



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

WRIT PETITION NO. 5146 OF 2020

1. Yogeshwari Shikshan Sanstha, Ambejogai,
Tq. Ambejogai, Dist. Beed.
Through its Chairman/Secretary
2. Swami Ramanand Tirth Mahavidyalay,
Ambejogai, Tq. Ambejogai, Dist. Beed,
Through its Principal

.. Petitioners

Versus

1. Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad
Through its Registrar
2. The Pro-Vice Chancellor,
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad
3. The Joint Director,
Higher Education, Aurangabad
4. Dilip Chhagan Chavan,
Age : 58 years, Occu. : Nil
R/o. Ambejogai, Tq. Ambejogai,
District : Beed.

.. Respondents

Mr. R. N. Dhorde, Senior Advocate i/by Mr. Rajendra L. Kute, Advocate
for the Petitioners.

Mr. K. M. Suryawanshi, Advocate for Respondent No. 1.

Mr. K. S. Patil, AGP for Respondent No. 3.

Mr. B. L. Sagar Killarikar, Advocate h/f Mr. Babasaheb A. Dhengle,
Advocate for Respondent No. 4.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 12th December, 2024.

Date on which order pronounced : 31st January, 2025.

ORDER :-

. The petitioners are education institution and a college which have come to this Court challenging the judgment and order passed by the learned Presiding Officer, College Tribunal, Aurangabad in an Appeal No. BAMU-01/2017. The respondent No. 4 had approached the learned College Tribunal challenging his termination order passed by the petitioners. The learned Presiding Officer partly allowed the said appeal directing petitioners to reinstate respondent No. 4 as Principal in Petitioner No. 2 college. The respondent Nos. 1 and 2 are the University and Pro-Vice Chancellor. The respondent No. 3 is the Joint Director, Higher Education, Aurangabad.

2. Two facts necessary for the decision are that, the petitioner i.e. college is affiliated when the Principal was appointed to respondent No. 1 University which was governed by the rules of the University Grants Commission (for short "UGC"). The principal was appointed for a term of five years as per rule 5.1.6 of the UGC rules. The said rules are adopted by the Government of Maharashtra vide Government decision dated 15.02.2011. In view of these rules, the Principal can be appointed only for a term of five years. Such term can be extended only for another five years. Thus, a Principal can be only for a period of maximum ten years. The respondent No. 4 was already in service

with one college namely Mahila College, Shahada, District Nandurbar. He accepted the appointment by keeping lien for a period of five years in the earlier college which is permissible under the policy of the Government vide Government decision dated 15.03.2011. After the appointment, the university granted approval to the post of respondent No. 4 for a period of five years. The respondent No. 4 was thus appointed on 02.01.2012. The appointment order specifically mentions that, the appointment will be as per UGC/University/Government rules. On 25.01.2012, the university granted approval to the appointment of respondent No. 4/Principal for a period of five years. After the appointment, the respondent No. 4 accepted the appointment. He made representation that, his appointment shall not be treated as a tenure post. On 10.01.2017, the management passed a resolution stating that the appointment of the respondent No. 4 was for five years and the said period is coming to an end and therefore, he should be relieved. On 13.01.2017, the in-charge Principal took charge of the post of respondent No. 4. The respondent No. 4 also tendered resignation on 13.01.2017 itself. However, within four days after resignation the respondent No. 4 requested the management for cancellation of resignation without retrospective effect. He issued similar letter to the university as well on 25.01.2017. Though a request was received, there was no question of continuing the respondent No. 4

in the college.

3. After this, the respondent No. 4 approached the College Tribunal with a grievance that, though he had tendered resignation, that was under wrong impression. After completing probationary period his service was deemed to be confirmed. The approval was granted by the authorities. The learned Presiding Officer, College Tribunal accepted the case of respondent No. 4 and held that his appointment was not for five years but was permanent. It is consequently held that, the order of termination is illegal and granted relief of reinstatement with back-wages. The petitioners are thus before this Court.

