

(2015) 01 MAD CK 0131

In the Madras High Court

Case No : Writ Petition Nos. 14262, 14265 to 14268, 18657, 19915, 20164, 21228, 21939 to 21941, 22220, 22334 to 22336 and 22376 of 2013, Cont. P. No. 1567 of 2013 in W.P. No. 18657 of 2013 and Cont. P. No. 1875 of 2013 in W.P. No. 19915 of 2013

Emil Mathew

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Maritime University Act, 2008 — Section 12, 12(4), 21(1), 5, 50

Citation : (2015) 01 MAD CK 0131

Hon'ble Judges : M.M. Sundresh, J.

Bench : Single Bench

Advocate : B. Ravi for R. Subramanian, for the Appellant; S. Haja Mohideen Gisthi, SCGSC, Advocates for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—The respondent Indian Maritime University came into existence on 14.11.2008 in pursuant to the enactment of the Indian Maritime University (IMU) Act, 2008 (Central Act 22 of 2008), for which the assent was given by His Excellency the President of India on 11.11.2008.

2. The object of the enactment was to establish and incorporate a teaching and an affiliating University at National level to facility and promote maritime studies and research and to achieve excellence in areas of Maritime Science and Technology, Maritime Environment and other related fields and to provide for matters connected therewith or incidental thereto. In the Schedule attached to the enactment statutes of the University are set out.

3. Provisions of the Act and the statutes:

3.1. Section 5 of the Act deals with powers of the University. Sub-clause (ix), (x) and (xv) deals with institution of teaching or academic positions, of persons to

those positions, provision for terms and conditions of service and creation of teaching, non-teaching, administrative, ministerial and other posts in the University and to make appointments thereto. It is apposite to re-produce here the relevant provisions. The relevant clauses in Section 5 are as under:

""5. The University shall have the following powers, namely:-

(i) to (viii).....

(ix) to institute Directorships, Principalships, Professorships, Associate Professorships, Assistant Professorships and other teaching or academic positions, required by the University and to appoint persons to such Principalships, Professorships, Associate Professorships, Assistant Professorships or academic positions;

(x) to provide for the terms and conditions of service of-

(i) Directors, Principals and teachers and other members of the academic staff appointed by the University;

(ii) teachers and other members of the academic staff appointed by any college or institution; and

(iii) any other employee of recognised college or institution, whether appointed by the University or such college or institution;

(xi) to appoint persons working in any other University or organisation as teachers of the University for a specified period;

(xii) to (xiv).....

(xv) to create teaching, non-teaching, administrative, ministerial and other posts in the University and to make appointments thereto....""

Therefore, the respondent University is a sole authority for the creation and appointment to various posts including teaching, non-teaching, administrative and ministerial. Apart from that, it can also provide for the terms and conditions of service.

3.2. Under Section 9(1) of the IMU Act, the President of India shall be the Visitor of the University. Under Section 9(2), the Visitor may, from time to time, appoint one or more persons to review the work and progress of the University. He can also issue directions upon receipt of a report and after obtaining the views of the Executive Council as he considers necessary in respect of any matters dealt with in the said report. The University is bound to comply with such directions. Under Section 9(3), the Visitor shall have the right to cause inspection and inquiry. Section 9(9) mandates the Executive Council or the Management, as the case may be, to communicate to the Visitor any action it proposes to take upon the result of the inspection or inquiry. Under Sub-clause (12) of Section 9, the Visitor may give any direction to the University notwithstanding anything contained in the foregoing provisions. The only condition precedent, being, the University will

have to be provided an opportunity of hearing. Section 12 with the appointment, functions and powers of the Vice Chancellor. Under Sub-section 4 of Section 12, the Vice Chancellor in a given situation may ask the authority concerned to review its decision within sixty days of such decision and if no review of the decision was done and if no such review is effected within the said period, the matter shall be referred to the Visitor, whose decision shall be final. Section 21(1) deals with the Executive Council, being the principal executive body of the University. Its constitution, term of office, powers and functions are to be prescribed by the Statutes. Section 50 mandates the University to comply with the directions of the Central Government on questions of policy.

3.3. The above said provisions would show that the object and rationale behind the enactment is to make the respondent University to act and function as an independent authority subject to the policies to be evolved from time to time by the Central Government. In other words, except the Visitor, no other external authority including the Central Government has no role in the internal affairs of the University. The Central Government can only prescribe a policy in tune with the object of the enactment.

