
(2022) 05 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 2908 Of 2022

Dr. Chandraprakash Dattarao Khedkar

APPELLANT

Vs

Hon'ble Chancellor And Others

RESPONDENT

Date of Decision : 05-05-2022

Acts Referred:

Maharashtra Animal And Fishery Sciences University Act, 1998 — Section 2(3), 2(11), 14(5), 17, 17(2), 17(4), 17(5), 17(16), 17(17), 17(18), 62(b)

Citation : (2022) 05 BOM CK 0032

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : Amol B. Patil, S.V. Manohar, A.R. Patil

Final Decision : Disposed Of

Judgement

Manish Pitale, J

1. Heard.

2. Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for the rival parties.

3. The petitioner is before this Court for the second time to agitate grievance in respect of the manner in which his service stood terminated and the avenue of appeal provided under the provisions of the Maharashtra Animal and Fishery Sciences University Act, 1998 (hereinafter referred to as the Act of 1998). In the first round, the petitioner had approached this Court by filing writ Petition No.3777/2016, which stood disposed of by judgment and order dated 19/10/2018, whereby the order of respondent No.2 – Vice-Chancellor of the said University dated 15/01/2014, dismissing the petitioner from service with disqualification for future employment with Government, was stayed, while the Executive Council of the said University was directed to take up the appeal filed by the petitioner under Section 17(17) of the Act of 1998, including the question of maintainability of the appeal.

4. It was further directed that if the decision of the Executive Council was to be adverse to the interest of the petitioner, it would remain stayed for a further period of 15 days from the date of communication of the order. The subsequent events resulted in adverse orders being passed against the petitioner, as a consequence of which, he was constrained to file the present writ petition and to approach this Court for the second time. On 17/08/2021, this Court directed the parties to maintain status quo as regards the service of the petitioner, due to which he has continued in service.

5. The facts in brief leading up to filing of the present writ petition are that the petitioner being duly qualified was initially appointed as Assistant Professor, Department of Dairy Microbiology at the College of Dairy Technology, Pusad, District Yavatmal, which is a constituent College of the respondent No.3 – University. Thereafter, the petitioner was appointed as Associate Professor in the same department.

6. The Indian Council of Agricultural Research (ICAR) invited concept notes for project under the theme of Sustainable Rural Livelihood Security, to effectively implement a scheme under the National Agriculture Innovation Programme (NAIP). The Vice-Chancellor of the said University directed the petitioner to submit a concept note on the above subject. The ICAR was satisfied with the concept note and the presentation made by the petitioner and allotted the said project to the respondent – University, as a lead center. This project was to be implemented by the respondent – University with other Universities as consortium partners. The petitioner was appointed as the Consortium Principal Investigator (CPI) and other co-Investigators were appointed from various Institutions.

7. In October 2010, a complaint was submitted by the Sarpanch of Grampanchayat, village Shekapur and Keroli, District Nanded, alleging that the project was improperly implemented. The said complaint was forwarded by the respondent – University to the petitioner. He submitted clarifications along with necessary documents. But, on 07/05/2011, the petitioner was suspended and a departmental enquiry was initiated against him. A parallel enquiry was also conducted by the officers of NAIP, New Delhi, to enquire into the alleged irregularities concerning the said project. It is the allegation of the petitioner that such parallel enquiry was conducted by the NAIP behind his back, although the petitioner had addressed numerous communications to the respondent – University with a request to permit him to participate in such parallel enquiry. In the said parallel enquiry, the NAIP itself excluded expenditure to the tune of Rs.1,42,57,636/- and certain observations were made. According to the petitioner, the said report became the basis of the departmental enquiry conducted against him and without proper application of mind, it was concluded that the entire aforesaid amount was to be recovered from him.

8. On the basis of the findings in the said enquiry report, after issuing show cause notice to the petitioner, on 15/01/2014, the respondent No.2 – Vice-

Chancellor of the University issued order dismissing the petitioner from service with disqualification from future employment under the Government, with a further direction to recover the aforesaid amount from the him. The said order was passed by the respondent No.2 – Vice-Chancellor of the University under Section 17(2),(4),(5) and (16) of the Act of 1998. Hence, the petitioner filed the appeal before the Executive Council of the respondent – University under Section 17(17) of the Act of 1998.

