

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6701 OF 2005**

1. University of Pune,
Ganeshkhind, Pune
By its Registrar,

2. Vice Chancellor,
University of Pune,
Ganeshkhind, Pune

..Petitioners
(Org. Respondents)

v/s.

Khushal Irwantrao Vibhute
Row House, D-34,
Anmol Residence,
Kalewadi Chowk, Wakad,
Pune 411 027

..Respondent
(Org. Appellant)

Mr. A.Y.Sakhare, Sr. Advocate i/b. Rajendra Anbhule for the
Petitioner.

Mr. A.V.Anturkar, Sr. Advocate a/w. Mr. Amol Gatne i/b. Smt. Vibha
Bakre-Shastri for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
RESERVED ON : 29th JUNE 2017
PRONOUNCED ON : 13th OCTOBER, 2017.**

JUDGMENT.

1. The petitioner herein has challenged the judgment and order dated 5th August, 2005 whereby the University Tribunal has allowed the appeal filed by the respondent herein and quashed and set aside

the order of compulsory retirement dated 22nd April, 2003 and further directed the petitioner herein to re-instate the respondent to the post of Professor of Department of law, University of Pune and pay backwages and other benefits accrued within a period of 60 days.

2. Brief facts necessary to decide this petition are as under:

The respondent started his career as a lecturer in the Department of Law, University of Pune in the year 1979. In the year 1994, he was selected as a Professor in Law, and later in the year 1997 he came to be designated as the Head of the Department of Law, University of Pune.

3. On 30th August, 2000, in a complaint addressed to the Dean, one of the students Anuradha Ekatpure complained that on 21st August, 2000 in the course of the tutorials, the respondent had made inappropriate and indecent comments-having sexual overtones against her. The Dean forwarded the complaint to the Vice Chancellor of the University of Pune, with a request to appoint a fact finding Committee to ascertain the veracity of the allegations made

by the student.

4. On receipt of the said complaint, the Vice Chancellor convened a meeting of the Management Council of the University of Pune. The said complaint was placed before the Management Council in its meeting held on 18th October, 2000 and the Management Council took a resolution to appoint a fact finding committee to ascertain the veracity of the allegations.

5. Pursuant to the said resolution, the Fact Finding Committee was appointed. The Committee submitted its report dated 7th December, 2000 to the Vice Chancellor. The Committee opined that the allegations leveled by the student prime facie appeared to be true and genuine. The report of the Fact Finding Committee was placed before the Management Council. In its meeting dated 19th March, 2001, the Management Council decided to appoint an Inquiry Committee consisting of three members with Retired High Court Judge as a Chairman, Senior Woman and a person having experience of academic and administrative matters, as members. The Management Council authorized the Vice Chancellor to appoint the members of the Inquiry Committee. Pursuant to the said resolution,

the Vice Chancellor appointed a Committee consisting of Justice R. A. Jahagirdar (Retired Judge) as Chairman, Prof. Sumantai Oak and Dr. Kalyan Banerjee as the members.

6. The respondent was issued a chargesheet dated 27th April, 2001 containing details of the charges leveled against him. Upon receipt of the said chargesheet, the respondent filed his statement of defence. The respondent denied the charges leveled against him and claimed that the complaint was filed by the said student at the behest of Sureshchandra Bhosale, the Dean, Faculty of law. In the course of the enquiry one of the members Suman Oak resigned and another member Smt. Mathur was appointed.

7. On 28.1.2001 the Inquiry Committee held that the appellant University had not proceeded with the enquiry even though it was given sufficient opportunity. The Inquiry Committee therefore closed the enquiry and held that the charges against the respondent were not proved. Immediately thereafter, the presenting Officer filed an application before the Inquiry Committee for recalling the order of closure of the enquiry. The Inquiry Committee recalled the order and thereafter recorded the statements of the witnesses on behalf of the

appellant University as well as on behalf of the respondent. On 27.2.2003 the Inquiry Committee submitted the report to the Competent Authority holding the respondent herein guilty of the charges leveled against him.

