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WP 3504.22 R.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3504 OF 2022

Swami Ramanand Teerth
Marathwada University, Nanded
through it's Registrar,
"Dnyanteerth", Vishnupuri,
Nanded, Tal. & Dist. Nanded.

.. Petitioner.

VERSUS

1. The State of Maharashtra
through Principal Secretary
Higher & Technical Education
Department, Mantralaya, Mumbai-32.
2. Gajanan Panditrao Mudholkar,
Age 37 years, Occ. Service,
R/o. /Gajanan Niwas, Near Railway Over Bridge,
Datta Nagar, Nanded Tal. & dist. Nanded.

..Respondents.

...

Mr. U.S. Malte, Advocate for petitioner
Mr. M.V. Ghatge, Advocate for respondent No.2
Ms. R.R. Tandale, AGP for respondent No.1.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 7TH AUGUST, 2024.
PRONOUNCED ON : 27TH AUGUST, 2024.

ORDER :-

1. The petitioner University impugns the judgment and order dated 6.10.2021 passed by the University and College Tribunal, Aurangabad in Appeal No. SRTMU-03 of 2017.

2. Respondent No.2 had approached University and College Tribunal contending that under 12th Scheme of University Grants Commission (UGC for short) certain amount was sanctioned to the Universities to render education in the faculty of School of Commerce and Management Sciences. The UGC had issued guidelines for recruitment of teaching staff. The petitioner University passed a resolution to implement the scheme and issued an advertisement inviting applications from the eligible candidates for appointment on the post of Assistant Professor (Five Year Tenure from University Fund). The respondent No.2 offered his candidature in pursuance of the advertisement and after following due procedure of law, he was appointed vide order dated 10.12.2012 in the Pay Band of Rs. 15,600 – 39100/- with Annual Grade Pay of Rs. 6,000/- and eligible allowances like D.A., H.R.A. etc.

3. The Management Council of University vide resolution No. 1/23-2015, dated 20.2.2015 took a decision to issue regular appointments to employees like respondent, accordingly on 21.2.2015, petitioner University issued revised appointment order to respondent No. 2. The revised appointment order stipulates that respondent No.2 is appointed as Assistant Professor in the school of educational sciences at University on reserved post, for UGC (XII) Plan, based on performance in interview held on 11.12.2012. The appointment order stipulates the condition that the appointment is on probation period of 2 years in the prescribed pay band. Surprisingly, vide communication dated 21.7.2017, one of the teacher appointed under the scheme (Mr. Kalyankar) was informed by University that he is relieved from service w.e.f. 27.7.2017 since his term of appointment of 5 years expires on 27.7.2017. The

reference was made to decision of management council dated 25/07/2017.

4. Aggrieved thereby, respondent No.2 approached the University and College Tribunal by filing appeal under the provisions of Maharashtra Universities Act assailing the resolution dated 25.7.2017 passed in the meeting of Management Council thereby terminating services of respondent No.2. The petitioner University filed reply opposing the prayers in the appeal. The Tribunal, after hearing the parties, allowed the appeal vide judgment and order dated 6.10.2021, thereby setting aside the impugned termination order as well as resolution of the Management Council and directed the University to pay salary in accordance with the revised appointment order and bear the cost of the litigation. The judgment and order of the Tribunal is subject matter of challenge in this writ petition.

5. Mr. U.S. Malte, learned advocate for the petitioner submits that respondent No.2 was appointed in pursuance to advertisement dated 19.6.2012 on purely temporary basis for a specified term of 5 years. The appointment order also specifies the aforesaid condition. He would submit that in absence of sanctioned post on establishment of the University, the permanent appointment can not be made. The appointment of the respondent No.2 is against the scheme of UGC, for which special grants were released. Thereafter, the University had moved the proposal to the State Government to make available salary grants against the post of the petitioner. However, the State Government declined to entertain the proposal. He submits that even the revised appointment order dated 21.2.2015 was on probation for two years.

The University has never issued permanent appointment order. Respondent No.2 has no right to seek continuation of his services.

