

MHIC090000722023

Exh.O-



IN THE INDUSTRIAL COURT NO.1, MAHARASHTRA  
AT KOLHAPUR

Complaint (ULP)No.11/2023

Smt. Ranjana Eknath Phad .. Complainant

V/s

Registrar, Shivaji University, Kolhapur .. Respondent.

CORAM : S. S. Khandekar, Member.  
(J.O. Code :- MH-02957)

IN THE MATTER OF INTERIM RELIEF U/S. 30(2) OF  
THE MRTU & PULP ACT, 1971.

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**APPEARANCES** : Shri. P. R. Rane, Ld. Counsel for Complainant.  
Shri. D. S. Joshi, Ld. Counsel for Respondent.  
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**: ORDER BELOW EXH.U-2 :**

(DICTATED & PRONOUNCED IN OPEN COURT ON 23.1.2023)

1. The Complainant has filed the Complaint along with the instant application for interim relief u/s. 30(2) of the MRTU & PULP Act, 1971 (hereinafter mentioned as 'the Act of 1971' for sake of

brevity).

2. The Complainant is working on the post of Assistant Superintendent with the respondent. She has challenged the suspension order dtd. 12.01.2023 and 13.01.2023 by way of present proceeding. The Complainant has urged for prima facie declaration of unfair labour practices. It is also urged to stay the effect and operation of suspension order dtd. 12.1.2023 and direct the respondent to allow the Complainant to perform her duties forthwith till the decision of the complaint.

3. It is contended that the Registrar, Shivaji University, Kolhapur is the administrative head as per the provisions of the Maharashtra Universities Act, 2016. The Complainant performs her duties on the post of Assistant Superintendent. She is required to write various registers and maintain record of the students in the department. She has to do verification of the documents of the students claiming scholarship and appearing for Ph.D. The nature of duties are clerical. The Complainant works under the complete control and supervision of head of the department. She has no

authority to appoint or terminate any employee. She cannot allot work to any of the employees. She cannot take policy decisions. She has no authority to sanction or reject leaves. She cannot issue memo, show cause or initiate disciplinary action. Thus, the Complainant is a 'workman'. The respondent is involved in systematic activity with the help of employees. Thus, the respondent is an 'industry'.

4. Thereafter, the Complainant has narrated her service tenure. She came to be appointed as Junior Clerk on 28.05.2004. She was promoted on the post of Senior Clerk on 03.10.2008. She was confirmed on the post of Senior Clerk by order dtd. 03.05.2011 with effect from 03.10.2010. The Complainant obtained Master of Arts degree on 12.03.2011. She was promoted on the post of Assistant Superintendent by order dtd. 28.12.2017 with effect from 23.03.2017. The Complainant has performed duties for 19 years in various departments of the respondent University. As part of routine transfer for administrative purposes, she is transferred to English Department on 27.04.2022.

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5. It is contended that the Head of Department of English Department Dr. T. K. Karekatti did not allow the Complainant to join duties for three days as the Complainant went to take charge and perform her duties. The Head of Department has not given any reason, hence, the Complainant approached the respondent and orally informed the illegality on the part of said Head of Department. Then only the complainant was allowed to join duties. There was only one Clerk and Peon on daily wages working in the said department. The Complainant was required to rely upon the Head of Department of English Department for understanding the working and nature of duties. However, the said Head of Department did not inform anything to the Complainant. The Head of Department by holding grudge against the Complainant informed the Deputy Registrar, the false and frivolous facts about the Complainant. The Deputy Registrar without any authority and by ignoring 19 years meritorious service of Complainant, issued office order dtd. 22.09.2022 directing the Complainant to submit explanation through Head of Department. The said Deputy Registrar has no authority to issue any order calling explanation

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from any employee of the university. The Complainant submitted detailed explanation to the respondent by letter dtd. 27.09.2022 and its copy to the Deputy Registrar through the Head of Department on 01.10.2022. The Head of Department, on 28.09.2022 became angry and directed the Complainant not to stop in the office of department. The Complainant informed the same to the Vice Chancellor of the University by letter dtd. 29.09.2022. The Head of Department got further annoyed and insulted the Complainant in front of subordinate staff and students to harass her. The Complainant informed by letter dtd. 14.10.2022 to the Respondent.

