

(2017) 06 BOM CK 0187

In the Bombay High Court

Case No : 347 of 2003 ALONGWITH CIVIL APPLICATION NO 3354 of 2005

Dr.Rajeshkumar Prakashchandra Gupta, & Anr.

APPELLANT

Vs

State of Maharashtra, & Ors.

RESPONDENT

Date of Decision : 06-06-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Medicine Central

Citation : (2017) 06 BOM CK 0187

Hon'ble Judges : R.D. Dhanuka

Bench : SINGLE BENCH

Advocate : S.C.Naidu, Shardul Singh, Satendra Kumar, A.S.Khandeparkar, Rakesh Pathak, Rajdeep Gade, Khandeparkar, Mihir Desai, Sarnath S.P.

Judgement

1. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has impugned the judgment dated 16th October,2002 delivered by the learned Presiding Officer, Mumbai University and College Tribunal dismissing the appeal (62 of 2002) filed by the petitioner herein under section 59 of the Maharashtra Universities Act, 1994. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. Sometime in the year 1980, the petitioner passed B.A.M.S. from Mumbai University. It is the case of the petitioner that in the year 1982, the petitioner completed his internship from M.A.Podar Hospital, Worli and worked in the said hospital as a House Physician, House Surgeon and as a Registrar cum Tutor in Surgery for three years. The petitioner passed Ayurvediya Parangat from Tilak Maharashtra Vidyapeeth, Pune a deemed University recognized by Central Council of Indian Medicine and University Grants Commission in the year 1986. It is the case of the petitioner that the said degree in Ayurvediya Parangat is a post graduate qualification in Shalya-Shalakyia and Surgery. Sometime in the month of September 1986, the petitioner joined the respondent no.2 hospital as a

Resident Medical Officer. The petitioner was selected as a lecturer and Head of the Department in Shalya-Shalakya at Bhaisaheb Sawant Ayurved Mahavidyalaya of the respondent no.2 sometime in the year 1988 and is examiner for M.D. and Ph.D. students for Pune and Banaras Hindu University.

3. On or about 30th March,2000 the respondent no.2 college advertised various posts including for the purpose of reader in Shalayantra in Loksatta. In response to the said advertisement, the petitioner applied for the said post along with several other candidates. The respondent no.2 called six candidates for the interview including the petitioner and the respondent no.5 on 17th June, 2000.

4. It is the case of the petitioner that the respondent no.4 i.e. the Secretary, Medical Education & Drugs Department, Mantralaya, Mumbai 400 021 had addressed a letter to the Director, Directorate of Ayurved, Worli on 23rd November, 2000 stating that if they had any objection regarding the selection committee, then they could approach the court. The Directorate of Ayurved was informed to go ahead with the recommendation of the selection committee. It is the case of the petitioner that none of the candidates including the respondent no.5 had made any complaint about the appointment of the selection committee.

5. By a letter dated 1st December,2000 issued by the respondent no.2, the petitioner was selected and offered the post of reader. Condition No.8 of the said letter of appointment provided that the petitioner should secure degree in M.D. within five years from the date of appointment. It is the case of the petitioner that the said condition was imposed in the letter of appointment in view of the fact that the Ayurved degree, Pune was not notified till that date in the Gazette as a post graduate degree and was awaiting publication.

6. On 30th November,2000, the appointment of the petitioner to the post of the reader was approved by the Directorate of Ayurved. The said appointment was also approved by the University of Mumbai by its letter dated 4th September, 2001 and 11th October,2001. In the letter of approval issued by the University of Mumbai, it was recorded that the appointment of the petitioner to the post of reader as full time in Shalayantra was approved on probation basis on 1st December, 2000 subject to the condition that he will obtain M.D. degree within five years as per letter of Director, Directorate of Ayurved dated 30th November, 2000. The Registrar of the University of Mumbai directed the respondent no.2 to communicate the said decision to the petitioner and three other lecturers whose appointments were approved by the said letter. Maharashtra University of Health Sciences, Nashik noted the said approval granted by the University of Mumbai in their records by letter dated 8th October,2001.

7. Sometime in the year 2001, the respondent no.5 filed a writ petition (1025 of 2001) in this court inter alia challenging the appointment of the petitioner basically on the ground that the selection committee who had recommended the name of the petitioner to the said post of reader was not properly constituted. It is the case of the respondent no.5 that the said writ petition is dismissed by this

court for want of prosecution.

8. It is the case of the petitioner that the petitioner had addressed a letter to the Central Council of Indian Medicine, New Delhi to confirm the status of "Ayurvediya Parangat" degree. The Secretary of the Central Council of Indian Medicine vide its letter dated 19th April, 2001 clarified that the Ayurvediya Parangat examination of Tilak Maharashtra Vidyapeeth was approved as a post graduate qualification and the same had been already sent by the Government of India for publication in the Government Gazette.

9. On 11th October, 2001, Central Government published a notification in exercise of the power conferred on section 14(2) of the Indian Medicine Central Council Act, 1970 and amended the second schedule to the said Act. The degree of "Ayurvediya Parangat" obtained during the period 1942-1988 from Tilak Maharashtra Vidyapeeth, Pune was recognized as a post graduate degree. The said entry was already entered at serial no.61 of the 2nd schedule. However, by the said notification the words and the figures "from 1942 to 1980" were substituted by the words and the figures "1942 to 1988". It is the case of the petitioner that the petitioner had already obtained a degree of Ayurvediya Parangat in June 1986 and was thus within the period approved by the Central Council of Indian Medicine.

10. The Registrar, Maharashtra Council of Indian Medicine furnished a detail information of A.V.P.(Poona) qualification separately setting out the exact nature A.V.P.(Poona) qualification. It is stated in the said statement that the said degree Ayurvediya Parangat A.V.P.(Poona) was a post graduate qualification. A.V.P. of Tilak Maharashtra Vidyapeeth Puna or its equivalent with A.M.M.S., L.I.M., L.A.M.S., G.F.A.M., D.S.A.C. etc. were the qualification for admission. In column 16 of the said statement, it was provided that the said qualification was recognized for registration by State Ayurvedic/Unani Board. In Column 17, various subjects taught for Ayurvediya Parangat were mentioned.

11. The Joint Director of Ayurved addressed a letter dated 10th December,2001 to the respondent no.2 and referred to a letter dated 26th November,2001 of the Government stating that the selection of the petitioner was cancelled by the State Government and thus the salary difference paid to the petitioner from June 2000 should be recovered from the salary of the petitioner. The Directorate, Ayurved addressed a letter dated 14th December, 2001 and referred to the letter of the State Government dated 26th November,2001 and directed the respondent no.2 to take suitable steps in the matter. The respondent no.2 accordingly issued a letter dated 23rd March,2002 to the petitioner thereby reverting the petitioner from the post of the reader to the post of the lecturer.

12. Being aggrieved by the said letter dated 23rd March 2002, the petitioner herein filed an appeal under section 59 of the Maharashtra Universities Act, 1994. The University of Mumbai, the Secretary, Medical Education & Research, Mantralaya, Mumbai, respondent no.2 herein and the respondent no.5 were

impleaded as respondents to the said appeal. The respondents to the said appeal filed written statement before the University Tribunal. By an order and judgment dated 16th October, 2002, the University Tribunal dismissed the said Appeal (62 of 2002) filed by the petitioner herein on various grounds.

