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

WRIT PETITION NO. 9274 OF 2016

1. MAHYCO RESEARCH FOUNDATION TRUST,
Jalna, through its authorized signatory,
Dr. Usha Zehr
2. Dr. Kavita Prashar,
Age: 55 years, Occ:Service,
Principal, Badrinarayan Barwale
Arts, Commerce & Science College
Aurangabad Road, Jalna ..PETITIONERS

VERSUS

1. The State of Maharashtra,
Department of Higher Education,
through its Secretary,
Mantralaya, Mumbai
2. Joint Director (Higher Education),
Aurangabad Division, Railway Station
Road, Aurangabad ..RESPONDENTS

Mr S. V. Adwant, Advocate for Petitioners;
Ms R.P. Gaur, A.G.P. for respondents-State

**WITH
CIVIL APPLICATION NO. 13470 OF 2016
IN
WRIT PETITION NO. 9274 OF 2016**

Dr Babasaheb Ambedkar Marathwada University
Senior College Teachers Association,
Aurangabad Through its Secretary,
Dr. Fulchand Salampure ..APPLICANT

IN

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1. MAHYCO RESEARCH FOUNDATION TRUST,
Jalna, through its authorized signatory,
Dr. Usha Zehr
2. Dr. Kavita Prashar,
Age: 55 years, Occ:Service,
Principal, Badrinarayan Barwale
Arts, Commerce & Science College
Aurangabad Road, Jalna ..PETITIONERS

VERSUS

1. The State of Maharashtra,
through its Secretary,
Department of Higher Education,
Mantralaya, Mumbai-32
2. Joint Director (Higher Education)
Aurangabad Division, Railway Station
Road, Aurangabad ..RESPONDENTS

Mr B. L. Sagar Killarikar, Advocate for applicant
Ms R. P. Gaur, A.G.P. for respondent-State;

**WITH
CIVIL APPLICATION NO. 13038 OF 2016
IN
WRIT PETITION NO. 9274 OF 2016**

1. MAHYCO RESEARCH FOUNDATION TRUST,
Jalna, through its authorized signatory,
Dr. Usha Zehr
2. Dr. Kavita Prashar,
Age: 55 years, Occ:Service,
Principal, Badrinarayan Barwale
Arts, Commerce & Science College
Aurangabad Road, Jalna ..APPLICANTS

VERSUS

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1. State of Maharashtra,
Department of Higher Education,
through its Secretary,
Mantralaya, Mumbai
2. Dr. R.S. Dhamnaskar,
Joint Director (Higher Education)
Aurangabad Division, Railway Station
Road, Aurangabad ..RESPONDENTS

Mr S. V. Adwant, Advocate for applicant;
Ms R. P. Gaur, A.G.P. for respondents-State

**WITH
CIVIL APPLICATION NO. 5540 OF 2019
IN
WRIT PETITION NO. 9274 OF 2016**

1. MAHYCO RESEARCH FOUNDATION TRUST,
Jalna, through its authorized signatory,
Dr. Usha Zehr
2. Dr. Kavita Prashar,
Age: 55 years, Occ:Service,
Principal, Badrinarayan Barwale
Arts, Commerce & Science College
Aurangabad Road, Jalna ..APPLICANTS

VERSUS

1. State of Maharashtra,
Department of Higher Education,
through its Secretary,
Mantralaya, Mumbai
2. Dr. R.S. Dhamnaskar,
Joint Director (Higher Education)
Aurangabad Division, Railway Station
Road, Aurangabad ..RESPONDENTS

Mr S.V. Adwant, Advocate for applicant

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Ms R.P. Gaur, A.G.P. for respondent-State;

**WITH
WRIT PETITION NO. 10455 OF 2016**

1. MAHYCO RESEARCH FOUNDATION TRUST,
Jalna, through its authorized signatory,
Dr. Usha Zehr

2. Dr. Kavita Prashar,
Age: 55 years, Occ:Service,
Principal, Badrinarayan Barwale
Arts, Commerce & Science College
Aurangabad Road, Jalna

..PETITIONERS

VERSUS

1. State of Maharashtra,
Department of Higher Education,
through its Secretary,
Mantralaya, Mumbai

2. Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad
through its Registrar

3. The Director,
Board of College and University Development
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad

..RESPONDENTS

Mr S.V. Adwant, Advocate for Petitioners;
Ms R.P. Gaur, A.G.P. for respondent-State;
Mr S.S. Thombre, Advocate for respondent no. 2 & 3

**CORAM : PRASANNA B. VARALE
AND
R. G. AVACHAT, JJ.**

DATE : 6th August 2019

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ORDER:

Heard learned Counsel appearing on behalf of the petitioners, learned AGP for respondents/State, and learned Counsel for respective respondents.