3.4. Coming to the Statutes of the University, Statute 6(1) deals with the appointment of Finance Officer by the Executive Council for a term of five years. Statute 11 deals with membership, constitution, quorum and tenure of the Executive Council, which reads as under:

""11. (1) The Executive Council shall consist of the following members, namely:-

(a) the Vice-Chancellor, who shall be the Chairperson, ex officio;

(b) the Pro-Vice-Chancellor, ex officio;

(c) the Secretary of Ministry of Shipping, Road Transport and Highways

(Department of Shipping), Government of India, or his nominee not below the rank of a Joint Secretary;

(d) the Director-General of Shipping or his nominee not below the rank of a Joint Secretary;

(e) The Chairman, Indian Port Association, New Delhi;

(f) the Financial Adviser, Ministry of Shipping, Road Transport and Highways (Department of Shipping), Government of India, or his nominee not below the rank of a Joint Secretary;

(g) five members to be nominated by the Visitor having special knowledge and/or practical experience in respect of maritime-education, industry, science or technology and other related subjects on the recommendation of the Vice-Chancellor, out of a panel of at least ten persons;

(h) one member not below the rank of Joint Secretary to be appointed by the Central Government to represent the Ministry of Defence of the Central

Government.

(i) one Dean of Schools of Studies nominated by the Vice- Chancellor by rotation on the basis of seniority;

(j) two Directors nominated by the Vice-Chancellor by rotation on the basis of seniority;

(k) three Principals of the affiliated colleges and academic institutions nominated by the Executive Council by rotation;

(l) one Vice-Chancellor present or former, of any technical University; and

(m) one representative of the Government of the State where University is located.

(2) The Registrar shall be ex officio Secretary of the Executive Council.

(3) Seven members of the Executive Council shall form a quorum for a meeting of the Executive Council.

(4) The members of the Executive Council other than ex officio members shall hold office for a term of three years.

(5) There shall be not less than four meetings of the Executive Council in a year and the rules of procedure for conduct of business to be followed at a meeting and such other matters in relation to meeting as may be necessary shall be such as may be prescribed by the Statutes.""

3.5. Statute 12(1) deals with powers and functions of the Executive Council, the relevant portion of which is extracted hereunder:

""12. Powers and functions of the Executive Council.--

(1) The Executive Council shall have the power of management and administration of the revenue and

(2) property of the University and the conduct of all administrative affairs of the University not otherwise provided for.

(2) Subject to the provisions of this Act, the Statutes and the Ordinances, the Executive Council shall, in addition to all other powers vested in it, have the following powers, namely:-

(i) to create teaching and academic posts, to determine the number and emoluments of such posts and to define the duties and conditions of service of Professors, Associate Professors, Assistant Professors and other academic staff and Principals of colleges and institutions maintained by the University: Provided that no action shall be taken by the Executive Council in respect of the number, qualifications and the emoluments of teachers and academic staff otherwise than after consideration of the recommendations of the Academic Council;

(ii) to appoint such Professors, Associate Professors, Assistant Professors and other academic staff, as may be necessary, and the Principals of colleges and institutions maintained by the University on the recommendation of the Selection Committee constituted for the purpose and to fill the temporary vacancies therein;....""

3.6. Statute 21(1) provides for Selection Committees for making recommendations to the Executive Council for appointment to the various posts mentioned therein. In this connection, it is apposite to reproduce the relevant provision, which reads as under:

""21.(1) There shall be Selection Committees for making recommendations to the Executive Council for appointment to the posts of Professor, Reader, Lecturer, Registrar, Finance Officer, Librarian and Principals of colleges and institutions maintained by the University.....""

3.7. Statute 29(1) speaks about removal of employees of University. It also speaks about the power of suspension available to the Vice Chancellor. Under the said provision, the Executive Council shall have power to remove a teacher on the ground of misconduct. Statute 29(3) mandates either the Executive Council or the appointing authority not to remove any teacher except for a good cause and after giving three months notice or on payment of three months salary in lieu thereof. Sub-clause (4) further provides for a reasonable opportunity of showing cause to the concerned teacher or the member of academic staff against the proposed action sought to be taken. A cumulative reading of the Statutes would once again reinforces the conclusion arrived earlier that a complete autonomy has been provided to the University in its administration. The powers and functions of the authorities are clearly defined by the various procedures determined in these statutes. Even here there is no whisper of any other external intervention except to the extent what is provided under the enactment.

Brief Facts:-

4.1. The respondent University made advertisement to the 63 posts in various fields for the post of Professors, Associate Professors and Assistant Professors in The Hindu, The Times of India and Business Line on 19.9.2012 and 18.9.2012 respectively. On the above said dates, the details of number of posts, positions, qualifications, disciplines and areas of specialisation have been prescribed in the Website. For the disciplines of (a) Management, Social Sciences, Public Policy, (b) Law, (c) Ocean Technology, number of applications were received. After scrutinising the applications and after conducting the interview, selection of 33 faculties was placed before the Executive Council for approval on 3.12.2012 and 26.12.2012 respectively. The Executive Council in turn was pleased to approve the faculties. Some of the faculties joined within the time granted and some of them sought extension of time, which was also granted. Of the 33 faculties, two declined. 19 of them joined on or before 31.3.2013, which is the original date prescribed for joining. With respect to some of the candidates including the

petitioner in W.P. No. 21939 of 2013, who was appointed as a Finance Officer, interview was conducted through Skype and telephone. The other candidates to whom time was given were ready to join duty. Some of the candidates have quit their jobs abroad and within the country to facilitate the joining with the respondent University. As certain allegations have been raised about the irregularities in the selection process, the Government of India constituted a Committee headed by Captain Mohan in and by the office memorandum dated 26.2.2013, by which the constitution of the earlier Committee for the above said purpose was modified. The terms of the reference of the Committee are as follows:

