

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3042 OF 2024

Punyashlok Ahilyadevi Holkar
Solapur University, Solapur

...Petitioner

V/s.

Dr. Shrikant Rajaram Kokare

...Respondent

Mr. Pramod N. Joshi, *with Mr. I.M. Khairdi & Ms. Rukmini Khairnar for the Petitioner.*

Mr. C.G. Gavnekar, *with Mr. Rohit Parab i/b Mr. Milind Deshmukh for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 5 February 2025.

Judgment pronounced on : 13 February 2025.

Judgment:

1. **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for final disposal.

2. Petitioner-University has filed this Petition challenging the judgment and order dated 16 October 2023 passed by the Presiding Officer, Savitribai Phule, Pune, Shivaji and Solapur University and College Tribunal, Pune (**Tribunal**),

allowing Appeal No.1 of 2020 and setting aside termination order dated 9 December 2019 with further direction to the Petitioner - University to reinstate the Respondent in service with all consequential benefits of continuity, monetary emoluments and backwages.

3. Petitioner is a University governed by the provisions of the Maharashtra Public Universities Act, 2016 (**Universities Act**). The Respondent was appointed as a Lecturer/Assistant Professor at Raje Ramrao Mahavidyalay, Jat, District-Sangli in the year 1993. The University advertised the post of Director, Board of Examinations and Evaluation on 13 August 2018. Respondent applied in pursuance of the said advertisement. He was selected for being appointed as a Director, Board of Examinations and Evaluation and by order dated 5 December 2018. He came to be appointed on the said post for a period of 5 years as per Section 17(4) of the Universities Act. The appointment letter put the services of Respondent on probation and the same could be continued only on satisfactory completion of probation period. Respondent accepted the appointment and joined the services as Director on 17 December 2018. By letter dated 9 December 2019 Petitioner-University terminated his services w.e.f. 9 December 2019 stating that he was still on probation by paying him salary for one month in lieu of notice. The Respondent approached University Tribunal by filing Appeal No.1 of 2020 challenging his termination letter dated 9 December 2019. The Appeal was resisted by Petitioner-University by filing reply. It appears that after termination of his services

Respondent rejoined services of his parent college on the post of Lecturer /Assistant Professor. Petitioner filed additional affidavit before the Tribunal placing copy of First Information Report lodged against the Respondent by the University on 25 December 2019 and the fact that he was arrested on 9 January 2021 and remained in custody till 9 April 2021. It was also placed on record that Dr. Shivkumar Suganna Ganpur is appointed as Director, Examinations and Evaluation on 23 August 2021.

4. The Tribunal has allowed Appeal filed by Respondent by judgment and order dated 16 October 2023 by setting aside termination letter dated 9 December 2019 directing the Petitioner-University to reinstate him on the post of Director, Board of Examinations and Evaluation within two months with all consequential benefits of continuity and backwages. Tribunal has also imposed costs of Rs.10,000/- on the Petitioner-University. Present Petition is filed challenging the judgment and order dated 16 October 2023 passed by the Tribunal.

5. Mr. Joshi, the learned counsel appearing for the Petitioner-University would submit that the terms and conditions of appointment of Respondent were governed by letter of appointment, which expressly contained a provision for probation of one year as well as right to terminate services by serving notice of one month. That the Tribunal has erred in determining the validity of terms and conditions of appointment with reference to provisions of Section 17(4) of the University Act while determining correctness of termination. That Respondent

never questioned the terms and conditions of his appointment and accepted the same. The same could not be challenged by him while launching an attack on the termination order. He would submit that Section 17(4) of the University Act did not prevent the Petitioner-University from prescribing probation in respect of appointment of Respondent. He would submit that no prejudice is otherwise caused to the Respondent on account of termination of his appointment as Director since he immediately rejoined his post as Lecturer/Assistant Professor in his parent college. Without prejudice to the challenge raised to the order of the Tribunal on merits, Mr. Joshi would submit that direction for reinstatement and/or payment of backwages is unsustainable on account of subsequent arrest of the Respondent. That the Respondent remained in custody from 9 January 2021 to 9 April 2021 and the Tribunal did not even take that aspect into consideration while mechanically directing payment of backwages even in respect of the period when Respondent remained in custody. He would therefore pray for setting aside order passed by the Tribunal.

