

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5176 OF 2015
WITH
CIVIL APPLICATION NO. 12266 OF 2016

1. Vishwajit s/o Dinkarrao Patil,
Age 37 years, Occu: Service, Presently
working as Assistant Professor in
Mechanical Engineering, Chemical
Technology Department,
North Maharashtra University, Jalgaon.

2. Dr. Pankaj s/o Kautikrao Pawar,
Age 35 years, Occu: Service, Presently
working as Assistant Professor in
School of Live Sciences,
North Maharashtra University, Jalgaon.

3. Dr. Anil s/o Sahebrao Kuwar
Age: 33 years, Occu: Service, Presently
working as Assistant Professor
in School of Chemical Sciences,
North Maharashtra University, Jalgaon.

4. Dr. Bipinchandra s/o Kashinathrao Salunke
Age 36 years, Occu: Service, Presently
working as Assistant Professor
in School of Live Sciences,
North Maharashtra University, Jalgaon.

...Petitioners

Vs.

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

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2. The Director of Higher Education,
Maharashtra State, Pune.

3. The North Maharashtra University,
Jalgaon, through its Registrar.

4. The University Grants Commission,
Bahadurshah Zafar Marg,
New Delhi 110 002.

...Respondents

Mr. S.R. Barlinge, Advocate for the Petitioners,
Mrs. M.A. Deshpande, Addl. G.P. for the Respondent Nos.1 & 2.
Mr. A. B. Girase, Advocate for Respondent No.3,
Mr. D. B. Pawar, Advocate for Respondent No.4

CORAM : C.V. BHADANG AND

SANDIPKUMAR C. MORE, JJ.

RESERVED ON : 19 JULY 2022

PRONOUNCED ON : 20 JULY 2022

JUDGMENT : (Per C. V. Bhadang, J.)

By this petition, the petitioners are seeking following substantive reliefs:

"A) By a writ of certiorari, or any other appropriate writ, or order or directions in the like nature, the impugned order dated 03.03.2015, passed by the respondent No.1, may kindly be quashed and set aside.

(B) By a writ of mandamus, or any other appropriate writ, or order or directions in the like nature, the respondent No.3

University be directed to reinstate the petitioners in service and continue them in service as per the 11th Five Year Plan.

2. The brief facts necessary for the disposal of the petition may be stated thus:

That the petitioners claim to be possessing necessary qualification prescribed by the University Grant Commission (UGC) for appointment to the post of Assistant Professors.

3. The UGC, vide notification dated 22 February 2010, had informed the Vice Chancellor of the respondent- North Maharashtra University allocating posts as per 11th Five Year Plan and intimating that the grants would be made available to the University, after the University acts upon the said plan.

4. The respondent- University had issued an advertisement No. 1/2010 dated 29 April 2010, seeking recruitment to the posts of Professors/Associate Professors/Assistant Professors and others. The posts were referred to as the ' Plan Posts' for the tenure till 31 March 2012. Following note No.1 is appended to the Advertisement:

1. Plan posts are sanctioned by the UGC under the XIth Plan for the tenure till 31/3/2012. These posts are being filled in temporarily but after obtaining

concurrence from Government, these posts will be filed in on regular basis by re-advertising. The reservation to these posts will be applicable as per Government rules.

5. Undisputably, the petitioners came to be appointed in pursuance of the said advertisement and a proposal was sent to the Government for getting concurrence in respect of the candidates who were appointed as per the 11th Five Year Plan. Such a proposal was submitted on 12.01.2012 indicating that the posts are necessary for maintaining educational standards in the University and for the welfare of the students. The University by virtue of the said proposal had requested for getting concurrence to the posts as sanctioned by the UGC as per the 11th Five Year Plan.

6. The State Government, by virtue of the impugned letter dated 3 March 2015, has refused to grant concurrence on the ground that the posts were created by the University without prior approval of the State Government as eventually, the financial implications out of such creation of posts is required to be borne by the State Government.

7. The University by an order dated 4 May 2012, terminated the services of the petitioners with effect from 7 May 2012. However, by subsequent communication dated 7 May

2012, the appointment was continued till 31 May 2012. Thus, the petitioners stood terminated with effect from 31 May 2012.

8. It is in these circumstances that the petitioners are challenging the communication dated 3 March 2015 and seeking their reinstatement in service.