2. Petitioner No.1 is a Trust running an academic institutions, namely, Badrinarayan Barwale Arts, Commerce & Science College, Jalna. Petitioner No.2 is the person appointed as Principal of the College. The petitioners have challenged a letter dated 18th August, 2016, issued by respondent No.2 – Joint Director (Higher Education), Aurangabad Division, Aurangabad (in WP No.9274/2016) and a letter dated 26/29th August, 2016, issued by respondent No.3 – The Director, Board of College and University Development, Dr. Babasaheb Ambedkar Marathwada University, Aurangabad (in WP No.10455/2016). By both these communications, respective respondents informed petitioner No.1 that appointment of petitioner No.2 as a Principal was for a stipulated period and this appointment is not sustainable. It was informed to petitioner No.1 that as per the orders, petitioner No.2 was initially appointed for a period of two years on probation and thereafter her appointment continued for three years

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and as she completed the stipulated period, she shall not permit by petitioner No.2 to act as a Principal and no communication or proposal in respect of finances be submitted by petitioner No.1 through petitioner No.2. It was further directed that, name of the petitioner No.2 may not show as an employee in the salary bills for August, 2016. There is also reference to certain representation received by Dr. Babasaheb Ambedkar Marathwada University (hereinafter referred to as 'the University' for sake of brevity) and it was informed in the communication that though the report was sought for, by way of communication to petitioner No.1, till date of communication dated 18th August, 2016, no report was forwarded by petitioner No.1.

3. In Writ Petition No.10455 of 2015, the letter dated 26/29th August, 2016 is under challenge. This letter refers to the communication, dated 18th August, 2016, issued by the Joint Director which is the subject matter of Writ Petition No.9274 of 2016. It was informed that no communication be forwarded to the University under the signature of petitioner No.2. It was further informed to petitioner No.1 to initiate the process of selection for the post of Principal through the competent selection committee at the earliest.

4. As both these petitions lead to the similar action against

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respondent No.2 and as the grounds raised in the petitions are identical, both the petitions are tagged together and as such, are heard together and are taken up for hearing and disposal with consent of the parties.

5. Mr Adwant, learned Counsel appearing on behalf of the petitioners vehemently submitted that the action against petitioner No.2 is wholly untenable on more than one grounds. It is submitted by Mr Adwant that respondents - authorities have failed to follow the principles of natural justice and no opportunity of hearing was granted to the petitioners. It was then submitted by Mr Adwant that appointment of petitioner No.2 was by following due process as well as by following the provisions of the Marathwada University Act, 1974 (for short 'the Act of 1974') and Rules. He then invited our attention to the documents placed on record, namely, advertisement published by petitioner No.1, the appointment of the selection panel and it is then submitted that the selection committee, after interviewing the candidates on 25th July, 2011, gave preference to two candidates, namely, Dr. Kavita Prashar and Dr. Ravindra Ramakant Deshpande. Accordingly, recommendations were forwarded to the University and petitioner No.2 was selected and appointed under the order dated 26th July, 2011. It was also submitted by Mr Adwant that petitioner No.2

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was appointed by following due procedure and on receipt of a communication dated 18th August, 2016, petitioner No.1 had responded by forwarding communication dated 23rd August, 2016, requesting respondent No.2 to recall the order dated 18th August, 2016 but respondent No.2 paid no heed to the response.

6. Mr Adwant has placed compilation before this Court under the Caption “Short Note for Reference – Additional Points”. The Government Resolution dated 15th February, 2011 is placed on record. It is the submission of Mr Adwant that the State Government ought not to have effect any change, as in Clause 8 of the said Government Resolution, the non-agricultural Universities were informed to carry out the necessary changes in the Statutes in view of the communication issued by the University Grants Commission, dated 30th June, 2010, but by an addendum, dated 22nd May, 2012, the State of Maharashtra effected certain changes in respect of the criteria for selection of Principal.

7. Mr Adwant then invited our attention to the Ordinance-864 dealing with minimum qualifications as laid down for appointment of a person to the post of Principal. It was also the submission of Mr Adwant that in the Ordinance-864, Clause (vi) states that the post of

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Principal should be a tenure post. It further states that term of the appointment of the College Principal shall be five years with eligibility for reappointment for one more term only after a similar selection committee process.

8. Mr Adwant then submitted that the act of making the post of Principal as a tenure post by way of an Ordinance-864 is unsustainable on the ground that there was no meeting of the Management Council and meeting of the Management Council is prerequisite under Section 54 of the Maharashtra Universities Act 1994 (for short 'the Act of 1994'). Mr Adwant also made an attempt to submit before this Court that initially the Act of 1974 was occupying the field and the said Act is repealed by the Act 1994. He made a reference to Section 2 (12) of the Act and also it was his submission that the Government Resolution cannot override on the Universities Act, being a subordinate legislation. In support of his submission, he made a reference to Sections 37, 38, 39 and 40 of Act of 1974 Act which reads thus:

37. Subject to the conditions prescribed by or under this Act, the Senate may make Statutes to provide for all or any of the following matters, namely:-

(i) the conferment of honorary degrees:

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(ii) the holding of Convocations to confer degrees, diplomas, certificates and other academic distinctions;

(iii) the powers and duties of the officers of the University, except as provided by this Act;

(iv) the constitution, powers and duties of the authorities of the University except as provided by this Act;

(v) the institution and maintenance by the University of Departments, Colleges, Institutions of Research and Specialised Studies, Halls and Hostels;

(vi) the acceptance and management of trusts, bequests, donations and endowments;

(vii) the manner of election of members of the Senate by the donors;

(viii) the registration of graduates and maintenance of a register of Registered Graduates;

(ix) the composition and activities of students' organisations;

(x) the procedure at meetings of the authorities and bodies of the University and for the transaction of their business;

(xi) the transfer of management of a college;

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(xii) collaboration with other Universities in the State and other statutory authorities in such manner and for such purposes as the Executive Council may determine;

(xiii) the appointment, for a specified period, of teachers and other academic staff working in any other University or organisation for undertaking joint projects;

(xiv) the principles governing the seniority and service of employees of the University;

(xv) the abolition of Departments, Halls, Colleges and Institutions;

(xvi) the term of office, duties and conditions of service of Officers, Teachers and other employees of the University, the provisions of pension, insurance and provident fund and the manner of termination of their service and other disciplinary action and their qualifications, except those of Teachers;

(xvii) provision for reservation of adequate number of posts of teachers, officers and other employees of the University and of the affiliated Colleges and recognised Institutions, for members of the Scheduled Castes and Scheduled Tribes

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(xviii) the mode of appointment and removal of examiners and moderators, and the fixing of fees, emoluments, travelling and other allowances to them;

(xix) the taking over, in the public interest, of the management of a college or institution by the University and the conditions for such taking over, including any payment to be made therefor;

(xx) the conditions of grant of autonomous status to a University Department, College or recognised Institution;

(xxi) all other matters which, by or under this Act, are to be, or may be, prescribed by the Statutes, and

(xxii) generally, all matters for which provision is, in the opinion of the Senate, necessary for the exercise of the powers conferred, or the performance of the duties imposed, on the Senate by or under this Act.

38. Statute-their making. - (1) The Statutes may be made, amended or repealed by the Senate in the manner hereinafter provided.

(2) The Senate may take into consideration the draft of a Statute either of its own motion or on a proposal by the Executive Council. In the case of a draft which is not

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prepared by the Executive Council, the Senate, before considering the same, shall obtain the opinion of the Executive Council :

Provided that, if the Executive Council fails to submit its opinion within three months from the date it receives the draft, the Senate may proceed to take the draft into consideration.

(3) The Senate, if it thinks necessary, may also obtain the opinion of any officer, authority or body of the University in regard to any draft Statute which is before it for consideration:

Provided that, where any such draft Statute pertains to academic matters, the Senate shall obtain the opinion of the Academic Council before considering the same.

(4) Every Statute passed by the Senate shall be submitted to the Chancellor who may give or withhold his assent thereto or refer it back to the Senate for consideration.

(5) No Statute passed by the Senate shall be valid or shall come into force until assented to by the Chancellor.

[(6) If at any time it appears to the State Government that the Statutes made by the Senate on any matters in respect of conduct of meetings are inadequate to regulate such

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matters or it appears to it that it is expedient to make a new Statute on any such matters, then notwithstanding anything contained in this section or section 37 or any other provisions of this Act, the State Government may, with the concurrence of the Chancellor, direct the Senate to amend any Statute or to make a new Statute and the Senate shall comply with such directions within two months of the date of receipt of such direction, failing which the State Government may make an amendment in the Statute or make a new Statute and notify it in the *Official Gazette*, and the Statute so notified shall take effect from the date on which it is so notified.

39. Ordinance-Subject matter. - Subject to the conditions prescribed by or under this Act, the Executive Council may make Ordinances to provide for all or any of the following matters, namely :-

(i) the conditions under which students shall be admitted to courses of study for degrees, diplomas, certificates and other academic distinctions:

(ii) the fees to be charged for enrolment of students for attending such courses in the University and colleges (including the tuition fees and hostel charges), which shall,

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as far as possible, be uniform for the colleges situated in the same local area, for admission to the examination leading to degrees, diplomas, certificates and other academic distinctions, and for registration of graduates;

(iii) the conditions of residence, conduct and discipline of the students of the University, and the action to be taken against them for breach of discipline or misconduct, including the following

(a) use of unfair means at an examination, or in relation thereto, by himself or by any other student, or abatement thereof;

(b) refusal to appear or give evidence in any authorised inquiry by an officer in charge of an examination, or by any officer or authority of the University; or

(c) disorderly or otherwise objectionable conduct, whether within or outside the University;

(iv) the qualifications and classification of Teachers in University Departments, Colleges and recognised Institutions;