6. Petition is opposed by Mr. Gavnekar, the learned counsel appearing for the Respondent. He would submit that no interference is warranted in the well-considered decision of the Tribunal. That the Tribunal has rightly concluded that the terms and conditions of the appointment would be governed by provisions of Section 17(4) of the Universities Act, which does not make any provision for probation. He would submit that even otherwise it is inconceivable that there can be any probation in

respect of tenure appointment. That the concept of probation is relevant only in respect of a regular appointment, where the appointee would continue in services till retirement. That since appointment itself was for tenure of five years, no period of probation could otherwise be prescribed. He would invite my attention to the advertisement in support of his contention that the same provided for tenure of appointment of five years without any condition of probation. That services of the Respondent are actually terminated for alleged misconduct by misusing the probation clause in the appointment order. That employer-employee relationship in the present case is governed by provisions of Section 17(4) and by the terms of the advertisement. That Respondent did not have any choice but to join in pursuance of appointment letter and that therefore it cannot be contended that he accepted the condition of probation. He would submit that subsequent events of lodging of FIR and arrest are wholly irrelevant for determining validity of termination letter dated 9 December 2019. He would rely upon judgment of Allahabad High Court in ***Pirthwinath Chowdhry Vs. State of Uttar Pradesh***¹ in support of his contention that a tenure holder has right to remain in service throughout the tenure of his appointment. He would accordingly pray for dismissal of the Petition.

7. Rival contentions of the parties now fall for my consideration.

¹ 1958 SCC OnLine ALL 299

8. The short issue that arises for consideration is whether it was permissible for the Petitioner-University to include the condition of probation in the appointment order in the light of provisions of Sub-section (4) of Section 17 of the Universities Act. While allowing the Appeal, the Tribunal has held that the appointment is governed by the provisions of Sub Section (4) of Section 17 of the Universities Act and in absence of any provisions for probation in the Act, it was impermissible for the Petitioner-University to include the same in the appointment order. The Tribunal has therefore found the termination to be in breach of Sub Section (4) of Section 17 of the Universities Act.

9. Section 17 of the Universities Act provides for appointment of Director of Board of Examinations and Evaluation and provides thus:

Section 17.-Director of Board of Examinations and Evaluation-

(1) The Director, Board of Examinations and Evaluation shall be a full time salaried officer and shall work directly under the directions and control of the Vice-Chancellor. He shall discharge his functions under the superintendence, direction and guidance of the Board of Examinations and Evaluation, and shall be concerned with the implementation of the policies and directives given by the Board of Examinations and Evaluation.

(2) The qualifications and experience for the purpose of selection of the Director. Board of Examinations and Evaluation shall be as may be specified by the State Government, by an order published in the *Official Gazette*.

(3) The Director, Board of Examinations and Evaluation shall be appointed by the Vice-Chancellor on the recommendation of the selection committee constituted for the purpose under this Act:

Provided that, in appointing the Director, Board of Examinations and Evaluation preference shall be given to the persons with proven capacity of use of technology in delivery of education.

(4) **Appointment of the Director. Board of Examinations and Evaluation shall be for a term of five years or till he attains the age of superannuation, whichever is earlier and he shall be eligible for re-appointment by selection on the recommendation of a selection committee constituted for the purpose, for only one more term of five years in the university in which he is serving.**

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(emphasis added)

10. Section 17 thus governs the manner in which the Director, Board of Examinations and Evaluation is to be appointed and the duties and responsibilities to be performed by the holder of that post.

11. Reliance is placed by the Respondent on the provisions of Sub Section (4) of Section 17 of the Universities Act, under which appointment of Director, Board of Examinations and Evaluation shall be for a term of five years and it is contended that the Respondent had right to hold the post of Director at least for a period of five years. The issue that arises for consideration therefore is whether Section 17(4) providing for '*Appointment of the Director, Board of Examinations and Evaluation shall be for a term of five years...*' would create a right in favour of holder that post to hold the same for minimum period of 5 years?

12. In my view, there are two ways of reading the provisions of Section 17(4) of the Universities Act. One way of reading the same is that it provides for the maximum period for which appointment of Director can be made by the University. It

seeks to put a fetter on the University from appointing any person as Director, Board of Examinations and Evaluation for a period exceeding five years. Sub-Section (4) of Section 17 further provides that person appointed as Director for a period of five years would be eligible for reappointment by selection on recommendations of a Selection Committee for only one more term of five years in the same University in which he was serving. Thus, under the provisions of Sub Section (4) of Section 17 of the Universities Act, no person can hold a post of Director, Board of Examinations and Evaluation for a period exceeding 10 years. A Director can be appointed initially for maximum period of five years or till the date of his superannuation and he can be reappointed after being subjected to selection for another term of five years. When read in this context, Section 17(4) prevents the University from appointing any person as Director, Board of Examinations and Evaluation for a period of five years at one stretch and in any case, for a period exceeding 10 years in the same University.