13. Being aggrieved by the said order and judgment dated 16th October, 2002 delivered by the said University Tribunal, the petitioner has filed this writ petition inter alia praying for a writ of certiorari and has prayed that the said order dated 16th October, 2002 passed by the said tribunal be quashed and set aside and to allow the petitioner to work on the post of the reader in terms of the appointment letter dated 1st December, 2000. The petitioner has also applied for a writ of certiorari and seeks a direction against the respondents to refund the salary to the petitioner, deducted for the period from 1st December 2000 to 23rd March 2002 during the period the petitioner had worked as a reader.

14. This court while admitting this petition, on 26th July, 2006 did not grant any interim relief in favour of the petitioner on the ground that such a relief if granted would result in granting substantive relief sought in the petition.

15. Insofar as respondent no.5 is concerned, it is his case that he acquired the qualification of B.A.M.S. from Shivaji University in the year 1983 and further acquired the post graduate degree qualification of Vachaspati/M.S.(Ayu) (Shalayatantra) from the University of Mumbai in the year 2000. The respondent no.5 was appointed to the post of demonstrator in the respondent no.2 college in September 1988 and was re-designated as lecturer w.e.f. 10th December 1990. The respondent no.5 was appointed to the post of Reader in the respondent no.2 college in December 2005. The respondent no.5 has been now promoted to the post of reader Associate Professor and would reach the age of superannuation in the year 2019. The respondent no.2 however has made it clear in the letter of appointment issued to the respondent no.5 that the said appointment was subject to the result of this writ petition since the same was pending final disposal when he was appointed to the post of reader.

16. It is the case of the petitioner that by a letter dated 13th July, 2006, Tilak Maharashtra Vidyapeeth confirmed to the petitioner that Ayurvedya Parangat is a post graduate degree and is recognized by the Central Council of Indian Medicine. A copy of the Government Gazette dated 11th October, 2001 issued by the Central Government was annexed to the said letter.

17. The petitioner filed an affidavit in this petition placing certain documents on record in support of his submission that Ayurvedya Parangat degree is the post graduate degree issued by Tilak Maharashtra Vidyapeeth Pune and is recognized by Central Council of Indian Medicine. By an order dated 2nd August, 2016 passed by this court, this court granted liberty to the respondent no.2 to confirm whether the degree of Ayurvedya Parangat issued by the Tilak Maharashtra Vidyapeeth, Pune had been recognized by the Central Council of Indian Medicine as claimed by the petitioner in the affidavit dated 15th July, 2006 and to file an

affidavit in that regard. Pursuant to the said order dated 2nd August, 2016, the respondent no.2 filed an affidavit before this court on 8th August, 2016 placing certain facts on record.

18. Mr.Naidu, learned counsel for the petitioner invited my attention to various documents annexed to the writ petition and also to various affidavits filed by the parties. He submits that one of the condition mentioned in the advertisement dated 30th March, 2000 by the respondent no.2 while inviting the applications for the post of reader in the subject of Shalayantra was that the educational qualification shall be as setout in Part (a) or Part (c) to the schedule to the Maharashtra Medical Practitioners Act, 1961 or the qualification prescribed by the Indian Medicine Central Council in exercise of the powers conferred vide Medicine Central Council Act, 1970 and post graduate degree in the concerned Ayurvediya Parangat subject to the recognized university or recognized institution. It is submitted by the learned counsel that the petitioner had already held a graduate degree i.e. B.A.M.S. i.e. Bachelor of Ayurvedic Medicine and Surgery (Mumbai University) and also passed a post graduate degree i.e.Ayurvediya Parangat - AVP - Poona from Tilak Maharashtra Vidyapeeth Pune before the date of the advertisement issued by the respondent no.2 inviting applications for the post of reader in the subject of Shalayantra.

19. It is submitted by the learned counsel that the degree obtained by the petitioner i.e. Ayurvediya Parangat - AVP - Poona is a post graduate degree approved by the Central Council of Indian Medicine. He submits that in the precondition no.8 of the letter of appointment issued by the respondent no.2 it was stipulated that the petitioner should secure the degree in M.D. Within five years from the date of the appointment. He submits that the said condition was imposed by the respondent no.2 in view of the fact that the said post graduate degree Ayurvediya Parangat - AVP - Poona from Tilak Maharashtra Vidyapeeth Pune was not notified till that day in the Government Gazette as a post graduate degree beyond 1980 and was awaiting publication. He submits that before expiry of five years from the date of appointment, the Central Government had issued a notification dated 11th October, 2001 in the Gazette of India - Extraordinary Part II recognizing the said degree Ayurvediya Parangat - AVP - Poona obtained from Tilak Maharashtra Vidyapeeth Pune during the period 1942- 1988 as a post graduate degree.

20. It is submitted that the petitioner had already obtained the said degree of AVP from Tilak Maharashtra Vidyapeeth, Pune in 1986 and therefore was within the norms and period approved by the Central Council of Indian Medicine. He submits that in any event since the said degree obtained by the petitioner in AVP was recognized as a post graduate degree within a period of five years, the petitioner had complied with the said condition no.8 of the letter of appointment issued by the respondent no.2. He further submits that the Mumbai University also had approved the appointment of the petitioner on the same condition including the condition no.8. It is submitted that the respondent no.5 who had

also applied for the said post of reader pursuant to the said advertisement dated 30th March, 2000 issued by the respondent no.2 was not selected by the selection committee. He however never raised any objection at any point of time earlier that the said degree i.e. Ayurvedya Parangat - AVP - Poona from Tilak Maharashtra Vidyapeeth was not a recognized post graduate degree or that no relaxation of obtaining the said post graduate degree within five years from the date of appointment could be granted to the petitioner by the respondent no.2 or by the University of Mumbai.

21. It is submitted by the learned counsel for the petitioner that the said degree of Ayurvedya Parangat - AVP - Poona issued by Tilak Maharashtra Vidyapeeth, Pune was a post graduate degree and this fact was confirmed by the Central Council of Indian Medicine vide its letter dated 19th April, 2001 annexed at Ex.B to the affidavit dated 15th July, 2006 filed by the petitioner. He also invited my attention to the said degree in Ayurvedya Parangat issued to the petitioner by Tilak Maharashtra Vidyapeeth, Pune in view of the petitioner having passed Ayurvedya Parangat examination held in June 1986.

22. Learned counsel for the petitioner invited my attention to the Gazette of India dated 11th October, 2001 publishing the notification dated 8th October, 2001 issued by the Central Government notifying various degrees entered in the second schedule to the Indian Medicine Central Council Act, 1970. It is submitted that the degree in Ayurvedya Parangat from Tilak Maharashtra Vidyapeeth, Pune was already inserted in the second schedule at serial no.61 obtained during the period between 1942-1980. He submits that by the said notification dated 8th October, 2001 the Central Government had substituted the words and figures in entry no.61 "from 1942 to 1980" by the words and figures "from 1942 to 1988". He submits that in view of the said notification issued by the Central Government in exercise of the powers conferred by section 14(2) of the Indian Medicine Central Council Act, 1970, the said Ayurvedya Parangat degree was already recognized as a post graduate degree and was accordingly inserted in the second schedule and was made applicable to the said degree obtained by the petitioner in the year 1986. He submits that the said notification issued by the Indian Medicine Central Council was binding on the respondent no.2, the State of Maharashtra and also the respondent no.5.

