

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4869 OF 2020
WITH
CIVIL APPLICATION NO. 2969 OF 2022

Dr. Mrs. Asha Dagdu Akolkar
Age : 40 years, Occ: Service
in Sharadchandra Mahavidyalaya, Shiradhon,
Tq. Kallam, Dist. Osmanabad

...Petitioner
(Orig. Respondent
No.5 in Appeal)

Versus

1. Hindustan Education Society,
Ausa, Tq. Ausa, Dist. Latur
Through its Secretary,
2. Sharadchandra Mahavidyalaya,
Shiradhon, Tq. Kallam,
Dist. Osmanabad,
Through its Principal
3. Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad
Through its Registrar
4. The Joint Director,
Higher Education, Aurangabad
Division, Aurangabad.
5. Bharat S/o Madhukarrao Nalge
Age : 31 years, Occ : Service,
R/o Ausa, Tq. Ausa, Dist. Latur.

..Respondents
(R.Nos. 1 to 4-Orig.
Respondent Nos. 1
to 4 & R.No.5-
Original Appellant in
Appeal)

Mr R.N. Dhorde, Senior Counsel i/by Mr V.R. Dhorde and Mr P.S. Dighe,
Advocates for petitioner
Mr M.C. Syed, Advocate for Respondent Nos. 1 and 2
Mr K.M. Suryawanshi, Advocate for Respondent No. 3
Mr S.G. Sangle, AGP for respondent No. 4
Mr Rajendra Deshmukh, Senior Counsel a/w Ms Priya S. Gondhalekar i/by
Mr R.B. Dhaware, Advocate for Respondent No. 5

WITH
WRIT PETITION NO. 1574 OF 2021

1. Hindustan Education Society,
Afsar Nagar, Ausa, Tq. Ausa, Dist. Latur
Through its Secretary,
2. Sharad Chandra Mahavidyalaya,
Shiradhon, Tq. Kallam, Dist. Osmanabad,
Through its Principal ..Petitioners

Versus

1. Bharat S/o Madhukarrao Nalge
Age : 38 years, Occ : Service
(at present Nil), R/o Ausa,
Tq. Ausa, Dist. Latur. (Ori. Appellant)
2. Dr. Babasaheb Ambedkar Marathwada
University Campus, Aurangabad
Through its Registrar
3. The Joint Director,
Higher Education, Aurangabad
Division, Aurangabad. (Ori.Respondent no. 3 and 4)
4. Mrs. Asha Dagdu Akolkar
Age : 40 yrs., Occu: Service
In Sharad Chandra Mahavidyalaya,
Shiradhon,Tq. Kallam,
Dist. Osmanabad (Ori.Respondent No.5)

Mr M.C. Syed, Advocate for petitioners
Mr Rajendra Deshmukh, Senior Counsel a/w Ms Priya S. Gondhalekar i/by
Mr R.B. Dhaware, Advocate for Respondent No. 1
Mr K.M. Suryawanshi, Advocate for Respondent No. 2
Mr S.G. Sangle, AGP for respondent No. 3
Mr R.N. Dhorde, Senior Counsel i/by Mr V.R. Dhorde and Mr P.S. Dighe,
Advocates for Respondent No. 4

CORAM : SHRIKANT D. KULKARNI, J.
RESERVED ON : 01.04.2022
PRONOUNCED ON : 04.05.2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for both the sides, heard finally at the admission stage.

2. Both the petitions are directed against the Judgment and order dated 09.03.2020 passed by the Presiding Officer, University and College Tribunal, Aurangabad in Appeal No. BAMU-02/2013.

