

(1990) 11 BOM CK 0028

In the Bombay High Court

Case No : Writ Petition No. 2848 of 1988

Dr. Shashikant K. Lokhande

APPELLANT

Vs

University of Bombay and Another

RESPONDENT

Date of Decision : 26-11-1990

Acts Referred:

Bombay University Act, 1974 — Section 42, 74

Citation : (1991) 2 BomCR 260 : (1991) MhLj 337

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : M.M. Vashi, for the Appellant; S. Radhakrishnan, for the Respondent

Judgement

D.R. Dhanuka, J.—By this petition, the petitioner has sought to challenge the order of termination dated 14th May, 1987 passed by respondent No.1. The facts and circumstances leading to the filing of this petition, in brief, are as under:-

2. On 13th May, 1985, respondent No .1, University of Bombay, issued a letter of appointment to the petitioner informing him that the petitioner was appointed to the post of lecturer in the University Department of Marathi on the starting pay of Rs.700 per month on probation for a period of two years with effect from the date of assumption of duties in the post. The petitioner accordingly started functioning as lecturer in the University Department of Marathi on probation.

3. On 14th May, 1987, the Registrar of the University of Bombay informed the petitioner that the Executive Council at its meeting held on 28th April, 1987 had decided that the petitioner be not confirmed in the post of Lecturer in the Department of Marathi and that his services be terminated since the petitioner had not completed the probationary period satisfactorily. It was stated in the said letter that the services of the petitioner shall stand terminated after one month from the date of issue of the said letter. By this letter dated 15th July, 1987, the petitioner requested the Registrar of the University of Bombay that the dispute between him and the University of Bombay arising out of the said contract

pertaining to the termination of his services be referred to the Tribunal of Arbitration as contemplated u/s 74 of the Bombay University Act, 1974. It is not necessary to refer to the rival contentions of the parties on merits of the impugned order of termination.

4. It is one of the contentions of the petitioner in the petition that respondent No.1 ought to have allowed the petitioner to avail of the provisions contained in section 74 of the Bombay University Act, 1974, hereinafter referred to as "the said Act", and the respondent No.1 ought to have referred the dispute to the Tribunal or Arbitration as provided therein. No specific prayer is to be found in the petition in that behalf.

5. When the petition was argued for admission before Daud, J., on 13th October, 1988, the learned Judge specifically formulated the questions which arose for consideration of the Court. The said questions are as under :-

i) Whether the petitioner was entitled to the benefit of section 74 of the Bombay University Act, 1974?

ii) Whether the so-called non-confirmation or termination is in fact a dismissal?

It is, therefore, clear that the petitioner has been pressing his contention to get the dispute decided by the Tribunal of Arbitration u/s 74 of the said Act if the High Court is not inclined to examine the challenge to the order of termination in this writ petition on merits.

6. Section 74 of the Bombay University Act, 1974 reads as under :-

"74. Any dispute arising out of, or relating to, the contract between the University and any Officer or Teacher of the University shall, on the request of Officer or Teacher concerned, be referred, within thirty days from the receipt of such request, to a Tribunal of Arbitration consisting of the member appointed by the Executive Council, one member nominated by the Officer or Teacher concerned and an umpire appointed by the Chancellor, and on request based on such dispute shall, for any reason whatsoever, be declined or withheld. The decision of the Tribunal shall be final, and no suit or other legal proceeding shall lie in any Court in respect of the matter decided by the Tribunal. Every such request shall be deemed to be a submission to arbitration on the terms of this section within the meaning of the Arbitration Act, 1940, and the provisions of that Act shall apply accordingly."

7. Mr. Radhakrishnan, learned Counsel for respondent No.1, has contended that section 74 of the said Act is applicable to disputes which may arise between permanent teachers and the University and is not applicable to disputes between the University teacher on probation and the University. Mr. Radhakrishnan submits that there is no written contract between the University and the petitioner and accordingly section 74 of the said Act has no application. It is not possible to accept this submission of Mr. Radhakrishnan. The expression "contract" used in section 74 of the said Act shall have to be interpreted in the

same sense in which the said expression is used under the Indian Contract Act, 1872. Accordingly the letter of appointment dated 13th May, 1985, duly acted upon by the petitioner, constitutes the contract between the petitioner and respondent No.1 University. Section 74 contains a very salutary and imperative provision. In case of teachers who teach in colleges affiliated to the University of Bombay, a College Tribunal has been set up u/s 42 of the said Act. Similarly, in case of school teachers, there is a School Tribunal. Section 74 of the said Act is the only provision which provides for reference of all disputes arising out of or relating to the contract between the University and the teachers of the University or the contract between the University and the Officers of the University. The use of the word "shall" in the above section also clearly indicates that the provisions of section 74 of the said Act are mandatory. Tribunal of Arbitration is to consist of one member appointed by the Executive Council, one member nominated by the teacher concerned and an umpire appointed by the Chancellor. In the circumstances, it is the duty of this Court to mould the relief to be granted to the petitioner in an attempt to prevent multiplicity of proceedings. I am not examining the questions pertaining to the legality of the termination order dated 14th May, 1987 as there is adequate remedy available to the petitioner u/s 74 of the said Act.

8. I accordingly pass the following order :-

(a) The petitioner shall nominate one person to function as member on the Tribunal of Arbitration and exercise the option available to him for determination of the dispute arising out of or relating to the said order of termination and the said resolution dated 14th May, 1987, which dispute is undoubtedly connected with the contract contained in the letter of appointment dated 13th May, 1985. The petitioner shall notify the said appointment to the Registrar of the University of Bombay within fifteen days from today.

(b) Thereafter the Executive Council of the University of Bombay shall appoint one person to be the member of the said Tribunal of Arbitration. Such appointment shall be made by the Executive council within a month thereafter.

(c) Thereafter the Chancellor of the University of Bombay shall appoint an umpire, not later than 28th February, 1991.

(d) The parties shall file their necessary pleadings before the Tribunal of Arbitration expeditiously. The Tribunal shall endeavour to make its award by 30th of June, 1991. In case of any genuine difficulty in completion of proceedings within the time stipulated, the parties shall have liberty to apply to this Court for reasonable extension of time. This being an old matter, every effort should be made to decide the matter expeditiously.

9. Having regard to the facts and circumstances of the case, there shall be no order as to costs.