6. Again the Deputy Registrar by office order dtd. 04.01.2023, by giving reference of letter dtd. 24.11.2022 and 28.11.2022 of Head of Department and without providing copies of the same, asked the Complainant to submit explanation within 7 days as to why enquiry should not be conducted against her. The Deputy Registrar has no authority to issue such letters. The Complainant by letter dtd. 11.01.2023, demanded letters dtd. 24.11.2022 and 28.11.2022, for submitting detailed explanation.

However, the respondent immediately suspended the Complainant on 12.01.2023 ignoring the 19 years service record in various departments and due to personal grudge of Head of Department of English Department.

7. The Complainant is suspended only to please the Head of Department of English Department. She is suspended before taking any decision as to which type of disciplinary action shall be initiated against her. In breach of provisions of the Maharashtra Civil Services Rules (hereinafter called as 'the MCS Rules' for sake of brevity), the respondent has not given any reason that shall amount to serious misconduct on the part of Complainant which makes her liable for major penalty and disciplinary action. Further the Complainant is directed not to leave headquarter without prior permission of respondent just to harass and victimize her. She is suspended without any show cause notice and without framing any charge of misconduct or misbehaviour, thus she is suspended in breach of service rules. There is no mention of suspension allowance in the suspension order. On 13.01.2023 another letter is issued that Complainant shall get suspension allowance as per

University rules. There are no “University rules” as stated in the said order. The Complainant is held guilty without getting any opportunity. The impugned order is issued just to help the said Head of Department. It shall result in serious prejudice to the Complainant. Thus, it is urged to stay the effect and operation of the impugned order dtd. 12.01.2023 during the pendency of the complaint.

8. The application is contested by the respondent by filing say vide Exh. C-2. It is submitted that the interim application is false and liable to be dismissed. It is submitted that the Complainant is holding the post of Assistant Superintendent. She is doing predominantly supervisory duties in the English Department. She is holding highest administrative post, therefore, she is not a ‘workman’. There are clerks working under her and therefore, she has no right to proceed against the respondent under the provisions of MRTU & PULP Act, 1971.

9. The respondent was governed by Maharashtra Universities Act, 1994 and prior to that by Maharashtra Universities

Act, 1974. Now it is governed by Maharashtra Public Universities Act, 2016. The said Act of 2016 has special provisions regarding redressal of dispute by constituting Grievance Committee u/s. 79 and employees of University can raise such grievance before the Grievance committee which is Competent Authority to look into grievance and has redressal powers. Thus, the Maharashtra Public Universities Act, 2016 being special code, the provisions of MRTU & PULP Act, 1971 are not applicable to the respondent and thus, the complaint is not maintainable. The aggrieved employee can file appeal against the order of Grievance Committee u/s. 81(1b). Thus, this Court has no jurisdiction to deal with the present complaint. It is submitted that the complaint is filed u/s. 9 & 10 of Sch. IV of the Act of 1971. Item 9, Sch. IV pertains to breach of settlement, agreement or award. The suspension of the Complainant is as per MCS(Discipline & Appeal) Rules, 1979. There is no whisper as to breach of any rule on the part of Complainant. Merely by surmises and conjectures mentioning irrelevant things does not give right to the Complainant to espouse the cause before this Court. The Complainant has mentioned item

10 without specifying the details. Thus, the complaint itself is not maintainable.