3. It is necessary to have a glance on the factual scenario for deciding the petitions.

(a) The Hindustan Education Society (petitioner No.1 in Writ Petition No. 1574/2021) is a minority institution and runs Sharadchandra Mahavidyalaya at Shiradhon, Tal. Kallam, Dist. Osmanabad (petitioner No. 2 in Writ Petition No. 1574/2021). Dr Mrs Asha Dagadu Akolkar was appointed as a lecturer in Public Administration subject for the academic year 2002-2003. At that time, Dr Asha Akolkar was not having requisite qualification with NET/SET or Ph.D. She was appointed from year to year basis and subject to approval by the College Management and the University. She was Master in Arts. In order to fill-up vacant post of lecturer for the subject of Public Administration, the education institute and College (referred above) have issued advertisement in the newspaper. The Selection Committee was constituted. Mr Bharat Madhukarrao Nalge had applied for the post of lecturer in Public Administration. He was having requisite qualification NET/SET. The Selection Committee after conducting the interview of Mr Bharat Nalge, selected him on 06.07.2009. Mr Bhart

Nalge joined the college (Sharadchandra Mahavidyalaya) on the post of lecturer to teach subject of Public Administration on 06.07.2009. Mr Bharat Nalge was appointed on the probation of two years. Necessary approval was also accorded by Dr Babasaheb Ambedkar Marathwada University (B.A.M.U.), Aurangabad. There was sufficient work load in the college for one lecturer to teach the subject of Public Administration.

(b) In the meanwhile, Dr Mrs Asha Akolkar completed her M.Phil from Madurai Kamraj University by way of distance education. According to the stand taken by the education institution and its college, a candidate who has passed M.Phil is exempted from NET/SET and eligible for the post of lecturer. As such, the education institution submitted the proposal to the University for approval of Dr Mrs Asha Akolkar which was turned down by the University. The real problem cropped up when the education institution sent proposal for approval of Dr Mrs Asha Akolkar for the post of lecturer in a subject of Public Administration. The University raised objection as to how the institution has submitted the proposal when there was only one sanctioned post of lecturer for the subject of Public Administration and that too when Mr Nalge was appointed on the said post earlier. As a result, University had cancelled the approval for one post of the lecturer in the subject of Public Administration. The education institution issued order dated 18.01.2013, thereby putting Mr Bharat Nalge and Dr Mrs Asha Akolkar on clock hour basis.

(c) Feeling aggrieved by the fresh appointment on clock hour basis, Mr Bharat Nalge has knocked the doors of the University and

College Tribunal, Aurangabad by making education institution, College, University, Joint Director and Dr Mrs Asha Akolkar as the party respondents. The University Tribunal vide Judgment and order dated 01.09.2016 was pleased to dismiss the appeal on the ground of want of jurisdiction to entertain the appeal. It is noteworthy that Dr Asha Akolkar has not challenged the order dated 18.01.2013.

(d) That Judgment and order passed by the University Tribunal dated 01.09.2016 was challenged before the High Court vide Writ Petition No. 12225/2016. This Court under order dated 03.12.2018 was pleased to remand the proceedings to the University and College Tribunal, Aurangabad by setting aside the order dated 01.09.2016 with following directions :-

"The Tribunal will decide the question as to whether withdrawal of the status of the petitioner as a permanent lecturer would amount to his termination from the said post. If it is a termination, then the Tribunal can decide the appeal on its own merits. Contentions of the parties are kept open."

(e) After reminding the matter to the University and College Tribunal, the appeal was heard afresh by giving an opportunity of being heard to all the parties.

(f) The University and college Tribunal was pleased to partly allow the appeal preferred by Mr Bharat Nalge. The order dated 18.01.2013 passed by the education institution and the College was set aside. The education institution and College were directed to reinstate Mr Bharat

Nalge on the vacant post of permanent lecturer in Public Administration subject within a period of three months from the date of passing of the order by giving benefit of arrears of back wages till his reinstatement and continuity in service. The liberty was given to Mr Bharat Nalge to approach the Grievance Committee under section 57/80 of the Universities Act against the order dated 26.06.2012 regarding withdrawal of approval by the University. In the above background, the education institution and the College have preferred Writ Petition No.1574/2021 and Dr Mrs Asha Akolkar has preferred Writ Petition No. 4869/2020 and challenged the Judgment and order passed by the University and College Tribunal dated 09.03.2020, by invoking writ jurisdiction.

