
(2022) 11 BOM CK 0073
In the Bombay High Court
Case No : Writ Petition No. 2590 Of 2000

Dr. Prashant

APPELLANT

Vs

Honourable Chancellor And Others

RESPONDENT

Date of Decision : 21-11-2022

Acts Referred:

Maharashtra Universities Act, 1994 — Section 76

Citation : (2022) 11 BOM CK 0073

Hon'ble Judges : Sunil B. Shukre, J;G. A. Sanap, J

Bench : Division Bench

Advocate : M. G. Bhangde, A. B. Patil, S. Y. Deopujari, A. C. Dharmadhikari, K. L. Dharmadhikari, A. S. Agrawal

Final Decision : Allowed

Judgement

G.A.Sanap, J

1. In this petition, the petitioner is seeking writ of certiorari to quash and set aside the order dated 10.07.2000, passed by the respondent no.1 – Hon'ble Chancellor, Amravati University, Amravati directing respondent no.2 – Vice Chancellor, Amravati University, Amravati to terminate the appointment of the petitioner as a Lecturer in Molecular Biology in the Department of Bio Technology of Amravati University and other consequential reliefs.

2. This Court (Coram : D.K. Deshmukh and S.K.Shah, JJ), on 1. 08.2000, issued Rule in the matter with a direction to the parties to maintain status-quo vis-a-vis employment of the petitioner. On 22.04.2022, the petition was heard by this Court (Coram : Nitin Jamdar and Anil L. Pansare, JJ.) and passed a detailed order. The Court dealt with the submissions advanced by the learned advocates for the parties and made certain observations in the order. This Court directed the concerned to place the matter before the Hon'ble Chancellor for further course of action. This Court in view of the candid observations made in the order, dated 22.04.2022 made a request to the Hon'ble Chancellor to have a relook at

the impugned order and decide as to whether its enforcement is necessary as on today. The relevant facts, the questions raised and prima facie consideration of the same can be gathered by reproducing the said order. The order dated 22.04.2022 reads thus :-

"Having heard the learned counsel for the parties at length and considering the facts and circumstances of the case we are of the opinion that this matter needs to be placed before the Hon'ble Chancellor for reconsideration of the impugned order passed by the Hon'ble Chancellor on 10 July 2000.

2. The factual backdrop of the case and the reasons why we intend to follow this course of action are as under.

3. The Respondent no.2-Amravati University issued an advertisement on 26 April 1996 for one post of Lecturer in the subject of Molecular Biology in the Department of Bio-Technology. The Petitioner applied and the Petitioner was interviewed by the selection committee of the Respondent no.2-University constituted under Section 76 of the Maharashtra Universities Act, 1994 (for short, 'the Act of 1994') on 7 December 1996 and the Petitioner was appointed on 7 December 1996 itself. The Respondent no.3 had also applied pursuant to the advertisement and was interviewed. The Respondent no.3 was not selected and therefore filed a Writ Petition No.1138 of 1998 which was disposed of on 22 October 1999 whereupon the Hon'ble Chancellor was requested to decide the representation of the Respondent no.3. The Respondent no.1-Hon'ble Chancellor passed the impugned order holding that the Petitioner had not passed the requisite examination of NET-SET conducted by the University Grants Commission or the State Government at the time of selection and therefore the Petitioner should be terminated from service. The present writ petition was filed on 25 July 2000.

4. On 9 August 2000, the interim order was granted directing the parties to maintain status quo and the Petitioner continued in service. Thereafter the Petitioner was awarded Ph.D. on 9 August 1995 and passed the State Eligibility Test (SET) in the month of July-2000. Thereafter the Petitioner was promoted to the post of Reader by the Respondent no.2-University on 23 January 2009.

5. In the meanwhile the Respondent no.3 was appointed as a Lecturer/Assistant Professor on 17 June 2010. We are informed that the Respondent no.3 is also likely to be promoted as a Reader soon.