10. Thereafter, the respondent has given parawise reply to the interim application. It denied the averments and contentions of the Complainant. It is submitted that the suspension is as per Rule 4(1) and Annexure therein of the MCS(D&A) Rules. The suspension is in contemplation of the disciplinary proceedings and question of show cause notice and charge sheet does not arise at all. The respondent has recognized the right of the Complainant to receive the suspension allowance during the suspension period. The Complainant is not held guilty. Prior to suspension order, the Complainant was issued various communications. The letter dtd. 11.01.2023 of the Complainant is received by the respondent after service of suspension order issued to the Complainant. The Complainant is trying to create false ground to suit her purpose. The respondent has not indulged in any unfair labour practices. There is no prima facie case. The balance of convenience is in favour of the respondent. It is the respondent that shall suffer irreparable loss in case interim application is granted. Thus, it is

urged to reject the interim application.

11. On the basis of rival contentions, the following points arise for determination and the findings are recorded thereon for the reasons to follow:-

<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1. Whether the respondent proves that the complaint is not maintainable ?	.. No.
2. Whether the respondent proves that the Complainant is not a 'workman'?	.. No.
3. Whether the complainant demonstrated strong prima facie case?	.. No.
4. Whether the complainant has shown balance of convenience?	.. No.
5. Whether the complainant demonstrated irreparable loss?	.. No.
6. What order and relief ?	As per order.

### **REASONS**

#### **AS TO POINT NO. 1 :**

12. The respondent has contended that through the reply

that the complaint is not maintainable for the reason that under the provisions of Maharashtra Public Universities Act, 2016, there is provision of Grievance Committee, any employee of the university can approach such Grievance Committee. There is also provision of appeal u/s. 81 to challenge the order passed by the Grievance Committee before the University Tribunal. Under such circumstances, it is contended that the complaint itself is not maintainable. Thus, there is no question of grant of any interim relief.

The Ld. Counsel for the Complainant argued that Sec. 81 of Maharashtra Public Universities Act, 2016 provides that in case of dismissal, removal or otherwise termination of service and in case of compulsory retirement or reduction in rank, the employee can approach the Grievance Committee and against the decision of Grievance Committee, appeal can be filed before the University Tribunal. It is argued that present matter pertains to issuance of suspension order and therefore, the jurisdiction of this Court under the MRTU & PULP Act, 1971 is not ousted.

13. Heard the Ld. Counsels at length and perused the

documents. It is well settled proposition that in view of availability of parallel remedy, the jurisdiction of this Court is not ousted.

In the matter of *Balasaheb Dagadu Yeole vs. Sangamner Taluka Vikas Pratishthan Bairavnath Madhyamik Vidyalaya Judgment dtd. 09.12.2016 in W.P. No. 1572/2015, the Hon'ble Bombay High Court* was pleased to hold that in case the employee is a 'workman', belonging to School or College or for that matter University, such employee can approach the Labour Court or Industrial Court under the provisions of MRTU & PULP Act, 1971 to raise his grievance. Therefore, the objection raised by the respondent has no substance and is liable to be answered in negative. Hence, the point no. 1 is answered accordingly.

**AS TO POINT NO. 2 :**

14. The respondent has raised another ground by submitting that the Complainant is working on the post of Assistant Superintendent. There are Clerks working under her and she is holding highest administrative post which has supervisory powers. Under such circumstances, the Complainant cannot be called

‘workman’ and on this ground the complaint itself is not maintainable. The respondent relied upon the provisions of standard code to demonstrate the duties of the post of Assistant Superintendent in support of its contention.

The Ld. Counsel for Complainant relied upon the Government Resolution dtd. 20.05.2010 to demonstrate that the standard code has been abolished and its’ place has been taken by the MCS Rules. It is submitted that as the standard code itself does not exist, there is no question of rejecting the complaint for non maintainability of this ground.

15. Heard Ld. Counsels at length and perused the documents. It is the contention of respondent that the Complainant is discharging the duties of administrative and supervisory nature. The respondent relied upon the standard code which is replaced by MCS Rules. The respondent at present has not filed any list of duties performed by the Complainant. Even otherwise, such question cannot be decided without granting an opportunity to the parties to lead evidence. Under such circumstances, at present, other than merely raising an objection, the respondent has taken no

steps, therefore, the objection is liable to be disposed of, at present.

