

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8701 OF 2013

1. Dr.Navinchandra Gopal Shimpi,
Age 34 years, Occu.Service,
r/o Plot No.25, Gut No.26,
Shantai, Nivrutinagar, Near
Kartik Swami Temple, Jalgaon,
District Jalgaon.
2. Dr. Vijay Raman Chaudhary,
Age 32 years, Occu. Service,
r/o Zoorkhed, Post Zoorkhed,
Taluka and District Jalgaon.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai.
2. The Director of Higher Education,
Maharashtra State, Pune.
3. The North Maharashtra University,
Jalgaon, through its Registrar.
4. The Hon'ble Vice Chancellor,
North Maharashtra University,
Jalgaon.
5. The University Grants commission,
through its Joint Secretary,
Bahadur Shah Jafar Marg,
New Delhi.

...RESPONDENTS

Mr.S.R.Barlinge, Advocate, for petitioners.
Mr. V.H.Dighe, AGP for respondent State.
Mr. A.B.Girase, Advocate, for respondent no.3.
Mr.S.B.Deshpande, ASG, for respondent no.4.
Mr.Alok Sharma, Advocate, for respondent no.5.

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**CORAM: S.S.SHINDE
AND
P.R.BORA, JJ.**

Date: 29th July, 2015

Date of reserving
the judgment: 20/3/2015
Date of pronouncing
the judgment: 29th July, 2015

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JUDGMENT: (Per P.R.Bora, J.)

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for the parties.

The present petition was filed by two petitioners, challenging the orders of even date, terminating their services, and with a further prayer for continuation of their services after 31st March, 2015, even after cessation of financial assistance extended by the University.

2. During pendency of the petition, petitioner no.1, namely, Dr. Navinchandra Gopal Shimpi, joined with Mumbai University as an Associate Professor. As such, an order has been passed by this Court on 11th September, 2015, thereby making it clear that the present writ petition would be

proceeded further qua petitioner no.2. It is not in dispute that the petitioner was appointed vide order of appointment dated 28.4.2011, issued under the signature of the then Vice Chancellor of respondent no.3 University. There is further no dispute that vide Office Order dated 1.10.2013, respondent no.3 has terminated the services of petitioner no.2 w.e.f. 31.10.2013, after office hours. Taking exception to the said termination order, the present petition was filed on 15.10.2013. On 22nd October, 2013, this Court has granted ad interim relief in favour of the petitioners in terms of prayer clauses C and D of the petition, thereby staying operation of the order dated 1.10.2013, and directing respondent nos. 2 and 3 to continue the petitioners in service and to pay their salary regularly.

3. It is the case of the petitioners that the University Grants Commission has framed a Scheme known as innovative programme during the period of 11th Plan according to which the colleges were to be given financial assistance for the approved staff for a period of five years on an assurance from the said institution or college that the programme shall continue even after completion of said five years. It is the further case of the petitioners that respondent no.3 University accepted the terms and conditions of the innovative programme and started

the course of M.Tech. in Nano Science and Technology as approved by the University Grants Commission (U.G.C.). It is the further case of the petitioners that respondent no.3 University had communicated the U.G.C. that the innovative programme and the courses undertaken in the said programme will continue even after period of five years and for continuation of the said course and / or the programme, the financial assistance will be sought from the State Government. According to the petitioner, it was also resolved by respondent no.3 University that even if the State Government declines to extend financial approval for continuation of the innovative programme, the University at its own, will bear all financial burden even after completion of the five years.

4. It is the further submission of the petitioners that while issuing appointment orders to the petitioners, the University has committed a mistake by introducing clause No.1, thereby appointing the petitioners on purely temporary basis for a period of five years i.e. till 31st March, 2015, when it was the specific condition imposed by the U.G.C. that the U.G.C. will not pay for ad hoc or temporary appointments made if any against the regular posts approved under the programme. According to the petitioners, the University has violated the

assurance given to the U.G.C. It is the further contention of the petitioners that the petitioners were bona fide believing that when their appointments were being made under the innovative programme, which has been accepted by respondent no.3 University, their appointments are made on permanent basis. The petitioners have alleged that after having accepted the innovative programme initiated by the U.G.C., it was open for respondent no.3 University to deviate from any of the clauses and / or obligations imposed by the U.G.C., while providing financial assistance under the said programme. The petitioners have, therefore, alleged the impugned orders to be bad in law and have prayed for setting aside the orders and also prayed for their continuation beyond 31st March, 2015.