23. It is submitted by the learned counsel for the petitioner that once the said qualification of Ayurvedya Parangat was entered in the Schedule B of the said Indian Medicine Central Council Act, 1970 and validity thereof has been admittedly not challenged by any party, the same is binding not only on the management, the Government but also on the other parties. He submits that in view of the said notification, the Central Government could not have cancelled the appointment of the petitioner and could not have directed the respondent no.2 to revert the petitioner from the post of the reader to the post of the lecturer and to recover the difference in pay.

24. Learned counsel appearing for the petitioner invited my attention to the

reasons recorded by the said Tribunal in the impugned order and judgment and would submit that the said Tribunal has rejected the appeal filed by the petitioner on an erroneous premise that the petitioner did not have the post graduate degree but had possessed only the degree in B.A.M.S. which was not a post graduate degree. It is held by the said tribunal that the said Ayurvedya Parangat is not a degree at all and thus the petitioner not having acquired the post graduate degree, would not be eligible for the post of reader. It is submitted by the learned counsel that the finding of the said tribunal that the Mumbai University also could not have given such approval to an appointment of a person not having the requisite qualification for the said post is also totally erroneous.

25. It is submitted that the said approval granted by the University was not challenged by any party including respondent no.5. It is submitted that though the Central Government had already issued a notification as far back as on 11th October, 2001 thereby substituting the words and figures from "1942 to 1980" in respect of the degree Ayurvedya Parangat issued by Tilak Maharashtra Vidyapeeth, Pune by "from 1942 to 1988", the said tribunal totally overlooked the said notification recognizing the said degree Ayurvedya Parangat obtained from Tilak Maharashtra Vidyapeeth, Pune upto the year 1988 by entering the same in the second schedule of Indian Medicine Central Council Act, 1970 and passed a perverse order.

26. In his alternate submission, it is submitted by the learned counsel for the petitioner that the said degree Ayurvedya Parangat was already entered into Part A of the Maharashtra Medical Practitioners Act, 1961 as a post graduate degree and thus it was no longer open to the said tribunal to hold that the said Ayurvedya Parangat was not a degree at all. He submits that the finding of the said tribunal is contrary to and ultra vires the said statute. It is submitted that once an approval was granted to the said degree and the same was recognized as a post graduate degree by the Central Government, it would relate back to the date of obtaining such degree by the petitioner. In support of this submission, learned counsel placed reliance on the judgment of Supreme Court in case of Gujarat Steel Tubes Ltd. and others vs. Gujarat Steel Tubes Mazdoor Sabha and others, (1980) 2 SCC 593 and in particular paragraph 152. Learned counsel for the petitioner submits that the said post graduate degree Ayurvedya Parangat was already acquired by the petitioner much prior to the date of the advertisement issued by the respondent no.1 and only the procedural recognition thereof in part A was post appointment of the petitioner.

27. Insofar as the finding of the said tribunal that no provisions in the Act or applicable rules was shown to the tribunal is under which such relaxation of obtaining the post graduate degree of five years could be granted by the selection committee or by appointing authority is concerned, the said finding is de hors the issue raised by the party before the said tribunal. He submits that the said condition was imposed by the respondent no.2 as well as by the University of Mumbai based on the rules and thus the reversion of the petitioner on that

ground was ex-facie perverse and illegal. He submits that even in the writ petition filed by the respondent no.5 in this court challenging the appointment of the petitioner to the said post of reader was not on the ground that no such relaxation of five years could be granted by the respondent no.2 or by the University of Mumbai.

28. Learned counsel for the petitioner invited my attention to the affidavit in reply dated 8th August, 2016 filed by the respondent no.2 pursuant to an order passed by this court. My attention is also invited to paragraph (3) of the said affidavit placing on record that at the time of selection of the petitioner, the petitioner had passed bachelor degree in B.A.M.S. In or about the year 1986, i.e. prior to his appointment as a lecturer in the 2nd respondent's college, the petitioner had obtained Ayurvedya Parangat from Tilak Maharashtra Vidyapeeth, Pune. It is stated that earlier the said degree of Ayurvedya Parangat of Tilak Maharashtra Vidyapeeth was not recognized as a post graduate degree. It was for that reason, that the petitioner was selected by the selection committee on the condition that the petitioner would obtain a post graduate degree within a period of five years. The said concession was made due to the fact that the exigency of the duty of the petitioner in the college did not permit the college to grant to the petitioner leave for completing the post graduate course after his appointment. The Mumbai University had granted a conditional approval to the temporary appointment of the petitioner subject to his obtaining M.D. degree within five years.

29. It is submitted by the learned counsel that in the said affidavit filed by the respondent no.2, it is admitted that on 8th October,2001 i.e. before the judgment was delivered by the tribunal, the Central Government had by its Gazette dated 8th October,2001 had recognized Ayurvedya Parangat of Tilak Maharashtra Vidyapeeth, Pune as a post graduate course for those students who had passed the said examination between the years 1942 to 1988. It is stated in the said affidavit that the degree of Ayurvedya Parangat obtained by the petitioner was in the year 1986 and was thus recognized as a post graduate degree.

30. It is submitted by the learned counsel for the petitioner that it is thus clear that even according to the respondent no.2, the petitioner had already obtained the said post graduate degree prior to the date of his appointment but the period when the petitioner had obtained the said post graduate degree was recognized by the said notification dated 8th October,2001 by the Central Government.

31. It is submitted by the learned counsel for the petitioner that the respondent no.2 has admitted in the affidavit dated 8th August, 2016 that the Central Government had threatened the respondent no.2 that the grant of the 2nd respondent would be stopped if the amount was not deducted from the salary of the petitioner already paid and if the petitioner was not reverted. It is the case of the respondent no.2 that there was no other option left but to revert the petitioner. The respondent no.2 had already deposited an amount deducted from

the salary of the petitioner with the State Government from whom the respondent no.2 was receiving the grant for payment of salaries to the teaching staff.

32. Learned counsel for the petitioner invited my attention to some of the provisions and the schedule to the Maharashtra Medical Practitioners Act, 1961 and would submit that the qualification prescribed under the said provisions are synonymous with the degree. He also invited my attention to the provisions of the Indian Medicine Central Council Act, 1970 and more particularly section 13A, 14, 2nd schedule to the said Act and also to the entry 55 which are granted by various Universities in the State of Maharashtra. Ayurvediya Parangat obtained from Tilak Maharashtra Vidyapeeth, Pune is obtained the period 1942-1988 is mentioned at serial no.61 of the said 2nd schedule. He submits that even the Indian Medicine Central Council has recognized the said degree Ayurvediya Parangat under section 14 of the said Act.