13. The other way of reading Section 17(4) of the Act is to mean that the University cannot make appointment of Director, Board of Examinations and Evaluation for a period less than minimum period of 5 years. The provision ensures that the one person performs duties of responsibilities of the post for minimum of 5 years.

14. However, even after reading of the provisions of Section 17(4) of the Act in either of the manner, I am unable to

read creation or vesting of right in favour of holder of the post to hold the same for 5 years under any circumstances. The twin objectives of not making a permanent appointment in favour of any person as Director and also not to change the Directors at short intervals, would still not create a corresponding right in favour of holder of the post to hold the same for minimum period of 5 years. The objective behind incorporation of Section 17(4) of the Act is not really to create a right in favour of holder of the post to hold the same for any specified period. The objective, as observed above, is mainly in the interest of administration of the University where a person should not develop vested interests in the post on account of appointment on a solitary post and also to ensure that the university does not act arbitrarily by making appointment of Directors at short intervals.

15. What must also be appreciated is the reason why provision is made for appointment of Director, Board of Examinations and Evaluation on tenure basis. It is a solitary post. It does not act as a promotional avenue for any lower post. The holder of the post also does not have any further promotional prospects. These appear to be the factors why the Legislature has thought it appropriate to prescribe a fixed tenure for appointment as Director, Board of Examinations and Evaluation. The objective however is not to create a right in favour of holder of the post to continue on the post for minimum of 5 years notwithstanding occurrence of any eventuality.

16. Therefore, provisions of Sub-section (4) of Section 17 cannot be read to mean a vested right in favour of holder of post of Director to serve for a term of five years. In my view, the true purport of provisions of Sub-section (4) of Section 17 is to merely prescribe the maximum tenure for which a Director can be appointed by the University. The provision is aimed at regulating the powers of the University to make the appointment rather than seeking to create a right in favour of holder of that post to serve for any particular tenure.

17. The other important aspect is about permissibility for the University to prescribe conditions in the appointment order which are not in conformity with provisions of Sub-section (4) of Section 17 of the Universities Act. So long as any term or condition in the appointment seeks to appoint the Director for a tenure exceeding 5 years, the same would be void as it would breach provisions of Sub-Section (4) of Section 17. However, would it mean that every other term or condition of appointment, which is not dealt with by Section 17 of the Universities Act would also be rendered void? The answer to this question, to my mind, appears in the negative. Sub Section (4) of Section 17 of the Universities Act is not a complete framework for governing the service conditions of Director. It does not circumscribe the power of the appointing authority to prescribe such terms and conditions of appointment, which do not cause any violence to Section 17 of the Act. Beyond prescribing the maximum tenure for which a Director can be appointed, Section 17 is silent about

various other terms and conditions of the appointment, which can always be prescribed by the University.

18. If Sub-Section (4) of Section 17 of the Universities Act is read to mean as if there is a prohibition on University from prescribing any term or condition, which is not to be found in Section 17, the same would mean that University will not be able to make a provision for resignation by the Director before completion of tenure of five years. In the present case, condition No.6 of the appointment order dated 5 December 2018 created a right in favour of Respondent to leave the services before completion of tenure of five years by issuing one month's notice in writing. If the interpretation of the Tribunal of Sub-Section (4) of Section 17 of the Universities Act is accepted, the same would virtually mean negating the right of the Director to resign from service before 5 years, though such right is recognised in the appointment letter. In my view therefore correct way of reading Sub-Section (4) of Section 17 of the Universities Act is that same merely provides fetter on the University from appointing a person as a Director for a period exceeding the period provided under Sub-section (4) of Section 17 of the Universities Act. The provision cannot be read to mean that there is any fetter on the University from prescribing any term or condition governing the service, which is not to be found in Section 17 of the Universities Act.