6. Per contra, Mr. Mahesh Ghatge, learned advocate appearing for the respondent employee, submits that the petitioner was interviewed by the Selection Committee constituted under Section 176 of the Maharashtra Universities Act 1994. Prior to that, the advertisement was issued inviting applications from the eligible and qualified candidates to hold the post advertised. After following due process of law and on the basis of the recommendation of the Selection Committee, respondent No.2 was appointed. He would submit that the courses against which the respondent No.2 was appointed, are still continued and there is sufficient strength of students. In fact, there is shortage of requisite staff and respondent No.2 is continuously rendering services since last more than 12 years. He would submit that the respondent No.2 is now age-barred and not eligible for fresh appointment. Respondent No.2 was protected by the interim order passed by Tribunal during the pendency of appeal. As such, till this date he has been continued in service.

7. Mr. Ghatge, would invite attention of this Court towards judgment of the Division Bench of the Allahabad High Court in the matter of *Dr. Ashish Kumar Pande vs. Chancellor, Ram Manohar Lohiya Avadh University*, wherein, the issue as regards termination of employees appointed under the 10th Five Year Plan of UGC was raised. The said termination was on account of denial of the State Government to bear the expenses. He would submit that the Division Bench of the Allahabad High Court quashed and set aside order of termination of those employees and directed reinstatement with continuity of the services.

The order passed by the Division Bench of Allahabad High Court is confirmed by the Supreme Court of India vide order dated 6.7.2017 in SLP © No. 18163 to 18165 of 2024.

8. Mr. Ghatge would further invite attention of this court towards judgment of the Supreme Court of India in the case of ***Dr. Sushil Kumar Tripathi vs. Jagadguri Ram Bhadracharya Handicapped University and another, (Civil Appeal No. 6255 of 2021 arising out of SLP (C) No. 17893 of 2008)*** wherein, termination of Assistant Professors appointed under the 10th Plan of UGC was the subject matter. The Supreme Court, while setting aside termination of the employees directed reinstatement with benefit of continuity of service.

9. Having considered submissions advanced, it can be gathered from the averments and documents tendered into service that the petitioner University, in pursuance to 12th Plan of UGC for general development assistance to the Central, State Universities and institutions advertised the post of Assistant Professor in various streams/subject areas. The UGC assistance was made available for the post created under the scheme only for the plan period of 5 years. The University was put under the obligation to ensure that UGC regulation of minimum qualification for appointment of teachers and other academic staff in University and Colleges are strictly followed and sanctioned posts are filled up within one year of approval of UGC. The Condition No. 5.18.2 under scheme is made applicable to the State Universities that reads as under :-

5.18.2 In respect of State Universities, the following conditions also need to be fulfilled :-

(a) Assurance/undertaking may be obtained from the State Government for taking over the liability of these posts after the XII Plan period.

(b) Assurance/undertaking may be given by the University through a resolution of the Executive Council to bear the burden of these posts after the XII Plan period.

(c) Appointment shall be made on contractual basis. The Universities shall follow conditions regarding qualification etc. of the posts as prescribed under the UGC Regulations of 2010.”

10. The petitioner - University floated an advertisement dated 7.5.2012, thereby inviting applications for the post of Assistant Professor from the eligible candidates on temporary basis. Respondent No.2 was interviewed in pursuance to said advertisement. After interview, he was declared as selected. Consequently, Appointment order dated 10.12.2012 was issued, specifying five year tenure of post from University Fund. It appears that latter on, Management Council of the University passed a resolution to merge teaching posts under UGC 12th Plan, under the head “staff” and sent the proposal to UGC. The resolution further records that appointment of the teachers were made as per the rules of academic eligibility for appointment of teachers, as prescribed by UGC in their Recruitment Rules through proper procedure followed by the University. Clause No.5 of the resolution stipulates for correction in the appointment orders issued by the University to concerned teachers. The words “temporary appointment only” appearing in appointment order was directed to be replaced by “UGC 12th Plan posts”. Consequently, revised appointment order dated 21.2.2015 was issued to respondent No.2 stipulating that appointment is against the post for UGC 12th Plan.