4. Heard Mr R.N. Dhorde, learned senior counsel for the petitioner/Dr Mrs Asha Akolkar in Writ Petition No.10939/2020, Mr M.C. Syed, learned counsel for the education institution Sharadchandra Mahavidyalaya and the College(petitioner in Writ Petition No 1574/2021), Mr Rajendra Deshmukh, learned senior counsel for Mr Bharat Nalge, Mr K.M. Suryawanshi, learned counsel for Dr. Babasaheb Ambedkar Marathwada University, Aurangabad and Mr S.G. Sangle, learned AGP for the Joint Director, Higher Education Division, Aurangabad.

5. Mr R.N. Dhorde, learned senior counsel submitted that the appeal preferred by Mr Bharat Nalge before the University and College Tribunal is not at all maintainable in view of section 59 of the Universities Act. He submitted that though preliminary objection was raised about the jurisdiction of the Tribunal, the Tribunal went ahead and decided the

appeal on merits which is bad in law. He invited my attention to the impugned order dated 18.01.2013 whereby Mr Nalge and Mrs Asha Akolkar were put on clock hour basis by issuing fresh appointment orders. He submitted that mere reduction in rank from full time to clock hour basis does not amount to oral termination. He submitted that the findings recorded by the University Tribunal are bad in law. The Tribunal has overlooked the various Judgments of the parent High Court thereby position of law is well settled.

6. Mr R.N. Dhorde, learned senior counsel further invited my attention that Dr Mrs Asha Akolkar was appointed way back in the year 2002-2003 by the Management of education institution to teach subject of Public Administration in the Sharadchandra College. She was continued on year to year basis on the post of lecturer though on temporary contractual appointment. Mr Dhorde, learned senior counsel submitted that Mrs Asha Akolkar was having requisite qualification for selection on the vacant post of lecturer in Public Administration. She was holding M.Phil. The Management has also submitted proposal to the University claiming exemption from NET/SET in view of University notification. University granted approval to the appointment of the petitioner on temporary basis till decision of University Grants Commission and the State Government takes decision. However, the education institution and college have prepared record about issuance of advertisement and filling up one post of lecturer in the subject of Public Administration whereby Mr Bharat Nalge came to be appointed on 06.07.2009. It has caused injustice to Dr Mrs Asha Akolkar. He submitted that education institution and

college have submitted incorrect information to the University and thereby right of Dr Mrs Asha Akolkar to get appointment on vacant post of lecturer got defeated. Vide order dated 18.01.2013, the college management had put Dr Mrs Asha Akolkar on clock hour basis which is bad in law. Mr Dhorde, learned senior counsel submitted that Dr Mrs Asha Akolkar was having requisite qualification of M.Phil at the relevant point of time. She was exempted from NET/SET. She was working in the college right from the year 2002-2003. Even then, the education institution has denied the permanent appointment to Dr Mrs Asha Akolkar. There was sufficient workload in the college to teach the subject of Public Administration. He submitted that the Tribunal has committed an error in observing that Dr Mrs Asha Akolkar was not qualified for the post of permanent lecturer since she had not passed NET/SET. The Tribunal has not framed specific issue to that effect. He submitted that the University has confirmed the services of similarly situated candidates, who have passed M.Phil and has granted approval and those candidates are made permanent. The same treatment needs to be given to Dr Mrs Asha Akolkar, who was holding M.Phil degree at the relevant point of time. She has now completed Ph.D. and she needs to be appointed on the permanent post of lecturer for the subject of Public Administration. He submitted that the impugned order passed by the University and College Tribunal is bad in law. It is liable to be quashed and set aside.