8. On 25.3.2003 a show cause notice accompanied by the copy of the report was issued to the respondent and he was called upon to submit his reply. The respondent was informed that the Vice Chancellor being the Appointing and Disciplinary Authority had proposed to inflict punishment of compulsory retirement under the Teachers statute no.432-I(II)(ii).

9. The petitioner filed his reply dated 9th April, 2003 alleging that the enquiry was not fair and proper and that the allegations leveled against him were false and fabricated. By letter dated 22.4.2003 the Registrar of University of Pune, under the directions of the Vice Chancellor informed the respondent that the Vice Chancellor had considered his reply dated 9th April, 2003 and also his previous records and arrived at a conclusion that the respondent was guilty of committing an act of moral turpitude which constitutes misconduct. The respondent was informed that the Vice Chancellor being the

Competent Authority had passed an order inflicting a major punishment of compulsory retirement as per the Teachers Statute 432(I)(II)(iii) w.e.f. 22nd April, 2003.

10. The respondent challenged the said order of compulsory retirement by filing an appeal before the University and College Tribunal. By the impugned judgment dated 5th August, 2005, the University and College Tribunal allowed the appeal mainly on two grounds. i.e. the Vice Chancellor was not competent to issue the order of compulsory retirement, and secondly the Inquiry Committee was not competent to recall the order dated 28th January, 2002, whereby it had closed the enquiry and held that the University had not proved the charges against the respondent. Based on these findings the learned Presiding Officer allowed the appeal and quashed and set aside the impugned order dated 22nd April, 2003 and directed the petitioner herein to reinstate the respondent to the post of Professor, Department of Law and to pay to him backwages and other benefits accrued within a period of 60 days.

11. This petition raises two questions as under:-

(i) Whether the Inquiry Committee had powers to recall its order

of closure of evidence?

(ii) Whether the Vice Chancellor had powers to inflict penalty on the respondent?

12. Shri Sakhare, the learned Senior Counsel for the petitioner contends that the enquiry was closed on 28th January, 2002 for non appearance. The presenting Officer had filed the application for recall of the order on the same date. Relying upon the judgment of the Apex Court in M/s. *Lokmat Newspapers Pvt. Ltd. vs. Shankarprasad AIR 1999 SC 2423*, he has submitted that the Committee had yet to submit the report to the Competent Authority and as such the Inquiry Committee was not functus officio. He therefore contends that the Committee had powers to recall the order.

13. Per contra, Shri Anturkar, the learned Counsel for the respondent submitted that having closed the enquiry, the Inquiry Committee had become functus officio and as such the Inquiry Committee was not competent to entertain the application for recall of the order.

14. In M/s. Lokmat, (supra), the services of the employee were

terminated on the same date that the Conciliation proceedings were closed. The employee had alleged that the termination order was passed during the pendency of Conciliation proceedings. The Apex Court after considering the scope of sub Section 4 of Section 12 of Industrial Dispute Act observed thus:

“24. In order to answer these questions, it is necessary to note sub- section (4) of Section 12 of the I.D. Act which reads as under :

"(4) ... A mere look at this provision shows that if the Conciliation Officer finds during conciliation proceedings that no settlement is arrived at between the disputing parties, then after closing the investigation he has, as soon as practicable, to send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and has also to mention all other details as required to be mentioned in the report under Section 12(4) of the I.D.Act.

25. The aforesaid statutory requirements leave no room for doubt that after closing the investigation and after having arrived at the conclusion that no settlement is possible between the parties, the Conciliation Officer has to spend some more time before submitting his detailed written report about failure of consideration for information and necessary action by the State Government. In the very nature of things, therefore, such requirement will take at least a couple of days, if not more, for the conciliator after closing the investigation to enable him to send an appropriate report to the State Government. ... He remained very much seized of these proceedings till at least the time the report left his end

apart from the further question whether conciliation proceedings could be said to have continued till the report reached the State Government. Thus, on the express language of Section 12(4) the conclusion is inevitable that closer of investigation by 4.35 p.m. on 22.6.1982 did not amount to termination of conciliation proceedings by that very time. ..”