19. In my view therefore Petitioner -University was justified in prescribing condition of probation for one year in the

appointment order dated 5 December 2018. No judgment is cited by the Respondent in which it is held that period of probation cannot be prescribed in respect of a tenure appointment. On the contrary, it is settled position of law that power to appoint includes the power to determine the appointment. This principle would apply even to tenure appointment as there is no vested right in favour of a tenure appointee to hold the post till completion of tenure. In ***Bool Chand (Dr.) v. Chancellor, Kurukshetra University***², it is held as under:

4. There is no express provision in the Kurukshetra University Act or the Statutes thereunder which deals with the termination of the tenure of office of Vice-Chancellor. But on that account we are unable to accept the plea of the appellant that the tenure of office of a Vice-Chancellor under the Act cannot be determined before the expiry of the period for which he is appointed. A power to appoint ordinarily implies a power to determine the employment. In *S.R. Tiwari v. District Board, Agra* [AIR 1964 SC 1680 : (1964) 3 SCR 55] it was observed by this Court at p. 67:

“Power to appoint ordinarily carries with it the power to determine appointment, and a power to terminate may in the absence of restrictions express or implied be exercised, subject to the conditions prescribed in that behalf, by the authority competent to appoint.”

A similar view was also expressed in *Lekhraj Sathramdas Lalvani v. N.M. Shah, Deputy Custodian-cum-Managing Officer, Bombay* [AIR 1966 SC 334 : (1966) 1 SCR 120] . That rule is incorporated in Section 14 of the Punjab General Clauses Act 1 of 1898. That section provides:

“Where by any Punjab Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority by it in exercise of that power.”

5. Counsel for the appellant urged that since the general rule is given a statutory form, the validity of the exercise of the power to determine the tenure of the office of the appellant must be

²1967 SCC OnLine SC 41

found in Section 14 of the Punjab General Clauses Act. Counsel says that Section 14 has no application to the interpretation of the Kurukshetra University Act, because clause 4(vii) of the Statutes which prescribes that the appointment of a Vice-Chancellor shall ordinarily be for a period of three years discloses a different intention. But clause 4(vii) of the Statutes does not purport to confer upon a person appointed Vice-Chancellor an indefeasible right to continue in office for three years : the clause merely places a restriction upon the power of the Chancellor, when fixing the tenure of the office of Vice-Chancellor.

20. The Division Bench of Jharkhand High Court has dealt with almost similar case in *Wing Commander Narinder Nath Aggarwal v. State of Jharkhand*³, in which it is held as under:

8. The main contention urged by the counsel for the appellant is that the appellant having been appointed for a period of three years and the appointment being a tenure appointment, the Respondents cannot terminate his service on the ground of his unauthorized absence from duty without initiating any departmental proceeding.

9. Learned counsel for the appellant further contended that the order of termination having issued without disclosing the reason and without initiation of proceeding is illegal and passed in violation of rules of natural justice.

10. On the other hand, according to the counsel for the Respondents, **as the appellant was on probation, it was open to the competent authority to terminate his service, even during the period of probation, if the services are not found satisfactory.**

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12. In the case of *Dr. Bool Chand v. Chancellor, Kurukshetra University*, (A.I.R. 1968 SC 292), as referred by the counsel for the appellant, the Supreme Court noticed that there was no expressed provision in the Act or the Statute which deals with the termination of the tenure of the office of Vice-chancellor. Taking into consideration, Clause 4(vii) of the Statutes, the Supreme Court observed that the appointment of Vice-

³. 2005 SCC OnLine Jhar 636

Chancellor shall ordinarily be for a period of three years, but it does not purport to confer upon a person appointed Vice-Chancellor an indefeasible right to continue in office for three years: the clause merely places a restriction upon the power of the Chancellor, when fixing the tenure of the office of Vice-Chancellor.

13. In the said case, the Supreme Court further observed that it cannot be held that a person appointed as a Vice-Chancellor is entitled to continue in office for a full period of his appointment even if it turns out that he is physically decrepit, mentally infirm, or grossly immoral.

14. In the case of *Dr. L.P. Agarwal v. Union of India*, ((1992) 3 SCC 526 : A.I.R. 1992 SC 1872), the Supreme Court noticed that, the post of Director of All India Institute of Medical Sciences is a tenure post; The Supreme Court observed:

*“Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of tenure **unless curtailed on justifiable grounds.**”*
(Emphasis added).

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17. In the letter of appointment also, it was mentioned that he was appointed for a period of three years and if the services were found to be satisfactory, may be extended for another two years. It does not mean that even if the service of a tenure appointee is ‘unsatisfactory’, he has a right to continue till the completion of tenure-period.

18. Admittedly, out of three years' tenure period, one year was the probation period of appointment. Appellant joined the service on the date, the letter of appointment was issued Without prior permission of his employer and after three days of joining, he proceeded on leave of his own, without prior permission and failed to return on duty for about 1 ½ months, in spite of ultimatum and notice to him that he must join by 8th April, 2004.