6. As regards the advertisement for the post of Lecturer is concerned, it was stated that the candidate who has cleared the Eligibility Test for Lecturers conducted by the University Grants Commission or the State Government this requirement could be waived in the case where the candidate who has submitted his Ph.D. thesis or was awaiting the Ph.D. degree prior to 31 December 1993. Admittedly, the Petitioner did not possess NET-SET qualification when the advertisement was issued nor had the Ph.D. degree prior to 31 February 1993 but had acquired the Ph.D. degree subsequently.

7. Two contentions are raised by the Petitioner; first that the stipulation of cut-off date of 31 December 1993 which has been relied upon in the impugned order and contained in the Government Resolution dated 22 December 1995, is arbitrary. Secondly, it is not that those who have been appointed without passing the NET-SET examination should be straightway dismissed from service even though they have acquired the qualification subsequently.

8. As regards the argument of the Petitioner regarding cut-off date being arbitrary, the issue is no longer res integra in light of the decision of the Hon'ble Supreme Court in the case of University Grants Commission Versus Sadhana Chaudhary & Others (1996) 10 SCC 536. The Hon'ble Supreme Court has categorically rejected the argument that the cut-off date is arbitrary and the classification does not have nexus with the object. This argument therefore is not available to the Petitioner.

9. As regards the second contention, the Petitioner has relied upon the judgment of the Division Bench of this Court in the case of Maharashtra Federation of University and College Teachers Organization Versus State of Maharashtra & Others in Writ Petition No.2082 of 2013 dated 23 December 2015. According to the Petitioner the Division Bench has protected the services of those non NET-SET teachers appointed during the period 23 October 1992 to 3 April 2000 on certain conditions. According to the learned counsel for the Respondent no.2-University these were only those non NET-SET teachers when they were appointed there was no suitable qualified candidate with NET-SET qualification available and in the present case when the Petitioner was appointed in the year 1996 the Respondent no.3 with NET-SET qualification available. The Respondent no.3 has contended that since the Petitioner was not qualified the appointment of the Petitioner is void ab-initio and no indulgence can be shown nor equity jurisdiction can be exercised in light of the decision of the Hon'ble Supreme Court in the case of Rakesh Kumar Sharma Versus State (NCT of Delhi) & Others(2013) 11 SCC 58.

10. Now we turn to the position as on today. The petition which concerns the appointment of the Petitioner of the year 1996 has come up for hearing in the year 2022 and we have to decide as to whether the Petitioner should be terminated from service after the Petitioner has now put in twenty six years of service and is promoted by the Respondent no.2-University itself during the pendency of the petition as a Reader.

11. Though reply affidavit is filed by the Respondent no.2-University stating that the promotion of the Petitioner is subject to the outcome of this petition, no leave of this Court was obtained before promoting the Petitioner inspite of the order of status quo. It is not the case of either the Respondent no.3 or the Respondent no.2-University that the Petitioner misrepresented any factual position when the Petitioner was selected by Selection Committee of the Respondent no.2-University.

12. When the Respondent no.3 was not selected in the year 1996, till date except challenging the appointment of the Petitioner, the Respondent no.3 has not taken any step as regards the claim of the Respondent no.3 to be appointed from the year 1996. The Respondent no.3 seems to be under misconception that if the Petitioner's appointment is cancelled, in this petition itself the Respondent no.3 will get a relief that the Respondent no.3 be considered having been appointed since the year 1996. The Respondent no.3 thereafter has been duly selected in the year 2010 and it is in the year 2010 that the Respondent no.3 has entered the services of the Respondent no.2-University.

13. Therefore, as and when, which is imminent, that the Respondent no.3 is promoted to the post of Reader all that will remain is the inter se seniority between the Petitioner and the Respondent no.3. Therefore, dismissal of the petition confirming the order of the Hon'ble Chancellor will not result in granting any relief to the Respondent no.3 per se. In that context the appointment of the Petitioner will have to be seen.