4. The learned senior advocate Mr. Dhorde for the petitioners vehemently argued that, the appointment of the respondent No. 4 was governed by UGC rules. The pay scale and service conditions were also governed by UGC rules. The advertisement which was published inviting applications clearly mentions that, the appointment is for a period of five years. The respondent No. 4 accepted the appointment for five years. Even the university granted approval only for a period of five years. The respondent No. 4 was well aware of this position and therefore, he had preferred a representation dated 13.01.2012. The petitioner did not disclose before the learned Tribunal that he had kept a lien in earlier college over the post of Principal. This fact is

suppressed from the Tribunal. He thus submits that, the respondent No. 4 has committed fraud and in view of this fraud every action is vitiated. The learned College Tribunal failed to appreciate that, it is the UGC which governs the service conditions. He submits that the communication between the parties would clearly show that, both the parties were ad idem that the appointment is for a fixed term. The learned senior advocate relies upon the following judgments :

- (i) Sudhir s/o Sharadrao Hunge and another Vs. State of Maharashtra and others reported in 2010 (4) Mh.L.J. 572.
- (ii) Bhaskar Laxman Jadhav and others Vs. Karamveer Kakasaheb Wagh Education Society and others reported in (2013) 11 SCC 531.
- (iii) P. Suseela and Ors. etc. Vs. University Grants Commission and Ors. etc. reported in AIR 2015 SC 1976.
- (iv) Union of India and Ors. Vs. Brahma Dutt Tripathi reported in AIR 2006 SC 3244.
- (v) U. P. State Textile Corporation Ltd. Vs. Suresh Kumar reported in AIR 2011 SC 3296.

5. The learned advocate Mr. Sagar Killarikar for respondent No. 4 forcefully argued that, the UGC regulation cannot illegally curtail the term of appointment. The judgments relied upon by the petitioners are not applicable. He submits that, the judgments relied upon by the

petitioners are not applicable to the case for the above reason. The respondent No. 4 was appointed as Principal in the year 2008 itself and thus, the subsequent UGC rules and the policy of the Government by decision in 2011 would not be applicable. When he applied for the post of Principal, he had sent an application through proper channel. The petitioners were thus aware that respondent No. 4 was regularly appointed as Principal in earlier college. There is no dispute about this position. He submits that, in the present matter the main question is about applicability of rule 5.1.6. The learned Presiding Officer has rightly considered all these aspects and has allowed the appeal. The representation of 13.01.2012 by respondent No. 4 remained unanswered. It will have to be thus taken that the petitioners had accepted the case of respondent No. 4 that the post was not a tenure post, but was a regular post. Rule 5.1.6(d) is held ultravires by the Division Bench of this Court. The present case is thus governed by clause (3) of the Government decision dated 15.03.2011. He submits that, the letter of resignation was not given voluntarily. There are various mix questions raised in the present petition which were not before the learned College Tribunal. The main thrust of the argument is that, the post was not a tenure post and the appointment was not for only fixed period.

6. In rejoinder, the learned senior advocate submits that, in fact, the term of respondent No. 4 came to an end on 13.01.2017. The resignation letter is also issued on the same date whereas, the Division Bench judgment is passed subsequently. Thus, as the legal position stood on the date of resignation cannot be subjected to the judgment in the case which came to be subsequently filed. When the term was expired, there was no extension granted and there was also no protection granted and for this reason also the judgment of the Division Bench would not be applicable.

7. The learned A.G.P prays that appropriate order be passed.

8. The questions mainly, in view of the above discussion, fall for consideration (i) whether the post of respondent No. 4 was a tenure post for five years in view of clause 5.1.6 of the UGC regulation, (ii) whether the respondent No. 4's service was rightly put to an end on 13.01.2017. In view of the above discussion, third question that would arise, as to what about the effect of keeping lien over the post by the respondent No. 4 in earlier college. The last question that, as to whether the learned College Tribunal was right in allowing the appeal of the respondent No. 4.

