

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.965 OF 2002

Sirchitnis, Nashik District Maratha
Vidya Prasarak Samaj Nashik, & Anr.

... Petitioners

vs.

Shri Arun Punjaji More & Ars.

... Respondents

Mr. K.Y. Mandlik for the Petitioners.

Mr. Satheesh K. R. for the Respondent No.1.

Mr. Rajendra Anbhule for the Respondent No.2.

**WITH
CIVIL APPLICATION (STAMP) NO.35886 OF 2012
IN
WRIT PETITION NO.965 OF 2002
WITH
CIVIL APPLICATION NO.288 OF 2015
IN
WRIT PETITION NO.965 OF 2002**

Shri Arun Punjaji More

... Applicant/Respondent No.1

vs.

Sirchitnis, Nashik District Maratha
Vidya Prasarak Samaj Nashik, & Anr.

... Respondents

Mr. Satheesh K. R. for the Applicant/Respondent No.1.

Mr. K.Y. Mandlik for the Respondent Nos.1 and 2.

Mr. Rajendra Anbhule for the Respondent No.3.

Coram : **A.A.Sayed, J.**

Dated : **4 MAY 2017**

ORDER :

1 By this Petition under Articles 226 and 227 of the Constitution
Petitioner-Management has challenged the judgment and the order
dated 31 October 2001 passed by University and College Tribunal,

Pune, in an Appeal filed by the Respondent No. 1-Lecturer under section 59 of the Maharashtra Universities Act, 1994. By the impugned order the Appeal of the Respondent No. 1-Lecturer was allowed and oral termination dated 17 August 2000 was set aside and the interim order was confirmed by the College Tribunal. The Petitioner-Management was directed not to issue termination order against the Respondent No.1-Lecturer on the ground of non-possession of required qualification.

2 The case of the Respondent-Lecturer in his Appeal before the College Tribunal, in a nutshell, is as follows:

He is M.Sc. Microbiology and belongs to Scheduled Caste. An advertisement was published in the local newspaper dated 22 May 1997 for the post of Lecturer in the subject of Microbiology from the category of Scheduled Caste in the Respondent No. 2 Medical College. He had submitted his Application for the post of Lecturer. He was called for the interview on 17 August 1997. In pursuance of the selection by the Selection Committee, he was appointed as a Lecturer by letter dated 11 September 1997. However, the pay scale for the post of Lecturer was not mentioned as per usual tactics but a fixed lumpsum salary of Rs.5,000/- was mentioned as payable to him. The appointment letter/order was issued to him on probation of one year and thereafter he was continued for the next two years i.e. 1998-1999 and 1999-2000. On 17 August 2000 the Respondent-Lecturer was

orally intimated that his services were terminated. Hence he filed the Appeal before the College Tribunal on 4 September 2000.

3 On the other hand, the case of the Petitioner Management before the School Tribunal was as follows- that there was a basic clerical mistake or clerical error caused in mentioning the required qualification of M.Sc. (Medical) - Microbiology and the word Medical having not been mentioned in the qualification column of the said Advertisement. The Petitioner/Management contended that the Respondent No.1 is not qualified and that he is only M.Sc. Microbiology and the post was advertised on 22 May 1997 for Professor for Microbiology in Medical College and therefore, the Professor was required to possess qualification of Microbiology (Medicine). The Respondent No.1 was not therefore qualified and he mislead the selection committee that he had the requisite qualification of M.sc. (Medical) in the meeting held on 17 August 1997 when he was selected as Lecturer in Microbiology. The Respondent No.1 was appointed by an order dated 11 September 1997 with effect from 15 September 1997 for one year i.e. 1997-98. By letter dated 14 June 1998 the Respondent No.1 was continued for the academic year 1998-99 on the Application dated 11 April 1998 made by the Respondent No.1. On another Application dated 12 June 1998 of the Respondent No.1, he was further continued for the academic year 1999-2000. It was learnt after verification that the Respondent No.1 did not hold the

of Microbiology in Medical and, therefore, ineligible for the said post for want of requisite qualification and therefore, he was not continued by the Petitioner/Management after the end of the academic year 1999-2000. The Respondent No.1 has not signed the muster roll from 16 June 2000 and as no letter of appointment was issued. The Appeal under section 59 of the Maharashtra Universities Act was not maintainable and section 9 of the Maharashtra Universities Act was not attracted and University and College Tribunal has would not have jurisdiction to entertain and try the Appeal.

4 After hearing the parties, the College Tribunal has recorded and answered the issues in the following terms:

“POINTS:

FINDINGS

- 1) *Whether this Tribunal could entertain the present appeal which raises question of non-eligibility of the appellant even for being appointed in the year 1997 after the establishment of independent University for the Medical College in the year 1998?* Yes.
- 2) *Whether the objection raised with regard to the non-possession of qualification could be held as acceptable and tenable?* No.
- 3) *What order?* Appeal is allowed as per final order.”

5 So far as the issue no.1 is concerned the Tribunal held that it has jurisdiction to entertain and try the Appeal. It is an admitted position that the Respondent No.1 was appointed as Lecturer on a post in Medical College run by the Petitioner No.1-Management. An enactment known as Maharashtra University of Health Sciences Act, 1998 (hereinafter referred to the Health Sciences Act) was enacted by the State of Maharashtra Act, which came into force on 3 June 1998. All Colleges imparting Education and Health Sciences conducted by the University or affiliated with the University situated in the State of Maharashtra are governed by the Health Sciences Act from 3 June 1998. Reference may be made to Sections 1(3), 2(2), 2(3), 2(11), 2(17), 2(35), 2(36), 3 and 95 of the Health Sciences Act. They are reproduced hereunder:

“1 (3) It shall be deemed to have come into force on the 3rd June 1998.