9. We have heard learned counsel for the parties. Perused record.

10. It is submitted by Mr. Barlinge, the learned counsel for the petitioners, that the petitioners are duly qualified as per the qualification prescribed by the UGC and have been selected by duly constituted Selection Committee against sanctioned / clear posts. He, therefore, submitted that the services of the petitioner could not have been terminated on the ground of the same being tenure posts or for a temporary period. The learned counsel has also taken exception to the refusal by the State Government to grant concurrence on the ground of want of prior permission from the Government. It is submitted that the State Government is obliged to release/sanction funds once the posts are approved by the U.G.C. under the relevant Five Year Plan. The learned counsel has referred to certain orders passed by the Government by which, in respect of the posts in the 11th Five Year Plan, the State Government has granted concurrence. A specific reference

in this regard is made to the Government Resolution dated 30 March 2012 whereby, concurrence was granted in respect of certain posts created by the respondent- University as a part of the 11th Five Year Plan of the U.G.C. It is pointed out that by the said Government Resolution dated 30 March 2012, the Government had agreed to bear financial burden with effect from 1 April 2012. He, therefore, submitted that the Government cannot discriminate between the posts, which have been sanctioned as a part of the same Five Year plan. It is submitted that refusal by the State Government to grant concurrence is discriminatory, without any nexus to the object sought to be achieved.

11. On behalf of the petitioners, reliance is placed on the decision of this Court in Writ Petition No. 8701 of 2013 (Dr. Navinchandra Gopal Shimpi and others Vs. State of Maharashtra) decided on 29 July 2015. Reliance is also placed on the decision of Madras High Court in Writ Petition (MD) No.3935/2012 and others decided on 21 September 2012. In short, it is submitted that the Government cannot refuse concurrence once the posts are sanctioned as per the Five Year Plan of the UGC.

12. The learned counsel for the respondent- University submitted that the posts were part of the financial assistance

granted by the U.G.C. for the 11th Five Year Plan ending 31 March 2012 and looking to the nature of the appointment and the terms of the advertisement, the petitioners cannot seek any regularization /permanency or continuation in service. It is submitted that the petitioners stood terminated with effect from 31 May 2012 and had an alternate remedy before the College Tribunal. It is submitted that the petition is, therefore, not maintainable in view of the availability of the alternate statutory remedy.

13. The learned AGP has submitted that a policy decision was taken in the year 2014 not to grant concurrence to such of the posts which are directly got sanctioned by the University under the Five Year Plan of the U.G.C., without prior concurrence of the State Government. It is submitted that this ultimately leads to the financial implication/burden on the Government. She submitted that the policy decision has been taken subsequent to the year 2012, after which no posts under the 11th Five Year Plan have been granted concurrence / approval. She submitted that there is no discrimination and claimed that the reliance placed on the Government Resolution dated 30 March 2012 is misplaced. The learned AGP has pointed out section 8 of the Maharashtra Universities Act, 1994 ('the University Act' for short)in order to submit that there is statutory obligation on the University to seek prior concurrence.

14. In reply, it is submitted by the learned counsel for the petitioners that section 8 of the University Act may not apply where the posts are created as part of the Five Year plan by the UGC. He, therefore, submitted that section 8 of the University Act has no application in the matter. He has placed reliance on clauses (d), (e) and (f) of section 12 of the University Grants Commission Act, 1956 (the UGC Act for short) in order to submit that the powers and functions of the Commission as prescribed under Section 12 of the UGC Act would indicate that the State Government was under obligation to grant such concurrence.

15. In so far as the objection, regarding alternate remedy is concerned, it is submitted that the College Tribunal cannot examine the issue of grant of concurrence / approval by the State Government and as such, the petitioners could not have approached the College Tribunal.

16. We have given our anxious consideration to the rival circumstances and the submissions made.

17. It is not in dispute that about 23 teaching posts were filled in by the Respondent - University as part of the 10th and 11th Five Year plan of the U.G.C. It is also not in dispute that the petitioners came to be appointed by the Respondent-