15. Reverting to the facts of the case, the Inquiry Committee was appointed to enquire into the charges leveled against the respondent. The Committee was therefore required to conduct an enquiry , and upon considering the evidence adduced by the respective parties, was required to record findings about the guilt of the respondents and submit its report to the Competent Authority. The role of the Inquiry Committee would come to an end upon submission of the report to the Inquiry Committee.

16. It is not in dispute that the Inquiry Officer had closed the inquiry for non-prosecution and had recorded that the charges were not proved. The Inquiry Committee had neither prepared a report nor communicated its finding to the Competent Authority. The Inquiry Committee was therefore still seized of the matter and hence was not functus officio.

17. Shri Anturkar, the learned Sr. Counsel for the respondent has further contended that the Inquiry Committee had no powers to re-open the enquiry or review the order in the absence of specific provisions.

18. There is no dispute about this proposition. It is however to be noted that in the instant case the Inquiry Officer had not reviewed the order, but had only recalled the order which was passed in the absence of the petitioner. There is certainly a distinction between review and recall of order, which has been explained by the Apex Court in *Asit Kumar Kar vs. State of West Bengal (2009) 2 SCC 7003* thus:

“While in a review petition the Court considers on merits where there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to the affected party.”

19. As regards the power of recall, it would be advantageous to refer to the decision of the Apex Court in *Grindlays Bank Ltd., vs. The Central Government Industrial Tribunal and Ors. AIR 1981 S.C. 606*. In the said case, one of the questions before the Apex Court was whether the Industrial Tribunal had any jurisdiction to set

aside the ex-parte award. The Apex Court whilst considering the said question has observed thus:

“ We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand there are indications to the contrary.”

20. These principles have been reiterated in ***Satnam Varma vs. Union of India AIR 1985 SC 294*** and ***M/s. J.K.Synthesis Ltd. vs. Collector of Central Excise JT. 1996 (7) S.C. 674***. In *J.K.Synthesis* (supra) the Apex Court has held that if in a given case, it is established that if the respondent was unable to appear before it for no fault of his own, the ends of justice would clearly require him that the ex-parte order against him should be set aside. Not to do so on the ground of lack of power would be manifest injustice.

21. In my considered view, the same principles would apply to the Inquiry Committee, which is appointed under the statute and discharges quasi judicial functions. The Inquiry Committee in exercise of these ancillary powers, entertained the application which was filed on the same date, and being satisfied with the cause shown, recalled the order. In the light of above, the findings rendered by the learned Presiding Officer of the College and University Tribunal as regards the power of the Inquiry Committee to recall the order cannot be sustained.

22. Now coming to the next question, Shri Sakhare, the learned Senior Counsel for the petitioner submits that under Section 14(9) of the Maharashtra Universities Act, which was inserted on 12th May, 2000, the Vice Chancellor is the Appointing and Disciplinary Authority and as such he was competent to issue the order of compulsory retirement. He submitted that statute 433 of the University of Pune which is contrary to sub-section (9) of Section 14 of the Act and stands superseded in view of Section 115 of the Act. The learned Senior Counsel for the petitioner, therefore contends that the learned Presiding Officer has erred in holding that the Vice

Chancellor had no authority to issue the order of compulsory retirement.

23. Shri Anturkar, learned Senior Counsel appearing for the respondent no.1 has submitted that Section 14(9) of the Maharashtra Universities Act, 1994 provides that the Vice Chancellor is the Appointing and the Disciplinary Authority for the University teachers who are appointed on the recommendation of the Selection Committee constituted for the said purpose. He submits that the petitioner herein was appointed in the year 1994 before the Act came into force. His service conditions were governed by the statutes framed under Section 42 and 73 of the Poona Universities Act, 1974 and the said statutes continue to be in force. He submits that the decision to initiate the inquiry was taken by the Management Council. The Vice Chancellor had issued the chargesheet on the basis of the recommendation of the Management Council. He has submitted that the Management Council had not conferred or delegated powers on the Vice Chancellor to inflict the penalty. He therefore submits that the decision taken by the Vice Chancellor to inflict penalty, as well as the order of penalty is without any

authority.