9. The very first question of applicability of rule 5.1.6 of UGC

regulations. There is no dispute that the advertisement to fill up the post of Principal was issued after taking permission from the Joint Director. The Deputy Director had granted approval to the advertisement pursuant to letter dated 12.09.2011 by the Director, Colleges and University Development Board addressed to the petitioner No. 1. By the said letter university granted permission to fill up the post by giving an advertisement. A permission was sought from the Deputy Director. The advertisement came to be approved. The Condition No. 2 given in the advertisement reads as under :

“(2) Pay Scales and other eligibility conditions are as per rules & norms laid down by Dr. Babasaheb Ambedkar Marathwada University, Aurangabad/State Govt. of Maharashtra/UGC rules.”

10. The Deputy Director thus granted permission. The advertisement issued pursuant to the approval by the Joint Director clearly shows condition No. 2. The respondent No. 4 was appointed pursuant to the selection process undertaken, and thereafter, he was given an appointment letter. In the appointment letter, it is clearly stated that the respondent No. 4 will be paid the salary as per UGC/university/Government rules and would be subject to approval of the Vice Chancellor of the university. The Director of Board of College and University Development (for short “BCUD”) by letter dated

25.01.2012 granted approval for five years as tenure post. The respondent No. 4 by communication dated 23.02.2012 requested the management that, his post shall not be treated as tenure post. This letter was addressed to the Director of BCUD. This thing clearly shows that the appointment was for five years in view of rule 5.1.6 of the UGC regulations. Even the respondent No. 4 was aware of this position and therefore, he had sought correction. As a matter of fact, till today there is no such correction and there is no pursuation by the respondent No. 4. So far as applicability of rule 5.1.6, there is no dispute. The question as to whether it was ultravires on the date of the appointment will be discussed while discussing the judgment of the Division Bench of this Court.

11. The second question, as to whether the respondent No. 4's service was rightly put to an end on 13.01.2017. As is clear that the appointment was only for five years, it naturally came to an end on 13.01.2017. Even the respondent No. 4 sent resignation on that day. This clearly shows that he had accepted the said position. This question therefore also goes against the respondent No. 4.

12. The question thereafter is about the lien kept by the respondent No. 4 in the earlier college. The petitioners had shown that the

respondent No. 4 had kept a lien on the post where he was working i.e. Mahila College, Shahada where he was appointed as permanent Principal prior to appointment to the petitioner No. 2 college. However, this fact is not disclosed by the respondent No. 4 before the learned College Tribunal. In view of this fact, this material fact is suppressed by the respondent No. 4 before the learned College Tribunal. While considering this petition, this is material fact that needs to be considered. The petitioners have brought on record communication dated 09.01.2012 by the respondent No. 4 to the President of Sonamai Shikshan Prasarak Mandal, Vidyawadi, Deopur, Dhule. In the said letter the respondent No. 4 has specifically requested the said institution to grant him a lien for period of five years. This letter of request was accepted by the President of earlier institution. This is one more fact which clearly indicates that the respondent No. 4 had joined the post only for five years. There is no denial of this fact. If the respondent No. 4 was to join earlier college then, naturally he cannot act as Principal in two different colleges. This Court finds substance in the submissions of learned senior advocate that by suppressing this material fact before the learned College Tribunal the respondent No. 4 has played a fraud upon that authority and therefore, it would vitiate everything.

13. This Court would consider the judgments relied upon by the parties. So far as regulations of UGC, the petitioners have relied upon two judgments. In the case of Sudhir s/o Sharadrao Hunge and another (*supra*), it is held that the UGC has introduced a qualification of NET/SLET for appointment as lecturer. The same was notified in gazette dated 11.07.2009. It is held that, the said notification will have prospective operation. The appointments made on the basis of advertisement published prior to that date would not be affected. It is further considered that, the advertisements were duly approved and sanctioned by the university. Thus, what is material is the regulations which are in force on the date of the advertisement. In the present case, it is sufficiently shown that when the advertisement was issued rule 5.1.6 was in force and naturally the appointment would be governed by the said regulation.