9. The Executive Council directed the respondent No.3 – University to make presentation to justify the charges levelled against the petitioner and after hearing the petitioner as well as the respondent No.3 – University, on 26/06/2015, a resolution was passed by the Executive Council forwarding the explanation of the petitioner along with documents. On 26/06/2015, the Executive Council passed a resolution stating that since the enquiry could not be completed till the said date, the petitioner be reinstated with immediate effect and the respondent No.3 – University was requested to enquire into the aforesaid project of NAIP through a retired High Court Judge and to complete the enquiry within four months. Since the respondent No.3 – University did not implement the said resolution, the Executive Council again resolved on 25/08/2015, reiterating its earlier decision and resolution passed on 26/06/2015. The respondent No.2 – Vice-Chancellor of the University was aggrieved by the said resolution and hence, he preferred an appeal under Section 17(18) of the Act of 1998, before the respondent No.1 i.e. the Hon'ble Chancellor of the University. The aforesaid appeal was rejected as not maintainable on the ground that the Vice-Chancellor could not be an aggrieved person by the decision / resolution of the Executive Council.

10. Thereupon, the respondent No.3 – University immediately preferred a reference before the Hon'ble Chancellor against the said resolution of the Executive Council, requesting the Hon'ble Chancellor to invoke powers under Section 14(5) of the Act of 1998. By an order dated 12/05/2016, the Hon'ble Chancellor allowed the reference made by the respondent No.2 – Vice-Chancellor, exercising powers under Section 14(5) of the Act of 1998 and thereby annulled the aforesaid resolution Nos.38/2015 and 50/2015, dated 26/06/2015 and 25/08/2015. The Hon'ble Chancellor held in the said order dated 12/05/2016, that the respondent No.2 – Vice-Chancellor could have invoked powers under Section 17(16) of the Act of 1998, only in case of an emergency and since the order dismissing the petitioner was passed after a detailed departmental enquiry, it could not be said that emergency powers had been invoked and consequently the appeal under Section 17(17) of the Act of 1998, was not maintainable.

11. The petitioner filed the aforesaid writ petition bearing No. 3777/2016, before this Court, challenging the said order passed by the Hon'ble Chancellor. On 19/10/2018, this Court disposed of the aforesaid writ petition, considering various issues arising in the matter, including the interpretation of relevant provisions of the Act of 1998. This Court allowed the writ petition set aside the

order dated 12/05/2016, passed by the Hon'ble Chancellor. The order dated 15/01/2014, passed by the respondent Vice-Chancellor, whereby the petitioner was dismissed from service, was stayed till final decision of the Executive Council and it was further directed that if the decision of the Executive Council was to be adverse to the interest of the petitioner, it would remained stayed for a further period of 15 days from the date of communication of the order. The Executive Council was directed to reconsider the whole matter, including the objection regarding maintainability of the appeal, in the light of Section 17(17) of the Act of 1998 and Clause 6 of Statute 19 of the respondent – University.

12. Pursuant thereto, the Executive Council of the respondent – University held a meeting on 26/08/2019 and passed resolution No.59/2019, holding that the appeal filed by the petitioner under Section 17(17) of the Act of 1998, was maintainable. On 10/01/2020, the Executive Council passed resolution No.97/2019, constituting an expert committee of 8 members to verify the facts in the matter of alleged financial irregularities committed by the petitioner, concerning the said project implemented under the aegis of ICAR and NAIP. It was also resolved that a one-man fact-finding committee of a retired High Court Judge would determine the extent of involvement of the petitioner. It was also resolved that 50% arrears of the petitioner shall be released, till the final decision by the Executive Council of the University.

13. The respondent No.2 – Vice-Chancellor again filed a reference on 05/02/2020, under Section 14(5) of the Act of 1998, before the respondent No.1 i.e. the Hon'ble Chancellor to annul the said resolutions bearing Nos.59/2019 and 97/2019, passed by the Executive Council of the University on 26/08/2019 and 10/01/2020, respectively.

14. On 04/09/2020, the respondent Vice-Chancellor filed additional grounds in the aforesaid reference and the Hon'ble Chancellor issued notice on 09/10/2020, keeping the hearing of the said reference at Mumbai on 12/10/2020. The petitioner filed reply alongwith documents in the above reference. Hearing of the matter was conducted before the Hon'ble Chancellor on 27/10/2020. Thereafter, the Hon'ble Chancellor issued another notice dated 21/6/2021, to which the petitioner submitted his reply on 03/07/2021.