7. Mr R.N. Dhorde, learned senior counsel has placed his reliance on following stock of citations in support of his submissions :-

- (i) ***Principal K.J. Somaiya College of Arts and Commerce Vs. Mrs Nalini Karnal V. Karnad and Anr. 2006 (4) Mh.LJ 132***
- (ii) ***State of Punjab Vs. Shri Kishan Das reported in 1971 (1) SCC 319***
- (iii) ***Shithla Shah Srivastava Vs. General Manager, North Eastern Railway, Gorakhpur reported in AIR 1966 SC 1197***
- (iv) ***Sudhir s/o Sharadrao Hunge and Anr. Vs. State of Maharashtra and Ors. reported in 2010 (4) Mh.L.J. 572.***
- (v) ***Shridhar son of Ram Dular Vs. Nagar Palika, Jaunpur and Ors. reported in AIR 1990 SC 307***
- (vi) ***A.V. Papayya Sastry and Ors. Vs. Government of A.P. and Ors. AIR 2007 SC 1546***
- (vii) ***T. Vijendradas & Anr. Vs. M. Subramanian and Ors. reported in 2008 (1) ALL MR 446 (SC)***

8. Mr M.C. Syed, learned counsel for the education institution and college practically argued on the lines of Mr R.N. Dhorde, learned senior counsel. The education institution has taken the stand to support Dr Mrs Asha Akolkar. Mr Syed, learned counsel submitted that even though fresh appointment orders are issued by the education institution by putting Dr Mrs Asha Akolkar and Mr Bharat Nalge on clock hour basis, it does not amount to reduction in rank or oral termination. As such, the Tribunal has no jurisdiction to decide that legal issue when there is no termination in the eye of law. Mr Syed, learned counsel submitted that even if a full time teacher is appointed as a part timer or on clock hour basis, his grade or

category of post as Assistant Teacher remains the same meaning thereby reduction of workload cannot be treated as reduction in rank. He submitted that impugned order passed by the University and College Tribunal thereby giving reinstatement to Mr Bharat Nalge on the vacant post of permanent lecturer for subject of Public Administration with back wages and continuity in service is bad in law. He submitted that the University Tribunal has completely overlooked the service jurisprudence. The impugned order is not maintainable in the eye of law. He therefore, urged to set aside the order passed by the University and College Tribunal dated 09.03.2020.

9. Mr Syed, learned counsel has placed his reliance on the following stock of citations in support to his argument :-

- (i) ***Maharashtra Seva Sangh Solapur and Anr. Vs. Shaikh Jamalchand and Anr. 2009 (4) Mh.LJ 198***
- (ii) ***Vithal Ramchandra Biradar and Anr. Vs. P.G. Patil and Ors.2000 MCR 50 (Aurangabad Bench)***
- (iii) ***Decision in Writ Petition No. 10612/2016 (Suresh Renukadas Halhalli Vs. Bashwaraj Vishwanathappa Dharne and Ors.) decided on 19th October, 2016.***
- (iv) ***Ajit Chandrakant Nagarkar and Ors. Vs. Mulund Gymkhana's College of Physical Education and Ors. MEC 925 (Bom.H.C.)***
- (v) ***Rajbir Singh Dalal (Dr.) Vs. Chaudhari Devi Lal University, Sirsa and Anr. 2008 (9) SCC 284***
- (vi) ***Ramrao Gopalrao Zanak Education Society and Anr. Vs.***

Vasudeo Ananda Zambre and Anr. 2007 (3) Bom.C.R. 284 (Nagpur Bench)

(vii) St. Ulai High School, through its Principal and Ors. Vs. Devendraprasad Jagannath Singh and Anr. reported in 2007 (1) Bom. C. R. 540.