(v) the conditions governing the appointment and duties of examiners;

(vi) the conduct of examinations and other tests, and the

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manner in which the candidates may be assessed or examined by the examiners;

(vii) the recognition of Halls and Hostels;

(viii) the inspection of colleges, recognised institutions, halls and hostels;

(ix) the recognition of Teachers of the University and the conditions subject to which persons may be recognised as qualified to give instruction in the University colleges and recognised institutions;

(x) the mode of execution of contracts or agreements for, or on behalf of, the University;

(xi) the rules to be observed and enforced by colleges and recognised institutions regarding transfer of students;

(xii) the powers and functions of students' associations and other organisations in colleges;

(xiii) all other matters which, by or under this Act or the Statutes, are to be, or may be, provided by Ordinances, and

(xiv) generally, all matters for which provision is, in the opinion of the Executive Council, necessary for the exercise of the powers conferred, or the performance of the duties imposed, on the Executive Council by or under this Act or the Statutes.

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40. Ordinance-their making. - (1) The Executive Council may make, amend or repeal Ordinances in the manner hereinafter provided.

(2) No Ordinance concerning the matters referred to in clauses (i) to (vi) and (ix) of the last preceding section, or any other matter connected with the maintenance of the standards of teaching and examinations within the University, shall be made by the Executive Council unless a draft thereof has been proposed by the Academic Council.

(3) The Executive Council shall not have the power to amend any draft proposed by the Academic Council under sub-section (2), but may reject or return it to the Academic Council for reconsideration, in part or in whole, together with any amendments which the Executive Council may suggest.

(4) All Ordinances made by the Executive Council shall have effect from such date as it may direct, but every Ordinance so made shall be submitted to the Chancellor within two weeks. The Chancellor shall have the power to direct the Executive Council, within four weeks of the receipt of the Ordinance, to suspend its operation, and he

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shall, as soon as possible, inform the Executive Council of his objection to it. He may, after receiving the comments of the Executive Council, either withdraw the order suspending the Ordinance or disallow the Ordinance, and his decision shall be final.

He also made a reference to Sections 27, 28 and 51 of the Act of 1994 which reads thus:

27. Management Council:- (1) The Management Council shall be the principal executive authority to formulate statutes and forward the same to the Senate for approval and make Ordinances to administer the affairs of the university and shall carry out all such duties which are not specifically assigned to any other authority. It shall consist of the following members, namely:-

- (a) The Vice-Chancellor; Chairman;
- (b) The Pro-Vice-Chancellor, if any;
- (c) One Dean, elected by the Senate from amongst the Deans;
- (d) One person nominated by the Chancellor;
- (e) the Secretary, Higher Education or his nominee not

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below the rank of Deputy Secretary or Joint Director of Higher Education;

(f) The Director of Technical Education or his nominee not below the rank of Joint Director;

(g) The Director of Higher Education or his nominee not below the rank of Joint Director of Higher Education;

(h) One head or Director, nominated by the Senate, from amongst the heads or Directors of university departments or university institutions;

(i) The Director, Board of college and University Development;

(j) two principals, elected by the Senate from amongst the principals, who are members of the Senate of whom one principal shall be a person belonging to the category of the Scheduled Castes or Scheduled Tribes or Denotified Tribes (Vimukta Jatis)/Nomadic Tribes or Other Backward Classes, by rotation;

(k) One teacher from the university department or university institutions with ten years post graduate teaching experience, who is not a Head or Director of university department or university institution, elected by the Senate from amongst the teachers, who are the members of the Senate.

Provided that, if no teacher from the university department or university institutions with ten years post-graduate teaching experience is available then the teacher

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from the university department or university institutions with lesser experience but, in any case not less than five years post-graduate teaching experience may be considered ;

(l) Two teachers from amongst the teachers of the affiliated colleges with sixteen years teaching experience, who is not principal, elected by the Senate from amongst the teachers of the affiliated colleges who are members of the Senate of whom one shall be women;

(m) One person, who is not Dean, Head or Director of University department, principal, teacher, student member or representative of the management, elected by the Senate from amongst its members.

(n) Three persons elected by the Academic Council from amongst its members as prescribed by Statutes :

(o) two representatives of the management, elected by the Senate from amongst themselves of whom one shall be a woman representative;

Provided that not more than one person shall be from one faculty as prescribed by the Statutes.

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(3) The Finance and Accounts Officer and the Controller of Examinations shall be permanent invitees of the Council, but they shall have no right to vote.

(4) There shall be not less than four meetings of the Management Council in a year and the rules of procedure for conduct of business to be followed at a meeting including the quorum at the meeting and such other matters in relation to meetings as may be necessary shall be such as may be prescribed by the Statutes.