15. In the interregnum, the Hon'ble Chancellor issued show cause notice to the Executive Council of the University as to why the aforesaid resolution No.59/2019, dated 26/08/2019, ought not be annulled, in pursuance of which the respondent – University again appears to have convened a special meeting on 20/05/2021. A fresh resolution was passed in the said meeting under the respondent No.2 – Vice-Chancellor as the Chairperson and it was resolved that the appeal filed by the petitioner under Section 17(17) of the Act of 1998, was not maintainable.

16. Thereafter on 29/07/2021, the Hon'ble Chancellor passed the impugned order and annulled the aforesaid resolution No.59/2019, dated 26/08/2019,

passed by the Executive Committee. As a consequence, on 03/08/2021, the respondent No.2 – Vice-Chancellor passed an order holding that the directions given by this Court in the judgment and order dated 19/10/2018, passed in Writ Petition No. 3777/2016, stood complied with and stay granted in the said judgment and order of 15 days would expire and the order of dismissal would stand revived. Aggrieved by the said order dated 29/07/2021, passed by the Hon'ble Chancellor and the order dated 03/08/2021, passed by the Vice-Chancellor of the University, as also the resolution dated 20/05/2021, passed by the Executive Council of the respondent No.3 – University, the petitioner filed the present writ petition, wherein notice for final disposal was issued and by order dated 17/08/2021, the parties were directed to maintain status quo as regards service of the petitioner. Admittedly, the petitioner has continued in service in view of the said interim order granted by this Court.

17. Mr. Amol Patil, the learned counsel for the petitioner submitted that the petitioner stood dismissed from service as far back as on 15/01/2014 and after all these years the petitioner is back to square one, only on the question as regards the remedy available to him against the said order of dismissal from service. It was submitted that for all these years, the grievance of the petitioner has not been addressed on merits at all and he is constrained to run from pillar to post, only on the question of the avenue of appeal / remedy available to him in the context of the order of dismissal from service. It is submitted that, but for this Court granting relief of reinstatement as per the judgment and order dated 19/10/2018, passed in Writ Petition No.3777/2016, the petitioner would have suffered even more.

18. The learned counsel for the petitioner submitted that a perusal of the order dated 15/01/2014, whereby he was dismissed from service would show that it was expressly passed under Section 17(16) of the Act of 1998 and consequently, the appeal under Section 17(17) thereof, was clearly maintainable. It was submitted that the Executive Council of the University had resolved twice regarding the maintainability of the said appeal. Reliance was placed on Resolution No.59/2019, dated 26/08/2019, of the Executive Council of the respondent University, to contend that the appeal was indeed maintainable. It was submitted that the aforesaid resolution and the subsequent Resolution No.97/2019, dated 10/01/2020, passed by the Executive Council of the respondent – University were in consonance with the provisions of the Act of 1998. It was only because the said resolutions had opened up the question of a detailed enquiry into the matter, which would include role of respondent No.2 – Vice-Chancellor and other officers of the University in the alleged irregularities concerning the aforesaid project, all efforts were being made by the respondent No.2 – Vice-Chancellor to scuttle the said resolutions, by wrongly claiming that the appeal under Section 17(17) of the Act of 1998, was not maintainable. It was submitted that the observations made by this Court in the earlier judgment and order dated 19/10/2018, passed in Writ Petition No.3777/2016, demonstrated that the subsequent action on the part of the respondent No.2 in hurriedly

holding a meeting of the Executive Council of the University on 20/05/2021 and passing the review Resolution No. SP1/2021, to resolve that the appeal was not maintainable, was an action in the teeth of the statutory provisions and it was wholly unsustainable.

19. It was further submitted that a proper interpretation of the provisions of the Act of 1998, read with Statute 19 of the respondent – University, as also Statute 169 would show that the only avenue of appeal available to the petitioner was before the Executive Council of the University under Section 17(17) of the said Act. It was submitted that the Grievance Committee constituted under Statute 19 of the University consisted of the respondent No.2 – Vice-Chancellor himself as the Chairman and other officers, including the Registrar and Comptroller as members thereof. It was submitted that an appeal before the aforesaid Grievance Committee would be meaningless, because it would be an appeal from the order of the Vice-Chancellor to the Grievance Committee of which the Vice-Chancellor himself is the Chairman.