""3. The Committee will examine the following issues:

- (i) The number of faculty recruited course wise/faculty wise as per/beyond the norms of EFC.
- (ii) The recruitment process of the faculty and whether it is as per norms laid down by EFC of IMU.
- (iii) To determine the excess number of faculty recruited, if any, and further suggestions in this regard.
- (iv) To examine whether any irregularities have been done in selection of candidates.
- (v) To fix responsibility for violation of EFC norms, if any, and also for faculty recruitment, if any.
- (vi) To suggest the exact requirement of faculty strength course wise/campus wise in IMU.""

4.2. On 3.4.2013, Captain Mohan Committee gave its report. The following is the conclusion arrived at by the said Committee:

""18. Given the complex nature of the recruitment process, it is recommended that IMU once again reviews the entire selection process and identifies any irregularities in the selection of candidates.

19. It appears from all the information and data collected that due diligence was not exercised by the VC in the recruitment process resulting in some adhocism. The registrar has also been found wanting in providing guidance to the VC. There were procedural lapses.

20. Although some preliminary exercise was done by the Committee in consultation with Campus Heads, it is recommended that IMU carry out a detailed study and arrive at the exact faculty requirement campus wise/course wise.

21. On the basis of the salient points brought out in the report and the facts arising therein, the Ministry may take a view and take appropriate action.""

4.3. This report has been given by the Committee to the Ministry. The conclusion of the Committee would clearly show that no concrete findings have been rendered and it merely recommended that the University will have to carry out a detailed study in pursuant to its preliminary exercise and review the entire selection process after identifying any irregularities in the selection of candidates. Its conclusion is general in nature. Based upon the report of the Committee, resolutions were passed by the Executive Committee on 26.6.2013 and 1.8.2013 resolving to cancel the entire selection made. In pursuant to the resolutions, cancellation letters were issued to the petitioners. To The candidates, who were not allowed to join, the following cancellation order was issued:

""I am directed to inform you that the offer of appointment given to you vide letter No. IMU/EST/HQ/STAFF/01/FACUL/P001/2012 dt. 4.12.2012 for the post of Professor in the School of Maritime Law is hereby withdrawn with immediate effect. ""

4.4. To the candidates, who have joined and working, the following order has been issued:

""Sub:- Cancellation of your appointment as.....Asst. Professor in School of..... Maritime Management in Indian Maritime University.

You had applied for the post of.....Asst. Professor in Maritime Management on 9th October 2012. You were called for interview on 1st December 2012 and you attended the same. An offer of appointment was issued to you vide IMU/EST/HQ/STAFF/D1/FACUL/NGT/AP006/2012 dated..... as..... Asst. Professor in the School of..... Maritime Management on..... 2.1.2013. Consequent to your posting to IMU Vizag Campus, you joined duty thereon...16.1.2013 and has been working there since then.

The Ministry of Shipping has noticed that faculties have been appointed beyond the Expenditure Finance Committee (EFC) norms/sanctioned strength. Therefore, the Ministry constituted a Committee under the Chairmanship of Capt. P. V.K. Mohan (Chairman, National Shipping Board) by an order dated 26.2.2013 to look into the correctness of the selection process adopted by IMU and to ascertain as to whether any procedural irregularities were found.

The Committee after having enquired and verified with IMU about the procedure adopted by IMU in the selection of faculty, submitted a report to the Ministry of Shipping. The Committee has observed certain lapses and deficiencies and in view of the same, the Ministry of Shipping advised the IMU to place it in the ensuring EC meeting.

The Report of Capt. Mohan was placed before the Executive Council of IMU for its deliberation and thereupon, the Executive Council in its 21st meeting on 16.5.2013 decided as follows:

(a) Executive Council (EC) discussed the lapses and infirmities in the process of appointments of faculty for IMU based on the reports of the Capt. P.V.K. Mohan

Committee on Faculty Recruitment and the report of the Chief Vigilance Officer. EC also took note of the subcommittee report. EC accepted and adopted both the reports.

(b) EC unanimously agreed that the entire selection process had been procedurally flawed and corrective action will be taken by the EC as per the provisions of IMU Act/Statutes/Ordinances.