28. Powers and duties of Management Council:- The Management Council shall exercise the following powers and perform the following duties, namely :-

(a) make such provisions, as may enable colleges and institutions to undertake specialised studies and, where necessary or desirable, organise and make provision for common laboratories, libraries, museums and equipment for teaching and research;

(b) establish departments, colleges, schools, institutions of higher learning, research and specialised studies, hostels and provide housing for staff, on the recommendation of the Academic Council;

(c) make, amend or repeal Ordinances and prepare draft

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Statutes and make such recommendations thereon to the Senate as it thinks fit;

(d) hold, control and arrange for administration of assets and properties of the university;

(e) present the budget estimates as received from the Finance and Accounts Committee with its own modifications, if any, to the Senate for its final approval;

(f) enter into, vary, carry out and cancel contracts on behalf of the university;

(g) determine the form of a common seal for the university, and provide for its custody and use;

(h) accept, on behalf of the university, trusts, bequests, donations and transfer of any movable or immovable property to the university;

(i) transfer by sale, or otherwise, any movable property on behalf of the university;

(j) borrow, lend or invest funds on behalf of the university as recommended by the Finance and Accounts Committee;

(k) lay down policy for administering funds at the disposal of the university for specific purposes;

(l) provide buildings, premises, furniture, apparatus and other means needed for the conduct of the work of the university;

(m) recommend to the Senate conferment of honorary

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degrees and academic distinctions;

(n) institute and confer such degrees, diplomas, certificates and other academic distinctions as recommended by the Academic Council and arrange for convocation for conferment of the same, as provided by the Ordinances;

(o) institute fellowships, travelling fellowships, scholarships, studentships, exhibitions, awards, medals and prizes, and prescribed rules therefor in accordance with the Regulations made in this behalf;

(p) make Regulations for collaboration with other universities, institutions and organisations for mutually beneficial academic programmes recommended by the Board of College and University Development;

(q) create posts of university teachers and non-vacation academic staff on the recommendation of the Academic Council as and when required;

(r) lay down by Statute, on the basis of qualifications and terms and conditions of service and other guidelines approved by the State Government from time to time, and the procedure for appointment of university teachers and non-vacation academic staff and fix their emoluments and norms of workload and conduct and discipline;

(s) create posts of officers and other employees of the university, subject to prior approval of the State Government;

(t) lay down by Statutes the procedures for appointment of

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officers and other employees of the university, qualifications, mode of recruitment, pay scales, terms and conditions of service including conduct, discipline and their duties;

(u) prescribe by Statutes procedure for appointment of teachers, officers and other employees in all institutions and colleges affiliated to the university, terms and conditions of their service and rules and procedures for their appointments;

(v) prescribe fees and other charges;

(w) prescribe honoraria, remunerations and fees and travelling and other allowances for paper-setters, examiners and other examination staff, visiting faculty, and for such other services rendered to the university ;

(x) receive and consider report of the working of the university from the Vice- Chancellor periodically as provided by the Ordinances;

(y) prepare academic calendar of the university as per the Statutes, and guidelines from the University Grants Commission for next academic year before the expiry of the current academic year;

(z) confer autonomous status on university departments, affiliated colleges and recognised institutions on the recommendation of the Academic Council subject to the predetermined norms approved by the State Government having regard to the guidelines of the University Grants

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Commission;

(aa) consider the perspective plan for the academic development of the university, prepared by the Board of College and University Development;

(bb) assess and approve the feasibility of proposals from the Academic Council for academic programmes;

(cc) consider and adopt the annual report, annual accounts and audit report and forward them to the Senate for approval;

(dd) cause an inquiry to be made in respect of any matter concerning the proper conduct, working and finances of colleges, institutions or departments of the university ;

(ee) delegate, any of its powers, except the power to make, amend or repeal Ordinances, to the Vice-Chancellor or such officer or authority of the university or a committee appointed by it, as it thinks fit.

51.Statutes:-Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters,namely:—

(1) conferment of honorary degrees and holding convocation;

(2) the establishment and maintenance of the university departments, institutions, conducted colleges, institutions of higher learning, research or specialised studies and hostels;

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- (3) the powers and duties of the officers of the university;
- (4) powers and duties of the authorities of the university;
- (5) the principles governing the seniority and service conditions of the employees of the university;
- (6) the provision for disqualifying members of the authorities, bodies or committees of the universities;
- (7) abolition of university departments or institutions and conducted colleges;
- (8) qualifications, recruitment, workload, code of conduct, terms of office, duties and conditions of service, including periodic assessment of teachers, officers and other employees of the university and the affiliated colleges except those colleges or institutions maintained by the State or Central Government or a local authority, the provision of pension, gratuity and provident fund, the manner of termination of their services, as approved by the State Government,
- (9) application Of funds of the university for furtherance of the objects of the university;
- (10) norms of affiliation of colleges or for withdrawing the affiliation of the colleges:
- (11) the norms for grant of autonomy to university departments or institutions, affiliated colleges and recognised institutions, subject to the approval of the State Government;