20. As regards the Appellate Authority under Statute 19(6) of the University, it was submitted that such an appellate authority was never appointed and it was very recently that a retired District Judge was appointed as an Appellate Authority. As regards the applicability of Statute 169 and on that basis the applicability of the Maharashtra Civil Services Rules (hereinafter referred to as MCSR), it was submitted that a proper interpretation of the said Statute read with Sections 62(b) and 2(11) of the Act of 1998, would show that such recourse to the aforesaid Rules was not available in the case of the petitioner. On this basis it was submitted that the only remedy of appeal available to the petitioner against the order of dismissal from service dated 15/01/2014, was the appeal provided before the Executive Council under Section 17(17) of the Act of 1998, particularly when the said order was specifically issued under Section 17(16) of the Act of 1998.

21. It was vehemently submitted that the respondent Nos.2 and 3 had acted in the aforesaid manner, only with a view to avoid detailed enquiry as regards the role of respondent No.2 – Vice-Chancellor and other officers of the University in respect of the irregularities concerning the said project and that the impugned actions were in the teeth of the statutory scheme, as well as a specific direction given by this Court while disposing of Writ Petition No.3777/2016. On this basis, it was submitted that the present writ petition deserved to be allowed.

22. On the other hand, Mr. S.V. Manohar, learned Senior Counsel appearing for respondent Nos.2 and 3 submitted that no interference was warranted in the impugned orders and resolution, for the reason that they were all in tune with the statutory scheme contemplated under the Act of 1998. It was submitted that mere wrong nomenclature or reference to a wrong provision in the order dated 15/01/2014, dismissing the petitioner from service, would not amount to the said order having been issued under the said wrongly quoted provision. It was submitted that reference to Section 17(16) of the Act of 1998, in the aforesaid

order dated 15/01/2014, was a case of wrong quotation, for the reason that the respondent No.2 – Vice-Chancellor had obviously not exercised any emergency power as contemplated under Section 17(16) of the Act of 1998.

23. It was an admitted position that a detailed departmental enquiry was conducted against the petitioner under the MCSR and the order of dismissal from service was issued after such detailed enquiry had resulted in a report rendering adverse findings against the petitioner. On this basis, it was submitted that in the order of dismissal from service dated 15/01/2014, reference to Section 17(2), (4), (5) of the Act of 1998, was justified because the said provisions concerned the power of respondent No.2 – Vice-Chancellor of exercising general control over the affairs of the University as well as ensuring that the provisions of the Statute and Regulations were faithfully observed as the Vice-Chancellor is responsible for proper administration of the University, including financial administration. It was submitted that the contents of the order dated 15/01/2014, whereby the petitioner was dismissed, demonstrated that reference to Section 17(16) pertaining to action that the Vice-Chancellor could undertake in case of emergency, was obviously a case of wrong quotation / reference to the provision and this could not enure to the benefit of the petitioner.

24. It was submitted that when the order itself could not be said to be issued under Section 17(16) of the Act of 1998, the appeal provided under Section 17(17) of the Act of 1998, was clearly not available to the petitioner and that, therefore, the Hon'ble Chancellor was justified in invoking powers under Section 14(5) of the Act of 1998, to annul Resolution No.59/2009, dated 26/08/2019. The learned Senior Counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of Lekhraj Sathramdas Lalvani Vs. N.M. Shah, Deputy Custodian Cum Managing Officer, Bombay and others reported in AIR 1966 SC 334; State of Karnataka Vs. Muniyalla reported in (1985) 1 SCC 196 and Super Cassettes Industries Limited Vs. State of Uttar Pradesh and another reported in (2009) 10 SCC 531.

25. The learned Senior Counsel further submitted that the Hon'ble Supreme Court had deliberated upon the nature of emergency powers that could be exercised by the Vice-Chancellor concerning a similar Statute i.e. Marathwada University Act, 1974, in the case of Marathwada University Vs. Seshrao Balwant Rao Chavan reported in (1989) 3 SCC 132. The aforesaid judgment indicated the extent of such power and in what circumstances emergency power could be exercised. The learned Senior Counsel for respondent Nos.2 and 3 also relied upon judgment of the Hon'ble Supreme Court in the case of Sahiti and others Vs. Chancellor, Dr. N.T.R. University of Health Sciences and others reported in (2009) 1 SCC 599, to make submissions as regards the role of the Vice-Chancellor of the University. On this basis, it was submitted that the Executive Council of the University had obviously erred in issuing Resolution No.59/2019 dated 26/08/2019, to resolve that the appeal filed by the petitioner under Section 17(17) of the Act of 1998, was maintainable.