10. Mr Rajendra Deshmukh, learned senior counsel for Mr Bharat Nalge/respondent pointed out that education institution and college had published advertisement in the daily newspaper 'Marathwada Kesari' dated 25.05.2009 for the post of permanent lecturer to teach subject of Public Administration. Accordingly, meeting of Selection Committee was held on 07.06.2009. The interviews of the candidates were conducted. Mr Bharat Nalge was selected by the Committee and the appointment order dated 06.07.2009 was issued to Mr Bharat Nalge. He joined his duty on the same day. The Management Committee has submitted proposal for approval of Mr Bharat Nalge to the University and accordingly, the University had granted the approval to the Selection Committee of Mr Bharat Nalge on 10.02.2010. Accordingly, the letter to release salary of Mr Bharat Nalge was issued. Mr Bharat Nalge was working on the post of permanent lecturer to teach subject of Public Administration for more than two years. He was on probation for two years and in view of deeming provision under the University statute, he has become permanent on the post of permanent lecturer. Whereas Dr Mrs Asha Akolkar was not having requisite qualification at the time of selection process. She was appointed on contract basis from year to year basis. Her services were not made permanent for want of requisite qualification. She had no right to claim the

post of permanent lecturer without having requisite educational qualification.

11. Mr Rajendra Deshmukh, learned senior counsel submitted that once Mr Bharat Nalge has completed more than two years continuously on the post of permanent lecturer, he is said to be permanent on the said post. His services cannot be terminated or he cannot be reduced in rank by the management without following due procedure of law. Mr Bharat Nalge was put on clock hour basis by order dated 18.06.2013 by way of fresh appointment. It amounts to oral termination as well as reduction in rank. The University and College Tribunal has considered all these aspects and rightly allowed the appeal by setting aside the order issued by education institution and college management on 18.06.2013. Mr Deshmukh, learned senior counsel supported the impugned Judgment and order passed by the University Tribunal dated 09.03.2020.

12. Mr Rajendra Deshmukh, learned senior counsel has placed his reliance on the following citations :-

- (i) ***Bharat Education Society's Junior College of Commerce, Economics others Vs. Shri Balraman Vembulu 2000 (4) Mh.L.J. 849***
- (ii) ***Maharashtra Cosmopolitan Education Society's MCES College of Education and Research Vs. The Presiding Officer Mumbai University and College Tribunal University of Mumbai and Ors. reported in 2017(3) ALL MR 622.***
- (iii) ***Decision in Writ Petition No. 9141/2017 ((Shirur Shikshan Prasarak Mandal and Ors. Vs. Shri Amrapal Ramesh Nitnavare) decided on 8th October, 2018 (Bombay)***

13. Mr K.M. Suryawanshi, learned counsel for the University submitted that the petitioner Dr Mrs Asha Akolkar was not having requisite educational qualification at the time of selection process for the post of permanent lecturer. As such, she was given temporary appointment on year to year basis. Her services were not made permanent at any point of time. Mr Bharat Nalge was appointed by following due procedure. The University has given approval. Accordingly, Mr Bharat Nalge had worked on the vacant permanent post of lecturer for more than two years. He has drawn the salary for the said post. He submitted that the position on the date of selection for the permanent post of lecturer to teach Public Administration needs to be considered. Even though Dr Mrs Asha Akolkar was holding M.Phil, was not having requisite qualification and that is why the University has not accorded the approval. He, therefore, urged to dismiss the petitions filed by the respective petitioners.

14. Mr Sangle, learned AGP for the State submitted that the State has very limited role to play.

15. I have considered the submissions of learned senior counsel Mr R.N. Dhorde and Mr Rajendra Deshmukh appearing for the respective parties, Mr Syed, learned counsel for the education institution and college, Mr K.M. Suryawanshi, learned counsel for the University and Mr S.G. Sangle, learned AGP for the State.

16. Perused the impugned Judgment and order passed by the University and College Tribunal dated 09.03.2020.

17. The centre of dispute involved in the petitions is changing the status of Mr Bharat Nalge from a lecturer on permanent basis to clock hour basis whether amounts to termination of his services as a permanent lecturer or it would amount to reduction in rank.

18. Let me first deal with the issue of jurisdiction raised by Mr R.N. Dhorde, learned senior counsel and Mr M.C. Syed, learned counsel for the respective petitioners.