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(12) acceptance and management of trusts, bequests donations, endowments and grants from individual, or organisations;

(13) provision of reservation of adequate number of posts of teachers, officers and other employees of the university, affiliated colleges and recognised institutions, for members of the Scheduled Castes and Scheduled Tribes, and Other Backward Classes in accordance with the policy of the State Government;

(14) number of working days, number of actual days of instruction, holidays other than Sundays, vacation and terms in academic year;

(15) disciplinary action against defaulting teachers, officers and other employees of the university, affiliated colleges and recognised institutions other than the colleges or institutions managed and maintained by the State Government or Central Government or Local Authorities;

(16) the taking over or transferring, in public interest, of the management of a college or institution by the university and the conditions for such taking over or transferring, subject to the approval of the State Government;

(17) any matter which is to be prescribed or which is necessary to give effect to the provisions of this Act.

9. There is also requirement of approval by the Chancellor to the decision of Management Council. As these prerequisites are not

followed, the action of respondent No.2, directing the petitioner not to treat petitioner No.2 as Principal and then directing petitioner No.1 not to forward any proposals through petitioner No.2 and not to forward the salary bill of petitioner No.2 from the month of August, 2016, is unsustainable. He then placed reliance in support of his submission on the judgment the Hon'ble the Apex Court in the matter of **S. L. Kapoor Vs. Jagmohan & ors.**, reported in **(1980) 4 SCC 379**.

10. Insofar Writ Petition No.10455 of 2016 is concerned, the submission of Mr Adwant is that all three members Committee was constituted so as to submit report on receipt of the complaint against the appointment of petitioner No.2. The Committee was required to submit the report on the points in the communication dated 20th July, 2016. Accordingly, the Committee scheduled its visit petitioner No.1 - College on 30th July, 2016. It is submitted by Mr Adwant, learned Counsel for the petitioners that though the request was made to the Committee to grant an opportunity of hearing and grant of time through petitioner No.2, no opportunity was granted to petitioner No.2. He then submitted that a letter was also addressed to the Joint Director (Higher Education), Aurangabad, but the authorities failed to consider the reply.

11. On behalf of the applicants, Mr Killarikar, learned Counsel supported the action of the authorities. It was the submission of Mr Killarikar that though there was no interim order in favour of the petitioners, an impression was created as if there was an interim order passed by this Court and the authorities were made to believe that there is an interim order passed by this Court in Writ Petition No.9274 of 2016. It is then submitted by Mr Killarikar that in Writ Petition No.10455 of 2016, an incorrect statement was made before this Court and on the basis of incorrect statement, an interim order was passed. Mr Killarikar placed reliance on the judgment of this Court in the matter of **Suresh Patilkhede Vs. Chancellor, University of Maharashtra & ors.**, reported in **2012 (6) ALL MR 336** as well as the judgment of the Honourable the Apex Court in the matter of **Annamalai University Vs. Secretary to Government, Information and Tourism Department & ors.**, reported in **(2009) 4 SCC 590**, in which the observations made by Honourable Apex Court read thus :

"42. The provisions of the UGC Act are binding on all Universities whether conventional or open. Its powers are very broad. Regulations framed by it in terms of clauses

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(e), (f), (g) and (h) of sub-Section (1) of Section 26 are of wide amplitude. They apply equally to Open Universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the co- ordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of the UGC are all pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub- section (2) thereof."

12. Learned AGP Ms. R.P. Gaur, vehemently opposed the petition. Our attention is invited to the affidavit-in-reply filed on behalf of respondent Nos.1 and 2 through Dr. R. S. Dhamnaskar, Joint Director (Higher Education), Aurangabad. Learned AGP then invited our

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attention to the notification of the University Grants Commission, dated 30th June, 2010, which is placed on record at Exh.R-1, annexed to the affidavit-in-reply to submit that Clause 5.1.6 (d) thereof refers to the tenure appointment and it reads that "The term of appointment of the college principal shall be FIVE years with eligibility for reappointment for one more term only after a similar selection committee process."

13. Learned AGP then submitted that the State of Maharashtra had adopted the recommendations of the UGC vide notification dated 30th October, 2010 in Government Resolution dated 15th February, 2011 and by way of an addendum, dated 22nd May 2012, it was clarified that there will be no adverse effect of the Government Resolution dated 15th February, 2011 on those Principals appointed during 30th June, 2010 to 14th February, 2011.

14. Learned AGP then submitted that petitioner No.2 was initially appointed on a probation for a period of two years and thereafter continued for further three years and as such, the petitioner No.2 had completed her tenure for the post of Principal and shall be eligible for reappointment for one more term only after compliance of similar selection process. She then submitted that by communication dated

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26/29th August, 2016, the President of the Trust was informed to take further steps for appointment / reappointment of the Principal through statutory selection mode. It is also submitted by learned AGP that respondent No.2 is the competent authority to verify the record of teaching and non-teaching staff and also to verify whether the appointments are made against admissible and sanctioned posts as per the Rules and accordingly the salary grants are to be released subject to annual verification. A reference is made to Government Resolution dated 17th May, 1994 in respect of these submissions.