26. It was also submitted that such resolution passed by the majority members of the Executive Council ought not to prevail over the position of law based on proper interpretation of the provisions of the Act of 1998. It was further submitted that even if this Court was to interfere with the subsequent Resolution No. SP1/2021 dated 20/05/2021, passed by the respondent No.3 – University, earlier resolution also ought to be set aside, because interference with only the subsequent resolution would lead to restoration of the earlier resolution, which on a proper interpretation of the Act of 1998, is wholly illegal and unsustainable. For this proposition, the learned Senior Counsel appearing for respondent Nos.2 and 3 relied upon the judgment of the Hon'ble Supreme Court in the case of *Bhartiya Seva Samaj Trust through President and another Vs. Yogeshbhai Ambalal Patel and another* reported in (2012) 9 SCC 310.

27. Considering the submissions made on behalf of the rival parties, this Court perused the documents on record, as also the provisions of the Act of 1998 and relevant Statutes framed thereunder. The rival parties have addressed this Court on the basic question as to whether the petitioner could maintain the appeal under Section 17(17) of the Act of 1998, before the Executive Council of the respondent – University against the order dated 15/01/2014, passed by the respondent No.2 – Vice-Chancellor, dismissing the petitioner from service. By the impugned order dated 29/07/2021, the Chancellor has held that such an appeal before the Executive Council was not maintainable and, on that basis, power under Section 14(5) of the Act of 1998, has been exercised to annul Resolution No.59/2019, dated 26/08/2019, passed by the Executive Council of the University. The nature of the order dated 15/01/2014, will have to be considered, in order to reach a conclusion as to whether it could be said to be an order passed by the respondent No.2 – Vice-Chancellor by invoking Section 17(16) of the Act of 1998.

28. Before proceeding to annul the contents of the said order, it would be appropriate to refer to the judgments relied upon by the learned Senior Counsel for respondent Nos.2 and 3 as regards the nature of an order, which quotes a wrong provision. In the case of *Lekhraj Sathramdas Lalvani Vs. N.M. Shah* (supra), the Hon'ble Supreme Court held that the validity of an order has to be judged on a consideration of its substance and not its form. It was held that when an authority passes an order, which is within its competence, it cannot fail merely because it purports to be made under a wrong provision. The emphasis has to be on the actual existing authority under which the order is passed and under which it would have validity rather than one under which it would be void. Similarly, in the case of *State of Karnataka Vs. Muniyalla* (supra), it was held that mere recital of wrong provision of law does not have the effect of invalidating an order, which is otherwise within power of the authority making the order. In the case of *Super Cassettes Industries Limited Vs. State of Uttar Pradesh* (supra), the Hon'ble Supreme Court held that mere omission or error in quoting a provision would not affect the maintainability of an appeal, if otherwise the order impugned is amenable to appeal.

29. Hence, it becomes clear that while construing the powers exercised by an authority while issuing an order, the substance of the order is to be appreciated and not its form. Applying the said dictum to the order dated 15/01/2014, passed by the respondent No.2 – Vice-Chancellor dismissing the petitioner from service, it is seen that in the said order, detailed references are made to the departmental enquiry conducted against the petitioner.

30. The respondent No.2 – Vice-Chancellor quoted the charges levelled against the petitioner and the findings in the report of the departmental enquiry, and upon agreeing with such findings, the respondent No.2 – Vice-Chancellor stated that the order was being passed under Section 17(2),(4),(5) and (16) of the Act of 1998. A perusal of Section 17 and the aforesaid sub-sections (2),(4) and (5) thereof shows that the Vice-Chancellor has relied upon his power of exercising general control over the affairs of the University, to ensure that the provisions of the Act of 1998 are faithfully observed as the Vice-Chancellor is responsible for the proper administration, including financial administration of the University. Reference is also made to sub-section (16) of Section 17 of the Act of 1998, which pertains to power that can be exercised by the Vice-Chancellor in an emergency, requiring immediate action on his part. The contents of the order dated 15/01/2014, show that while reference to Section 17(2), (4) and (5) of the Act of 1998, is in terms of the observations and findings in the said order, reference to Section 17(16) of the Act of 1998, is wholly misplaced and not in tune with the contents of the said order.

