer and the suspension constituted an

unfair labour practice. The Employer sought a declaration that the approach to the Industrial Court was without jurisdiction. The Industrial Court ruled that it could not rule out its jurisdiction and that it was not inclined to use its powers to issue any interlocutory measure.

24. Therefore, the invocation of the jurisdiction of the MRTU & PULP Act was in line with the policy intent of that legislation. If and when, and as and when, the Industrial Court were to come to a view that the Employer has indulged in an unfair labour practice, it could well issue remedial directions. However, that does not, by any stretch, lead to a conclusion that the invocation of the Industrial Court's jurisdiction inevitably ousted the statutory jurisdiction of the Universities Act and the right to appeal against a dismissal conferred by it.

25. Mr. Sakhare's invocation of the decision in ***Jacob Chinnannan***¹, in my opinion would be of no assistance to the Employer's case. In ***Jacob Chinnannan***, the proceedings in conflict with each other were proceedings under the MRTU & PULP Act on the one hand and the Industrial Disputes Act, 1947 on the other. The Petitioner had chosen one of the two and later sought to proceed with the next.

¹ *Jacob Chinnannan vs. Sudarshan Aluminium Industries Ltd. & Anr.* – 2002 (94) FLR 775

26. It is in this context that it was held that in view of Section 59 of the MRTU & PULP Act, the recourse to the Industrial Disputes Act was barred. Section 59 of the MRTU & PULP Act is extracted below :

59. Bar of proceedings under Bombay or Central Act.— If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceeding shall at any time be entertained by the Industrial or Labour Court under this Act.

[Emphasis Supplied]

27. It will be seen from a plain reading of the foregoing that the legislature explicitly provided that where the matter fell within the purview of the MRTU & PULP Act, no proceeding would be initiated by any authority in respect of that matter under the Industrial Disputes Act, 1947 which is defined in the legislation as the “*Central Act*”. Another local legislation i.e. the Bombay Industrial Relations Act, 1946 which was defined as the “*Bombay Act*”. If any proceeding in respect of any matter within the purview of the MRTU & PULP Act were to be instituted, under the Industrial Disputes Act or under the Bombay Act, then no proceedings could be entertained for the same matter under the

MRTU & PULP Act, and vice versa.

28. It is well settled law that an ouster of jurisdiction has to be explicit and express or very clearly implied. It cannot be assumed, as is being sought to be canvassed. It is Mr. Sakhare's submission that the ruling in *Jacob Chinnannan* must be imported into the interplay between the MRTU & PULP Act and the Universities Act. I am afraid this is unacceptable. It would need a leap of faith and an assumption of an ouster. The ouster in Section 59 of the MRTU & PULP Act is explicit in its terms. The reasons for this are not far to seek. The subject matter and policy intent of the three legislation referred to in that provision is identical and in that context, the legislature explicitly stipulated an ouster.

29. In sharp contrast, there is no ouster of the Universities Act in the MRTU & PULP Act, and indeed, Section 81 of the former is a *non-obstante* provision, thereby obviating any scope for an overlap leading to a conflict. The *non-obstante* provision ensures that there is no conflict or repugnancy created between the two statutes. It is only if one legislative stipulation cannot co-exist with another, that repugnancy would emerge. On the contrary, the legislative choice is that the Universities Act would override any conflicting provision in any other

law in force, which would include the MRTU & PULP Act. Therefore, the invocation of *Jacob Chinnannan* does not turn the needle in favour of the Employer's contention on implied ouster of jurisdiction. On the contrary, there is an explicit overriding of the MRTU & PULP Act when it comes to the statutory right to appeal under the Universities Act.

30. Therefore, the jurisdictional challenge to the Impugned Order is untenable, on a conjoint analysis of the Universities Act and the MRTU & PULP Act.

Remand Not an Inexorable Consequence:

31. Having held that the Impugned Order was within jurisdiction, the next issue to consider is whether the School Tribunal had no legitimate option but to remand the case back to the Employer.

32. The Employer would submit that the School Tribunal had comprehensively held that the enquiry had been vitiated, among others, by not enabling the Employee to defend himself properly, with the Employee being cross-examined without being permitted to lead an examination-in-chief to begin with. The School Tribunal found that the Employee had not been allowed to engage a representative in defence. Therefore, according to the Employer, the School Tribunal ought not to

have waded into merits and should have merely remanded the matter back to the Employer, keeping the suspension active.

33. I am afraid this contention does not lend itself to acceptance as an absolute proposition. Such an absolute proposition that the moment the School Tribunal finds even a vestige of due process violation, it ought not to rule on merits and should let the Employer conduct the process afresh without procedural breach, would incentivize adoption of abusive process and place a premium on abuse whereby the victim of the abuse can be kept under continued suspension, letting the employer persist with more iterations of the enquiry process. This is why such an absolute proposition would not be reasonable.

