

Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 826 OF 2014

Uttam Krishna Ushinkar.

.. Petitioner

Vs

Rachana Sansad & ors.

.. Respondents

Mr.C.R.Sadasivan i/b Mr.N.M.Ganguli, for Petitioner.

Mr.S.C.Naidu a/w Mr.Sagar Batavia i/b M/s C.R.Naidu & Co., for
Respondent No.1.

CORAM: N.M.JAMDAR, J.
Thursday 11 September, 2014

P.C.:

Rule. Rule made returnable forthwith. Respondents waive service.

2 The Petitioner challenges the order passed by the University and College Tribunal, Mumbai dated 28 October 2013 dismissing his appeal. From the arguments advanced across the bar it appears that both the Petitioner and the Respondents are aggrieved by the decision as much as their respective contentions have not been satisfactorily dealt with, it is in this context, brief facts are narrated hereinafter.

3 The Petitioner had filed an Appeal No.17 of 2013 in the University and College Tribunal, Mumbai contending that on 14 June 2010 he was appointed as an administrative officer on probation in clear vacancy against a clear permanent post. According to him, he was wrongfully

discontinued from services on 30 June 2013. The Petitioner accordingly prayed for reinstatement with back wages. The Respondent No.1 Trust had taken up a stand that the Petitioner was appointed as an administrative officer of the Trust that too on a contract basis and the Tribunal will not have jurisdiction to entertain his appeal.

4 As regards the maintainability of the appeal, the Tribunal did not frame any issue, however came to the conclusion that the appeal was maintainable. The Tribunal further held that the Petitioner since the appeal memo showed his age as 46 years, he was age barred at the time of his initial appointment. The Tribunal accordingly dismissed the appeal on the ground that Petitioner did not fulfill the eligibility criteria of age, and he was never issued an appointment letter of probation.

5 Learned counsel for the Petitioner submitted that the issue that the Petitioner did not have eligibility of age, was not seriously contended by the Respondent and the Tribunal ought not to have taken up the issue of age bar on its own. The learned counsel submitted that the Tribunal has only relied upon the description of the parties in the appeal memo to hold that the Petitioner was age barred while the service record and various other documents would clearly show that the Petitioner was not age barred at the relevant time. The learned counsel for the Respondent No.1 submitted that in the proceedings before the Tribunal, the Respondent No.2 Principal was never joined as party respondent and it is for the first time that he is joined in this petition without seeking any leave. According to the learned counsel for the Respondent No.1 the Petitioner has completely changed his case in the Writ petition. The learned counsel

for the Respondent No.1 contended that it was the case of the Petitioner before the Tribunal that he was appointed as an Administrative Officer with the Respondent No.1 Trust, and in the petition, the Petitioner is asserting that he is appointed as an Administrative Officer in the college of Respondent No.2, represented through the Principal. Learned counsel also submitted that the issue as to the maintainability of the appeal has not been satisfactorily dealt with as the Petitioner could not have filed an appeal since he was employee of the Trust, which is not defined as an educational institute.

6 The perusal of the impugned order shows that the grievance made by the learned counsel for the Petitioner as well as Respondent No.1 as regarding the Tribunal dealing with their submissions, appears to be justified. Both the issues regarding the Petitioner being over age and the maintainability of the appeal have not been dealt with satisfactorily. The learned counsel for the Petitioner has also contended that the Code upon which reliance has been placed by the Tribunal is superceded by Government Resolution dated 20 May 2010. These are some of the aspects the Tribunal will have to be consider. In the circumstances, case for remanding the proceedings back to the Tribunal is made out.

7 It is however, made clear that the Appeal No.17 of 2013 will stand restored on the file of the Tribunal in it's present form without reference to the pleading in the petition filed in this Court. Only those who have been made party-respondents in the appeal will remain as party respondents and not the Respondent No.2 in the present petition. In any case in the rejoinder filed in the petition, the Petitioner has also accepted

that Respondent No.2 in the present petition needs to be deleted.

8 Accordingly, the petition is disposed of by quashing and setting aside the order passed by the Tribunal dated 28 October 2013. Appeal No.17 of 2013 is restored to file. It is made clear that all contentions on merits are kept open. Petition is disposed of as above.

N.M.JAMDAR, J.

Bombay High Court