33. Mr.Naidu also placed reliance on the judgment of Division Bench of this court in case of Vitthal s/o.Dewaji Chavan vs. Medical Council of India and others, 2003(4) Mh.L.J.974 and in particular paragraphs 18 to 21 and 24 to 26 and would submit that the post graduate medical degree granted by the University duly established by the statute in this country which have also been recognized by the Indian Medical Council by its inclusion in the first schedule in the Indian Medical Council Act, 1956 must ipso facto to be regarded, accepted and treated as valid throughout the country. He submits that the said degree Ayurvediya Parangat obtained by the petitioner from the Tilak Maharashtra Vidyapeeth, Pune in the year 1986 which is recognized as a post graduate degree by issuing a notification on 8th October,2001 which degree was inserted in the Schedule B of the Maharashtra Medical Practitioners Act, 1961 was thus binding on all the parties including the said tribunal. He submits that the said tribunal has totally overlooked these crucial facts and have passed the impugned order by adopting a casual approach.

34. Mr.Desai, learned senior counsel for the respondent no.5 submits that it was one of the condition provided in the advertisement issued by the respondent no.2 for the post of the reader in the subject Shalyatantra that the candidates shall not only have educational qualification setout in Part A or Part C to the Schedule to the Maharashtra Medical Practitioners Act, 1961 for the qualification prescribed by the Central Council of Indian Medicine in exercise of powers conferred vide Indian Medicine Central Council Act, 1970 but also a post graduate degree in the concerned ayurved subject from the recognized university or recognized institution. He submits that the said degree relied upon by the petitioner was not a post graduate degree at all as contemplated in the said advertisement issued by the respondent no.2. He submits that the only the Central or the State Medical Council can decide whether a particular degree is a post graduate degree or not. The petitioner does not have post graduate degree recognized by Central or State Council even today.

35. It is submitted that the post graduate degree/diploma are awarded by the universities. He tendered a copy of the list of such diploma awarded by the university after graduation. He placed reliance on the provisions of Indian Medicine Central Council Act, 1970 and more particularly entries at serial nos.55 and 61. He also placed reliance on sections 14 and 17 of the said Act and would submit that the said provisions have set out the qualification for entitlement of the candidates for practice. He submits that the degree granted to the respondent no.5 by the University of Mumbai i.e. Master of Surgery is a post graduation degree whereas Ayurvedya Parangat obtained by the petitioner is not.

36. Learned senior counsel placed reliance on the provisions of Maharashtra Medical Practitioners Act, 1961 and submits that merely because the qualification is listed in the schedule to the said Act, it would not make the degree as a post graduate degree for registration to practice medicine. He submits that under section 14 of the said Act, the powers are conferred on the University to grant diploma or degree etc. He submits that the said Ayurvedya Parangat was inserted much after the appointment of the petitioner in the schedule to the said Maharashtra Medical Practitioners Act, 1961. It is submitted that a degree granted by a University has to be recognized by a Medical Council.

37. Learned senior counsel invited my attention to the paragraph (5) of Schedule Part A of the Maharashtra Medical Practitioners Act, 1961 and in particular entry no.5 which provides a qualification for admission i.e. Ayurvedya Parangat issued by Tilak Maharashtra Vidyapeeth, Pune and submits that the said schedule does not state that the said qualification Ayurvedya Parangat was a post graduate degree.

38. Learned senior counsel placed reliance on the letter dated 8th September, 2006 addressed by the Directorate of Ayurved, Maharashtra State, Mumbai in response to the application made by his client under the provisions of Right to Information Act. He submits that the said authority has categorically informed that the AVP issued by the Tilak Maharashtra Vidyapeeth, Pune was a degree. He submits that even the said authority has not confirmed whether the said Ayurvedya Parangat was a post graduate degree. He submits that the said authority has also categorically informed that the said Ayurvedya Parangat is not approved by the Government as a post graduate qualification for a lecturer/reader. He placed reliance on the answer of the said authority to query nos. 6 and 7 and would submit that the said authority has categorically denied that the Ayurvedya Parangat was a post graduate degree.

39. Learned senior counsel for the respondent no.5 placed reliance on the letter dated 19th December, 2006 addressed by the Central Council of India Medicine to the respondent no.5 informing that the Tilak Maharashtra Vidyapeeth, Pune was not conducting UG Course as prescribed by the Central Council of Indian Medicine. In the said letter, it is further stated that the Ayurvedya Parangat awarded by the Tilak Maharashtra Vidyapeeth was already included in the second schedule to Indian Medicine Central Council Act, 1970 and the same has been

extended till 1988 for remaining passed students. The respondent no.5 was further informed that as per the information available with the authority, the Ayurvedya Parangat was conducted upto 1984 only. In the said letter, it was further informed that as per the Indian Medicine Central Council Act, 1970 which is Central Act and extends to all the States of India and as per the Indian Medicine Central Council Act, 1970, the qualification included in the second schedule to the Indian Medicine Central Council Act, 1970 are only recognized qualification after 1st October, 1976 for registration on State Registrar/Central Registrar, therefore, it is obligatory on the part of the State Board to follow the Central Act.

40. It is submitted by the learned senior counsel that there was no provision for relaxation of the conditions under any of the Act applicable or in the advertisement dated 30th March, 2000 issued by the respondent no.2. He submits that since the initial appointment made by the respondent no.2 of the petitioner itself was illegal, this court cannot set aside the order of reversion of the petitioner and condone such illegal act committed at the time of appointment of the petitioner by the respondent no.2 or approved by the University of Mumbai. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of Bhartiya Seva Samaj Trust Through President and another vs. Yogeshbhai Ambalal Patel and another, (2012) 9 SCC 310 and in particular paragraphs 6, 7, 11 and 14 to 16. He submits that the relaxation of a condition must be part of the statute and in absence thereof, cannot be granted by an appointing authority. He also placed reliance on the judgment of Supreme Court in case of Mohd.Sohram Khan vs. Aligarh Muslim University and others, (2009) 4 SCC 555 and in particular paragraphs 23, 25 and 28 to 30 in support of the aforesaid submissions and also the judgment of Supreme Court in case of Rajasthan Public Service Commission vs. Kaila Kumar Paliwal and another, (2007) 10 SCC 260 and in particular paragraphs 8 and 20.

41. Learned senior counsel invited my attention to the parawise comments made by the Directorate of Ayurved, Maharashtra State before the said Tribunal. He submits that though the said authority has referred to the recruitment rules in support of the submission that the Government is empowered to relax the conditions, no such rules were placed before the said Tribunal. He also invited my attention to the affidavit in reply filed by the said authority before this court on 21st July, 2005 and submits that in paragraph (6), the said authority has made averments which is inconsistent with the parawise comments made before the said tribunal. He submits that in said paragraph it is clearly mentioned by the authority that the qualifications A.V.V. and A.V.P. awarded by Tilak Maharashtra Vidyapeeth, Pune were recommended only as degree qualification upto 1980 in the second schedule of the Indian Medicine Central Council Act, 1970 and never had been considered as a post graduate qualification.