The irregularities mentioned in the Mohan Committee Report stated that:

(1) Against 10 vacancies for the regular faculty in Management as per EFC's norms, 21 were recruited.

(2) As per DoPT's guidelines, 2-00 point roster for reservation should be followed for the post of Assistant Professor and organization should designate an Officer from SC/ST category who will certify that the roster is followed as per Government rules. For the posts of Professor/Associate Professor, 40/100 points should be followed. These were not followed.

(3) As per DoPT guidelines, 60 days of time should be provided for calling the application from the applicant from the date of the calling the application from the applicant from the date of advertisement which can be reduced to 45 days after approval of the Competent Authority. The advertisement should clearly mention the number of vacancies, stream-wise with specialization, if any, and showing the vacancies as unreserved/reserved for SC/ST/OBC., etc. Contrary to these rules only 28 days were provided for calling for applications.

(4) In some cases interviews were taken telephonically or through Skype whereas this condition was not given in the advertisement.

(5) Some of the selected faculty did not meet the age and or required educational qualification/required experience criteria.

(6) Student teacher ratio as per EFC norms was not maintained.

(7) Number of eligible candidates were left out and selection committee was not consulted as per prescribed norms.

In view of the above deficiencies pointed out in the Mohan Committee Report dated 3.4.2013 and also the Chief Vigilance Officer's report dated 10th and 11th April 2013, the Executive Council in its 23rd meeting resolved that the entire selection process is illegal and instructed IMU to take appropriate action against the newly recruited faculties. Again, in the 24th Meeting of Executive council held on 01.08.2013 it was resolved to scrap the entire recruitment process of 31 faculties ab initio.

However, this will not apply to faculties who have obtained ad-interim injunction from the High Court of Madras in Writ Petitions No. 14262 to 14269 of 2013 or any other legal cases, but will be subject to the final decision in their respective court cases.

Hence, the appoint of.... Dr. J. Sivadurga Prasad as..... Asst. Professor in Indian Maritime University is cancelled with immediate effect..""

4.5. Insofar as the petitioner in W.P. No. 21939 of 2013 is concerned, the termination order was issued in the following manner

""There was a complaint against the appointment of Shri S. Vasudevan, as Finance Officer, IMU and the matter was placed before the Executive Council, which was deliberated in its 21st, 22nd and 23rd meetings. EC in its 22nd Meeting appointed Shri Ashwani Kumar, Director, MOS, to look into the matter and directed him to submit the report to EC. Accordingly, Shri Ashwani Kumar, Director, MOS, has submitted his report to EC during the 24th Meeting.

EC deliberated the report and found that the report was comprehensive in all respects and approved the same. According to the report, the post of Finance Officer, IMU, was advertised on the basis of "deputation". Shri S. Vasudevan, had retired voluntarily from the Indian Audit and Accounts Service (IA and AS) with effect from 14.8.2007. Shri S. Vasudevan, had applied for this post, when he was not on "service". The post of FO is for a limited period by the end of which, the incumbent has to reverted back to his parent cadre. Whereas in the case of Shri S. Vasudevan, there is no parent cadre on the date of his selection as FO of IMU because Shri S. Vasudevan had taken VRS in 2007 Hence, on the basis of the report, Shri S. Vasudevan was not eligible for applying to the "deputation post, as he has already retired from "service".

Accordingly, the Executive Council has decided that the appointment of Shri S. Vasudevan as the Finance Officer, IMU is null and void and his services in IMU are terminated with immediate effect.

In view of the above, the services of Shri S. Vasudevan a Finance Officer, Indian Maritime University are hereby terminated with immediate effect.

This is issued with the approval of Vice Chancellor.""

4.6. In the first set of orders passed, no reasons have been assigned by the respondent University except by stating that the appointments given are withdrawn with immediate effect. In the said set of orders passed, the observation of the Captain Mohan Committee was indicated without any specification to individual cases followed by the decisions made in the 23rd and 24th meetings. Insofar as the petitioner in W.P. No. 21939 of 2013 is concerned, the termination order has been passed on the ground that he was not sent on deputation. Incidentally, this petitioner is the one, who has sworn to the counter affidavits to the affidavits filed by some of the other petitioners as the person holding additional charge as the Registrar In-charge.

4.7. In the meanwhile, the writ petitions have been filed by eight of the petitioners in W.P. Nos. 14262 and 14269 of 2013 and orders of interim injunction have been obtained. Subsequently orders were also obtained by the petitioners in W.P. Nos. 18657 and 19915 of 2013 on 10.7.2013 and 23.7.2013

respectively. Similarly, some of the petitioners have also filed writ petitions and obtained interim orders. Against one of the interim order, a writ appeal was filed in which the order of single Judge was stayed. However, inspite of the interim orders granted in some of the cases, the 2nd respondent has not given any permission to take classes. Alleging violation of the orders passed by this Court, contempt petitions have been filed in Contempt Application Nos. 1576 and 1875 of 2013.