Hence the point No. 2 is answered accordingly.

**AS TO POINT NO. 3 to 5:**

16. The Ld. Counsel for Complainant argued that during the period 2004 to 2022, no memo is issued against the Complainant although she worked in various departments. The Complainant performed her duties sincerely and diligently. It is further argued that the Deputy Registrar of the respondent has no authority to issue any memo or notice. The Complainant is appointed by the Registrar of the University. Earlier, the respondent university was governed by the Maharashtra Universities Act, 1994 and now by Maharashtra Public Universities Act, 2016. It is further argued that disciplinary proceedings are governed by MCS Rules. As per the said MCS Rules, there are minor and major punishments. The minor punishment result from disciplinary action and major punishments result from departmental enquiry. The Complainant was not supplied letters dtd. 24.11.2022 and 28.11.2022. By the impugned order she is directed not to leave Headquarter against the provisions of MCS Rules. The suspension order gives no reason for

issuance of the same. No decision is taken to conduct departmental enquiry. Even the suspension order is issued by In-charge Registrar, that has no authority. It does not mention any suspension allowance. After realizing the mistake, the respondent issued letter about suspension allowance on the next day. Thus, the Complainant is able to demonstrate strong prima facie case, balance of convenience and irreparable loss on her part. Hence, it is argued to allow the interim application.

17. The Ld. Counsel for the respondent argued that the document no. 18 i.e. suspension order is as per the format provided in MCS Rules, therefore, the Complainant cannot claim that the suspension order itself is bad in law. She is also issued letter about suspension. It is argued that in the premise of university service, the primary consideration is students' welfare. The Complainant was negligent and lethargic in performance of her duties. She was issued various letters and oral reprimands to improve her conduct and perform her duties diligently. In any department the Complainant is expected to do same work. The Complainant failed

to perform her duties properly. The hierarchy of the posts narrated. It is as follows : Registrar, Deputy Registrar, Assistant Registrar, Superintendent and Assistant Superintendent. It is argued that therefore, the Deputy Registrar has every authority to issue notices to the subordinate staff. Therefore, it cannot be said that the said Deputy Registrar has no authority.

It is further argued that the suspension is not a punishment. On the basis of various complaints received from Head of Department, the respondent was constrained to initiate action against the Complainant. It is argued that it is the respondent that shall suffer irreparable loss in case the interim relief is granted.

18. Heard the Ld. Counsels at length and perused the documents. The service tenure of the Complainant is not disputed. She came to be appointed on 28.05.2004, thereafter she has served at various departments of the respondent university. The dispute arose from the time the Complainant is transferred to the English Department of the University in April 2022. The Deputy Registrar issued office order dtd. 22.09.2022. It is stated therein that there is

negligence on the part of Complainant. The conduct of Complainant was questionable. The allotted work was not completed within time. The Complainant has given reply on 27.09.2022. It was submitted that there is scarcity of staff at the said department. The documents are not filed properly. The Complainant submitted that certain work remained to be completed inadvertently and she has deposited the fine amount.

Thereafter, the Complainant submitted application to the Vice Chancellor on 29.09.2022 and 14.10.2022. From the document, it can be seen that there was oral altercation between the Complainant and Head of Department of the said department. Again on 18.10.2022 and 04.01.2023, the Deputy Registrar has issued office order to the Complainant to submit explanation. It is mentioned therein that various complaints have been received from the Head of Department of the said department towards the conduct of the Complainant. On 11.01.2023, the Complainant demanded certain information from the Deputy Registrar. It is seen that the said letter is served upon the Deputy Registrar on

12.01.2023. Prior to that the Acting Registrar of the respondent has issued suspension order. The Acting Registrar has also issued order dtd. 13.01.2023 whereby the Complainant was informed that she would be paid suspension allowance and she has to mark her attendance everyday.