42. Learned senior counsel submits that the appointment of the selection committee by the respondent no.2 itself was totally illegal and thus the

appointment of the petitioner made to the said post itself was illegal. He submits that the writ petition filed by the respondent no.2 was not dismissed on merits but was dismissed for want of prosecution. He submits that his client had obtained post graduate degree from Mumbai University and was appointed to the said post of reader in the year 2005. He submits that since 2011 his client is promoted as a professor and is holding the said post. He submits that there is no document or notification issued by the Central or State Government produced by the petitioner or other respondents to show that the degree of Ayurvedya Parangat is a post graduate degree.

43. Mr. Khandeparkar, learned counsel for the respondent no.2 submits that the appointment of the petitioner was made by his client after following the proper procedure. It is submitted that the constitution of the selection committee by the respondent no.2 was also proper. He submits that the writ petition filed by the respondent no.5 challenging the appointment of the petitioner on the ground that the selection committee was not properly appointed is dismissed by this court. He submits that the respondent no.2 was directed to deduct the amount paid to the petitioner from his salary and to remit the said amount to the State Government otherwise the grant-in-aid of the respondent no.2 would have been cancelled by the State Government. The respondent no.2 accordingly deducted certain amount from the salary of the petitioner and deposited the same with the State Government. The respondent no.2 accordingly reverted the petitioner to the post of lecturer pursuant to the said letter issued by the State Government. He submits that since no other suitable candidate was available and due to the exigency of the duty of the petitioner in the respondent no.2 college, it did not permit the college to grant leave to the petitioner to complete his post graduate course. The respondent no.2 had permitted the petitioner to obtain the post graduate degree within five years from the date of his appointment which appointment was also approved by the University of the Mumbai on the same condition. He submits that the said relaxation was never challenged by the respondent no.5 or the other candidates and cannot be challenged now before this court.

44. Learned counsel for the respondent no.2 invited my attention to the averments made by the respondent no.5 in the written statement filed before the said tribunal and more particularly paragraph (4) thereof and submits that even according to the respondent no.5, the qualification of AVP had been recognized by the Central Government of Indian Medicine and the same was furnished to the Central Government for notification. It is contended by the respondent no.5 in the said written statement that the Central Government did not recognize the said qualification and did not notify. It is contended that the said contention raised in the written statement by the respondent no.5 is factually incorrect.

45. Learned counsel also invited my attention to the documents annexed by the petitioner in the affidavit dated 15th July, 2006 and would submit that those documents clearly demonstrates that the Ayurvedya Parangat examination of

Tilak Maharashtra Vidyapeeth, Pune was approved by the Central Council of Indian Medicine as a post graduate qualification and had sent to the Government of India for Gazette notification. He submits that the Gazette issued by the Central Government notification dated 8th October, 2001 clearly indicates that the said degree Ayurvedya Parangat issued by the Tilak Maharashtra Vidyapeeth, Pune which was inserted into the second schedule to the said Act for the period 1942 to 1980 was substituted by the words and figures " 1942 to 1988". He submits that the respondent no.5 has not challenged the said notification issued by the Central Government and cannot make any submission contrary thereto. He submits that the information obtained by the respondent no.5 under the provisions of Right to Information Act is also misleading and does not assist the case of the respondent no.5. The said reply to the queries raised by the respondent no.5 does not refer to the period for which the said query was answered.

46. It is lastly submitted by the learned counsel that his client has no objection if the petitioner is restored back to the post of reader however with no financial burden on the respondent no.2. He submits that the petitioner was reverted in view of the standing instructions received from the Government and if the said instructions would not have been followed by the respondent no.2, the grant-in-aid of the respondent no.2 would have been cancelled.

47. Mr.Naidu, learned counsel for the petitioner in rejoinder submits that insofar as issue now raised across the bar by the respondent no.5 that the constitution of the selection committee itself was illegal is concerned, the respondent no.5 did not press this issue before the said Tribunal. The said Tribunal therefore did not render any finding on the said issue and thus the said issue cannot be allowed to be raised now across the bar. He submits that the respondent no.5 admittedly did not challenged the said part of the impugned order passed by the Tribunal by filing a cross petition. It is submitted that the writ petition filed by the respondent no.5 in which the issue of alleged illegalities in constituting the selection committee was admitted by this court and thereafter came to be dismissed for want of prosecution. The said challenge made by the respondent no.5 has come to an end and on that ground also the said issue cannot be raised by the respondent no.5 in this petition raised in the collateral proceedings i.e. this writ petition filed by the petitioner.

48. It is submitted that the issue of relaxation now raised across the bar by the respondent no.5 was not an issue in this petition or even an issue before the said Tribunal or an issue even in the writ petition filed by the respondent no.5 challenging the appointment of the petitioner to the post of the reader. He submits that such relaxation is permitted by the Mumbai University which is a statutory and competent authority to grant such relaxation. He submits that the State Government has not passed an order of reversion of the petitioner on that ground. The Government had instructed the respondent no.2 to revert the petitioner on the ground that the degree AVP was not a recognized qualification

for appointment of the petitioner as a reader. He submits that none of the judgments relied upon by the learned senior counsel for the respondent no.5 would thus assist the case of the respondent no.5.

49. It is submitted by the learned counsel for the petitioner that the Central Council under the provisions of the Indian Medicine Central Council Act, 1970 recognizes such course. The degrees are not conferred by such Council but by the University. He placed reliance upon section 2(1) (e a), 2(1) (f) of the said Act and would submit that the qualification prescribed under the said Act is genus whereas the degree is a species. He also placed reliance on section 2(1) (h) and sections 13A, 13C, 14 of the said Act and would submit that the qualification prescribed therein are granted by the University and has to be recognized by the Council. He submits that the respondent no.5 is making an attempt to supplant the pleadings filed before the Tribunal across the bar at this stage which is not permissible. He submits that the said degree AVP is a post graduate degree certified by University and also by the Council and thus could not have been overlooked by the said Tribunal.

50. It is submitted by the learned counsel that if this court comes to the conclusion that the petitioner should be restored to the position of the reader, this court shall direct the State Government to provide grant-in-aid to the respondent no.2 to enable the respondent no.2 to pay the differential amount as prayed by the petitioner in prayer clause (b) of the petition. REASONS & CONCLUSIONS :

51. There is no dispute that the petitioner had passed B.A.M.S. from Mumbai University in the year 1980. He worked as House Physician and for three years as Registrar-cum-Tutor in surgery during the period 1982 to 1986. It is also not disputed by the management that the petitioner had passed Ayurvedya Parangat from Tilak Maharashtra Vidyapeeth, Pune in the month of June, 1986. In the month of September, 1986, the petitioner joined the respondent no.1 as a Resident Medical Officer.

52. A perusal of the advertisement issued by the respondent no.2 on 30th March, 2000, inviting applications for the post of Reader in the subject of Shalayantra indicates that the educational qualification prescribed in the said advertisement for the said post Reader was (i) educational qualification set out in part (a) or (c) of the Schedule to Maharashtra Medical Practitioners Act, 1961 or the qualification prescribed by the Indian Medicine Central Council in exercise of power conferred vide Indian Medicine Central Council Act, 1970 and a post graduate degree in the concerned Ayurved subject from a recognized University or recognized Institute.