34. This is why it is settled law that abuse of due process does not always lead to an automatic remand. One must have regard to the severity of the charges, bad faith in the employer's approach, and examination of where substantive justice lies. The following extracts from the decision of the Supreme Court in the case of **Anant Kulkarni**², would be instructive:

29. Therefore the Tribunal, as well as the learned Single Judge have both made it clear that the inquiry had not been conducted in ac-

² *Anant R. Kulkarni vs. Y.P. Education Society – (2013) 6 SCC 515*

cordance with the provisions of Rules 36 and 37 of the 1981 Rules. However, they themselves have dealt with each and every charge, and have recorded their findings on merit. The present case is certainly not one where a punishment has been set aside only on a technical ground, that the inquiry stood vitiated for want of a particular requirement. Thus, in the light of such a fact situation, the Division Bench has committed an error by giving liberty to the respondents to hold a fresh enquiry.

28. The Tribunal, as well as the learned Single Judge of the High Court have recorded a categorical finding of fact to the effect that initiation of departmental enquiry against the appellant had been done with mala fide intention to harass him. The charges were not specific and precise; in fact, they were vague and unspecific. Furthermore, the Management Committee had failed to observe the procedure prescribed in Rules 36 and 37 of the 1981 Rules. The said Rules 36 and 37, prescribe a complete procedure for the purpose of holding an inquiry, wherein it is clearly stated that an inquiry committee should have minimum three members, one representative from the Management Committee, one to be nominated by the employees from amongst themselves, and one to be chosen by the Chief Executive Officer, from amongst a panel of teachers who have been awarded national/State awards. In the instant case, there was only a two-member committee. The procedure prescribed under the Rules is based on the principles of natural justice and fair play to ensure that an employee of a private school, may not be condemned unheard. It is pertinent to note that the Management Committee failed to prove even a single charge against the appellant.

31. The conclusion reached by the Division Bench that the Tribunal and the learned Single Judge had found that there was a defect in the manner in which the enquiry was held, and therefore there was no question of it recording a finding on merit to the effect that the charges levelled against the appellant were not proved, is also not sustainable in law. It is always open for the court in such a case, to examine the case on merits as well, and in case the court comes to the conclusion that there was in fact, no substance in the allegations, it may not permit the employer to hold a fresh enquiry. Such a course may be necessary to save the employee from harassment and humiliation.

[Emphasis Supplied]

35. Therefore, one must examine the facts and circumstances of the case to see if there is a mere technical default or whether even on substantive merits, the case of the Employer was untenable. The Employer in the instant case has contended that comments by the Employee about the General Secretary and the institutional politics in the Employer's organization is conduct unbecoming of an employee.

36. A careful perusal of the Impugned Order would indicate that while the School Tribunal has found that the enquiry was vitiated owing to abuse of due process, it also found that the Employee was being punished twice for the same allegations; that the Employee was not guilty of wilful misconduct. The Impugned Order also found that the allegation that the Employee had made "wild allegations" about politics

in the management did not warrant the Dismissal Order. It is apparent that the findings are that, as a matter of substance, the Dismissal Order was untenable for being disproportionate and grossly unfair. It was over and above such findings on substance that the due process violation has also been noticed.

37. Mr. Sakhare's reliance on *Masilamani*³ as a matter of absolute proposition that the only avenue for the School Tribunal was to allow the Employer to conduct the process afresh does not appeal to me. Paragraph 17 of *Masilamani* too notes that the Court must examine the gravity of the charges levelled. This is not inconsistent with the law laid down in *Anant Kulkarni*, namely, that the gravity has to be examined and there cannot be a one-size-fits-all approach of giving liberty to the employer to conduct the process afresh.

38. Having examined the record, and the findings rendered in the Impugned Order, the finding that the Employee was being charged with the same allegations for which she had already been punished cannot be faulted. In exercise of the writ jurisdiction, I see no reason to interfere with the Impugned Order, when it is not unreasonable, arbitrary, or perverse. Indeed, the Employee appears to have been marked out for harsh treatment and this is manifested from the record, justifying the

³ *Chairman, LIC and Ors. vs. A. Masilamani – (2013) 6 Supreme Court Cases 530.*

findings by the School Tribunal.

39. This is not a case where the matter should routinely be remanded to the Employer only to conduct the process all over again, keeping the Employee under suspension. The allegation that the Employee had made remarks about politics in the senior management is vague and not warranting the Dismissal Order. The Employee has already suffered suspension and the ignominy and all the hardship that comes with it. Her reinstatement on merits with back wages cannot be faulted.

40. Therefore, in my opinion, the Impugned Order does not call for interference in exercise of the jurisdiction under Article 226 of the Constitution of India. There is neither any exercise of powers without jurisdiction nor any manifest arbitrariness or perversity in the exercise of jurisdiction, warranting interference with the Impugned Order.

41. Therefore, Rule is discharged and the Petition is *dismissed*. The back wages that are said to have been deposited in this Court shall stand released to the Employee along with all accruals thereon, within a period of three weeks from the uploading of this order on the website of the Court.

42. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]