University in pursuance of the advertisement dated 29 April 2010 as part of the 11th Five Year Plan of the UGC. As per the Guidelines, for innovative/emerging areas, during the XI plan period (2007-2012), the financial assistance under the plan was for five years. Clause 3(ii) stipulates that thereafter the State Government / University/ Institute/ College will take over the recurring liabilities to run the approved course as per the concurrence of the Government or the assurance/undertaking given by the University/Institute/College at the time of acceptance of the terms and conditions of the UGC assistance in implementing the programme. Clause 7(ii)(c) of the guidelines pertaining to the conditions for receipt of grants under the plan contemplates an assurance from the University/Institute/ College that the approved course will continue even after the UGC assistance to the programme ceases. It is not clear whether such assurance was given by the University. Clause 16(iv) of the Proforma (Annexure I) for submission of the proposal under the UGC innovative programme, requires the University to specify whether the state Government/University/Institute/College will take up the recurring liability after cessation of the UGC assistance. A conjoint reading of the guidelines would make it clear that the financial assistance by the UGC is only for the plan period of five years. The further stipulation that the subsequent liability towards recurring expenditure has to be taken over either by the Government/University/Institution /College is only to

emphasise that beyond the period of five years the UGC will not bear the expenditure. There is nothing on record to suggest that the State Government had either agreed or undertaken to bear such expenditure after the plan period. That is not even the case made out. It is necessary to note that the challenge to the impugned communication by the State Government is not at the instance of the University but by the four petitioners who were appointed in pursuance of the posts sanctioned under the 11th Five Year Plan. It is also not in dispute that prior concurrence of the Government was not obtained before the University proposed to the UGC for the assistance under the said plan. The question is whether in such circumstances the petitioners can successfully challenge the refusal by the State Government to grant concurrence / approval and consequently whether they can seek reinstatement in this petition in view of the alternate statutory remedy of an appeal before the College Tribunal.

18. The learned counsel for the petitioners has contended that the Government was under an obligation to grant concurrence once the posts were sanctioned as part of the five year plan of the UGC. On the contrary, the learned AGP submitted that under section 8 of the University Act the university was under an obligation to seek prior concurrence. In reply the learned counsel for the petitioners has relied upon section 12 (d)(e)(f) of the UGC Act.

19. Section 8(1)(a) of the Universities Act 1994 (which was applicable in the year 2010) stipulates that without previous approval of the State Government the University shall not create new posts of teachers, officers or other employees. It can thus be seen that there is a statutory duty on the university to seek prior approval of these State Government before creation of the posts. No such prior approval is obtained by the University. Reliance placed on behalf of the petitioners on clauses (d),(e) and (f) of section 12 of the UGC Act is entirely misplaced. The said clauses read as under.

12. Functions of the Commission – It shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may-

(a) ----

(b)----

(c)----

(d) recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation;

(e) advise the Central Government or any State Government on the allocation of any grants to Universities for any general or specified purpose out of the Consolidated Fund of India or the Consolidated Fund of the State, as the case may

be.

(f) advise any authority, if such advise is asked for, on the establishment of a new University or on proposals connected with the expansion of the activities of any University

20. It is difficult to see as to how the said clauses can be read to create an obligation on the State Government to grant approval/concurrence to the posts and takeover the financial burden if the posts are part of the five year plan of the UGC. The contention based on these clauses is liable to be rejected.

21. This takes us to the contention based on the discrimination by the State Government. It is necessary to note that as per directions issued in Writ Petition No.6126/2012 on 20 December 2012 a High Power Committee (HPC) of the Government had considered the issue and a policy decision was taken that the Universities shall not henceforth fill up such posts without sanction and approval of the Government. The approvals/concurrence granted by the Government on which reliance is placed on behalf of the petitioners are prior to the policy decision. The Respondent-State in the affidavit of Dr. Keshav Tupe, Joint Director of Education Jalgaon dated 18 January 2017 has pointed out the instances of various universities in para 10(a) to 10(k) where a similar proposal in respect of teaching and non teaching staff has been turned down. It is well settled that the court would be slow in interfering with a

policy decision of the state, more so, when it has financial implications. At the cost of repetition, it is necessary to note that the instant challenge is not by the University but by four petitioners who were appointed on the plan post. Considering the overall circumstances and the reasons as set out above, we are not inclined to accept the ground of discrimination, raised against the Government. Thus, the claim for a direction to the State to grant approval/concurrence has to fail

22. This takes us to the claim for reinstatement. The learned counsel for the petitioners submitted that the claim in this petition has to be considered in two parts. The first relating to the challenge to the impugned communication refusing to grant approval/concurrence and the second for reinstatement in as much as the petitioners could not have approached the College Tribunal for the former relief. In short, it is contended that as the College Tribunal is not clothed with the jurisdiction to examine the challenge to the impugned communication by the State Government the relief of reinstatement is sought before this Court.

23. The contention in our view cannot be accepted. The petitioners were selected and appointed by the University, under the 11th plan of UGC. The plan as noticed earlier contemplates the financial burden being borne by the UGC for a period of five years after which it was the responsibility of the University to take

over, in the absence of an approval by the Government which refusal we have found to be justified. The appointment of the petitioners was extended till 31 May 2012 that is after the plan period expired on 31 March 2012. On behalf of the contesting Respondents, reliance is placed on the note appended to the advertisement as reproduced above.