53. It is the case of the petitioner that the said degree Ayurvedya Parangat obtained by the petitioner from Tilak Maharashtra Vidyapeeth, Pune is a post graduate degree, whereas it is the case of the respondent no.5 that the said Ayurvedya Parangat was not a post graduate degree which was one of the

mandatory qualification prescribed for the post of Reader in the subject of Shalayantra by the respondent no.2.

54. It is not in dispute that when the respondent no.5 also applied for the said post pursuant to the advertisement dated 30th March, 2000, he did not have post graduate degree in the concerned Ayurved subject from a recognized University or recognized Institution. The respondent no.5 had obtained the post graduate degree in the year 2000 i.e. M.S. (Ayurved) (Shalayantra) from the University of Mumbai.

55. A perusal of the averments made in the affidavit dated 8th August, 2016 filed by the respondent no.2 indicates that the management had appointed a Selection Committee for the purpose of taking interviews and for appointments pursuant to the said advertisement dated 30th March, 2000. A perusal of the said affidavit indicates that it is an admitted position by the management that in or about 1986, prior to the appointment of the petitioner as Lecturer in the respondent no.2 college, the petitioner had obtained Ayurvediya Parangat from Tilak Maharashtra Vidyapeeth, Pune. The said degree of Tilak Maharashtra Vidyapeeth, Pune was not recognized as a post graduate degree when the said advertisement was issued by the respondent no.2. It is stated in the affidavit that due to exigency of the duty of the petitioner in the said respondent no.2 college, the respondent no.2 could not permit the petitioner to take leave for completing the post graduate course after his appointment. He was already working as a Lecturer in the respondent no.2 college. The Selection Committee found the petitioner as a suitable candidate and accordingly appointed the petitioner to the said post of Reader temporarily subject to the condition that the petitioner shall obtain his post graduate degree within five years. Mumbai University also granted a conditional approval to the appointment of the petitioner i.e. on the condition that the petitioner obtains post graduate degree within five years.

56. A perusal of the notification dated 8th October, 2001 issued by the Central Government which was published in the Gazette of India dated 11th October, 2001 and entry no.61 inserted in the Second Schedule to the Indian Medicine Central Council Act, 1970 indicates that prior to the said notification dated 8th October, 2001, the degree of Ayurvediya Parangat was recognized as medical qualification in the Indian Medicine granted by Tilak Maharashtra Vidyapeeth, Pune if obtained during the period 1942 to 1980. However, by the said notification dated 8th October, 2001, the said entry at serial no.61 relating to Tilak Maharashtra Vidyapeeth, Pune against Ayurvediya Parangat, the words and figures "1942 - 1980" were substituted by the words and figures "from 1948 to 1988".

57. Section 14 of the Indian Medicine Central Council, 1970 prescribes that the medical qualifications granted by any University, Board or other Medical Institution in India, which are included in the Schedule scheme shall be recognized medical qualifications for the purpose of the said Act. Any University,

Board or other Medical Institution in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have any such qualification recognized and the Central Government after consulting the Central Council may by a notification in the Gazette, amend the Second Schedule so as to include such qualification therein and any such qualification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be recognized medical qualification only when granted after a specific date. Section 17 provides that subject to the provisions contained in the said Indian Medicine Central Council Act, 1970, any medical qualification included in the Second, Third or Fourth Schedule shall be sufficient qualification for the enrollment of any State Register Indian Medicine.

58. A perusal of the said notification dated 8th October, 2001 issued by the Central Government and the unamended Second Schedule and more particularly entry no.61 clearly indicates that the said degree Ayurvedya Parangat was already recognized medical qualification during the period between 1942 to 1980. The petitioner had already obtained the said degree in the year 1986. It is thus clear that though on the date of the advertisement issued by the respondent no.2 on 30th March, 2000, the degree of Ayurvedya Parangat obtained by the petitioner in the year 1986 was not a recognized medical qualification, the same came to be recognized on 8th October, 2001, which was admittedly within a period of five years from the date of appointment of the petitioner to the said post of Reader.

59. In my view, the petitioner had thus fulfilled the said condition imposed by the respondent no.2 and also imposed by the University of Mumbai while approving the appointment of the petitioner to the said post of Reader. I am however not inclined to accept the submission of the learned counsel for the petitioner that the said graduate degree in Ayurvedya Parangat obtained in 1986 from Tilak Maharashtra Vidyapeeth, Pune would relate back to the date of appointment of the petitioner in the year 2000 in view of the notification dated 8th October, 2001. The petitioner will get the benefit of the said notification dated 8th October, 2001 recognizing the said post graduate degree Ayurvedya Parangat only from the date of notification thereof extending the period of recognition of the said notification upto 1988. Admittedly the earlier entry no.61 in the Second Schedule to the Indian Medicine Council Act, 1970 was only for the said post graduate degree obtained from Tilak Maharashtra Vidyapeeth, Pune during the period between 1942 to 1980, whereas the said post graduate degree in Ayurvedya Parangat from Tilak Maharashtra Vidyapeeth, Pune was obtained by the petitioner only in the year 1986.

60. I am thus not inclined to accept the submission made by the learned senior counsel for the respondent no.5 that the said Ayurvedya Parangat obtained by the petitioner from Tilak Maharashtra Vidyapeeth, Pune was not a post graduate degree but was atmost a qualification and on that ground the petitioner was not

eligible to be appointed to the said post of Reader in the respondent no.2 college.

61. Insofar as the submission of the learned senior counsel for the respondent no.5 that the Selection Committee had no power to relax the condition of a candidate not having post graduate degree of any recognized University is concerned, Mr.Desai, learned senior counsel for the respondent no.5 does not dispute that no such issue was raised by the respondent no.5 before the Tribunal in the affidavit in reply in those proceedings. The respondent no.5 has also not raised this issue in the affidavit in reply filed before this Court. It is also not in dispute that the respondent no.5 who had filed a separate writ petition impugning the appointment of the petitioner to the said post of Reader did not raise the issue of the alleged relaxation of the condition of a post graduate degree in that writ petition which came to be dismissed by this Court for want of prosecution.

62. A perusal of the affidavit in reply filed by the respondent no.2 clearly indicates that in view of the exigency of the services of the petitioner and in view of the fact that the management could not have relieved the petitioner for obtaining such degree for making appointment to the said post of Reader indicates that there was no relaxation in respect of the said condition of the candidate possessing the post graduate degree. The petitioner was issued an appointment letter subject to the petitioner obtaining the said post graduate degree within a period of five years. Similar condition was also imposed by the University of Mumbai while granting approval to the appointment of the petitioner to the said post. No such approval admittedly came to be challenged by the respondent no.5 or no such approval came to be challenged by the respondent no.4 or by any other candidate on the condition that such alleged relaxation could not have been granted by the respondent no.2 or by the University of Mumbai in favour of the petitioner. The respondent no.2 was not even under the zone of consideration for the said post at that point of time.