15. Learned AGP then submitted that though respondent No.2 forwarded a communication dated 25th July, 2016 seeking information, there was no response from petitioner No.1 - College/Trust and as such, respondent No.2 was left with no choice but to issue communication dated 18th August, 2016. It was then submitted by learned AGP that even the appointment order issued to the petitioner No.2 placed on record at Exh.'D', clearly shows that petitioner No.2 was appointed on probation for a period of two years from the date of her Joining and would be continued for further three years of satisfactory services. Thus, it is the submission of learned AGP that petitioner No.1 appointing petitioner No.2 and petitioner

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No.2 were well aware of the fact that the appointment is a tenure appointment.

16. It is also submitted by learned AGP that after accepting this position, the petitioners now again turned their back and submitted before this Court that the appointment of petitioner No.2 is not a tenure appointment. Learned AGP also vehemently submitted that the submission of the petitioners before this Court that no opportunity of hearing was granted is unacceptable as the record show otherwise. It is then submitted by learned AGP that on a communication through the Joint Director to submit documents and explanation, the petitioners forwarded a mail on 27th July, 2016, informing that the President of the Trust - Shri. Barwale is out of town and prayed for time and interestingly enough, on the next day, the President of the Trust reached the town and passed the order of continuation of services of petitioner No.2.

17. Learned AGP further submitted that the sequence of events clearly show that the petitioners were not interested in providing any explanation and documents to respondent No.2 but were more interested in continuation of service of petitioner No.2 against

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stipulation of tenure attached to the post. It is then submitted by learned AGP that the petitioners, on one hand petitioners submitted the letter/communication dated 23rd August, 2016, seeking recall of the order dated 18th August, 2016 and this letter though states that issued through President, no signature of the President or any authorized person through the President finds place in the communication and on the other hand, petitioner No.1 passed continuation order of petitioner No.2 and submitted before this Court that it was an legitimate expectation that respondent No.2 would recall his order. Thus, learned AGP vehemently submitted that both these things cannot go together. Learned AGP also vehemently submitted that the letter dated 23rd August, 2016 carries no outward number, as such, this letter is only used as shield by the petitioners and the petitioners cannot draw any support from these letters.

18. Learned AGP by inviting our attention to Section 8 of the Act of 1994 submitted that the Act of 1994 was in operation at the time of appointment of the petitioner. She then by inviting our attention to the Government Resolution dated 15th February, 2011 submitted that except Regulation 7 and part of Regulation 8, all other stipulations are accepted by the State Government.

19. Learned AGP then by inviting our attention to the UGC Regulations 2010 and more particularly clause 7.4.O submitted that the adoption of the Regulations was a precondition. It was also the submission of learned AGP that the University Grants Commission Regulations is a central legislation and would prevail and the Government Resolution dated 15th February, 2011 and the an addendum are only in consonance with UGC Regulations. Learned AGP places heavy reliance on the judgment of the Honourable the Apex Court in the matter of **Kalyani Mathivanan Vs. K. V. Jeyaraj & ors.**, reported in **(2015) 6 Supreme Court Cases 363**. Our attention is invited to the following observations of the said judgment :

"62. In view of the discussion as made above, we hold:

62.1. To the extent the State Legislation is in conflict with Central Legislation including sub-ordinate legislation made by the Central Legislation under Entry 25 of the Concurrent List shall be repugnant to the Central Legislation and would be inoperative.

62.2. The UGC Regulations being passed by both the Houses of Parliament, though a sub-ordinate legislation

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has binding effect on the Universities to which it applies.

62.3. The UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central Universities and Colleges thereunder and the Institutions deemed to be Universities whose maintenance expenditure is met by the UGC.

62.4. The UGC Regulations, 2010 is directory for the Universities, Colleges and other higher educational institutions under the purview of the State Legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, UGC Regulations, 2010 is partly mandatory and is partly directory.

62.5. The UGC Regulations, 2010 having not adopted by the State Tamil Nadu, the question of conflict between State Legislation and Statutes framed under Central Legislation does not arise. Once it is adopted by the State Government, the State Legislation to be amended appropriately. In such case also there shall be no conflict between the State Legislation and the Central Legislation."

(Emphasis Supplied.)

