

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.570 OF 2017**

DISTRICT : PUNE

1. Shri Balasaheb Geneba Kingare,)
 2. Shri Raheman Abdulla Mokashi Khan,)
 3. Shri Arvind Bhagawantrao Gaikwad,)
 4. Shri Girish Ramchandra Jadhav,)
 5. Shri Laxman Januji Ghate,)
 6. Smt. Sanjivaji Satish Auty,)
 7. Shri Dilip Vinayak Shende,)
 8. Shri Sudhakar Shivram Virbhadre,)
 9. Shri Anil Kashinath Newalkar,)
 10. Shri Anil Balasaheb Ranawade,)
 11. Shri Sudhir Devidas Waghmode,)
 12. Shri Mehesh Chudaman Ghodeshwar,)
 13. Shri Dilip Ananta Thorat,)
 14. Shri Ravindra Keshav Bidkar,)
 15. Shri Manbahadur Chand Rajput,)
 16. Shri Nandkumar Dault Mandavkar,)
 17. Shri Ravindra Pandurang Divekar,)
 18. Shri Ravindra Tatu Chavan,)
 19. Shri Ramdas Govind Shendge,)
 20. Shri Bharat Ganpat Raut,)
 21. Shri Sambhaji Dattatray Bhosale)
- All working in State Institute of Educational)
Technology, Agarkar Marg, Pune 411004)..Applicants

Versus

1. The Government of Maharashtra,)
Through Chief Secretary, Mantralaya, Mumbai)
2. The Government of Maharashtra,)
Through Principal Secretary, Finance Department)
Mantralaya, Mumbai 400032)
3. The Government of Maharashtra,)
Through Principal Secretary,
General Administration Department,)
Mantralaya, Mumbai 400032)
4. The Government of Maharashtra,)
Through Principal Secretary,)
School Education & Sports Department,)
Mantralaya, Mumbai 400032)
5. Commissioner of Education,)
M.S., Central Building, Pune 411 001)
6. Director,)
State Institute of Educational Technology,)
Agarkar Marg, Pune 411004)
- 6A. Maharashtra State Council of Educational)
Research & Training (Vidya Parishad),)
Through its Director, Sadashiv Peth, Pune)..Respondents

Shri M.D. Lonkar – Advocate for the Applicants

Shri D.B. Khaire, Special Counsel with

Smt. K.S. Gaikwad – Presenting Officer for Respondent No.1 to 5

Shri K.R. Jagdale – Advocate for Respondents No.6 & 6A

CORAM : Smt. Justice Mridula Bhatkar, Chairperson

Smt. Medha Gadgil, Member (A)

RESERVED ON : 26th July, 2023

PRONOUNCED ON: 11th August, 2023

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicants, Shri D.B. Khaire, learned Special Counsel with Smt. K.S. Gaikwad, learned Presenting Officer for Respondents No.1 to 5 and Shri K.R. Jagdale, learned Advocate for Respondents No.6 and 6-A.

2. In this case the main issue is whether applicants are government servants. The applicants were employed in Balchitravani establishment under the Societies Registration Act and Bombay Public Trust funded initially by the Central Government and subsequently it was taken over by the State Government on 31.10.1991. The applicants were appointed from 1985 onwards till 2017 i.e. till the date of impugned order/GR dated 31.5.2017. By impugned GR dated 31.5.2017 the services of the applicants were terminated. In order to point out that applicants are government servants, Ld. Advocate for the applicants relied on para 7.5 of the OA wherein it is stated that 6 posts were declared surplus by GR dated 25.11.2002 and upon retirement on superannuation they have been duly granted all service benefits.

3. The Government of India decided to establish State Institute of Educational Technology (SIET) i.e. Balchitravani in Maharashtra and Other States in 1982 for making children educational films. The SIET/Balchitravani/Society/Institute was set up in Maharashtra vide GR dated 27.1.1984 and the Central Government provided 100% financial assistance for establishment expenses including salaries. Vide GR dated 27.1.1984 initially 28 posts were created and vide GR dated 8.1.1985 another 92 posts were created. The appointments to the post of Class-I and Class-II employees were done by a selection committee established vide GR dated 30.1.1985 and appointment to the post of Class-III and Class-IV employees were done by a selection committee established vide GR dated 28.5.1986. Thereafter the Government granted sanction to establish the said Institute under the Societies Registration Act, 1860 and the said Institute was registered as Society on 5.2.1992. The said Institute was never given any grant-in-aid by the State of Maharashtra. Thus, the salaries of the staff as well as expenses for preparation of audio-visual educational program which were telecast from Doordarshan were 100% borne by Central Government. The Central Government sought information from the State Government about taking responsibility of the said Institute by letter dated 31.12.2002. By letter dated 14.1.2003 the State Government expressed its inability to bear the expenses of the said society. From the year 2003 onwards the Central Government stopped the grants for salary of the staff of SIET which was then required to depend on its own sources to pay salaries to its employees till March, 2013. The funds generated by SIET were never deposited in the State Exchequer but the said funds were retained by the SIET and were utilized to pay the salaries of the staff. The telecast of the program prepared by the SIET was stopped by Doordarshan which resulted in reduction of income. As the said institute did not have funds to pay salaries to the staff, in April 2013, 16 employees filed a Complaint (ULP) No.242/2015 in