19. It is not in dispute that the RIMS is a Medical College and Hospital and since its creation, there was no regular Director and for that there was a chance of its de recognition and for that a PIL was filed in this Court in which direction was given by this Court to fill up the post of Director, RIMS, Ranchi immediately. **In such a situation, during the probation**

period, if the Respondents being dissatisfied with the performance of the appellant, cancelled his appointment, it cannot be held to be illegal.

(emphasis added)

21. In service jurisprudence, if the tenure is sufficiently long, as in the present case, I do not see any reason why probation cannot be prescribed in respect of long tenure of five years. Prescription of probation enables the employer to adjudge the suitability of the candidate to hold the post and in the event it is found that the candidate does not perform to the satisfaction of the employer, even tenure appointment can be put to an end by passing an innocuous order of discharge of the probationer. Passing of such an innocuous discharge order does not cause any harm to the probationer, who is free to seek another job without attracting any stigma of termination. In the present case, Respondent apparently kept his lien on the post of Lecturer /Assistant Professor in his parent college and immediately joined there on his termination on 9 December 2019. He could have done so even during currency of the tenure of appointment by simply giving one month's notice to the University and it was not obligatory for him to serve for five years merely because provisions of Sub-Section (4) of Section 17 of the Universities Act provides for tenure of five years. Therefore, it is lawful for the University to prescribe terms and conditions in the appointment order, which are not inconsistent with provisions of Section 17 of the Universities Act. The Tribunal in my view has erred in holding that clause of probation is in violation of Section 17(4) of the Universities Act.

22. The Tribunal even otherwise could not have undertaken the exercise of invalidating a clause in the appointment order while deciding validity of termination order. This is not a case where Respondent approached the Court /Tribunal challenging any particular term or condition of appointment letter. He accepted all the terms and conditions of the appointment without any demur by submitting letter dated 10 December 2018. He cannot now turn around and seek to challenge the terms and conditions of the appointment order while launching an attack on the termination letter.

23. Also of relevance is the fact that the University has not found performance of the Respondent satisfactory and has refused to continue his services beyond the period of one year. He joined the services of the Petitioner University on 17 December 2018 and before completion of period of probation of one year, his services were terminated by innocuous order dated 9 December 2019. With a view to ensure that Respondent's termination does not remain stigmatic, the University did not specify any reason for termination of his services. However, the University apparently came across incidents of alteration of results of some of the students by increasing their marks by creating fictitious Login id and Password of the Chancellor in respect of which, FIR was lodged on 25 December 2019 against unknown person. In pursuance of the said FIR, investigations were apparently carried out and Respondent was subsequently arrested on 9 January 2021, who remained in custody till 9 April 2021 when

he was released on bail. Though this is not to suggest that services of Respondent are terminated on account of any misconduct committed by him, the Petitioner-University was fully entitled to discharge his services in the event his performance and conduct during the period of probation was not found to be satisfactory. Despite the documents and information relating to arrest of the Respondent being placed before the Tribunal, it has still proceeded to award full backwages in his favour meaning thereby that Respondent would enjoy wages from Petitioner -University while being in custody from 9 January 2021 to 9 April 2021.

24. Reliance by Mr. Gavnekar on the advertisement does not cut any ice. It was not necessary for the Petitioner-University to disclose the condition of probation in the advertisement. By the advertisement, only applications were invited for conducting selection. The terms and conditions of appointment were disclosed to the Respondent vide letter dated 5 December 2018, which constituted an offer of appointment. He accepted said offer by his letter dated 10 December 2018. Thus, a valid contract of appointment got created between the parties on account of acceptance of offer by Respondent. Such contract of appointment would continue to subsist notwithstanding provisions of Section 17(4) of the Universities Act. Therefore, mere absence of condition of probation in the advertisement does not mean that Petitioner was precluded from prescribing the condition of probation in respect of Respondent's appointment.

25. Mr. Gavnekar has relied upon judgment of the Apex Court in ***Pirthwinath Chowdhry*** (supra) in support of his contention that tenure appointee is entitled to serve for full tenure of appointment. In paragraphs 31, 33, 34 to 36 and 38 the Apex Court has held as under:

31. The actual order by which his services have been terminated has not been filed in the present case. It is not possible to say without seeing that order whether it can at all amount to an order of removal or dismissal within, the meaning of Article 311 of the Constitution of India. From the facts which have been proved in the present case all that appears is that the petitioner casually came to know that the names of some persons were asked for appointment as Additional Government Advocate whereupon he made a representation saying, that he was fit to discharge the duties of the Additional Government Advocate and that the new Rule 7 did not apply to his case.

