

(1994) 09 BOM CK 0064
In the Bombay High Court
Case No : Writ Petition No. 3735 of 1992

Arvind Shirsekar		APPELLANT
	Vs	
V.G. Khanvilkar and Others		RESPONDENT

Date of Decision : 16-09-1994

Acts Referred:

Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983 — Section 15(5), 16(4)

Citation : (1995) 2 BomCR 398

Hon'ble Judges : Vishnu Sahai, J; D.R. Dhanuka, J

Bench : Division Bench

Advocate : M.A. Rane and P.L. Naik, for the Appellant; V.M. Kanade and S.D. Khot and V.V. Pai, A.G.P. for the respondent Nos. 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

D.R. Dhanuka, J.—Heard learned Counsel on all sides.

2. By consent petitioner No. 2 is transposed as respondent No. 7 in the petition. Amendment to be carried out forthwith.

3. The respondent No. 1 Dr. V.G. Khanvilkar was Dean of Agricultural faculty of Konkan Krishi Vidyapeeth upto 31st July, 1992, when he retired. The Disciplinary Enquiry was held against Dr. Khanvilkar on various charges set out in para 3 of the petition. On 6th January, 1992, Shri V.T. Chari, the Enquiry Officer, made his report in the matter. By an order dated 11th March, 1992, the then Vice Chancellor of Konkan Krishi Vidyapeeth Agricultural University passed an order to the effect that Dr. Khanvilkar shall not be entitled to any increment till the date of his retirement etc. as more particularly set out in the said order.

4. Dr. Khanvilkar, the respondent No. 1 in this petition, filed Writ Petition No. 2735 of 1992 in this Court impugning the order passed by Vice Chancellor of the University on 11th March, 1992 on various grounds. The said writ petition was disposed of by Division Bench of this Court consisting of S.W. Puranik and P.S.

Patankar, JJ., by its order dated 24th July, 1992, at the admission stage. In the said order, the Division Bench of this Court observed that the statutory appeal against the order of the Vice Chancellor would lie to the Pro-Chancellor under the Maharashtra Agricultural Universities Act, 1983 as the Pro-Chancellor was the next higher authority and the impugned order was of the Vice Chancellor. The Court allowed the respondent No. 1 herein to withdraw the above referred writ petition with liberty to approach the Pro-Chancellor in Appeal.

5. The respondent No. 1 preferred an appeal before the Pro-Chancellor of the University as envisaged by the above referred order. By an order dated 31st July, 1992, the Pro-Chancellor granted Interim Stay of the order passed by the Vice Chancellor on 11th March, 1992.

6. Being aggrieved by the said stay order, Shri Arvind Shirsekar and Shri G.P. Pawar, two of the non-official members of the Grievance Committee constituted under Statute 118 of the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes, 1990 preferred this writ petition. The petitioners have sought a declaration from this Court to the effect that the Pro-Chancellor was not the appellate authority empowered to entertain any appeal against the order passed by the Vice Chancellor. The petitioner have also sought various consequential reliefs in the petition.

7. It is necessary to refer to the relevant provisions of the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983, Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes, 1990 and also some of the provisions contained in the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

8. Section 15 of the Act provides that "The Governor of Maharashtra, shall be the Chancellor of each of the Universities" governed by the said Act. Section 15(5) of the Act provides that :

"the Chancellor may, by order in writing, annul any proceeding of any officer or authority of the University, which is not in conformity with this Act, the Statutes or the regulations, or which is prejudicial to the interest of the University".

The said sub-section further provides that,

"before making any such order, Chancellor shall call upon the officer or authority concerned to show cause as to why such an order should not be made"

Thus the Chancellor of the University is entitled to set aside the order of the Vice Chancellor in an appropriate case. The powers of the Chancellor u/s 15(5) of the Act is not to be invoked in all situations and as a matter of routine. In normal situations, a party aggrieved may file appeal before the Grievance Committee. The Chancellor is, undoubtedly authorised under the Act to entertain the appeal against the orders of the Vice Chancellor. The power of the Chancellor to entertain such appeal in appropriate cases cannot be disputed.

9. Section 16 of the Act provides that:

"(1) The Minister for Agriculture, Maharashtra State, shall be the Pro-Chancellor of each of the Universities and shall in the absence of the Chancellor preside over the convocation of the University".

Section 16(2) of the Act provides that :

"(2) The Pro-Chancellor may call for his information any papers relating to the administration of the affairs of the University" and such requisition shall be complied with by the University"

Section 16(3) of the Act provides that :

"the annual programmes of work of the University shall be referred to the Pro-Chancellor for his information and any suggestion made by him shall be considered by the Executive Council"

10. Now we turn to the most crucial section having bearing on the subject matter of this petition i.e. section 16(4) of the Act. The said section reads as under :

"(4) He shall also exercise such powers and perform such duties of the Chancellors as the Chancellors may by order in writing delegate to the Pro-Chancellor and such delegation may be subject to such restrictions and conditions as may be specified in such order".

11. It is, therefore, obvious to us that the Pro-Chancellor can exercise the powers of the Chancellor conferred u/s 15(5) of the Act only if the Chancellor has delegated the power to consider and hear the appeals by an order passed by him in writing.