14. The judgment in the case of P. Suseela and Ors. (*supra*), is on the similar lines.

15. So far as appointment on the tenure post, the petitioners have relied upon the judgment in the case of U. P. State Textile Corporation Ltd. (*supra*). In the said case, it is held that, when the appointment is for a fixed period, the reinstatement cannot be granted beyond term for which such employee was appointed and in that view the order of

reinstatement was modified only till the period for which he was appointed.

16. In the case of **Union of India and Ors.** (*supra*), the Hon'ble Apex Court held that the officer once has accepted the terms of appointment cannot claim any continuity in post. This judgment is squarely applicable to the present case.

17. So far as suppression of fact is concerned, the petitioners have relied upon the judgment in the case of **Bhaskar Laxman Jadhav and others** (*supra*). In that case, since the petitioners had not disclosed certain order it is taken amounting to suppression of material facts . In view of such suppression the Hon'ble Apex Court did not entertain the SLP. It is further held that, mere passing reference to the material fact does not amount to disclosure of the said fact.

18. Thus, this Court finds that, all the judgments are squarely applicable to the present case.

19. So far as the judgment in the case of **Professor (Dr.) Sreejith P.S. Vs. Dr. Rajasree M. S. & Ors.** in Civil Appeal Nos. 7634-7635/2022 is concerned, the question was as to whether while making the appointment of a person to the post of Vice Chancellor be as per

prevailing UGC regulations or in effect of the provisions of the University Act, 2015 which was a State Act. In that case the stand of the Government was that, though the university regulations were specifically adopted, however, the amendments done thereafter were not specifically adopted. The Hon'ble Apex Court held that, merely because the subsequent amendment is not specifically adopted or accepted cannot be a ground to say that said amendment to the regulation is not binding on the State's Universities. Considering overall case, it is held that it is the UGC regulations which will prevail.

20. The judgment of Division Bench of this Court at Nagpur in the case of **Dr. Suresh s/o Bhagwanji Rewatkar** (*supra*) is relied upon by the respondent No. 4. In the said petition, a question was about the vires of clause 5.1.6(d) of the UGC regulations which is relied upon by the petitioners in this case. In that case, the Court has held that, there was no restriction of tenure of appointment to the post of Principal to a college prior to introduction of clause 5.1.6(d) and it was introduced by way of an amendment in the year 2010. The question was whether the said clause is followed which had the effect of converting permanent post of Principal into a tenure post. This Court relying upon various judgments held that, clause 5.1.6(d) as amended in the year 2016 is arbitrary and unconstitutional. By holding such, it is struck

down as violative of Article 14 of the Constitution of India. As rightly pointed out by the learned senior advocate that, even in the said judgment the benefit of the said judgment is given only to those persons who were continuing as Principals on the date of filing petition. It is further made clear that, since the tenure appointments of other petitioners were already over before filing of those petitions they would not be entitled to benefit of the said judgment. It is also pointed out that, this judgment came in the year 2020 whereas, in the present case the respondent No. 4 was already terminated and thus, he cannot take any benefit of this judgment.

21. Considering all above, this Court finds that, the petitioners have made out a case to allow the petition. Even considering the judgment delivered by this Court at Nagpur, no benefit can be given to respondent No. 4.

22. This Court finds that, the learned Presiding Officer, College Tribunal has failed to consider all above facts in proper perspective. It is further seen that, the fact of keeping the lien over the earlier post was suppressed by the respondent No. 4. Had the said fact been pointed out to the learned Presiding Officer, College Tribunal, it would have been considered properly. The respondent No. 4 would not have succeeded even before the learned College Tribunal.

23. The impugned judgment and order deserves to be quashed and set aside. In view of the same, the writ petition stands allowed in terms of prayer clause (B).

24. The writ petition stands disposed off.

25. Pending civil application, if any, also stands disposed off.

(KISHORE C. SANT, J.)

P.S.B.