19. It is contended by the Ld. Counsel for the Complainant that the Deputy Registrar has no authority to issue office orders as he is not the controlling authority. It is claimed that only the Registrar has authority and powers to issue such orders. It is seen that the post of Deputy Registrar is senior in hierarchy to the Complainant. The Complainant is working on the post of Assistant Superintendent. The hierarchy of the post is Assistant Superintendent then Superintendent, then Assistant Registrar, then Deputy Registrar and then Registrar. Under such circumstances, the Deputy Registrar exercises administrative control over the Assistant Superintendent. Therefore, the Complainant cannot at this prima facie stage question the authority of the Deputy Registrar to issue office orders to maintain discipline at the office.

It is seen that the suspension order is issued by the Acting Registrar. No provision is demonstrated to show that said Acting Registrar has no such powers to issue suspension order. The Complainant also claimed that suspension order is not proper. It is seen that the said suspension order is as per the proforma provided in the MCS Rules. Therefore, there is no error in the said format.

20. It is seen at prima facie stage that there has been consistent complaints against the Complainant by the Head of Department of the concerned department where the Complainant is rendering services. There is strength in the submission of the Ld. Counsel for Respondent that the services of Complainant are related to the field of education. Therefore, there are deadlines regarding declaration of results and submission of documents etc. Under such circumstances, the departments are required to complete the work in a time bound manner and therefore, even minor negligence or dereliction in duty is not permissible. Under such circumstances, considering the consistent complaints by the Head of Department, it is within the discretion of the respondent to initiate disciplinary

action against the Complainant. Stalling such action at this stage is not permissible. It is a settled proposition that Courts rarely interfere with the suspension orders or stall the disciplinary proceedings.

21. The Ld. Counsel for respondent relied upon the following case laws :

- 1) *New India Assurance Co. Ltd. vs. S.M.I. Kazim & Ors. 2001*  
(4) LLN SC 40
- 2) *Godrej & Boyce Mfg. Co. Ltd. vs. Jaikrishna jan Bahadur Singh & Anr.2002 I CLR 507*

This Court is in respectful submission to the ratio laid down by the Hon'ble Bombay High Court but the facts of the said case and present matter are distinct.

- 3) *Anthea Aromatic Pvt. Ltd. Vs. Association of Chemical Workers 2005 II CLR 173*
- 4) Writ Appeal No. 339/2020 decided by the Hon. Hyderabad High Court dtd. 16.09.2020 has observed as under ;

*“Furthermore, the suspension is not a punishment. Suspension is merely suspending the relationship between the employer and an employee. Since the petitioner is facing both the Criminal trial, and a departmental enquiry, the employer cannot be saddled with such an*

*employee. Therefore, the respondents were justified in issuing the suspension order, dtd. 31.07.2020.*

*For the reasons stated above, this Court does not find any merit in the present appeal; it is, hereby, dismissed at the admission stage. Since the learned Single Judge has granted the liberty to the petitioner to file a departmental appeal against the impugned suspension order, the liberty shall continue. No order as to costs.*

In the facts of the case, it is a prerogative of the respondent to initiate the proceedings considering the various complaints against the Complainant. Thus, the Complainant failed to demonstrate strong prima facie case, balance of convenience and irreparable loss. No justifiable reason is shown to interfere with the impugned order or to stay the same during the pendency of the complaint. Hence the points no. 3 to 5 are answered accordingly.

**AS TO POINT NO. 6 :**

22. In the premise of above facts and circumstances, the application for interim relief is liable to be rejected. Hence, the following order is passed :

**: ORDER :**

1. The application Exh.U-2 is rejected.
2. The complaint to proceed further.

Kolhapur.

Date : 23.01.2023  
RSS/-

(S. S. Khandekar)  
Member,  
Industrial Court No.1, Kolhapur.