5. As legal issues involved in all these cases are one and the same and a decision has been taken in pursuant to the 23rd and 24th Executive Committee meetings held to cancel all the appointments and the arguments having been made together, all these cases are disposed of by a common order.

Submissions of petitioners:

6. Learned counsels appearing for the petitioners submitted that all the petitioners have been qualified for the posts for which they were selected. There is no power or authority that vests with the 2nd respondent to pass the orders impugned. There is no jurisdiction for the 1st respondent to appoint a Committee. As the 2nd respondent is an autonomous body, power of the 1st respondent can be restricted to matters available under Section 50 of the IMU Act. The Visitor is the competent authority to take appropriate action and no action has been taken by him. His nominee was present even on the first occasion. The Executive Committee is the competent authority to make appointments. However, it cannot reject the recommendations of the Selection Committee. Having accepted the recommendations of the Selection Committee, it is not open to the Executive Committee to contend to the contra. The orders impugned are liable to be set aside for violations of principles of natural justice including non-disclosure of the reasons. There is no power of review available to the Executive Council. The 23rd and 24th meetings of the Executive Council are without quorum. As the petitioners have left their lucrative jobs both within the country and abroad, they are entitled to succeed on the principle of promissory estoppel. There cannot be en masse termination. The DoPT Rules are not applicable to the respondent University and in any case they have been complied with. All the petitioners are qualified to hold the post. It is only a misconception to say that they are not qualified. The relaxation in age has already been given. All of them have got 55% of marks with respect to basic qualification including the petitioner in W.P. No. 21939 of 2013. The general instructions given at the time of selection speak about relaxation of any qualification, experience, etc., in deserving cases. Such an exercise has already been done by the respondent University. Therefore it cannot go into the same once again. The rules of reservations have been followed. Unfortunately the respondent University has failed to take into consideration the relevant factual position by taking note of the posts filled up and sought to be filled up. Having allowed some of the candidates to be interviewed through phone and skype it is not open to the 2nd respondent to contend to the contra. There is no authorisation that is available to

the person who filed the counter affidavits to act as a Registrar In-charge. The entire decision has been taken as a knee-jerk reaction. In spite of the interim orders passed, the respondent University deliberately has not taken some of the petitioners back. The petitioner in W.P. No. 22334 of 2013 is a physically handicapped person with 90% disability. For no fault of him his services have been terminated. The report of the Captain Mohan Committee is only a piece of evidence. The respondent University has totally misconstrued the report even assuming it is legally valid. The objections raised by one of the member have not been taken into consideration. The Captain Mohan Committee has not questioned the qualification of the petitioners nor it was part of the reference. The petitioners have not committed any fraud. There is no suppression on their part. Some of them filed writ petitions earlier, being aware of the impending action proposed to be taken by the respondent University. Therefore, those writ petitions cannot be dismissed as premature, more so, after the orders have been passed cancelling the entire selection made. Hence, it is submitted that all the writ petitions will have to be allowed. In support of their contentions, learned counsels have made reliance upon the following judgments:

"(1) Bihar Public Service Commission and Another Vs. Dr Shiv Jatan Thakur and Others, ;

(2) Nagarjuna Construction Co. Ltd. Vs. Govt. of Andhra Pradesh and Others, ;

(3) Century Flour Mills Ltd. Vs. S. Suppiah and Others, ;

(4) Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another, ;

(5) Ashok Kumar Ratilal Patel Vs. Union of India (UOI) and Another, ;

(6) B.C. Mylarappa @ Dr. Chikkamylarappa Vs. Dr. R. Venkatasubbaiah and Others, ;

(7) Unreported Judgment of Gauhati High Court in Ashok Kumar Yadav Vs. State of Arunachal Pradesh dated 8.2.2002;

(8) Unreported decision dated 5.2.2013 made in W.P. No. 30602 of 2012 on the file of this Court (Dr. V. Mangaiyarkarasi Vs. The Registrar, Indian Maritime University). ""

Submissions of respondents:-

7. Learned counsels appearing for the respondents submitted that when some of the petitioners lack eligibility and qualification, their appointments would automatically become void in law. Under those circumstances there is no necessity to follow the principles of natural justice. An act of fraud would vitiate all solemn acts. As the petitioners are probationers, they cannot question the orders passed. Insofar as the other petitioners, who have not joined, they have been issued with the withdrawal letters, since they do not have any vested right to the post. The earlier process adopted was contrary to law. The rules of the

game were changed to suit certain persons. There was no provision for interview through skype or telephone. Therefore, the writ petitions filed, especially in those cases, where the petitioners were found to be not having requisite qualification and eligibility are liable to be dismissed. Mr. K.R. Tamilmani, learned counsel appearing for the 2nd respondent fairly indicated that except the petitioners in W.P. Nos. 14265, 14266, 18657, 19915, 21228 and 21939 of 2013, the others may be considered based upon the available materials for continuance/to work in pursuant to the orders of appointment given to them. However, those who have not joined as of now and those who are not continuing are not entitled for any back wages on the principle of "no work-no pay". Learned counsel further submitted that the writ petitions seeking writ of mandamus against proposed action are not maintainable as the petitioners cannot forestall any action of the 2nd respondent. In support of his contention, the learned counsel for the respondent University has made reliance upon the following judgments.

