

(2013) 03 BOM CK 0135

In the Bombay High Court

Case No : Writ Petition No. 3484 of 2012

Gajanan Laxminarayan Pedhiwal

APPELLANT

Vs

Sant Gadge Baba Amravati University and Others

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Maharashtra Universities Act, 1994 — Section 14(7), 57

Citation : (2013) 4 ABR 914 : (2013) 5 ALLMR 614 : (2013) 5 BomCR 154 :
(2013) 3 MhLj 727

Hon'ble Judges : Vasanti A. Naik, J

Bench : Single Bench

Advocate : U.N. Vyas, for the Appellant; J.B. Jaiswal, Counsel for R-1 to 3, Shri M.G. Sarda, Counsel for R-4 and 5 and Shri Anand Deshpande, Counsel h/f Shri Firdos Mirza, Counsel for R-6, for the Respondent

Final Decision : Allowed

Judgement

Vasanti A. Naik, J.—Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned Counsel for the parties. By this petition, the petitioner impugns the report of the Grievance Committee dated 9.7.2012 as also the communication issued by the Registrar of the Amravati University dated 12.7.2012, informing the petitioner that the Vice-Chancellor has by exercising the power u/s 14 (7) of the Maharashtra Universities Act, 1994 (hereinafter referred as "the Act of 1994" for the sake of brevity) accepted the report of the Grievance Committee, holding that the respondent no. 6 was senior to the petitioner.

2. The petitioner was appointed as a lecturer in the College at Washim on 30.11.1992. In the year 1995, the petitioner was declared as surplus in the College at Washim and was absorbed in the respondent no. 5 - College at Akola. The respondent no. 6 was also appointed as a lecturer in the respondent no. 5 - College at Akola in December, 1997. It is the case of the petitioner that the dispute in regard to the seniority inter se between the petitioner and the

respondent no. 6 was not raised by the respondent no. 6 at any point of time prior to 2008, when the respondent no. 6 filed a complaint before the Grievance Committee, alleging therein that the respondent no. 6 was senior to the petitioner and was eligible for appointment on the post of head of the department. The Grievance Committee decided the matter against the petitioner. Since the petitioner was not heard by the Grievance Committee before deciding the matter, the petitioner filed a writ petition. This Court allowed the writ petition filed by the petitioner and remitted the matter to the Grievance Committee for a fresh decision after hearing the petitioner. The petitioner appeared before the Grievance Committee and filed his written statement. It was pleaded by the petitioner before the Grievance Committee that the reliance placed by the respondent no. 6 on the circulars dated 19.7.1997 and 27.5.1997 for claiming seniority was misplaced as the circulars were stayed by the Government. It was also the case of the petitioner that according to the Statutes and Ordinances, the petitioner was entitled to be declared senior to the respondent no. 6, as the seniority has to be reckoned from the date of the initial appointment of the petitioner in the year 1992 in the College at Washim. The petitioner also sought for the dismissal of the complaint on the ground that the same could not have been filed after a delay of 10 years. The Grievance Committee after hearing the parties submitted a report dated 9.7.2012 and held that the respondent no. 6 was senior to the petitioner. The petitioner was then informed by the communication dated 12.7.2012, issued by the Registrar of the Amravati University that the Hon"ble Vice-Chancellor had accepted the report of the Grievance Committee u/s 14 (7) of the Act of 1994. A reference was also made in the order dated 12.7.2012 to the decision of the Management Council. The petitioner has impugned the report of the Grievance Committee dated 9.7.2012 as also the communication, issued by the Registrar, dated 12.7.2012.

3. The learned Counsel for the petitioner submitted that the report of the Grievance Committee is liable to be set aside as the Grievance Committee has not considered any of the submissions, made on behalf of the petitioner, for holding that the petitioner was senior to the respondent no. 6. It is submitted that the case of the petitioner that the circulars dated 19.7.1997 and 27.5.1997, on which respondent no. 6 relied, were stayed by the Government, was also not considered. In fact, according to the learned Counsel, the Grievance Committee illegally relied on the circulars dated 19.7.1997 and 27.5.1997, though they were stayed by the Government. It is submitted that the case of the petitioner that in accordance with the Statutes and Ordinances, the seniority of the petitioner ought to have been reckoned from the date of his initial appointment in the College at Washim on 30.11.1992, was not considered by the Grievance Committee. According to the learned Counsel, the order of the Grievance Committee is liable to be set aside as none of the relevant submissions made on behalf of the petitioner are considered by the Grievance Committee while answering the issue in favour of the respondent no. 6.

