

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3142 OF 2000

Smita d/o Rajendra Nagori,
Aged 28 years, Occ. Service,
Lecturer in English,
Maharashtra Udaygiri Mahavidyalaya
Udgir, Taluka Udgir, Dist. Latur

..Petitioner

Versus

1. Maharashtra Education Society,
Udgir, Taluka Udgir,
District Latur.
2. The Principal,
Maharashtra Udaygiri Mahavidyalaya
Udgir, Taluka Udgir, Dist. Latur.
3. Swami Ramanand Teerth Marathwada
University, Nanded,
Through its Registrar.
4. The State of Maharashtra
Through Joint Director of Higher
Education, Nanded Region, Tarasing
Market, Nanded Dist. Nanded.
5. Dr. P.G. Jadhav
Registrar, Swami Ramanand Teerth
University, Vishnupuri, Nanded,
District Nanded.

..Respondents

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Mr. V.D. Hon, Senior Counsel i/b Mr. A.D. Sonkawade & Mr. A.V. Hon,
Advocate for the Petitioner.

Mr. A.S. Shinde, AGP for the State.

Mr. H.B. Nandagavale h/f Mr. V.G. Sakolkar, Advocate for Respondent
Nos.1 & 2.

Mr. S.R. Bagul, Advocate for Respondent No.5.

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CORAM : S.G. MEHARE, J.

DATED : APRIL 15, 2024

ORAL JUDGMENT :-

1. Heard learned counsel for the petitioner and learned counsel for the respective contesting respondents.

2. This case illustrates how the litigants take advantage of the practice of mentioning the matters for hearing before the Court and overcrowding of the litigations, particularly after securing interim protection. Long back, 24 years ago, the impugned order of the University and College Tribunal, Aurangabad, was impugned. After filing the writ petition, the interim relief was obtained on 31.07.2000. The interim protection was granted in terms of prayer clauses (D) and (E), which read thus:

“(D) Pending hearing and final disposal of the present writ petition grant stay to the termination order dated 1.6.2000 passed by the respondent no.2 and the order dated 29.5.2000 only to the extent of direction to readvertise the post and to fill in the vacant post; and for that purpose issue necessary orders.

(E) Pending hearing and final disposal of the present writ petition respondents be directed to reinstate the petitioner in service with full backwages, continuity in service and continue to pay her salary regularly; and other consequential benefits and for that purpose issue necessary orders;”

3. After the order of interim relief dated 31.07.2000, the petitioner continued in service and was getting salary from the Government without approval. How and at whose instance the salary was paid is another question. However, the fact remains that after

around 24 years, the matter was listed. However, after securing the interim order, leave was obtained to add the State Government and Registrar of the University as a party to the petition. This happened in 2001. Thereafter, they joined as a party. They were served. Learned counsel for them appeared, and the matter was left unattended. For the first time, the circulation was sought on 31.10.2014. However, the Court (Coram: Ravindra V. Ghuge, J.) ordered “Not before me” as he had filed the affidavit in reply for contesting respondent no.3, the matter was again kept pending. Then the circulation was sought directly in 2020. Then, the matter was listed on 20.03.2020. Then again, the matter was listed on 31.10.2023. Nobody has shown the diligence to resolve the issue for a long period. The petition is now listed for hearing as the petitioner is on the verge of retirement in August 2024. Such a convenience has been awarded to the petitioner, and now it has been submitted that the petitioner is on the verge of retirement. Therefore, the matter may be heard on merit. It is astonishing, that none of the respondents circulated the matter for final arguments or decision on merit against the interim relief secured by the petitioner.

4. The petitioner had faced the interview in response to the advertisement. The selection committee of six members was constituted; one special expert differed, and five favoured the petitioner. Respondent no.1 issued the appointment order as

probationary. Thereafter, a proposal for approval was sent to respondent no.3 by letter dated 25/29th May 2000 informing respondent no.1 that the approval to the appointment of the petitioner was granted only for one academic year from 1999 to 2000. Respondent No.1 was directed to issue a fresh advertisement and get the appointment through the selection committee. In reference to the said letter, respondent No.1 terminated the services of the petitioner. Against that termination, she had preferred the appeal before the University and College Tribunal, Aurangabad. The learned Tribunal dismissed the appeal. In the impugned order, the Presiding Officer has recorded the finding that, in my opinion, the question for my consideration would be whether the Management has acted legally or otherwise while terminating the services of the employee. The question of correctness or otherwise of the period of approval granted by the Vice-Chancellor to the appointment of Lecturer would not be within my jurisdiction while dealing with the matter under Section 59 of the Maharashtra Universities Act. In this case, the Management was constrained to terminate the services of the appellant. In view of the circumstances mentioned above, the act of Management cannot be said to be contrary to the provisions. With the above observations, the appeal was dismissed.