19. Section 59 of the Maharashtra Universities Act, 1994 plays important role which reads thus :-

59. Right of appeal.

(1) Notwithstanding anything contained in any law or contract for the time being in force, any employee (whether a teacher or other employee) in any university, [- - -] college or recognised institution (other than that managed and maintained by the State Government, Central Government or a local authority), who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank by the university or management and who is aggrieved, shall have a right of appeal and any appeal against any such order 2 lie to the Tribunal

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court or Tribunal of competent jurisdiction or is pending before such Court or Tribunal on the date of commencement of this Act or where the order of dismissal or removal, otherwise termination of service or reduction in rank was passed by the management at any time before the date on which this Act comes into force

and in which case the period for filing an appeal has expired.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt him of the order of dismissal, removal, otherwise termination of services, or reduction in rank, as case may be:

Provided that, where such order was made before the date of commencement of this Act, such appeal may be made if the period of thirty days from the date of receipt of such order has not expired

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of four hundred rupees which shall not be refundable and shall be credited to the university fund:

Provided that it shall be lawful for the State Government to revise, by notification in the Official Gazette, such fees as it may deem fit from time to time.

20. The law is well settled on the point of limited jurisdiction of a Tribunal specifically constituted under special statute for specific purposes, and the Tribunal in question having been constituted under one such statute was required to deal with the matters within the parameters of section 59 read with section 61 of the Universities Act. The issue regarding validity or legality or illegality and or compliance or non-compliance of the procedural technicalities in course of obtaining affiliation of college being totally foreign to such issues under section 59 of the Universities Act. It is only in the matter of dismissal, removal or where

services or otherwise terminated or where an employee is reduced in rank, a remedy would be available to the employee under section 59 of the Maharashtra Universities Act, 1994 to approach the Tribunal and exercise right of appeal.

21. Having regard to the legal position, let me examine whether the order of appointment of Mr Bharat Nalge from the post of permanent lecturer to clock hour basis amounts to termination or reduction in rank.

22. The following admitted factual scenario is important to record an answer on the above issue :-

The education institution and college had published advertisement dated 25.05.2009 in the newspaper "Marathwada Kesari" for the selection of the vacant post of permanent lecturer to teach subject of Public Administration in the college. The education institution being a minority institution, a Selection Committee was constituted. The Selection Committee had conducted interviews with the candidates on 07.06.2009 and submitted the report. Mr Bharat Nalge was selected for the vacant permanent post of lecturer to teach Public Administration in the college. Accordingly, the appointment order in favour of Mr Bharat Nalge was issued on 06.07.2009 and he resumed his duties on the very day. The Management Committee has submitted proposal of Mr Bharat Nalge to the University on 30.12.2009. Accordingly, University has given approval to the appointment of Mr Bharat Nalge on the vacant permanent post of lecturer to teach Public Administration vide letter dated 10.02.2010. Accordingly, Mr Bharat Nalge was drawing salary for the post of

permanent lecturer to teach Public Administration. Subsequently, he became Head of the Department. At the time of selection of Mr Bharat Nalge, though Dr Mrs Asha Akolkar had applied for the said post, she was not having requisite qualification. As such, she was not selected. She was given contractual appointment on year to year basis. Mr Bharat Nalge was appointed on the permanent post of lecturer on probation for a period of two years. He has completed more than two years on the said post and drawn salary for the said post. In view of the statutes under the Marathwada University Act, 1974, statute 219(B) after successful completion of probation period, the employee shall be deemed to be permanent on the post on which he was appointed. Admittedly, Dr Asha Akolkar was not appointed on the vacant permanent post of lecturer for the subject of Public Administration. The University has also not accorded approval to Dr Mrs Asha Akolkar for the said post. Mr Bharat Nalge was appointed on the vacant permanent post of lecturer by following due procedure on a probation period of two years and after completion of two years period, he deemed to have become permanent in view of the University statute.