14. As regards the case of Rakesh Kumar Sharma (supra), it was a case where the Central Administrative Tribunal had quashed and set aside the show cause notice issued by the NCT of Delhi terminating the services of the candidate for not possessing the requisite eligibility. There the candidate was appointed provisionally making it clear that the appointment was temporary on provisional basis on verification. It was stated that if it was found that the information was concealed or misrepresented the appointment would be terminated. The candidate therein was dismissed on the ground that he had obtained the employment by misrepresentation. It is in that context the Supreme Court observed that the appointment was void ab-initio and the Courts should not protect an illegal appointment. Such are not the facts in the case at hand. Furthermore, had it been this position, the Division Bench in the case of Maharashtra Federation of University and College Teachers Organization (supra) also could not have protected the services of the teachers therein. It is correct that the circumstances in the case of Maharashtra Federation of University and college Teachers Organization (supra) of non-availability of suitable candidates are not present this case, but the fact remains that it is not impossible to take a view which may benefit a non NET-SET candidate who has been working for a long period of time.

15. In the present case, the cut-off date for submitting the Ph.D. thesis for non NET-SET candidates was 31 December 1993. The Petitioner submitted thesis in the year 1994 and was awarded Ph.D. degree in the year 1995. Thereafter the Petitioner has acquired the NET-SET qualification in July-2000 and therefore though the Petitioner did not possess the requisite NET-SET qualification on the date of advertisement, for last more than two decades the Petitioner is teaching the subjects with both Ph.D. degree and NET-SET qualifications.

16. Considering these facts, we are of the opinion therefore that, in light of passage of time; the acquisition of the qualifications by the Petitioner; the

decision of the Division Bench in the case of Maharashtra Federation of University and College Teachers Organization (*supra*); and that the Respondent no.3 is also now serving with the Respondent no.2-University, the Hon'ble Chancellor should have a re-look at the impugned order to decide as to whether its enforcement is necessary as on today.

17. We may also note that the Petitioner and the Respondent no.3 exchanged certain settlement terms amongst themselves as to how they can resolve the issue. Ofcourse, the Respondent no.2-University cannot be bound by the inter se arrangement however the Hon'ble chancellor, who heads the Respondent no.2-University should note that the Respondent no.2-University had granted promotion to the Petitioner during the pendency of this writ petition.

18. With these observations, the matter be placed before the Hon'ble Chancellor for further course of action. The learned Assistant Government Pleader states that the copy of the order and necessary records would be placed before the Hon'ble Chancellor. Though we do not intend to fix a time limit for the Hon'ble Chancellor, since the issue is pending since long, the Hon'ble Chancellor may consider if it is possible to take a decision within a period of three months.

19. Put this petition under the caption 'For Directions' on the weekly board in the week commencing 1 August 2022."

3. The matter was referred to the Hon'ble Chancellor for reconsideration. Hon'ble Chancellor forwarded a communication to the office of Government Pleader, Nagpur. By the said communication, the Hon'ble Chancellor noted down certain facts from the date of filing of the petition till the date of passing of the above order and made it clear that nothing has left to be decided by the Hon'ble Chancellor and that the Court should give its final verdict on the order passed by the then Hon'ble Chancellor in the year 2000. In view of this communication, the matter was listed before us for final hearing.

4. We have heard Mr. M. G. Bhangde, learned Senior Advocate assisted by Mr. A.B. Patil, learned advocate for the petitioner, Mr. S. Y. Deopujari, learned advocate for respondent nos.1 and 2, Mr. A.C. Dharmadhikari, learned advocate for respondent no.3, Mr. K. L. Dharmadhikari, learned Assistant Government Pleader for respondent no.4 and Mr. A.S. Agrawal, learned advocate for respondent no.5. Perused the record and proceedings.

5. Mr. Bhangde, learned Senior Advocate submitted that in view of the communication received from the office of the Hon'ble Chancellor, this Court would be required to give finality to the earlier order passed by this Court on 22.04.2022. Learned Senior Advocate submitted that this Court vide order dated 22.04.2022 has decided the material question in favour of the petitioner and therefore, the same could operate as *res judicata*. Learned Senior Advocate submitted that despite the communication from the Hon'ble Chancellor, the position obtained on record on the date of the order dated 22.04.2022 still holds good. On this point learned Senior Advocate has placed reliance on the decision

in the case of C. V. Rajendran and another .vs. N. M. Muhammed Kunhi, reported in (2002) 7 SCC 447, wherein it is held that when the order passed at an earlier stage of the same proceeding, if allowed to become final, the principle of res-judicata would become applicable. It is held that the other side in the absence of challenge to the said order attaining finality, cannot be allowed to challenge the same in the subsequent proceeding.