Appointment is made on probation period of two years and all consequential benefits of regular employees were made available.

11. It is discernible from the undertaking dated 20.2.2015 submitted by university to Secretary, University Grants Commission that University undertook liability of salary of these posts after the tenure of UGC 12th Plan period, if the proposal to undertake liability and responsibility of these posts after tenure of 12th Plan period is not accepted by State Government. The petitioner University also made specific correspondence dated 23.5.2015 to the Secretary of UGC, stating that the appointment of teachers are permanent in nature and the resolution is passed by the Management Council to take responsibility for the salary of appointed teachers/staff after completion of UGC 12th Plan period. In response to such correspondence, UGC communicated that they would have share of Rs. 60 Lakhs or actual expenditure, whichever is less.

12. Pertinently, the petitioner university made a proposal to the State Government to bear the expenses towards 7 posts recruited under the UGC 12th Plan. However, vide communication dated 5.7.2016, the Secretary of the Higher and Technical Education Department, refused to provide salary grants against those posts. It appears that in pursuance to such communication by the State Government, the Management council of the University passed impugned resolution to discharge respondent from service.

13. The aforesaid sequence of events would clearly indicate that although respondent No.2 was appointed against 12th UGC plan, based

on financial assistance for limited period of 5 years, the University gave a specific undertaking to UGC that after end of five years financial assistance, the petitioner university would either endeavor to get financial assistance from the State Government or bear the expenses from its own funds. The Management council of the University has passed similar resolution and consequently, revised appointment order was issued to respondent No.2. However, when the State Government declined to release salary grants, the Management Council of University passed subsequent resolution to relieve respondent No.2 giving reference to disinclination of the State Government to release salary grants after initial appointment for 5 years.

14. Apparently, the University was aware that financial assistance under UGC 12th Plan would be only for 5 years. However, consciously took a decision to issue revised appointment order, removing the clause of temporary post and treated the appointment to be on probation period of 2 years with all consequential benefits. The University has also submitted an undertaking and assurance to the UGC that the courses commenced under the UGC 12th Plan shall continue to exist, irrespective of the end of 5 years period of financial assistance receivable from the UGC. The State Government declined to take responsibility to release the salary grants in respect of posts of Assistant Professor recruited under 12th plan and for that reason, resolution contrary to its own decision is passed by the University.

15. Pertinently, in similar circumstances Division Bench of Allahabad High Court in the case of *Dr. Ashish Kumar Pande vs. Chancellor (supra)* has observed that the University gave assurance to

UGC to continue the courses while securing financial assistance under the 12th Plan. Now, the University cannot be permitted to dispense with the services of the petitioner-employee. The Division Bench has further observed that appointment of the employees was not based on assurance of State Government to release the salary grants, but it was the decision of the University to appoint the employees to implement the 12th UGC plan and to continue such courses even after the end of 5 years period.

16. Pertinently, in present case also all the courses initiated under the 12th UGC plan are continued by the University. The data available depicts that there is sufficient strength of students. Respondent No.2 employee is continuously rendering services till this date. In that view of the matter, the dispensation of the services of the respondent No.2 only on the ground that term of 5 years as per initial appointment order is expired, cannot be countenanced.

17. The Supreme Court of India in the case of ***Dr. Sushil Kumar Tripathi (supra)*** also dealt with similar situation and observed that termination of the services of the employees only after expiry of 5 years under the plan of UGC cannot be approved as long as post held by the employee is not abolished. In present case, admittedly, the courses are continued and sufficient number of students have been admitted. The respondent No.2 has rendered his services for more than 12 years by the time. In these circumstances, the decision of the Management Council of the University and consequential dispensation of services of the employee cannot be approved.

18. The University Tribunal has considered aforesaid aspects in

detail and recorded finding that the dispensation of services is illegal , consequently directed continuation of services of the respondent employee. No fault can be found in the order passed by the Tribunal. No case is made out to cause interference under Article 227 of the Constitution of India. Hence, the writ petition stands dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-