24. It is not in dispute that the respondent was initially appointed as a lecturer in the Department of Law, University of Pune in the year 1979. He was subsequently confirmed as Lecturer in the year 1981 and thereafter selected as a Reader in the year 1987-88. He was selected as a Professor in the year 1994-95 and Head of the Department University of Pune in the year 1997.

25. The terms and conditions of service of the respondent and other teachers appointed in the said University were governed by the Statutes which were made in exercise of powers under Section 42 and 73 of the Pune University Act, 1974. In the year 1994, the State Government enacted the Maharashtra Universities Act, 1994. By virtue of sub section 1 of Section 115 of the Maharashtra Universities Act, the Pune University Act, 1974 and several other acts specified in sub-clauses (a) to (h) of the said sub sections stood repealed on and from the date of commencement of the said Act. Sub-Section 2 of Section 115 of the Maharashtra Universities Act is a saving clause, which saves certain existing Provisions, Statutes, Ordinances, Regulations etc. Clause (xii) of sub-section 2 of Section 115 reads

thus:

“(xii) All Statutes and Ordinances made under the said Acts in respect of any existing University shall, in so far as they are not inconsistent with the provisions of this Act, continue in force and be deemed to have been made under this Act in respect of the corresponding university by the Senate of the Management council, as the case may be of that university, until they are superseded or modified by the Statutes made under this Act.”

26. Though the learned Counsel for the petitioner has submitted that statute 433 stood repealed in view of insertion of sub-Section (9) of Section 14 of the Maharashtra Universities Act, in para 4(a) of the written statement filed before the University and College Tribunal, the petitioner herein had specifically stated that the order of compulsory retirement was issued after following the due procedure laid down in Teachers Statute No.433. In tune with the said statement, the petitioner had also sought to contend before the Tribunal that the Management Council in its meeting dated 10th March, 2003 had considered the inquiry report and thereafter authorized the Vice Chancellor to inflict appropriate punishment/penalty on the respondent. It is thus evident that the contentions now raised are contrary to the defence raised before the

College & University Tribunal.

27. It is also pertinent to note that Statute 431 to 433-B relates to the disciplinary action against the teachers.

. Statute 431 enumerates the ground for taking the disciplinary action against the teachers, whereas Statute 432 prescribes penalties that can be inflicted on one or more of the grounds mentioned in Statute 431. Statute 433 provides that the power to inflict penalties on the teacher of University Department/Conducted College shall vest in the Executive Council and in case of Teacher in the Affiliated College/Recognized institution in its management.

. Clauses no. (1) and (2) of Statute 433-A prescribe procedure for inflicting minor and major penalties. Whereas, Clause (3) prescribe procedure of infliction of major penalties. Clauses (B) to (F) relate to appointment of Inquiry Officer/ Committee, and further stages of the inquiry viz. Chargesheet, statement of defence, oral hearing, final statement of defence by the teacher charged and the report of the Inquiry Officer/ Committee. Clauses (G) and (H) relate to the action/ final action to be taken on the Inquiry report. In terms of Clause (F) of statute 433-A the Inquiry Committee is required to

submit the report to the Competent Authority within one month of conclusion of the enquiry. Clause (G) of statute 433-A stipulates that on receipt of the Inquiry Report, the Competent Authority shall decide within one month the action to be taken in the light of the findings of the Inquiry Authority. In case any of the charges against the teacher concerned, are held as proved, the Competent Authority is required to decide the punishment to be inflicted on him, after giving him a notice to show cause as to why the proposed punishment should not be inflicted on him. Clause (H) of the statute provides that on receipt of the reply to the show cause notice from the teacher charged, the Competent Authority is required to finally decide the penalty/penalties and communicate the same to the concerned teacher charged within two weeks.