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33. There is no rule except Rule 14 of the Rules under which the services of the petitioner could be terminated during the period for which he was appointed. Rule 14 authorises the Governor to remove or suspend any law officer at, any time during his term of office for misconduct or dereliction of duty subject to the provision that no law officer shall be so removed unless he had a reasonable opportunity of being heard in his defence. The learned Standing Counsel has conceded that the petitioner has not been removed under this rule. In fact that is not the case of the State even in the counter affidavit. They have purported to act only under the new Rule 7.

34. The petitioner therefore normally had a right to remain as an additional Government Advocate for the period of full three years for which he had been appointed. It cannot also be denied that his services have been terminated before the expiry of the three years for which he had been appointed, it would therefore appear that if the new Rule 7 does not apply to his case, *prima facie*, the petitioner's removal before the expiry of the period of three years for which he had been appointed would amount to a punishment and would be a removal within the meaning of Article 311(2) of the Constitution of India.

35. It has been conceded by the learned Standing Counsel that before the services of the petitioner were terminated the opportunity contemplated by Article 311 of the Constitution of India was not given to him for showing cause against the proposed order of removal. Therefore what we have to see is as to whether the new Rule 7 applies to the petitioner's case, which brings us to the consideration of the third question i.e., whether or not that rule is retrospective. It is well established law that a new provision, except a provision relating to procedure, does not apply retrospectively unless the provision itself makes it retrospective.

36. It is also well established that a statute should not be so construed as to take away or extinguish the right of any person unless it appears by express words or by plain implication that it was the intention of the Legislature. Clear terms ought to be used if it is intended to divest a vested right. The new Rule 7 runs as follows :

"7 Age : A Law Officer shall be appointed or reappointed with due regard to his physical fitness, but shall not be ordinarily retained in service after attaining the age of sixty years :

Provided that the Governor may in any case retain a Law Officer after he has attained the age of sixty years."

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38. Before this rule was notified, the petitioner had a clear right to continue as an Additional Government Advocate for a period of 3 years from 16-4-57, and inasmuch as there is nothing in the language of this rule which makes it retrospective in its application I am of the view that the rights of the petitioner are not affected by this rule and he had a right to continue as an Additional Government Advocate for a period of three years from 16-4-1957. I however also make it absolutely clear that I should not be meant to be laying down that the Government had no power to make a rule which may be retrospective in its application and deprive the petitioner of his right of holding the post of Additional Government Advocate.

26. The Allahabad High Court in ***Pirthwinath Chowdhry*** (supra) was dealt with the issue of termination of

tenure of appointment by amending the service rules by prescribing the age of retirement. The Petitioner therein was appointed on 16 April 1957 on tenure of three years as Additional Government Advocate. However, during currency of his tenure, Rule 7 of the relevant Rules was amended providing for retirement on attaining the age of 60 years and accordingly his appointment was sought to be terminated on 25 August 1958. The Allahabad High Court has dealt with an altogether different issue of permissibility to introduce new condition in respect of a tenure appointee after his joining the service. This is not a case here. In the present case, condition of probation was made known to the Respondent before he joined as Director. He was already working on a regular post of Lecturer /Assistant Professor in his parent college and could have declined the offer after noticing that he was to run the risk of termination of his services during probation period and that his continuance in service for five years was subject to completion of probation. He however, accepted the said condition possibly on account of the fact that his lien was always maintained in respect of the post of Lecturer /Assistant Professor in his parent college. In my view therefore the case does not involve change in condition of service after the appointee is joined the service of a tenure post.

27. After considering the overall conspectus of the case, in my view, the Tribunal has erred in directing the reinstatement of the Respondent. The Petitioner-University was entitled to discharge the Respondent from service during the period of his probation by serving one month's notice or by

paying one month's notice pay to the Respondent. The Tribunal has erred in invalidating terms and conditions of Respondent's appointment while examining the correctness of his termination order. Order passed by the Tribunal thus suffers from serious jurisdictional error warranting interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

28. Petition accordingly succeeds and I proceed to pass the following order:

- (i) Judgment and order dated 16 October 2023 passed by the Tribunal is set aside.
- (ii) Appeal No.1 of 2020 filed by the Respondent is dismissed.

29. Writ Petition is allowed in above terms. Rule is made absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]