31. Thus, it is a clear case of misquoting of the provision by the Vice-Chancellor, while issuing the order of dismissal of service against the petitioner. Applying the ratio of the aforesaid judgments of the Hon'ble Supreme Court, it becomes clear that the substance of the order dated 15/01/2014, has to be appreciated over its form. Merely because, the respondent – Vice-Chancellor referred to sub-section (16) of Section 17 of the Act of 1998, which pertains only to exercise of power in emergency situation, it could not lead to a conclusion that the said order dated 15/01/2014, was passed under the aforesaid provision.

Thus, it becomes clear that the order dated 15/1/2014, in its substance was not an order passed under Section 17(16) of the Act of 1998, notwithstanding the fact that the aforesaid provision was indeed referred to by the Vice-Chancellor, while issuing the said order.

32. Once this conclusion is reached, it becomes clear that Section 17(17) of the Act of 1998, would not be available to the petitioner for preferring an appeal before the Executive Council. This would become further clear if sub-sections (16) and (17) of Section 17 of the Act are perused, which read as follows:

"17.

(1) to (15).....

(16) In any emergency which, in the opinion of the Vice-Chancellor, requires that

immediate action should be taken, he shall subject to the control of the Pro-Chancellor, take such action which he deems necessary and shall at the earliest opportunity thereafter report his action to the Executive Council and to such other authority or officer as would have in the ordinary course, dealt with the matter.

(17) Where any action taken by the Vice-Chancellor under the last preceding subsection affects any person in the service of the University to his disadvantage such person may prefer an appeal to the Executive Council within thirty days from the date on which such person has received notice of the action taken, and the Executive Council shall consider the appeal at its next meeting and shall give its decision within three months from the date of appeal."

33. What is significant is that it has to be determined as to whether, as a matter of law and interpretation of the aforesaid provision of the Act of 1998, in the facts of the present case, it could be said that the petitioner could have filed an appeal before the Executive Council of the respondent – University under Section 17(17) of the Act of 1998. This aspect was not discussed or adverted to by the Executive Council of the respondent – University, while passing Resolution No.59/2019 dated 26/08/2019. A perusal of the resolution shows that the members of the Executive Council by majority held that the said appeal of the petitioner was maintainable. No amount of majority of the members of the Executive Council can over-ride the position of law that emerges from appropriate interpretation of Section 17(16) and (17) of the Act of 1998.

34. A perusal of the impugned order dated 29/07/2021, passed by the Hon'ble Chancellor would show that after referring to the facts of the case in detail, the Hon'ble Chancellor has correctly found that in Resolution No.59/2019, dated 26/08/2019, the Executive Council of the respondent No.3 – University held the appeal filed by the petitioner as maintainable, only because the majority of the members of the Executive Council of the respondent No.3 – University were of the opinion that the appeal filed by the petitioner was maintainable. It is on the basis of correct interpretation of Section 17(16) and (17) of the Act of 1998, that the Hon'ble Chancellor found that the aforesaid resolution / decision of the Executive Council of the respondent No.3 – University was not in conformity with the provisions of the Act of 1998, as a consequence of which the power under Section 14(5) of the Act of 1998, was invoked by the Hon'ble Chancellor to annul the aforesaid Resolution No.59/2019, dated 26/08/2019. This Court is of the opinion that the Hon'ble Chancellor was justified in passing the impugned order dated 29/07/2021, as the same was passed on a correct interpretation of the provisions of the Act of 1998. Section 14(5) of the Act of 1998, reserves power with the Hon'ble Chancellor to annul such proceedings that are not in conformity with the provisions of the Act of 1998. Therefore, the challenge raised on behalf of the petitioner against the said order passed by the Hon'ble Chancellor must fail.

35. Insofar as the impugned order dated 03/08/2021, passed by the respondent

No.2 – University is concerned, it is an order passed as a consequence of the impugned order dated 29/07/2021, passed by the Hon'ble Chancellor. But, even if the said impugned order dated 03/08/2021, could be sustained, it would lead to a situation where the petitioner would be facing dismissal from service, despite not having had an opportunity to challenge the original order of the Vice-Chancellor dated 15/01/2014, on merits by approaching the appellate authority under the provisions of the Act of 1998. In view of the observations made in favour of the petitioner in the earlier judgment in Writ Petition No.3777/2016, this Court is of the opinion that the effect of the order dated 03/08/2021 and the earlier original order of the respondent – Vice-Chancellor dated 15/01/2014, ought to be kept in abeyance in the interest of justice to grant an opportunity to the petitioner to approach the appellate authority to raise his grievance on merits against the said orders. This is particularly because this Court in the aforesaid earlier judgment and order dated 19/10/2018, passed in Writ Petition No.3777/2016, found that the petitioner ought to be reinstated in service, while he may exhaust remedies available to him under the Act of 1998.