- ""(1) Shankarsan Dash Vs. Union of India, ;
- (2) Ashwani Kumar and Others Vs. State of Bihar and Others, ;
- (3) Chittoor Zilla Vyavasayadarula Sangham Vs. A.P. State Electricity Board and Others, ;
- (4) A. Umarani Vs. Registrar, Cooperative Societies and Others, ;
- (5) Secretary, State of Karnataka and Others Vs. Umadevi and Others, ;
- (6) National Fertilizers Ltd. and Others Vs. Somvir Singh, ;
- (7) State of U.P. and Others Vs. Desh Raj, ;
- (8) State of M.P. and Others Vs. Lalit Kumar Verma, ;
- (9) State of Mysore and Another Vs. S.V. Narayanappa, ;
- (10) R.N. Nanjundappa Vs. T. Thimmiah and Another, ;
- (11) B.N. Nagarajan and Others Vs. State of Karnataka and Others, ;
- (12) Mukul Saikia and Others Vs. State of Assam and Others, ;
- (13) Rakhi Ray and Others Vs. The High Court of Delhi and Others, ;
- (14) J. Sundara Vs. Union of India, (Unreported Judgment dated 13.7.2010 of Division Bench of this Court in W.P. No. 10000 of 2010);
- (15) Tej Prakash Pathak and Others Vs. Rajasthan High Court and Others, ;
- (16) Shiv Kumar Sharma Vs. Santosh Kumari, ;
- (17) State of Orissa and Others Vs. MESCO Steels Ltd. and Another, ;
- (18) T. Vijendradas and Another Vs. M. Subramanian and Others, ;
- (19) Reliance Energy Limited and Another Vs. Maharashtra State Road

Development Corporation Ltd. and Others, ;

(20) Dr Prit Singh Vs. S.K. Mangal and Others, ;

(21) State of Gujarat and Others Vs. Arvindkumar T. Tiwari and Another, ;

(22) Life Insurance Corporation of India and Another Vs. Raghavendra Seshagiri Rao Kulkarni, ;

(23) Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Another, ;

(24) Smt. Ravinder Sharma and Another Vs. State of Punjab and Others, ;

(25) Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others, and

(26) Unreported decision of this Court in W.P. No. 5472 of 2013 (Mrs. Padmapriya Vs, The vice Chancellor, Meenakshi Academy of Higher Education and Research).'''

8. Discussion:

8.1. Interpretation of the provisions:

8.1.1. As discussed above, a conjoint reading of the enactment as well as the Statutes would show that an absolute autonomy has been provided to the 2nd respondent through the Vice Chancellor and the Executive Council. The only authority under Sections 9 and 12 to deal with the problems of the University is the President of India, who shall be the Visitor alone. The Act provides for exercise of power by the Vice Chancellor and the Executive Council, as the case may be. The exercise of said power is subject to the further control by the Visitor alone. Admittedly, the Visitor was not requested to play any role in the entire proceedings by the 2nd respondent. On the contrary, the 2nd respondent has merely relied upon the report of the Captain Mohan Committee.

8.1.2. In the cases before this Court, all the applications have been scrutinised by the Committee duly constituted and candidates were duly interviewed apart from assessing the merit, qualification and eligibility. Thereafter approval has been given by the Executive Council. When that is the position, in the absence of any power of review, the Executive council cannot overturn its earlier one. A perusal of the records would show that there is nothing wrong in the constitution of the Committee. A challenge made to the constitution of the Committee was also repelled by this Court. The power of relaxation has also been exercised by the respondent University as seen from the documents filed by it. Even under Section 50, power of the 1st respondent is restricted to policy matters alone. The very fact that power is restricted to policy matters alone would be an indicative of the fact that an administrative power has to be exercised by the University alone either through Vice Chancellor or the Executive Council, as the case may be.

8.1.3. Coming to the Statutes of the University, the Selection Committee has

duly made its recommendations to the Executive Council. The Executive council has accepted the recommendations made. Under Statute 21(6), even if the Executive Council is unable to accept the recommendations made by the Selection Committee it is duty bound to record its reasons and thereafter submit the case to the Visitor for final orders. Such exercise was not done. On the other hand, the recommendations were duly accepted and approved. The Vice Chancellor has not exercised his powers under Section 12(4). In any case, the procedure contemplated therein has also not been followed. Difficulties, if any, ought to have been placed before the Visitor.