28. Thus, under Statute 433, the Competent Authority as defined under Clause (3) of Statute 411 is competent to decide and communicate the penalty/penalties to the concerned teacher. In the instant case it is not in dispute that the Dean had forwarded the complaint made by the student to the Vice Chancellor. The Vice Chancellor had placed the complaint before the Management

Council. The Management Council, after considering the complaint had decided to appoint a Fact Finding Committee. The report submitted by the Fact finding Committee was again placed before the Management Council and on 19.3.2001, the Management Council after considering the report had resolved to appoint the Inquiry Committee consisting of three members i.e. a retired High Court Judge as a Chairman, a senior woman and the person having experience of administrative and academic matters as its members. In exercise of powers under Clause (ee) of Section 28, the Management Council had delegated the powers of appointing the members of the Inquiry Committee to the Vice Chancellor. Pursuant to the said authorization, the Vice Chancellor had appointed the members of the Inquiry Committee. The said Committee inquired into the charges in accordance with the procedure prescribed under the statute and submitted the enquiry report.

29. It is not the case of the petitioner that the statute has been framed under Section 51(8) of The Maharashtra Universities Act, 1994, relating to qualifications, recruitment, workload, code of conduct, terms of office, duties and conditions of services of

teachers/officers and other employees of the university and the affiliated colleges. Atleast no such statute modifying, which is inconsistent with statute no.433 has been brought to my notice. Hence, Statute 433 continues to be in force in view of provisions under sub-section (2) of Section 115 of The Maharashtra Universities Act, 1994.

30. In the present case, the enquiry against the respondent was initiated pursuant to the resolution taken by the Management Council. It is not in dispute that the enquiry report was not placed before the Management Council and that the Vice Chancellor had taken the decision to impose the penalty of compulsory retirement. The petitioner had made a vain attempt before the Tribunal to prove that the Management Council , in its meeting dated 10th March, 2003 had considered the enquiry report and thereafter resolved to authorize the Vice Chancellor to inflict appropriate penalty against the respondent. The Tribunal has discarded and disbelieved the said contention on the ground that such plea was never raised in the written statement. The Tribunal had also held that even otherwise the petitioner had failed to prove that the report was in fact placed

before the Management Council and that the Council had delegated or authorized the Vice Chancellor to take appropriate decision. There is no serious challenge to the said findings. In the circumstances, it is evident that the Vice Chancellor had unilaterally terminated the services of the respondent without placing the Inquiry Report before the Management Council. As stated earlier, the disciplinary action was initiated as per the resolution of the Management Council which is the principal executive authority. Hence, as rightly held by the Tribunal, the report ought to have been placed before the Management Council for its decision. Needless to state that in case the decision of the Management Council was not agreeable to the Vice Chancellor, it was open to the VC to take recourse to the powers under sub-Section 6 of Section 14 of the Maharashtra Universities Act, which procedure has not been followed in the present case.

31. In the light of the above facts, the Tribunal was justified in holding that the Vice Chancellor was not competent to issue termination order without placing the report before the Management Council. The said findings are neither illegal, nor perverse and do

not warrant interference.

32. It may be mentioned that the Tribunal had directed the petitioner to re-instate the respondent to the post of Professor Department of law and to pay to him backwages and other benefits. The affidavit of the respondent reveals that he was 58 years of age as on the date of filing the said affidavit i.e. 15th February, 2009. The respondent has therefore attained the age of superannuation and hence cannot be re-instated to the post of Professor. The affidavit further reveals that the petitioner was employed in the Faculty of law in Addiss Ababa University (Ethiopsa) as professor in the pay scale of US 1675 dollars (income tax free) and free accommodation. In such circumstances the petitioner is also not entitled for backwages and other benefits. Nevertheless, considering the fact that the services of the petitioner were illegally terminated, the petitioner is directed to pay to the respondent, a token compensation of Rs.1,00,000/- (Rupees One lakh Only). Subject to above, the petition stands dismissed.

(ANUJA PRABHUDESSAI, J.)