2 (2) “affiliated college” means a college imparting education in Health Sciences which has been granted affiliation by the University;

2 (3) “approved institution” means a hospital, health centre, affiliated college or such other institution recognised by the University as an institution in which a person may undergo training, if any, required by a course of study before the conferral of any degree, diploma or other academic distinction of the University;

2(11) “college” means a college imparting education in Health Sciences conducted by the University or affiliated to the University situated in the

State of Maharashtra;

2(17) "Health Sciences" means modern scientific medicine in all its branches concerning preventing, promotive, curative and rehabilitative services and included surgery, obstetrics and gynaecology, dental science, nursing and other allied subjects including the Indian Systems of Medicine in all their branches;

2(35) "teachers" means full time approved Demonstrators, Tutors, Assistant Lecturers, Lecturers, Readers, Associate Professors, and other persons teaching or giving instructions on full time basis in affiliated colleges or approved institutions in the University;

2(36) "University" means the Maharashtra University of Health Sciences, established under section 3 of this Act;"

3. Establishment and incorporation of University:- (1) *There shall be established a University by the name "The Maharashtra University of Health Sciences" with jurisdiction over the whole of the State of Maharashtra.*

(2) *The University shall be a body corporate, by the name specified in sub-section (1) and shall have perpetual succession and a common seal and shall sue and be sued by the said name.*

(3) *The University shall be competent to acquire and hold property, both movable and immovable, to lease, sell or otherwise transfer or dispose of any movable or immovable property, which may vest in or be acquired by it for the purposes of the University, and to*

contract and do all other things necessary for the purposes of this Act.

Provided that, no such lease, sale or transfer of such property shall be made without the valuation made thereof by the approved valuer appointed by the University and without the prior consent of the Government.

(4) *In all suits and other legal proceedings by or against the University, the pleadings shall be signed and verified by the Registrar or any other person authorised in this behalf, and all process in suits and proceedings shall be issued to and served on the Registrar.*

(5) *The headquarter of the University shall be located at Nashik and it may establish additional campuses at such other places with the prior approval of the Government within the State of Maharashtra as it may deem fit and appropriate.*

(6) *The University shall be both, a teaching and an affiliating University.*

95. Act to prevail over other enactment:- *This Act and Statutes, Ordinances, Regulations and Rules made under this Act shall, in respect of any college in the University have effect notwithstanding anything inconsistent therewith contained in any other enactment with respect to matters enumerated in List II of the Seventh Schedule to the Constitution of India.”*

6. Section 53 of the Health Sciences Act deals with grievances of the teachers and other employees of the Colleges, it reads as follows:

“53. Grievances Committee:- (1) *There shall be a Grievances Committee in the University to deal with the grievances of teachers and other employees of the University, Colleges, institutions and recognised institutions and to hear and settle grievances as far as may be practicable within six months, and the committee shall make a report to the Management Council.*

(2) *It shall be lawful for the Grievances Committee to entertain and consider grievances or complaints and report to the Management Council for taking such action as it deems fit and the decisions of the Management Council on such report shall be final.*

(3) *the Grievances Committee shall consist of the following members, namely:-*

- (a) *The Pro-Vice-Chancellor, Chairperson;*
- (b) *Four members of the Management Council nominated by the Management Council from amongst themselves. Members;*
- (c) *The Registrar Member-Secretary.*

(4) *The Registrar shall not have a right to vote.”*

7 It is an admitted position that the oral termination of the Respondent No.1 is on 17 August 2000. In the circumstances, the cause of action of the Respondent No.1 accrued only on 17 August 2000, which is a date subsequent to 3 June 1998 when the Health Sciences Act came into force. In the present case, the Tribunal has exercised jurisdiction on the basis that though the independent University of Health Sciences was established, no Tribunal for

assigning the work of grievances was established like the present Tribunal. The Tribunal also observed in the impugned order that it is also not known whether there is an independent Committee really formulated and the inaction on the part of the said University indirectly would justify entertaining the Appeal by the Tribunal. Thus, the College Tribunal has on the aforesaid basis, has arrogated jurisdiction to itself despite the coming into force of the Health Sciences Act from 3 June 1998. In my view, the Health Sciences Act had come into force the College Tribunal had clearly ceased to have jurisdiction and the College Tribunal was not at all justified in entertaining the Appeal for the reasons mentioned in the impugned order.

8 For the aforesaid reasons, I have no hesitation to holding that the College Tribunal had no jurisdiction to entertain and try the Appeal and the impugned order cannot be sustained. The Petition is therefore allowed. The impugned order is set aside only on the ground of jurisdiction. The Respondent No.1 is however granted liberty to approach the forum under the Maharashtra University of Health Sciences Act or adopt such remedy as may be advised. It is noticed that this Court while admitting the Writ Petition had stayed the impugned order and the Respondent No. 1 has since ceased to be in service of the Medical College. I have no doubt in my mind that if the Respondent No. 1 takes recourse to the remedy available to him in law his case will be decided expeditiously considering the fact that the

termination is of the year 2000 and the pendency of the present proceedings will be considered for the purposes of limitation.

9 In view of the disposal of the Writ Petition, nothing survive in the Civil Application (Stamp) Nos.35886 of 2012 and Civil Application No.288 of 2015. Both the Civil Applications to stand disposed of. All contentions on merits are kept open.

(A.A.Sayed, J.)