8.1.4. Statute 29 speaks about the removal of a teacher of the University. Admittedly, the respondent University has not exercised power under Statute 29. There is no express power of review that is available. Accordingly, this Court holds that on the touchstone of the Indian Maritime University Act, 2008, read with the Statutes, the orders impugned cannot be sustained in the eye of law.

8.2. Captain Mohan Committee's report:-

As rightly submitted by the learned counsels appearing for the petitioners, Captain Mohan Committee's report has got no statutory prescription. The power of the 1st respondent is rather limited and only to be exercised within the parameters of Section 50, that too, with respect to policy matters. Therefore, the very constitution of the Mohan Committee with its impact are not in accordance with law. In other words, the report of the Mohan Committee cannot be the basis on the decision made by the 2nd respondent. Even otherwise, the Captain Mohan Committee has not gone into the details of each case. A perusal of the report would show that it is only preliminary in nature. It has made general remarks here and there. It has not gone into the qualification and eligibility of the petitioners.

Perhaps, that is the reason why it has observed that the 2nd respondent is required to conduct a detailed review. Unfortunately the said process has not been adopted. A perusal of the records would show that valid and pertinent objections have been raised by one of the members. Those objections were swept under the carpet. In the orders impugned, the observation of the Captain Mohan Committee were merely quoted. The 1st respondent cannot act as an appellate authority in the absence of any power vested on it. Accordingly, the constitution of the Captain Mohan Committee and the reliance made on the report of the Captain Mohan Committee, which formed the basis of the impugned orders, is bad in law, being contrary to the scope and object of the enactment, Accordingly it is hereby held that the constitution of the Captain Mohan Committee and its reliance are not in accordance with law.

8.3. Principles of Natural Justice:

As submitted by the learned counsel for the petitioners, natural justice is ingrained in the conscience of man. The principle governing natural justice is to be divided into two categories. In the first category, following the principle is

mandatory and failure of it makes the decision non-est in the eye of law. The second category is of a procedural violation. Admittedly, the petitioners have not been heard. The orders impugned have been passed without assigning any reasons. It is settled law that a counter affidavit cannot cure defects in the impugned orders. Reasoning is sole and heart beat of an administrative order having civil consequences. Therefore, this Court is of the considered view that the orders impugned cannot be sustained in the eye of law, being violative of principles of natural justice and also in view of the non-disclosure of the appropriate reasons as held by the Hon'ble Supreme Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and Rashmi Metaliks Ltd. and Another Vs. Kolkata Metropolitan Development Authority and Others, .

8.4. Impugned orders -- termination simpliciter or not:-

Mr. K.R. Tamilmani, learned Senior Counsel appearing for the 2nd respondent submitted that no right has been accrued to atleast some of the petitioners. When they have not joined the work they cannot have any grievance. The petitioners, being probationers, are not entitled for any hearing. Therefore, no principles of natural justice are violated. This Court is unable to countenance the said submission. It is not a case of the employer not satisfied with the services rendered by the employees. It is a case of en masse cancellation on the ground of lack of qualification and procedural violation. The post for which the petitioners are appointed are permanent posts, except in the case of the petitioner in W.P. No. 21939 of 2013, which involves a tenure posting. The decision has been made overturning the earlier one based upon extraneous materials. Therefore, this Court is of the view that the objections of the respondents cannot be accepted. Accordingly, the same is rejected by holding that the petitioners are entitled for the relief sought for.

8.5. Lack of Qualification:-

Learned Senior Counsel appearing for the 2nd respondent submitted that atleast in some of the cases, as noted in the preceding paragraphs, the petitioners are not qualified. Even this submission cannot be countenanced. The question as to whether some of the petitioners are qualified or not is a disputed question of fact. At the cost of repetition, it has to be held that the qualification and eligibility were considered and taken note of in the earlier occasion both by the Selection Committee and thereafter by the Executive Council. Except the bare averment in the counter affidavit there are no other contra material in support of the said allegations. It is not in dispute that all the petitioners are selected pursuant to the interview conducted. Such methodology adopted is sought to be overturned in a sweeping manner by merely accepting the report of the Captain Mohan Committee which is also devoid of material particulars, apart from not being binding. A perusal of the Volume III of typed set of papers filed by the 2nd respondent would show that for each discipline area of specialisation has been given. It is nobody's case that the petitioners do not have the expertise in the

area of specialisation mentioned therein. Therefore, the contentions raised on that score are also rejected.