6. Learned Senior Advocate submitted that dismissal of this petition would not extend any benefit to the respondent no.3 inasmuch as in absence of filing of any substantive petition by the respondent no.3, the respondent no.3 would not automatically get appointed to the post. Learned Senior Advocate submitted that the Hon'ble Chancellor had rejected such request made by respondent no.3 vide petition dated 02.04.1997, in the month of July-2000. A copy of the said order is placed on record. Learned Senior Advocate took us through the copy of the order and submitted that the Hon'ble Chancellor has rejected the prayer of the respondent no.3 for her appointment in the place of the petitioner, in case appointment of the petitioner is declared as void. Hon'ble Chancellor, it is pointed out, has held that he has no power to issue such a direction to the University to appoint respondent no.3 to the vacant post.

7. Learned Senior Advocate submitted that the Government Resolution, dated 18.10.2001 was issued by the Government Of Maharashtra to take care of all those lecturers who were appointed between 19.09.1991 and 11.12.1999, without clearing SET examination on the date of their appointment. Learned Senior Advocate, relying on this Government Resolution, submitted that the petitioner is entitled to get the benefit of this G.R. and the said benefit cannot be denied on the basis of the defence of the respondent no.3. Learned Senior Advocate in this regard placed heavy reliance on the decision in the case of Rakesh Bakshi and another .vs. State of Jammu and Kashmir and others, reported in (2019) 3 SCC 511. Learned Senior Advocate submitted that on facts, the law laid down in this decision by the Hon'ble Supreme Court would be squarely applicable to the facts of this case. In the case of Rakesh Bakshi and another (supra), the selection and appointment was set aside on the ground that the candidates did not possess the requisite qualification on the cut-off date. Hon'ble Supreme Court, considering the peculiar facts and more particularly the fact that due to efflux of time neither the appellant nor the respondent would be in a position to secure selection, was pleased to set aside the order passed by the Division Bench of the Jammu and Kashmir High Court setting aside the selection and appointment. Learned Senior Advocate submitted that in this case almost 22 years have rolled by. In the meantime, the petitioner was promoted to the post of Reader. Learned Senior Advocate submitted that the respondent no.3 was duly selected in the year 2010 as a Lecturer in the respondent no.2-University. She is also likely to be promoted to the post of Reader. Learned Senior Advocate, therefore, submitted that the decision in the case of Rakesh Bakshi and another (supra) would squarely apply to the case of the petitioner.

8. Learned Advocate Mr. Deopujari appearing for respondent nos.1 and 2 supported the order passed by the Hon'ble Chancellor. Learned advocate submitted that considering the rival contentions, the Court may pass appropriate order to meet the ends of justice.

9. Learned Advocate Mr. A.C. Dharmadhikari appearing for the respondent no.3 submitted that in the teeth of the order of respondent no.1 – Hon'ble Chancellor, the petitioner is not entitled to get any relief as sought for in this petition. Learned advocate submitted that the petitioner had admitted before the Chancellor that he was not duly qualified and as such eligible to be appointed as a Lecturer. Learned Advocate pointed out that the respondent no.3 was duly qualified and fully eligible for being appointed as a Lecturer, but with an oblique motive, she was denied the appointment. Learned advocate submitted that the decision of Hon'ble Chancellor, even if tested on the anvil of facts and the law does not warrant interference. Learned advocate submitted that the appointment of the petitioner being illegal, cannot be protected. The learned advocate, in order to buttress his submissions, relied upon the following decisions :

1] Union of India and another .vs. Ravi Shankar and another, reported in (1998) 3 SCC 146

2] State of Haryana and others .vs. Anurag Shrivatava and another reported in (1998) 8 SCC 399

3] Pramod Kumar .vs. U.P. Secondary Education Services Commission and others, reported in (2008) 7 SCC 153

4] University Grants Commission and others .vs. Sadhana Chaudhary and others, reported in (1996) 10 SCC 536.

10. Mr. K.L.Dharmadhikari, learned Assistant Government Pleader appearing for respondent no.4 and learned advocate Mr. Agrawal appearing for respondent no.5 supported the arguments advanced on behalf of respondent no.3.