36. This Court has held that the respondent No.2 – Vice-Chancellor indeed exercised powers of general supervision and administration of the respondent – University while issuing the order date 15/01/2014, dismissing the petitioner from service after perusing and analyzing various provisions of the Act of 1998, particularly Section 17 thereof. Respondent Nos.2 and 3 are justified in relying upon the judgments of the Hon'ble Supreme court in the cases of Marathwada University Vs. Seshrao Balwant Rao Chavan and Sahiti and others Vs. Chancellor, Dr. N.T.R. University of Health Sciences (supra), concerning similar Statutes, wherein the Hon'ble Supreme Court has deliberated upon and expounded the powers of the Vice-Chancellor of the University. Analysis of Section 17 of the Act of 1998, in the light of the law laid down by the Hon'ble Supreme Court in the aforesaid judgments, shows that the order dated 15/01/2014, issued by the respondent No.2 – Vice-Chancellor was certainly not under Section 17(16) of the Act of 1998, which concerns only an emergency situation and the powers to be exercised by the Vice-Chancellor in such a situation.

37. In the light of the fact that this Court is not with the petitioner on the question of maintainability of the appeal before the Executive Council of respondent No.3 – University under Section 17(17) of the Act of 1998, the subsequent impugned Resolution No. SP1/2021, dated 20/05/2021, passed by the Executive Council of the University does not deserve interference. In the light of the said finding, this Court is not required to refer to the position of law relied upon by the respondent Nos.2 and 3, as laid down by the Hon'ble Supreme Court in the case of Bhartiya Seva Samaj Trust through President and another Vs. Yogeshbhai Ambalal Patel (supra), wherein it is clarified that the Court should not set aside an illegal order if its effect is to revive another illegal order.

38. But, the discussion in the present case cannot stop at the point when this Court holds that the appeal under Section 17(17) of the Act of 1998, against the

order dated 15/01/2014, was not maintainable. The learned counsel for the petitioner has expressed anguish on the aspect that despite number of years passing by, the petitioner is still at the stage of the remedy of appeal available to him and his grievance on merits is yet to be addressed. The learned Senior Counsel appearing for respondent Nos.2 and 3 has countered the said contention by submitting that the availability of alternative avenue of appeal was argued in the earlier round before this Court in Writ Petition No.3777/2016 and that this Court had also adverted to the same. It was submitted that even in the operative portion of the judgment and order dated 19/10/2018, whereby Writ Petition No.3777/2016 was disposed of, this Court had directed the Executive Council of respondent No.3 – University to reconsider the question of maintainability of the appeal preferred by the petitioner in the light of Section 17(17) of the Act of 1998, as well as Clause 6 of Statute 19, framed under the provisions of the Act of 1998. Thus, according to respondent Nos.2 and 3, the blame for delay in consideration of the grievance of the petitioner on merits could not be placed at the door of the said respondents.

39. It is a matter of fact that even as on today the grievance of the petitioner on merits with reference to order of dismissal of service passed on 15/01/2014, has not been considered at any level. Therefore, it needs to be examined as to the avenue of the appeal available to the petitioner in respect of the said original order dated 15/01/2014, passed by respondent No.2 – Vice-Chancellor.

40. In this context, it was submitted on behalf of the petitioner that under Statute 19(1) of the respondent – University, there was no question of the petitioner filing an appeal before the Grievance Committee for the reason that the Vice-Chancellor himself is Chairman of the Committee and all other members are officers inferior in position to the Vice-Chancellor. There is substance in the aforesaid contention for the reason that the original order dated 15/01/2014, dismissing the petitioner from service was passed by the Vice-Chancellor himself and the appeal before the Grievance Committee of which the Vice-Chancellor himself is the Chairman, would lead to an illusory appeal and the same authority would be sitting in appeal over its own order. Hence, the petitioner is justified in contending that he could never have approached the Grievance Committee for University employees under Statute 19(1) of the respondent – University. It was also brought to the notice of this Court that when the petitioner was constrained to approach this Court in the first round by filing Writ Petition No.3777/2016, the Executive Council of the respondent – University had not appointed the appellate authority as contemplated under Clause 6 of the Statute 19 of the University. In fact, it was submitted that such appellate authority was never appointed since the inception of the University. But, the rival parties conceded that, as on today, there is indeed a retired District Judge appointed as appellate authority by the Executive Council of respondent – University. It is specifically provided under Statute 19(6) of the University that such an appellate authority shall entertain the appeals in respect of the original orders passed by the Vice-Chancellor of the University. It is provided therein that the Registrar or his representative shall be