23. Next crucial point is about order of Mr Bharat Nalge and Dr Mrs Asha Akolkar putting them on clock hour basis. So far as putting Dr Mrs Asha Akolkar on clock hour basis, cannot be said to be termination of her services or reduction in rank when her services were not made permanent by following due procedure. She was purely on contractual basis. As pointed out earlier, Mr Bharat Nalge was appointed on the vacant permanent post of lecturer to teach subject of Public Administration. He

was having requisite qualification for the said post when he was selected. The University has also granted approval. He had drawn the salary for the said post for more than two years. He had become permanent on the said post in view of University statute 219 (B) (2). How the education institute and college can put Mr Bharat Nalge on clock hour basis when he has become permanent on the post of lecturer without following due procedure of law. A permanent employee has been put on clock hour basis without following the provisions of The Maharashtra Universities Act, 1994 and Regulations/Rules made thereunder and Statutes under the Marathwada University Act, 1974. The Tribunal has held that putting Mr Bharat Nalge by way of fresh appointment on clock hour basis from the post of permanent lecturer amounts to his displacement from that post which also amounts to illegal termination from the post of permanent lecturer. By recording such finding, the Tribunal has held that it has jurisdiction to entertain the appeal and accordingly, decided the same.

24. The Tribunal has also considered the ratio laid down in case of ***Principal K.J. Somaiya College of Arts and Commerce Vs. Mrs Nalini Karnal V. Karnad and Anr. (supra)*** and noticed that there are distinguishable facts. In the cited case, Ms Nalini Karnad was shifted from higher grade to lower grade. Whether pay scale is affected or not if the employee is shifted to the lower cadre, it would amount to reduction in rank and then only person is entitled to approach the Tribunal under section 59 of the Maharashtra Universities Act, 1994. She was a lecturer and continued to be lecturer and merely her pay scale is affected by changing her from full time lecturer to part time lecturer, it is held by this

Court that it would not be covered by virtue of provisions of section 59 of the Maharashtra Universities Act, 1994, and therefore, Tribunal has no jurisdiction to entertain the appeal. The facts of the cited case are quite different. In the case in hand, Mr Bharat Nalge was appointed by way of selection process on the vacant post of permanent lecturer to teach subject of Public Administration on a probation of two years. He has completed probation of two years. The college administration has not communicated adverse report to him and thereby Mr Bharat Nalge has deemed to have become permanent in view of statute 219 (B) (2) of Statutes under the Marathwada University Act, 1974. He has been put on clock hour basis by way of fresh appointment. Certainly, the ratio laid down in case of ***Principal K.J. Somaiya College of Arts and Commerce Vs. Mrs Nalini Karnal V. Karnad and Anr. (supra)*** is not applicable to the present case.

25. In case of ***Sudhir s/o Sharadrao Hunge and Anr. Vs. State of Maharashtra and Ors. (supra)*** it is held by the Division Bench of this Court that insertion of compulsory NET/SET qualification by the Government Notification dated 11.07.2009 is prospective in operation and appointments made on the basis of advertisement published prior to 11.07.2009 prescribing M.Phil qualification not affected. Here in this case, Dr Mrs Asha Akolkar was not appointed by way of selection process on the basis of advertisement published prior to the notification dated 11.07.2009. As such, the selection and appointments made pursuant to the advertisements published prior to 11.07.2009 would not be affected by the introduction of compulsory NET/SET eligibility criteria as per

Government Notification dated 11.07.2009. As such, the decision in case of ***Sudhir s/o Sharadrao Hunge and Anr. Vs. State of Maharashtra and Ors.***(supra) is also not in any way helpful to the petitioner/Dr Mrs Asha Akolkar.