5. Shri Ashok Mahadu Mahajan, the then Registrar of respondent no.3 University has filed affidavit in reply on behalf of respondent nos. 3 and 4. These respondents have raised preliminary objection for entertaining the present petition on the ground that alternate and efficacious remedy to file appeal under Section 59 of the Maharashtra Universities Act, 1994, was available to the petitioners. It is the further contention of these respondents that the petitioners were appointed purely on contract basis and with a specific condition that their

services may be terminated even prior to the period of five years by giving one month's notice and the petitioners have accepted the terms and conditions incorporated in the said appointment orders. In the circumstances, according to the respondents, the petitioners are estopped from raising any dispute so far as the terms of appointments are concerned. It is further contention of respondent nos. 3 and 4 that neither the management Council nor the Academic Council have, at any point of time, have granted approval to start the courses in the Department of Chemical Technology. It is further contended that the respondent University had never assured that the Course (M.Tech.) will continue even after cessation of the U.G.C. assistance. The respondents have alleged that the documents filed on record in this regard are not genuine documents. It is further contention of the respondents that no illegality has been committed by respondent no.3 University in terminating the services of the petitioners and on all these grounds respondent nos. 3 and 4 have prayed for dismissal of the petition.

6. We have carefully considered the submissions made on behalf of the petitioners as well as respondent nos.3 and 4. We have also perused the documents filed on record by both

the parties. On perusal of the appointment order dated 28.4.2011, issued in favour of petitioner no.2, it is revealed that the petitioner no.2 was appointed as an Assistant Professor under the U.G.C. Innovative Programme Post in the subject of Nano Science and Technology in the Department of Chemical Technology in the pay band of Rs.15,600-39,100/- with AGP OF Rs.6,000/- plus other allowances. From clause 1 of the terms and conditions incorporated in the aforesaid appointment order, it becomes further clear that the appointment of petitioner no.2 was on the post sanctioned under innovative programme by the U.G.C. The said clause further reveals that the appointment of the petitioner was purely on temporary basis and only for the period upto 31st March, 2015. It is further mentioned in the said clause that the services of the petitioner will be liable to be terminated / discontinued by giving one month's notice by either side and / or by payment of one month's pay in lieu of notice without any reason being assigned for such discontinuation / termination.

7. Now, it will be useful to look into the contents of the order of termination. The services of petitioner no.2 have been terminated on the ground that the U.G.C., vide its communication dated 27.9.2011 and 13.5.2013 conveyed its

inability to release salary grants citing reason that the North Maharashtra University has appointed the petitioner purely on temporary basis and such appointment cannot be considered for providing salary grants. It is further mentioned that the Government of Maharashtra has also not given its concurrence for continuation of the said posts. The respondent nos. 3 and 4 have not disputed that the financial assistance was to be extended by the U.G.C. on an assurance from the University that the approved Course will continue even after the U.G.C. assistance to the programme ceases and further that the U.G.C. will not pay for ad hoc / temporary appointments made, if any, against the regular posts approved under the programme. Admittedly, the posts on which the petitioners were appointed were approved by the U.G.C. under the Innovative programme. Even in an advertisement issued in that regard there was a reference of U.G.C.'s innovative programme. In the order of appointment also it has been clearly mentioned that the said appointment is on the post sanctioned under the innovative programme by the U.G.C.