11. We have bestowed our thoughtful consideration to the submissions advanced by the learned advocates for the parties. In our opinion, the position obtained on record on 22.04.2022, when this Court made candid observations and recorded finding on important and relevant issues, would hold good. Despite the non-responsive communication from respondent no.2, the relevant observations touching to the merits of the controversy, recorded vide order dated 22.04.2022, would indicate that the petitioner cannot be denied the relief. The relevant observations and findings with regard to the subsequent acquisition of the qualification, promotion of the petitioner as a Reader, appointment of respondent no.3 as a Lecturer in 2010 and the likely promotion of respondent no.3 as a Reader, cannot be disturbed even after fresh hearing, in the teeth of the material placed on record. It is further pertinent to mention that the observations of this Court as above to the effect that by rejecting this petition, the respondent no.3 would not get an automatic appointment to the said post, also holds good in the

fact situation. In our opinion, in the backdrop of the observations made in paragraph nos. 13 to 16 of the order dated 22.04.2022 and on appreciation of the rival submissions, we are constrained to observe that we are not persuaded on the basis of the available material to take a different view of the matter. In fact, we reiterate that in the backdrop of the facts obtained on record, the view taken in paragraph nos.13 to 16 is the only possible view and the same needs to be followed for the purpose of deciding this petition finally. It is to be noted that applicability of principle of res-judicata may not be strictly applicable in this case in view of the nature of the order and facts of the case. A request was made to the Hon'ble Chancellor by making observation and recording a finding to give relook to the controversy. Hon'ble Chancellor did not deem it proper to reconsider his order. Hon'ble Chancellor requested this Court to decide the matter on merits. On appreciation of the material on record, we are of the opinion that the observations made and findings recorded on all the relevant aspects mentioned in paragraphs 13 to 16 of the order dated 22.04.2022, hold good.

12. There is one more additional ground pressed into service by the petitioner, relying on the Government Resolution dated 18.10.2001. This G.R. dated 18.10.2001 was not part of the record when the order dated 22.04.2022 was passed by this Court. The communication received from the office of the Hon'ble Chancellor would indicate that this GR dated 18.10.2001 was not brought to the notice of the Hon'ble Chancellor. Initial order passed by the Hon'ble Chancellor holding that the selection of the petitioner was not in accordance with law, is dated 10.07.2000. Admittedly, the GR dated 18.10.2001 was issued after passing of the order dated 10.07.2000. It is pertinent to mention at this stage that after receipt of the communication from Hon'ble Chancellor, the petitioner filed additional affidavit on 23.08.2022 and the GR dated 18.10.2001. It is stated in the additional affidavit filed by the petitioner that his case is covered by the GR dated 18.10.2001. We have perused this GR. This GR clearly records that all the Lecturers, who are appointed between 19.09.1991 and 11.12.1999 in aided and non-aided colleges and institutions by the competent Selection Committee shall not be discontinued, if they qualify NET-SET examination till December-2003. It is undisputed that the petitioner has cleared SET examination conducted by the Pune University in July-2000. This fact has been stated by the petitioner in his additional affidavit filed on 09.01.2001. The communication received from the Hon'ble Chancellor would indicate that this GR was not brought to his notice nor considered by him while declining to accept the suggestion of this Court to relook into the issue. Perusal of the GR would further show that the protection has been granted on the conditions stipulated in the GR. Therefore, in our opinion, the benefits of this GR cannot be denied to the petitioner on the ground that on the relevant date, the respondent no.3 was fully qualified and eligible to be appointed as a Lecturer. In our view, the observations made and findings recorded touching the merits vide order dated 22.04.2022 would also not permit us to deny the benefit of the GR dated 18.10.2001 to the petitioner. If

the facts obtained on record in this case and the GR dated 18.10.2001 are considered in proper perspective, it would crystalize and settle the issue. In the backdrop of the crystalized issue, the proposition of law laid down in the case of Rakesh Bakshi and another (supra) would be applicable to the facts of the present case.