the Industrial Court, Pune. The Industrial Court, Pune was pleased to pass order dated 3.11.2015 below Exhibit U-2 in Compliant (ULP) No.242/2015 directing the SIET-State Government to pay arrears of pay of employees of SIET. The Industrial Court while deciding the complaint filed by the employees was pleased to observe that Balchitravani is an Industrial Unit and as such the complainants are Workmen under the Workmen's Compensation Act. The order of the Industrial Court was challenged by the SIET (Balchitravani) before the Hon'ble Bombay High Court by filing W.P. No.1590 of 2016. The said writ petition was dismissed by the Hon'ble High Court by its order dated 14.3.2016 confirming the order of the Industrial Court.

4. Shri M.D. Lonkar, learned Advocate for the Applicants prays that applicants should be treated as Government servants with all consequential service benefits from time to time. He submitted that the applicants were regularly appointed. He further pointed out that the Finance Department issued GR dated 10.9.2001 pursuant to which a review of various posts of Government servants were directed to be carried out. Ld. Advocate for the applicants submitted that the post on the establishment of the SIET including the posts held by the applicants were brought under the purview of the said GR dated 10.9.2001. He further pointed out that in consonance with the aforesaid GR dated 10.9.2001, 6 posts were declared as surplus from sanction 121 posts. On the basis of minutes of the meeting of the High-Power Committee the GR dated 25.11.2002 was issued by respondent no.4.

5. Ld. Advocate for the applicants pointed out that few employees working with the last respondent i.e. SIET consequent upon their retirement on attaining the age of superannuation have been treated as Government servants and have been granted pensionary benefits in the form of pension as well as gratuity. Ld. Advocate for the applicants

challenges GR dated 31.5.2017 issued by invoking the powers as contemplated under Section 25FFA of the Industrial Disputes Act, 1947 by which the services of the applicants were terminated. He further stated that the said GR is violative of the provisions of Article 14, 16 and 21 of the Constitution of India. Another contention raised by the Ld. Advocate is that the applicants should have been considered for grant of status as Government servants and even if it was found that applicants had become surplus then by invoking the provisions of GR dated 10.9.2001 the services of the applicants were required to be transferred to the surplus cell. He relied on the ratio laid down by the Hon'ble Supreme Court in the case of M/s. Motilal Padampat Sugar Mills Co. (P) Ltd. Vs. State of Uttar Pradesh & Ors. decided on 12.12.1978, 1979 AIR 621, 1979 SCR (2) 641. He also stated that the fact that the applicants have put in more than 20 to 25 years of total service, the doctrine of legitimate expectancy is also attracted. He also pointed out that only 6 posts were declared as surplus and therefore transfer to the surplus cell and consequent on retirement those 6 employees have been duly granted service benefits. He, therefore, prays that the impugned order dated 31.5.2017 be quashed and set aside and the applicants should be treated as Government servants.

6. Shri D.B. Khaire, learned Special Counsel with Smt. K.S. Gaikwad, learned Presenting Officer for Respondents No.1 to 5 relied on the affidavit dated 24.8.2017 filed by Shri Nandkumar, Principal Secretary, School Education Department. He raised preliminary issue about maintainability of the present OA and the SIET was independent institute registered under the Societies Registration Act, 1860 and the said institute started functioning as society since 1992. The said institute was never given grant-in-aid by State of Maharashtra and after 2003 the State Government expressed its inability to bear the expenses of the society. The SIET/Balchitravani generated its income by creating program for Doordarshan and other educational institutes like SCERT, MPSP. He

pointed out that the Industrial Court while passing the order dated 3.11.2015 on the basis of complaint filed 16 employees directed the State Government to pay arrears of pay of employees to Balchitravani. The Industrial Court observed that Balchitravani is an Industrial Unit and as such the complainants are Workmen under the Workmen's Compensation Act. This decision was confirmed by the Hon'ble Bombay High Court in W.P. No.1590/2016. He further pointed out that all the applicants were paid compensation after the State closed down the said institute (Industrial Unit) by GR dated 31.5.2017. He submitted a chart showing amount paid to the employees.