the Presenting Officer on behalf of the University and that proceedings of such meetings shall be conducted as per procedure laid down under the Maharashtra Discipline and Conduct Appeal Rules, 1979.

41. In this context, reference was made to Statute 169 of the University, which pertains to the applicability of MCSR and various Rules framed in that context to the employees of the Institutions under the University. Submissions were made on behalf of the rival parties with reference to Section 2(11) and Section 62(b) of the Act of 1998. While the learned counsel for the petitioner submitted that a proper interpretation of Statute 169 of the University in the backdrop of the aforesaid two provisions would show that the MCSR and other Rules framed in that context would not be applicable to the petitioner, submissions were made to the contrary by the learned counsel appearing for respondent Nos.2 and 3.

42. Statute 169 of the University provides that various Rules of the MCSR specified therein are applicable to the employees of recognized Institutions other than those recognized for research and specialized higher learning. Section 2(11) of the Act of 1998 defines "recognized institution" to mean an institution for research or specialized studies, other than a constituent college, recognized or deemed to be recognized by the University. Section 2(3) of the Act of 1998 in turn defines "constituent college" to mean a college specified in the First Schedule and which is under the direct management of the University. There is no dispute that the institution in which the petitioner is working is indeed specifically included in the list of colleges in the First Schedule. Section 62(b) of the Act of 1998 provides that, on and from the appointed day the colleges specified in the First Schedule shall stand transferred to the University and shall be deemed to be the constituent colleges of the University. Thus, a conjoint reading of the said provisions of the Act of 1998 with Statute 169 of the University does show that the petitioner is justified in contending that the Rules of MCSR specified in Statute 169 of the University would not be applicable to him, as he is an employee of a constituent college specifically included in the First Schedule to the Act of 1998.

43. But, that in itself cannot take away the applicability of Statute 19(6) of the University, even if reference is made therein to Maharashtra Discipline and Conduct Appeal Rules, 1979. This is for the reason that as per Statute 19(6) of the University, only the proceedings of the meetings of the appellate authority provided therein, in an appeal against an original order of the Vice-Chancellor, are to be conducted as per procedure laid down in the Maharashtra Discipline and Conduct Appeal Rules, 1979. The appellate authority under the said Statute is a retired District Judge appointed by the Executive Council of the University. In other words, the appeal under Statute 19(6) of the University is before the appellate authority specified therein and not as per the Maharashtra Discipline and Conduct Appeal Rules 1979, while only the procedure of the meetings conducted by the appellate authority is to be as per the said Rules. Thus, even if the contention raised on behalf of the petitioner in respect of Statute 169 of the

University is to be accepted, applicability of Statute 19(6) cannot be taken away and the petitioner can file appeal before the aforesaid appellate authority specified therein.

44. Accordingly, it is held that the appeal filed by the petitioner before the Executive Council of the University under Section 17(17) of the Act of 1998, was not maintainable. He is entitled to file an appeal against the original order of the Vice-Chancellor dated 15.01.2014 before the appellate authority under Statute 19(6) of the University. If the petitioner files such an appeal within four weeks from today, the said appellate authority under Statute 19(6) of the University shall entertain the same and proceed to decide the same in accordance with law. The effect and operation of the order dated 15.01.2014, passed by the respondent Vice-Chancellor shall remain stayed during pendency of the appeal and in case an adverse order is passed against the petitioner in the appeal, the stay hereby granted shall operate for a further period of 15 days from the date of communication of the order of the said appellate authority to the petitioner. In view of these directions, the order dated 03.08.2021 passed by the respondent Vice-Chancellor is rendered meaningless. The Writ Petition stands disposed of.

45. Rule made absolute in above terms with no order as to costs. Pending applications, if any, stand disposed of.