In the circumstances, we find force in the submission made on behalf of the petitioners that they were bona fide believing that when respondent no.3 University has accepted the innovative programme initiated by the U.G.C., in turn, it

has also accepted the terms and conditions imposed in that regard by the U.G.C. more particularly, to the effect that the said innovative programme will be continued even after cessation of the financial assistance by the U.G.C. after 31.3.2015 and that their appointments are on the regular posts approved under the said innovative programme. Respondent nos. 3 and 4 have not provided any explanation as to why they have issued temporary orders to the petitioners when it was the specific condition imposed by the U.G.C. that the U.G.C. will not pay for such temporary appointments, if any, against the regular posts approved under the said programme.

8. In view of the ground taken by respondent no.3 University in the impugned order of termination, that the University Grants Commission has conveyed its inability to release the salary grant, it is estopped from raising the contention that neither the Management Council nor the Academic Council of the University have passed any resolution thereby approving the Innovative Programme initiated by the University Grants Commission. The facts which have come on record reveal that the course of M.Tech. (Nano Science and Technology) was already started by respondent no.3 University on Self Support basis. Thereafter, the University Grants

Commission introduced the Innovative Programme and sanctioned two posts of Assistant Professors and also the grants to the tune of Rs.55.5 lacs. Had the University not approved or accepted the University Grants Commission's terms, there was no reason for the University to demand the grants from University Grants Commission. Respondent no.3 University now cannot take a stand that they have not approved the terms of the University Grants Commission and not demanded the grants from University Grants Commission for the reason that the very ground taken by the University for terminating the services of the petitioner is that the University Grants commission had declined to sanction and make available the grants of Rs.55.5 lacs.

9. The record reveals that U.G.C. vide its letter dated 30th September, 2009, sent in response to the proposal submitted by the University Department of Chemical Technology, the North Maharashtra University, Jalgaon (respondent no.3) for seeking financial support for the course of Nano Science and Technology (Two Years), under the Innovative Programme, informed respondent no.3 University that the proposal so forwarded by it was accepted by the University Grants Commission. In the aforesaid letter of

approval, the University Grants Commission has incorporated the necessary terms and conditions for providing financial assistance to the tune of Rs.55.5 lacs. Clause 13 of the said approval letter envisages that, "The University Grants Commission will not pay for ad hoc / temporary appointments made, if any, against regular posts approved under the programme". The record further reveals that after receiving the aforesaid letter, giving approval for two posts of Assistant Professors under the Innovative Programme, advertisement No.3/2010 was published and the posts of Assistant Professors in Nano Science and Technology were advertised therein as the posts under Innovative Programme introduced by the University Grants Commission for the period till 31st March, 2015. The record further reveals that in pursuance of the aforesaid advertisement, petitioner no.2 applied for the post of Assistant Professor for Nano Science and Technology under the Innovative Programme and was selected by the duly constituted Selection Committee. The record further reveals that vide letter dated 23rd June, 2011, respondent no.3 University communicated to the University Grants Commission that under the Innovative Programme for M.Tech. in Nano Science and Technology (Two Years), Dr.Navinchandra Shimpi and Dr.Vijay R.Chaudhari (petitioner nos. 1 and 2) are appointed on the

post of Assistant Professor. Along with the said letter, respondent no.3 University forwarded to the University Grants Commission the following documents:

- (a) Copy of advertisement.
- (b) Bio-data of selected candidates.
- (c) Minutes of the Selection Committee - reports.
- (d) Appointment orders.
- (e) Joining reports.
- (f) Pay Fixation reports.

The record further reveals that on receiving the said letter dated 23rd of June, 2011, the University Grants Commission vide its letter dated 27th September, 2011, immediately informed respondent no.3 University that the appointments of Shri Shimpi and Shri Chaudhari will not be considered for grant-in-aid purpose since the two posts of Lecturers sanctioned under the Innovative Programme were on permanent basis whereas Shri Shimpi and Shri Chaudhari were appointed on purely temporary basis. Thus, respondent no.3 University had become aware that the appointments of the petitioners would not be considered by the University Grants Commission for grant-in-aid purpose unless they are appointed on permanent basis. However, till 2013, respondent no.3 University did not take any steps to give the permanent

appointments to the petitioners. The record reveals that, in the meantime, respondent no.3 University was also corresponding with the State Government for financial assistance to continue the Innovative Programme even after cessation of grants by the University Grants Commission after 31st March, 2015. The record further reveals that the Director of Higher Education has recommended to the Principal Secretary of Higher and Technical Education, Mumbai, for approving the posts created under the Innovative Programme of the University Grants commission in Nano Science and Technology.