7. The six (6) employees who were granted service benefits were appointed by Government before establishment of the Unit. All the 6 employees were appointed on deputation to the said Unit. Out of these 6 employees, 3 employees gave option to remain in Government service though they were working on deputation in Balchitravani. Al though these 6 employees were working in Balchitravani their salaries were always drawn from the public exchequer. Thus, these 6 employees were paid salaries by the State Government whereas remaining employees in Balchitravani were paid salary by the Balchitravani. He further pointed out that Shri Ananta Kale and Shri Avinash B. Naik gave option on 19.4.2004 to go back to Government and their services were considered as eligible for pensionary benefits on the condition that their services period in the Unit was not be entitled for deputation allowance. He further submitted that irrespective of the option given by the 6 employees since their salaries were always drawn from the Government/Public Exchequer they were always treated as Government employees and hence they were paid all the pensionary benefits after superannuation. Hence, he distinguished the case of these 6 employees from the applicants. He therefore, prayed that the OA should be dismissed.

8. Shri K.R. Jagdale, learned Advocate for Respondents No.6 and 6-relied on the affidavit in reply dated 4.6.2019 filed by Smt. Vandana Krishna, Additional Chief Secretary, School Education and Sports Department, Mantralaya, Mumbai on behalf of Respondent No.4. He argued that applicants are trying to get dual benefits of double status both as Industrial Workmen as well as Govt. employees which is not tenable. He pointed out that they have already received benefits as Workmen as per the orders of the Industrial Court and they are now trying to get double benefit as Government servants. He pointed out that the Hon'ble High Court in W.P. No.1590 of 2016 has already decided that they were Workmen of Autonomous Industry and this point has not been placed before this Tribunal. He stated that applicants were employed as temporary employees at SIET which was granted an autonomous status vide GR dated 31.10.1991. After giving autonomous status to the institution vide letter dated 14.7.1993 issued by the Director, SIET options were given to all the employees of the institute whether to continue or not with the autonomous institute on the allotted post. He produced these forms. He further pointed out that as per GR dated 31.5.2017 the institute was closed down according to the provisions of the Industrial Disputes Act, 1947 under Section 25FFA which permits the closure of an industrial unit with less than 50 workmen and which is facing financial crises. All the workmen were given one month's intimation notice and all the salary and consequential service benefits as per Industrial Disputes Act were paid. After accepting salary and consequential benefits as Workmen up to 31.5.2017 as per the Industrial Disputes Act, the applicants have now approached this Tribunal for further benefits as Government employees.

9. We have considered the contentions of both the sides. In this case the main issue is whether the applicants are Government servants or not. It is seen that SIET was granted autonomous status vide GR dated

31.10.1991. Having the right of power to be self-governed means that its employees would not get status as Government employees. The institute was registered with the Charity Commissioner under the Societies Registration Act, 1860. There are other similar autonomous institutes working under the State Government Education Department e.g. Balchitravani, Maharashtra State Board for SSC and HSC and Maharashtra State Council for Education, Research and Training (Vidya Parishad) where all the salary and other expenses are borne by these autonomous institutes themselves from revenue collected and no employee of these institutes is eligible for any kind of pensionary benefits except the Government officials posted there. Initially the institute was getting 100% grant-in-aid from the Central Government. When the Central Government by letter dated 31.12.2002 sought information from State Government about taking the responsibility of the said institute, the State Government vide letter dated 14.1.2003 expressed its inability to bear the expenses of the said society. It is clearly seen that the salary and expenses of the Balchitravani were borne out of the income generated by the Balchitravani itself.

10. We rely also on the order dated 3.11.2015 passed by the Industrial Court, Pune wherein it is clearly stated that the SIET prima facie appears to be a society and the complainants are indisputably covered within the definition of Workmen. Accordingly, the Director, SIET was directed to pay the complainants earned wages including unpaid wages for 16 months within one month. This order was challenged by the SIET before the Hon'ble High Court in W.P. No.1590/2016 and the Hon'ble High Court dismissed the writ petition and confirmed the order passed by the Industrial Court.

11. It is clear that the applicants were employed as temporary employees at SIET vide GR dated 31.10.1991 and SIET was granted

autonomous status. Moreover, the applicants have willingly given their option to continue working with this autonomous institute on the allotted post.

12. As far as 6 employees who got pensionary benefits, it is clear that they were originally State Government employees who were sent on deputation to SIET and their salaries were being drawn from the Government Treasury while salaries of the applicants and other temporary employees of SIET were paid from the Bank account of SIET. It is further noted that applicants have accepted salaries and consequential benefits as per Industrial Disputes Act as Workmen up to 31.5.2017 as per Industrial Disputes Act.

13. In view of all these factors it is clear that these applicants are not Government employees but the employees of the independent Balchitravani an autonomous unit, which was registered under the Societies Registration Act, 1860 in the year 1992 and also the fact that the Hon'ble High Court has confirmed the order of the Industrial Court and declared the applicants as Workmen under the Workmen's Compensation Act.

14. In view of the above, we hold that the Original Application deserves to be dismissed. Original Application is dismissed. No orders as to cost.

Sd/-

(Medha Gadgil)
Member (A)
11.8.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
11.8.2023

Dictation taken by: S.G. Jawalkar.