8.6. Fraud and Procedural violation:-

Admittedly all the petitioners have indicated their eligibility and qualification. Based upon the documents submitted by the petitioners they have been selected by the Selection Committee and thereafter approved by the Executive Council. Therefore, no fraud can be alleged against them. Similarly in the case of the petitioner in W.P. No. 21939 of 2013, the notification is very clear that it deals with two options of either deputation or on tenure. The petitioner in the said writ petition was working on a tenure basis. The appointment for a tenure post is different. There is no bar for an applicant being considered when on deputation or working on a tenure basis. In any case, even in the said case, there was no suppression. Furthermore, in all those cases, there is no allegation of the petitioners not performing their duties to the satisfaction of the 2nd respondent. This Court is also of the view that procedural violation has not been established by the 2nd respondent. It is one thing to state that there is procedural violation and another thing is to prove the same. It is for the 2nd respondent to establish the procedural violation, which goes to the root of the matter. Merely going by Captain Mohan's Committee's report is not sufficient even assuming it can be taken as a piece of evidence by the 2nd respondent and it has got a power to review its own decision. Hence, this Court is of the view that neither there is any fraud involved on the part of the petitioners nor any procedural violation that is established by the 2nd respondent. It is the 2nd respondent who adopted interview over phone and skype. What is prescribed is only an interview and therefore in the absence of any malpractice involved therein, it cannot be said to be wrong. The procedure was adopted in the given situation and not to benefit anyone. Further, the procedure adopted was not barred expressly. It was also not challenged before the Court of law by any of the affected candidates. No prejudice to other candidates was shown. Hence, the principle that where a statute requires that a certain thing must be done only in a certain way, the thing must be done in that way or not at all as held by the Supreme Court in *Manohar Lal Sharma Vs. The Principal Secretary*, does not have any application especially after approval was given by the Executive Council.

8.7. Writ of Mandamus:-

A technical objection has been raised by the learned Senior Counsel for the 2nd respondent stating that writ petitions filed earlier seeking writs of mandamus are not maintainable. This Court is afraid that such a technical objection cannot be approved for the simple reason that admittedly when there was a threat of removal hovering over the heads of the petitioners. This is established by the subsequent action on the part of the 2nd respondent. Furthermore, the subsequent writ petitions have been filed by some of the petitioners challenging the orders passed. Therefore, inasmuch as all the petitioners are similarly placed, this Court is not able to countenance the submission made in this regard.

Accordingly, the said submission is also rejected.

8.8. Nature of relief:

Learned Senior Counsel appearing for the 2nd respondent, while opposing the granting of relief to the six writ petitioners on the ground there was no appropriate qualification available, submitted that for other writ petitioners who have not joined and who have been issued with the impugned orders pursuant to which they are not working, back wages are not required to be paid. This submission has been made on the principle governing "no work-no pay". The learned Counsel for the petitioners submitted that taking into consideration of the over all situation appropriate orders are required to be passed and in any case the petitioners are entitled for continuity of service with all attendant benefits. From the averments made and after going through records it is abundantly clear that all the petitioners are always willing to work. Some of the petitioners are working and some others were not allowed to work inspite of the interim orders obtained. The other petitioners were not allowed to join in pursuant to the impugned withdrawal letters. Considering the above said facts, this Court is inclined to allow such of those writ petitioners who are working as on today in pursuant to the interim orders obtained. Insofar as the other writ petitioners who were initially working and thereafter not allowed to continue and those who were not even allowed to join this Court is of the view that they are not entitled for back wages. However, inasmuch as it is the 2nd respondent who prevented them from joining and working and substantial injury has already been caused to them, a direction is issued to the 2nd respondent to treat those who were working and thereafter terminated as continuing for the purpose of continuity of service and other attendant benefits. Those petitioners, who were not allowed to join, shall be allowed to count their services from the original date prescribed by the respondent to join duty. However, these two categories of the petitioners are not entitled for back wages as they are not discharging their duties. This order is also passed by taking note of the fact that the petitioners have left their jobs both within the country and outside and came to the 2nd respondent for working.

8.9. Decisions relied upon by the counsels:-

In view of the findings given both on facts and law, this Court is not inclined to go into the various decisions relied on at the bar from both sides. Therefore, all the decisions referred are not dealt with specifically though the principles laid down therein have been taken note of.

9. Conclusion:-

In the result, the impugned orders are set aside. The 2nd respondent is directed to continue the services of those writ petitioners who are working as on today. So far as the petitioners who were working and thereafter not permitted to work in pursuant to the termination orders, they shall be given continuity of service from the date of the termination orders and thereafter when they were

prevented from working, apart from the consequential benefits, except the back wages. Insofar as the petitioners who could not join in pursuant to the impugned orders, taking note of the peculiar facts of the case, they are entitled to count their service from the prescribed last date given by the respondent to join duty. However, they are also not entitled for any back wages. The writ petitions are allowed accordingly. Since the arguments have been heard in the writ petitions and final orders are passed, the contempt applications are closed. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.