24. Further reliance is placed on the terms of the appointment as contained in the letter of appointment, where the appointment is shown to be temporary for the period of UGC XI plan that is tenure till 31.3.2012. In our view, the petitioners had a remedy under section 59 of the 1994 Act against the University as the principal grievance of the petitioners is the cessation of their appointments, before the College Tribunal and for this reasons we are not inclined to entertain the petition for the relief of reinstatement.

25. On behalf of the petitioners reliance is placed on the decision of a Division Bench of this Court in *Dr. Navinchandra Shimpi and Another Vs. The State of Maharashtra and Others*¹ In that case, the petitioner No.1 Dr. Shimpi had during the pendency of the petition had joined Mumbai Universities as an Associate Professor and thus the petition survived only for the second petitioner. In that case, the petitioners were appointed under a similar innovative programme of the UGC on a

¹*in Writ Petition No.8701/2013 decided on 29.7.2015.*

temporary basis. The UGC citing the reason that under the said programme appointments cannot be made on a temporary/ad-hoc basis had stopped the financial assistance in the midst of the appointment which was made till 31 March 2015. The University terminated the services which was subject matter of challenge before this court. The petitioners had also sought continuation of their services even after the cessation of the financial assistance extended by the University. On behalf of the University, a preliminary objection was raised to the maintainability of the petition in view of the remedy available under Section 59 of the 1994 Act. This Court, after taking note of the fact that the University had accepted the terms of the UGC, about the innovative programme held that the appointments could not have been made on temporary basis. The only limited relief granted in that case was of reinstatement by setting aside the termination dated 1 October 2013. However the relief of continuation beyond 31 March 2015 was not granted and left to the decision of the University having regard to the fact that it was not the case of the University that the M.Tech. Course in Nano Technology was to be closed or discontinued. It can thus be seen that this court had said that the University may consider the case of the petitioner sympathetically as the course in nano technology was not discontinued.

26. In the present case, we find that the termination was even beyond the period of the plan which expired on 31 March 2012. Thus, even assuming that in terms of the innovative programme the University could not have made appointment on a temporary basis the said decision cannot come to the aid of the petitioners. That apart, we do not find that the Court has recorded any finding on the availability of an alternate remedy in that case. Thus, the reliance placed on the decision in *Dr. Navinchandra Shimpi*, in our view, is misplaced.

27. The case of *Dr. R. Soranam S/o. S. Ramaian and Others Vs. Manonmainam Sundaranar University and Another*² before the Madurai Bench of the Madras High Court decided on 21 September 2012 arose out of the appointment made in pursuance of the same 11th Five Year Plan of the UGC. A learned single judge dealing with the matter found that under the terms of the innovative programme it was a necessary condition for the release of UGC assistance against any post approved by the UGC that a copy of the concurrence accorded by the state Government/an undertaking by the University based on a resolution passed by the Executive Council of the University in respect of maintainance of the posts after the plan period was to be enclosed. It was an admitted position therein that no such undertaking by the University was furnished therein. The University could however appoint the teaching staff on contract basis for the plan period

²2012 SCC Online Mad 3645

only. The Court found that the University in its discretion had appointed the teaching staff on tenure upto 31 March 2012. The learned single judge found that the appointment on a tenure basis cannot be same as that on contract. Even in that case it does not appear that there was an issue of alternate remedy raised or considered by the court. Thus, we find that, the said case does not come to the aid of the petitioners.

28. In the result, we find that the principle dispute of the petitioners was with the University, about cessation of their employment which ought to have been raised before the college tribunal under section 59 of the 1994 Act. The issue about refusal of approval by the Government was only related to the State Government declining to take over the financial burden. As noticed earlier the UGC programme required either concurrence/ approval of the State Government or an undertaking by the University, of continuation of the posts even after the plan period and bearing the financial implications. It is not known whether any such undertaking was furnished by the university in this case. Be that as it may as we are declining to entertain the petition to the extent of the relief of reinstatement in view of availability of an alternate remedy we do not propose to dwell any further on the merits of the claim of reinstatement. In so far as the challenge to the letter dated 3 March 2015 is concerned we have already found that no case is made out.

29. The petition is without any merit and is accordingly dismissed, with no order as to costs.

30. Pending civil application is also disposed of.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.