20. Thus, learned AGP submitted that in the matter of Kalyani Mathivanan Vs. K. V. Jeyaraj & ors. (supra), the State of Tamil Nadu has not even adopted the Government Resolution, whereas the State of Maharashtra had adopted the UGC Regulations in issuing the Government Resolution. Learned AGP also placed reliance on the judgment of learned Single Judge of this Court in the matter of **Dr. Babasaheb Ambedkar Memorial Society, Chandrapur & anr. Vs. Presiding Officer, University and College Tribunal, Nagpur & ors.** reported in **2018 (2) Mh.L.J. 610**. It would be useful for our purposes to refer to the observations made in this judgment at para Nos.6 and 8, which read thus:

"6. Learned counsel for the petitioners submits that these regulations have to be adopted by the State Government. Learned counsel submits that such adoption happened only on 15th February, 2011. Nothing in law is pointed out to this Court, which requires the State Government to adopt the regulations by any specific order so as to make them effective. The Regulations apply by their own force and under the UGC Act, which is a Central statute framed by the parliament under Entry 66 of List-1. Assuming,

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however, that the regulations need adoption and implementation by the State Government, such requirement is in fact satisfied in the present case. The Government Resolution of 15th February, 2011 provides for implementation of the regulations, particularly Clause 11 thereof alongwith all its sub clauses as it is.

8. Even otherwise, under Sub Section (3) of Section 8 of the Maharashtra Universities Act by which the University and the second petitioner-college affiliated to it are governed in the present case, the State Government has the power to prescribe by notification a standard code providing for appointment related matters concerning teachers of Universities and affiliated Colleges including the conditions of their service for the purpose of securing and maintaining uniform standards. When such code is prescribed, the provisions made in the code prevail over any inconsistent provision in any statute, ordinance, regulation or rule made under the Maharashtra Universities Act. In the present case, the notification by the State Government adopting the particular regulations, namely,

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Regulations framed under the UGC Act, satisfies the requirements of Sub-Section (3) of Section 8 and can be termed as the standard code providing for matters mentioned therein. This code, by virtue of Sub Section (3) of Section 8, shall prevail over the provision made in Statute 53 to the contrary. There is no force in the submission of learned counsel for the petitioners that provisions of the notification of 15th February, 2011, are not described as code. There is nothing magical about the word 'code.' It means any system or collection of provisions dealing with the matters described in Sub-Section (3) of Section 8. The provisions of the notification of 15th February, 2011, thus, supersede any inconsistent provision contained in statute 53 with effect from 30th June, 2010, and that includes the provision of probationary period of two years."

21. It is submitted by learned AGP that a challenge before the Honourable the Apex Court against the said judgment of this Court by the petitioner was dismissed. She then placed reliance on the judgment of Honourable the Apex Court in the matter of **Secretary,**

Mahatma Gandhi Mission & anr. Vs. Bhartiya Kamgar Sena & ors., reported in **(2017) 4 SCC 449**, in which the following observations are made:

"71. In our opinion, the GR dated 12.8.2009 can be safely construed to be one made in exercise of the power under Section 8(3) of the Universities Act conferring a legal right on the teaching staff of the affiliated colleges irrespective of the fact whether they are aided or not.

72. The colleges run by the appellants are admittedly colleges affiliated to the Universities functioning under the Act. Therefore, their teaching staff would be entitled to the revised pay scales in terms of the G.R. dated 12.08.2009."

22. Insofar as Writ Petition No.10455 of 2016 is concerned, Mr Thombre, learned Counsel appears for the University. He submitted that though the University was a necessary party in Writ Petition No.9274 of 2016, till date, the petitioners have not made University as a party. It was then submitted by Mr Thombre that the order impugned in the Writ Petition No.10455 of 2016, passed by the

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University was a consequential order in view of the early order of the Joint Director, dated 18th August, 2016, which is the subject matter of Writ Petition No.9274 of 2016. Thus, Mr Thombre learned Counsel for the University also prays for dismissal of the petitions.

23. On hearing learned Counsel for the respective parties and on going through the material placed on record as well as the judgments relied on by learned Counsel appearing on behalf of the respective parties, we find considerable merit in the submissions of learned AGP.

24. Though Mr Adwant, learned Counsel for the petitioners made an attempt to vehemently submit before this Court that the post of petitioner No.2 could not have been treated as a tenure post and the Government Resolution dated 15th February 2011 cannot be accepted and though he raised challenge to the Government Resolution dated 15th February, 2011, we are unable to accept his submission in view of the counter submission of learned AGP. There is also merit in the submission of learned AGP as well as Mr Killarikar, learned Counsel for the respondent/applicant that at the time of appointment of petitioner No.2, petitioner No.1 had followed all the procedure for selection of petitioner No.2 as required under the Act of 1994.

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Petitioner No.2 had also accepted this appointment order and now the petitioners cannot turn their back, raising a challenge to the Government Resolution dated 15th February, 2011. Learned AGP is justified in his submissions before this Court .

25. In view of all the above referred facts, we are of the opinion that both the petitions are devoid of merits and deserves to be dismissed accordingly, following order is passed :

Both the petitions are dismissed.

Pending civil applications, if any, stand disposed of.

(R.G. AVACHAT, J.)

(PRASANNA B. VARALE, J.)

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