63. Insofar as the judgment of the Supreme Court in case of Rajasthan Public Service Commission (supra) relied upon by the learned senior counsel for the respondent no.5 is concerned, it has been held that a person in order to be considered for promotion to a higher post must possess the essential qualification. If he does not do so, he cannot be considered therefor. Even a Selection Committee in absence of any express power conferred upon it cannot relax such essential qualification. The Supreme Court has adverted to the judgment in case of M.C. Gupta (Dr.) vs. Dr.Arun Kumar Gupta (1979) 2 SCC 239 holding that even appointing body if were to contravene rules and regulations binding upon it in making the selection and recommending the selectees for appointment, the Court in exercise of extraordinary jurisdiction to enforce rule of law, may interfere in a writ petition under Article 226. There is no dispute about the proposition of law laid down by the Supreme Court in the said judgment.

64. Learned senior counsel for the respondent no.5 however, could not point out any objection in this regard raised by his client at any stage before the Tribunal

or in the separate writ petition filed by his client or even in the affidavit in reply filed in these proceedings. He also could not point out any bar against the employer or against the University of Mumbai from granting time to the petitioner to obtain such degree within a reasonable period of time though the petitioner was the only suitable candidate found for the said post. The judgment of the Supreme Court in case of Rajasthan Public Service Commission (supra) thus would not forward the case of the respondent no.5. Insofar as the judgment of the Supreme Court in case of Mohd. Sohrab Khan (supra) relied upon by the learned senior counsel for the respondent no.5 is concerned, the Supreme Court was considering a situation where the Selection Committee had changed the criteria / qualification in the selection process during its mid-stream. The said judgment is clearly distinguishable in the facts of this case. The Selection Committee has not changed the qualification in the mid-stream. The said judgment thus would be of no assistance to the respondent no.5.

65. Insofar as the judgment of the Supreme Court in case of Bhartiya Seva Samaj Trust (supra) relied upon by the learned senior counsel for the respondent no.5 is concerned, learned counsel for the management in that matter had conceded before the Supreme Court that the statutory provisions of the Bombay Primary Education (Gujarat Amendment) Act, 1986 were violated by the management. However, in the facts and circumstances of this case, the management has supported the appointment of the petitioner made by the management and has brought on record the exigency and reasons for appointing the petitioner to the said post. The University of Mumbai had approved the said appointment also on the similar condition and had made that appointment temporarily. The judgment of the Supreme Court in case of Bhartiya Seva Samaj Trust (supra) thus would be of no assistance to the respondent no.5.

66. The Division Bench of this Court in case of Vitthal Dewaji Chavan (supra) has dealt with the provisions of the Indian Medical Council (Amendment) Act, 1993 and more particularly section 10-A, 10-C and 11 and has held that section 11 in no uncertain terms, contemplates that the medical qualification granted by the Universities or Medical Institutions in India which are included in the First Schedule shall be a recognized medical qualification for the purpose of the said Act. It is further held that the requirement for recognized medical qualification for the purpose of said Act will be judged solely on the ground as to whether such University or Medical Institution granting such medical qualification is included in the First Schedule and if it is included in the First Schedule, then the medical qualification granted to any student of such medical college shall be a recognized medical qualification for the purpose of said Act.

67. It is held by this Court that the post graduate medical degree granted by a University duly established by the statute in India by its inclusion in the First Schedule in the Indian Medical Council Act, 1956 must ipso facto to be regarded, accepted and treated as valid throughout the country. Such degree awarded by the said University will have to be construed as a degree or a recognized medical

qualification for the purpose of the said Act. In my view, the judgment of the Division Bench of this Court in case of Vitthal Dewji Chavan (supra) squarely applies to the facts of this case. The provisions of the Medical Council Act, 1993 are *pari materia* with the provisions of the Indian Medicine Central Council Act, 1970. I am respectfully bound by the said judgment in case of Vitthal Dewji Chavan (supra) delivered by the Division Bench of this Court.

68. A perusal of the written statement filed by the respondent no.5 herein before the Tribunal indicates that it was contended by the respondent no.5 that the degree acquired by the petitioner was not equivalent to M.D. Degree in Shalayantra and it had not been recognized nor was it gazetted by the Central Government or the State government or the Director of Ayurved, who were correct and proper authorities. It was contended that the Central Government, State Government or the Director of Ayurved were the authorities to grant recognition. In paragraph 4 of the written statement, it is averred that though the qualification of Ayurvedya Parangat (AVP) had been recognized by the Central Council of Indian Medicine, they had forwarded the same to the Central Government for further notification. The Central Government had not notified it but had further stated that the qualification of AVP was not equivalent to M.D. It is further contended that the Central Council of Indian Medicine was a body selected and constituted by the teacher. The same body had powers to make recognition with regard to the qualification whose recognition was done only by way of Gazette notification by the Central Government.

69. It is thus clear that it was the case of the respondent no.5 himself that the Central Government, State Government or the Director of Ayurved were authorized to grant recognition. The qualification of AVP has been recognized by the Central Council of Indian Council and the same was forwarded to the Central Government for further notification, which was not issued. The said written statement was filed by the respondent no.5 in the month of August, 2002 i.e. much after publication of the notification dated 8th October, 2001 in the Gazette of India dated 11th October, 2001 thereby substituting the words and figures "from 1942 to 1980" by the words and figures "from 1942 to 1988" in respect of the said post graduate degree Ayurvedya Parangat issued by Tilak Maharashtra Vidyapeeth, Pune. In view of the admitted position that the notification was already issued as on 8th October, 2001, the arguments advanced by the learned senior counsel for the respondent no.5 before this Court that the degree Ayurvedya Parangat was not a post graduate degree or was not prescribed qualification for the purpose of appointing the petitioner to the post of Reader is totally untenable and is contrary to the written statement filed by him before the Tribunal.

70. Pursuant to the directions issued by this Court, the respondent no.2 college has filed an affidavit before this Court on 8th August, 2016. In the said affidavit, the college has contended that the degree of Ayurvedya Parangat (AVP) was acquired by the petitioner in the year 1986 which was recognized as post

graduate degree by the Government i.e. Central Government vide notification dated 8th October, 2001. It is stated that before the impugned order came to be passed by the said Tribunal, the said post graduate degree was already recognized by the Central Government by issuing a notification dated 8th October, 2001.

71. It is the case of the respondent no.2 college that the appointment of the respondent no.5 was made subject to the result of this petition. It is the case of the respondent no.2 that since the State Government directed the respondent no.2 to revert the petitioner to the post of Lecturer from the post of Reader and if the respondent no.2 would have refused to revert the petitioner and it would not have deducted amounts from the salary of the petitioner, the State Government would have refused to give grant to the college. The respondent no.2 had to thus revert the petitioner and to deduct the differential amount from the salary of the petitioner and to deposit the same with the State Government. Mr.Khandeparkar, learned counsel appearing for the respondent no.2 submits that the respondent no.2 has no complaint about the work being carried out by the petitioner and if this Court comes to conclusion that the order of reversion effected by the respondent no.2 on the directions of the State Government deserves to be set aside, this Court shall direct the State Government to release grant-in-aid to the extent of the amount deducted by the respondent no.2 from the salary of the petitioner to enable the respondent no.2 to pay the said amount to the petitioner.