10. We have already referred to the guidelines for Innovative Programme initiated by the University Grants Commission wherein one of the conditions for the recipient of grant was that the concerned University shall assure that the approved course will continue even after University Grants Commission's assistance to the programme ceases. Though the respondent University has disputed that any such assurance was given by the University at any point of time to the University Grants Commission, the contention of the University is liable to be rejected for the reason that the University itself has sought approval for appointment of the petitioners made

under Innovative Programme and have also sought grants for their salaries. There is every reason to believe that such demand could not have been made by the University without accepting the aforesaid terms and without giving assurance that the Innovative Programme will continue even after the University Grants Commission's assistance ceases.

11. We reiterate that looking to the steps taken by the University, there was every reason for the petitioners to believe that their appointments are made on permanent basis and till 31st March, 2015, the grants for their salary will be received from the University Grants Commission and, thereafter, from the State Government. Respondent No.3 University has utterly failed in bringing on record any reason for giving temporary appointments to the petitioners. It is not the case of the respondent University that it is going to close the Nano Technology Course started by it on self support basis for which subsequently it sought financial assistance from the University Grants Commission. On the contrary, the correspondence made by the University with the State Government shows that the said Nano Technology Course is going on well and is the unique course started by said University.

12. After having considered the entire material on record it is transpired that respondent No.3 University committed a mistake while issuing order of appointments in favour of the petitioners. When the appointments of the petitioners were made under the innovative programme introduced by the U.G.C., and on the posts sanctioned by the U.G.C., respondent No.3 University must have issued permanent orders in favour of the petitioners. We have already referred to the contents of the advertisement issued inviting applications for the post of Assistant Professor in Nano Technology in pursuance of which petitioner no.2 applied for the said post and was selected by due process of selection by duly appointed Selection Committee. In the advertisement so published it was specifically mentioned that the posts advertised were sanctioned under the innovative programme by U.G.C. for the period upto 31st March, 2015. In para 14 of its written statement, respondent no.3 University has also made similar averments accepting the fact of issuing an advertisement and the contents of the said advertisement. In view of the specific averment in the aforesaid advertisement that the appointments are being made for a period upto 31st March, 2015, in no case the services of the petitioners could

have been terminated prior to the said period. If the U.G.C. has refused to release the grants, the University has to blame itself for not observing the terms and conditions incorporated in the approval given by the U.G.C. while sanctioning the two posts of Assistant Professors. No blame in this regard can be attributed on the part of the petitioners.

13. In the circumstances, we hold the action of respondent No.3 University, terminating the services of the petitioners on the ground that the U.G.C. has not sanctioned the salary grants for the said posts to be bad in law and illegal. We, therefore, set aside the order of termination dated 1.10.2013 issued under the signature of the Vice Chancellor of respondent No.3 University.

In so far as further request of the petitioners to continue them in the services beyond 31.3.2015 is concerned, we leave this aspect to be considered by the University independently. However, we wish to observe that it is not the case put forth by respondent no.3 University that the course of M.Tech. in Nano Science and Technology is to be closed or discontinued by the University. If the said course is still continuing, the University may require the services of petitioner no.2. Petitioner No.1 has already joined with the Mumbai University. It is nowhere

the contention of the University that the work of petitioner no.2 is unsatisfactory. In the circumstances, the University may sympathetically consider to continue petitioner no.2.

The writ petition stands disposed of and the Rule is made absolute in aforesaid terms. No order as to costs. Pending Civil Applications stand disposed of.

(P . R . BORA)
JUDGE

(S . S . SHINDE)
JUDGE

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