12. The learned Counsel for respondents No. 5 and 6, after taking necessary instructions informs the Court that no order has been passed by the Chancellor in writing so as to delegate his power to decide the appeals u/s 15(5) of the Act. In view of this, statement we have no hesitation in holding that the Pro-Chancellor could not entertain the appeal preferred by respondent No. 1 against the order of Vice Chancellor being order dated 11th March, 1992. This Court passed its order dated 24th July, 1992 obviously on the assumption that the necessary powers might have been delegated to the Pro-Chancellor, so as to confer jurisdiction on the Pro-Chancellor to entertain the appeal. In view of there being no delegation of power conferred on the Chancellor u/s 15(5) of Act, we have no hesitation in holding that the appeal preferred by respondent No. 1 before the Pro-Chancellor was without jurisdiction and the impugned stay order dated 31st July, 1992, was equally without jurisdiction. In view of the order already passed by this Court on 24th July, 1992, and the fact of this case, we do not propose to direct the respondent No. 1 to prefer his appeal before the Grievance Committee constituted under Statutes 118 of Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes, 1990. We hereby direct that the appeal already filed by respondent No. 1 before the Pro-Chancellor shall be transferred to the Chancellor within two weeks from today and the Chancellor is requested to decide the said appeal within four months from the receipt of necessary appeal papers in his

office after following the principles of natural justice.

13. It is now necessary for sake of completeness of this judgment to refer to some of the provisions contained in Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes, 1990 as well as some of the provisions contained in the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

14. Section 37 of the Act empowers the competent authority to frame the necessary statutes for various purposes as set out therein. Statute 118 of the Statutes already framed provides that in accordance with the provisions contained in Sub-clause (5) of section 29 of the Act, the Grievance Committee for University Employees shall be constituted with the following members :

15. Sub-clause (3) of the Statute 118 provides that the Vice Chancellor shall be the Chairman of the Grievance Committee. The said Statute further provides that in his absence, the Registrar shall be the Chairman. Sub-clause (4) of the Statute provides that the Grievance Committee shall work as an appellate authority against the orders passed by the Vice Chancellor as an original order in respect of service rules of the University Employees. The Court is given to understand that the said statute is likely to be amended soon. It appears to us that the statute 118 as it exists at present is not quite satisfactory inasmuch as the Vice Chancellor is supposed to be the Chairman of the Committee so as to consider the appeal of the employees against the orders passed by the Vice Chancellor himself. We are given to understand that the Grievance Committee is functioning well. Shri Rane, learned Counsel for petitioner No. 1 also endeavoured to persuade us to direct the Committee that the appeal preferred by the respondent No. 1 shall be considered by the Grievance Committee and highlighted the fact that the then Vice Chancellor had already retired and the existing Grievance Committee can, therefore, be considered as totally independent Committee. It is not necessary to deal with these contentions on merits. We are inclined to pass an order which would be consistent with the order already passed by the Division Bench of this Court on 24th July, 1992 in Writ Petition No. 2735 of 1992.

16. Statute 138 of the said statutes provides that; "the provisions of Maharashtra Civil Service Rules as applicable to the State Government Employees shall be applicable mutatis mutandis to the employees of the University. Relying on the said statutes the learned Counsel for original petitioner No. 2 now transposed as respondent No. 7 submitted that the Pro-Chancellor could entertain an appeal by virtue of the provisions contained in Rule 18 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. In our opinion Rule 18 of the said Rules is not at all applicable in this case. The Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983 and Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes, 1990 makes special provisions for hearing of the appeals as discussed above. It is well settled that the special excludes the general. It is obvious that the provisions of Maharashtra Civil Services Rules, 1979 are applicable to the employees of the University, floating colleges and recognised institutes only mutatis mutandis. The expression "mutatis mutandis" is liable to

be interpreted to mean as "in so far as it may be".

17. In this view of the matter we hold that the Pro-Chancellor of the University could not entertain the said appeal under Rule 18 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and the Pro-Chancellor could entertain such an appeal only if the powers of entertaining such appeals were delegated in his favour by an order in writing passed by the Chancellor as contemplated u/s 16(4) of the Act.

18. In the result the petition is allowed. The rule is made absolute in terms of prayers (a) to (c). All Interim orders passed by this Court are vacated. It is hereby directed that the pending appeal before the Pro-Chancellor shall be transferred to the office of the Chancellor expeditiously and not later than two weeks from today. It is hereby further directed and requested that the Chancellor shall consider and dispose of the said appeal within four months from receipt of the appeal papers in his office after observing the principles of natural justice. This order is passed having regard to the earlier order passed by the Divisional Bench of this Court. This order should not be interpreted to imply all appeals against the order of the Vice Chancellor must necessarily be filed before the Chancellor and the same cannot be entertained by the Grievance Committee. We have molded the reliefs to be granted in this case having regard to the peculiar facts and circumstances of the case and having regard to the earlier order passed by the Division Bench of this Court.

19. The petition is finally disposed of in terms aforesaid. No order as to costs.

20. In view of this petition being finally disposed of, Civil Applications No. 3396 of 1994 do not survive. The said Civil Applications are accordingly rejected.

21. Issue of certified copy is expedited.