72. A perusal of the degree annexed at Exhibit "A" to the additional affidavit dated 15th July, 2006, indicates that the petitioner was issued a degree of Ayurvedya Parangat who had passed the said examination held in the month of June, 1986 by Tilak Maharashtra Vidyapeeth, Pune. The Central Council of Indian Medicine also vide its letter dated 19th April, 2001 addressed to the respondent no.2 has confirmed that Ayurvedya Parangat examination of Tilak Maharashtra Vidyapeeth, Pune has been approved by the Council as a post graduate qualification and has already sent to the Government of India for Gazette notification. The Government of India had forwarded the copies of Gazette notification in the month of November, 2001 to the Central Council of Indian Medicine showing that the said degree Ayurvedya Parangat issued by Tilak Maharashtra Vidyapeeth, Pune during the period from 1942 to 1988 has been recognized and was inserted in Second Schedule to Indian Medicine Central Council Act, 1970.

73. Insofar as parawise comments filed by the Directorate of Ayurved, Maharashtra State is concerned, a perusal of the said pleadings indicates that even according to the authority, as per recruitment rule in respect of the post of Reader, if there is no qualified candidate available for the post of Reader, then Government can appoint teacher on the said post subject to the condition that he must pass M.D. within five years in the concerned subject and accordingly the petitioner was appointed to the said post. In the affidavit in reply filed before this

Court on 21st July, 2005, the State Government and the Secretary, Medical Education and Drugs Department have contended that Indian Medicine Central Council Act, 1970 amended from time to time had recommended that the qualification of A.V.V. and A.V.P. awarded by Tilak Maharashtra Vidyapeeth, Pune as degree qualification only upto 1980 and it never been considered as post graduate qualification. In my view, the said contention raised by the respondent nos.1 and 4 in the affidavit in reply filed before this Court is contrary to the written statement in the form of parawise comment filed before the said Tribunal and is also contrary to the notification of the Central Government dated 8th October, 2001.

74. Insofar as reliance placed by the learned senior counsel for the respondent no.5 on certain informations alleged to have been provided by the authority under the provisions of the Right to Information Act is concerned, those informations do not advance the case of the respondent no.5. In the first column, the query raised by the respondent no.5 was whether A.V.P. (Pune) qualification was a certificate, diploma or degree. The response given by the Director of Ayurved was that the said A.V.P. was a degree. There was no query raised by the respondent no.5 whether the said A.V.P. was a post graduate degree or not. Similarly the information asked by the respondent no.5 at serial no.6 indicates that the query of the respondent no.5 was whether A.V.P. was considered as post graduate degree in 1998 for the post of Lecturer in Ayurved colleges, the reply thereto was in negative.

75. It is not the case of the petitioner that in the year 1998, A.V.P. was considered as post graduate qualification. Admittedly the notification came to be issued by the Central Government on 8th October, 2001 extending the period from 1980 to 1988. The said reply of the authority thus would not advance the case of the respondent no.5. The answer to query no.7 clearly indicates that even according to the authority, the Central Council of Indian Medicine had approved Ayurvediya Parangat (A.V.P.) obtained during the period 1942 to 1988. The said reply of the authority supports the case of the petitioner and not the respondent no.5 and confirmed the true and correct position.

76. Insofar as the submission made by the learned senior counsel for the respondent no.5 that the Selection Committee itself was not appointed properly by the management and thus the appointment of the petitioner itself was illegal on that ground is concerned, a perusal of the impugned order passed by the Tribunal indicates that the said Tribunal did not render any finding on the issue whether the constitution of the Selection Committee was proper or not on the ground that none of the parties had invited the attention of any applicable rules to the said Tribunal. The writ petition filed by the respondent no.5 challenging the appointment of the petitioner was admittedly dismissed for want of prosecution.

77. The respondent no.5 thus cannot be allowed to raise that issue before this Court for the first time in this writ petition. The respondent no.5 admittedly did

not file any separate writ petition challenging the finding of the said Tribunal on the issue of the appointment of the Selection Committee. This Court thus cannot go into this issue at this stage on the basis of the submissions made by the learned senior counsel for the respondent no.5 across the bar.

78. A perusal of the impugned order passed by the Tribunal indicates that the Tribunal has rejected the appeal filed by the petitioner on the ground that the appellant did not have post graduate degree. The Tribunal proceeded on the premise that the petitioner had only one degree i.e. degree in B.A.M.S. and though that was degree, the same was not a post graduate degree. It is held by the Tribunal that as regards Ayurvedya Parangat (A.V.P.) is concerned, it is not a degree at all and thus the petitioner not having acquired post graduate degree would not be eligible for the said post of Reader. Though the notification was already issued by the Central Government extending the date of recognition of the said degree Ayurvedya Parangat (A.V.P.) obtained from Tilak Maharashtra Vidyapeeth, Pune till 1988 and though the petitioner had already obtained the said degree in the year 1986, the Tribunal totally over looked this crucial aspect in the matter and has passed a perverse order thereby rejecting the appeal filed by the petitioner.

79. The impugned order is also contrary to the admitted fact recorded in the written statement filed by the respondent no.5 himself before the Tribunal admitting that the petitioner had acquired the qualification of A.V.P. and had contended that though the qualification of A.V.P. had been recognized by the Central Council of Indian Medicine, no Gazette notification was issued by the Central Government. The respondent no.5 has also admitted that the Central Council of Indian Medicine is a body selected and constituted by the teachers which body had power to make recognition with regard to the qualification which recognition is done only by way of Gazette notification of the Central Government. In my view, the Tribunal has committed an error by totally over looking the factum of issuance of notification by the Central Government much prior to the date of disposal of the appeal filed by the petitioner before the Tribunal.

80. It is not in dispute that the appointment of the respondent no.5 is made by the management subject to the out come of this petition. The petitioner has not applied for consequential benefits in the writ petition nor the same is pressed by the learned counsel for the petitioner. In my view, the impugned order passed by the University and College Tribunal dismissing the appeal filed by the petitioner is perverse, contrary to law and facts and thus deserves to be set aside.

81. I therefore, pass the following order :- a). The impugned order dated 16th October, 2002 passed by the learned Presiding Officer, Mumbai University and College Tribunal dismissing Appeal No.62 of 2002 filed by the petitioner is quashed and set aside. Appeal No.62 of 2002 is made absolute in terms of prayer clauses (A) and (B).

b). The respondent no.1 is directed to provide grant-in-aid to the respondent no.2 for the differential amount required to be paid to the petitioner in view of the order of reversion of the petitioner having been set aside by this Court and in view of the fact that this Court having directed the respondent no.2 to refund the salary deducted for the period during 1st December, 2000 to 23rd March, 2002 and for payment of the differential amount of salary and other emoluments from the date of reversion till reinstatement of the petitioner to the said post of Reader. Such grant-in-aid shall be released in favour of the respondent no.2 within four weeks from today. The respondent no.2 shall release the said amount to the petitioner within two weeks from the date of grant-in-aid released, if any, by the respondent no.1, as directed aforesaid.

c). Rule is made absolute in aforesaid terms.

d). There shall be no order as to costs.

e). In view of disposal of the writ petition, Civil Application No.3354 of 2005 does not survive and is accordingly disposed of.