13. There is one more ground for not denying the relief in favour of the petitioner. Respondent no.3 by way of an appeal, dated 02.04.1997, submitted to the Hon'ble Chancellor, had made two fold request. The first request was to terminate the appointment of the petitioner as a Lecturer in Molecular Biology subject and second request was to appoint respondent no.3 in place of the petitioner being duly qualified and eligible for appointment as a Lecturer with her name being at Serial No.2 on the Waiting List. The petition of the respondent no.3 with regard to the termination of the petitioner was allowed, however the petition seeking her appointment in place of the petitioner was rejected by the Hon'ble Chancellor by the order passed in July-2000. It is pertinent to note at this stage that respondent no.3 had filed substantive petition being Writ Petition No. 1138/1998 for setting aside appointment of the petitioner and for a direction to appoint her as a Lecturer in the Molecular Biology subject. The said petition was disposed of on 22.10.1999. It is observed in this order that the appeal filed by the respondent no.3 was pending before the Hon'ble Chancellor and respondent no.3 would be at liberty to challenge the decision, if any, passed by the Hon'ble Chancellor in accordance with law. As stated above, the Hon'ble Chancellor decided the appeal of respondent no.3 in July-2000 against her. Respondent no.3 did not file any substantive petition challenging this order passed by the Hon'ble Chancellor in July-2000 and also seeking an order and direction for her appointment in place of the petitioner. It is to be noted that in view of the candid observations of the Hon'ble Chancellor, made in the order passed in July-2000, it would become crystal clear that as on today, the respondent no.3 would not be entitled to get herself appointed in place of the petitioner. Similarly, no direction can be issued in this petition for appointment of the respondent no.3 in place of the petitioner. In our view, therefore, this is one more circumstance to make the decision in Rakesh Bakshi's case (supra) applicable to the case of the petitioner.

14. This Court (Coram: Nitin Jamdar and Anil L. Pansare, JJ.) in the order dated 22.04.2022 has considered the decision in the case of Sadhana Chaudhary and others (supra) and the decision in the case Rakesh Kumar Sharma .vs. State (NCT of Delhi) and others, reported in (2013) 11 SCC 58. Relying upon the decision in the case Sadhana Chaudhary and others (supra), this Court has recorded a finding that the condition with regard to the cut-off date could not be said to be arbitrary. This Court has also considered the applicability of the decision in Rakesh Kumar Sharma's case (supra) and held that the same would not be applicable to the case of the respondent no.3 in the fact situation obtained on record. Same is the proposition of law in the case of Pramod Kumar (supra) ; Anurag Shrivastava and another (supra) ; and Ravi Shankar and another (supra).

In our view, therefore, the proposition of law laid down in these cases would be of no help and assistance to the case of the respondent no.3.

15. We accordingly, conclude that the petitioner, who has been serving for last 22 years, cannot be denied the relief. Denial of relief to the petitioner would amount to miscarriage of justice. Denial of relief to the petitioner would not entail any benefit to the respondent no.3. The respondent no.3 has been gainfully employed. The case of the petitioner would be squarely covered by the Government Resolution dated 18.10.2001. The petitioner fulfills the necessary conditions with regard to acquisition of the necessary qualification in terms of the GR dated 18.10.2001. Therefore, the order passed by Hon'ble Chancellor cannot be sustained. The petition deserves to be allowed.

16. Accordingly, the writ petition is allowed in terms of prayer clause (a), which reads as follows :

"(a) by an appropriate writ, order and/or direction, including the writ of certiorari, quash and set aside the order dated 10.07.2000 of the respondent no.1, the Hon'ble Chancellor, Amravati University, directing the Vide Chancellor of the respondent no.2 Amravati University to terminate the appointment of the petitioner as a Lecturer in Molecular Biology in the Department of Bio Technology of the Amravati University (Annexure-XIII), and the consequent notice of termination dated 17.07.2000 issued by the respondent no.2 Amravati University to the petitioner, seeking to terminate his services in the aforesaid post, with effect from 16.08.2000 (Annexure-XIV) and further direct the respondent no.2 Amravati University, to continue the petitioner in the post of Lecturer in Molecular Biology in its Department of Bio Technology ;"

17. Rule is made absolute accordingly. No order as to costs.