5. Learned counsel for the petitioner would submit that the order refusing the approval is *non-est* for no reason. The petitioner

has faced the election process. She was never intimated about the dissenting opinion of the expert. On the contrary, the appointment order was issued to her. Since the appeal was dismissed erroneously, her services were continued as per the interim relief order of this Court. He would submit that the learned Tribunal incorrectly held that it has no jurisdiction to deal with the correctness or otherwise of the period of approval granted by the Vice-Chancellor to the appointment of Lecturer as it is out of its jurisdiction under Section 59 of the Maharashtra Universities Act. He would submit that the explanation of respondent no.3 by way of reply in appeal and affidavit in reply before the writ petitions are afterthought. Once the appointment is for two years, the University/respondent No.3 was bound to approve. He would submit that the petitioner is not at fault. Relying on the case of Arti d/o Vithalrao Warkhede Vs. Education Officer (Secondary), Zilla Parishad, Wardha and Others, 2011 (1) Mh.L.J. 638, he has vehemently argued that the law is well settled that the Tribunal has jurisdiction to decide whether the refusal of approval is right or wrong, as an ancillary or incidental question. He also relied on the case of Ramchandra Uttam Dhavale Vs. Padma Shamrao Patil and Others, 2017 SCC Online Bom 9285. He prayed to consider this petition under Article 226 of the Constitution of India and requested the Court to confirm the services of the petitioner, who rendered services for around 24 years with an unblemished record.

He also vehemently argued that the order granting approval only for one year and direction to re-advertise are without reason and contrary to the law. Therefore, it is liable to be quashed and set aside.

6. Per contra, learned counsel for respondent no.5 has vehemently argued that one of the expert members of the selection committee dissented and put his dissent note against the petitioner. Therefore, considering the interest of students, the university bonafide granted the approval only for one year. Though the letters were not specific, the intention of respondent no.3 was clear that the appointment was not legal and proper. The dissenting opinion of the expert ought to have been considered by the Management. Without seeking any opinion from the controlling authority, the Management issued the order of appointment. These facts were disclosed long back in an appeal of 2000 before the learned Tribunal. The petition was never amended to seek appropriate relief. The impugned judgment and order of the learned Tribunal is not on merit. The substantial question on the legality and validity of the appointment of the petitioner was not framed. Unless the legality of the appointment is determined, the learned Tribunal could not go ahead. The question of approval is not within his jurisdiction dealing with the matter under Section 59 of the Maharashtra Universities Act, 1994. He submits that since the impugned order is not passed on merit, the

only option with the Court is to remit the matter for a decision on merit.

7. Learned counsel for respondent no.1 is supporting the petitioner as he is the appointing authority.

8. Learned senior counsel for the petitioner submits that Section 60 of the Maharashtra Universities Act, 1994, provides for the general powers and procedure of the Tribunal. He would submit that the learned Tribunal also has the power to decide the procedure to be followed by the learned Tribunal for the disposal of its business, including the place or places at which it is located and the hours during which it shall hold its sittings. Therefore, under the powers under Section 60, the Presiding Officer has correctly followed the procedure; however, he passed an illegal order.

9. The State has submitted that they were not arraigned as a party before the learned Tribunal. Hence, they were unable to make a statement about the appointment. The learned Tribunal ought to have framed the first issue of the legality and validity of the appointment of the petitioner. The learned Tribunal delivered the judgment without issuing a root question.

10. Section 60 of the Maharashtra Universities Act, as discussed above, confers the power of the learned Tribunal to conduct appeals and procedures thereof. Sub-section (1) of Section 60 provides that for the purposes of admission, hearing and disposal of

appeals, the Tribunal shall have the same power as are vested in an appellate court under the Code of Civil Procedure, 1908. The appellate jurisdiction of the Civil Court under the Code of Civil Procedure provides that while dealing with the judgment in appeal, the Court shall frame the points for determination and record the finding on each point. The learned Tribunal did not follow this procedure. Considering the issues involved in the case and particularly the reply of respondent no.3, the question really revolved around the legality and validity of the appointment of the petitioner. The facts were disclosed by way of a reply as to why the approval was granted for one year only. However, the petitioner did not take appropriate orders. Be that as it may, it was the duty of the learned Tribunal to frame the issue considering the pleadings of both sides. This Court is of the view that considering the pleadings of both sides, the first question the learned Tribunal ought to have framed was about the legality and validity of the appointment of the petitioner, and then he ought to have dealt with its power touching the issue of legality and validity of the approval. However, it was not done. Hence, the following order :

ORDER

- (i) The petition is partly allowed.
- (ii) The impugned judgment and order of the Presiding Officer, University and College Tribunal, Aurangabad in Appeal No.SRTMU-

7/2000 dated 06.07.2000 is quashed and set aside and remitted to the learned Tribunal for decision on merit by following the procedure strictly under Section 60(1) of the Maharashtra Universities Act within two months from the date of appearance of the parties and to frame the points for determination specifically about the legality and validity of the appointment of the petitioner.

(iii) Both parties are directed to appear before the learned Tribunal on 29.04.2024.

(iv) No order as to costs.

(v) Till the parties appear before the learned Tribunal, there shall be interim protection to the termination order.

(vi) Rule is made partly absolute in above terms.

(S.G. MEHARE, J.)