26. In case of ***Maharashtra Seva Sangh Solapur and Anr. Vs. Shaikh Jamalchand and Anr. (supra)***, this Court has held that even if a full time teacher is appointed as a part timer or on clock hour basis, his grade or category of post as Assistant Teacher remains the same. In short, reduction of workload cannot be treated as reduction in rank. I have gone through the facts of the cited case very carefully. In the cited case, at the relevant time, employee was only having M.A. post graduate degree in Sociology and Political Science. He was not holding B.Ed. qualification which is prescribed under the relevant rules. As such, the Education Officer has given approval to his appointment only for one year by relaxing the condition of qualification. He was continued as part time teacher. Thereafter, his appointment was approved as part time teacher. He was thereafter granted approval on clock hour basis. In that factual background, this Court has held that reduction of his workload cannot be treated as reduction in rank. The facts of the case in hand are distinguishable.

27. In the case in hand, Mr Bharat Nalge was appointed through selection process and by following due procedure on the vacant permanent post of lecturer to teach subject Public Administration. He was appointed initially for a period of two years on probation. He has

completed more than two years on the said post without any break. In view of statute 219 (B) (2) of the Statutes under the Marathwada University Act, 1974, he is deemed to have become permanent on the said post after expiry of two years in absence of any contrary decision communicated to him. He cannot be disturbed from the permanent post of lecturer without following due procedure of law as provided under the University Act and Rules. All of a sudden, he cannot be put on clock hour basis by issuing fresh appointment. It amounts to illegal termination.

28. Rest of the citations referred by the learned counsel for both the sides have no direct bearing on the facts of the case.

29. In case of ***State of Punjab Vs. Kishan das (supra)***, it is held by the Hon'ble Supreme Court in para No. 9 as under :-

9. It is thus clear that education in rank within the meaning of Article 311(2), as the expression itself suggests, means reduction from a higher to a lower rank or post and not merely losing places in the rank or cadre to which the Government servant belongs and consequently, his seniority within such cadre or rank. This would be so, even if as a result of the Government's action he loses a higher salary or his chances of promotion to a higher post are reduced. For such action, the remedy would be under the rules governing the service and not under Article 311(2) as such action does not amount to reduction in rank as understood for the purposes of Article 311(2).

30. It is rightly observed by the Presiding Officer of the University and College Tribunal that Mr Bharat Nalge has become permanent after completion of his two years probation and thus, acquired confirmation on

the said post. He cannot be displaced or disturbed from the said post without following due procedure as provided under the University Act and Regulations/Rules. Here in this case, it appears that the education institution and college in order to accommodate Dr Mrs Asha Akolkar on the said post, have played an unfair role and invited the trouble. Initially, the education institution and college were not in favour of Dr Mrs Asha Akolkar since she was not holding requisite qualification for the vacant post of permanent lecturer to teach subject of Public Administration. Whereas Mr Bharat Nalge was having requisite qualification and also passed NET/SET and he was selected for the vacant permanent post of lecturer by following due procedure and he has become permanent on the said post after completion of probation. How he can be put on clock hour basis. It amounts to illegal termination.

31. The Tribunal has rightly recorded the finding to that effect. I do not see any error on the part of the Presiding Officer, University and College Tribunal to record such finding in the above factual scenario and documents on record. Both the petitions being devoid of any merits are liable to be dismissed.

ORDER

- (i) Both the Writ Petitions stand dismissed.
- (ii) Rule is discharged.
- (iii) No order as to costs.
- (iv) The civil application stands disposed of.

- (v) Record and Proceedings be sent back to the University and College Tribunal, Aurangabad.

[SHRIKANT D. KULKARNI, J.]

32. At this stage, Mr P.S. Dighe, learned counsel for the petitioner in Writ Petition No. 4869 of 2020 seeks continuation of interim relief granted earlier by this Court.

33. Mr K.M. Suryawanshi, learned counsel for respondent No. 3 and Mr R.B. Dhaware, learned counsel for respondent No. 5 opposed to continue the interim stay when the petitions have been disposed of on merits. I do not see any reason to continue the interim stay when the petitions have been dismissed on their own merits. Hence, prayer is turned down.

[SHRIKANT D. KULKARNI, J.]

mta