4. It is submitted on behalf of the petitioner that in view of the provisions of

Section 57 of the Act of 1994, it was necessary for the Grievance Committee to remit the report dated 9.7.2012 to the Management Council and though the impugned communication, issued by the Registrar dated 12.7.2012 makes a reference to the report of the Management Council, the report of the Management Council was never supplied to the petitioner and it appears from the submissions of the University that the same was not in existence on 12.7.2012, when the communication was issued to the petitioner. The learned Counsel submitted by relying on the documents annexed to the pursis filed on behalf of the respondent nos. 1 to 3 that there is nothing to show that the Hon"ble Vice-Chancellor had accepted the report of the Grievance Committee by invoking the power u/s 14(7) of the Act of 1994. It is submitted that while exercising the power u/s 14(7) of the Act of 1994, it is necessary for the Hon"ble Vice-Chancellor to record some reasons, if not many, that there is an emergency, which requires immediate action to be taken on the Grievance Committee's report without referring the matter to the Management Council as required by the provisions of Section 57 of the Act of 1994. According to the learned Counsel, there is nothing on record to show that the report of the Grievance Committee was accepted by the Hon"ble Vice-Chancellor u/s 14(7) of the Act of 1994. The learned Counsel submitted that the document at Annexure R - 2 does not show that the Hon"ble Vice-Chancellor had accepted the report of the Grievance Committee by invoking the power u/s 14(7) of the Act of 1994.

5. The learned Counsel for the respondent nos. 1 to 3 supported the orders passed by the Grievance Committee as also the Hon"ble Vice-Chancellor. It is submitted that the petitioner had not produced the Government Resolution, staying the circulars dated 19.7.1997 and 27.5.1997 before the Grievance Committee and therefore, the Grievance Committee had rightly decided the issue of seniority in favour of the respondent no. 6 by relying on the circulars. It is submitted that the petitioner was duly heard by the Grievance Committee and the petitioner cannot effectively challenge the report of the Grievance Committee. According to the learned Counsel, the Hon"ble Vice-Chancellor has jurisdiction u/s 14(7) of the Act of 1994 to take action by giving a go-bye to the procedure prescribed by the Act of 1994 in case of emergency and the decision of the Hon"ble Vice-Chancellor would be final. It is submitted that since the election to the Board of Studies was scheduled on 25.7.2012 and since it was necessary to submit the list of the heads of the departments by 16.7.2012, the Vice Chancellor had invoked the power u/s 14(7) of the Act of 1994 on 10.7.2012 and accepted the report of the Grievance Committee without sending the same to the Management Council as required by the provisions of Section 57 of the Act of 1994. It is submitted that after the Hon"ble Vice-Chancellor took a decision of accepting the Grievance Committee's report on 10.7.2012, the matter was referred to the Management - Council and the Management Council has approved the decision of the Hon"ble Vice-Chancellor by an order dated 25.7.2012. The learned Counsel submitted that it was not necessary for the Hon"ble Vice-Chancellor to record any reasons or even to state that he had

accepted the report of the Grievance Committee as the communication issued to the Hon''ble Vice-Chancellor showed that the report was submitted to the Hon''ble Vice-Chancellor for approval and signature. The learned Counsel sought for the dismissal of the writ petition.

6. The learned Counsel for the respondent no. 6 also supported the orders passed by the authorities and sought for the dismissal of the writ petition.

7. The learned Counsel for the respondent nos. 4 and 5 had nothing much to say in the matter and submitted that the issue of seniority inter se between the petitioner and the respondent no. 6 should be decided by the authorities in accordance with law.

8. On hearing the learned Counsel for the parties and on a perusal of the impugned orders as also the documents annexed to the petition and the reply filed on behalf of the respondents, it appears that neither the report of the Grievance Committee dated 9.7.2012 nor the action of the Hon''ble Vice-Chancellor u/s 14(7) of the Act of 1994 can be sustained. On a perusal of the written submissions filed by the petitioner before the Grievance Committee, it is clear that the petitioner had raised a specific ground that the circulars on which the respondent no. 6 relied for claiming seniority were stayed by the Government. The petitioner had also stated that in view of the Statutes and Ordinances the seniority of the petitioner ought to have been reckoned from the date of his initial appointment on 30.11.1992 in the College at Washim. It was also the case of the petitioner that the complaint was belated and was liable to be dismissed. On a perusal of the report of the Grievance Committee dated 9.7.2012, it is apparent that none of these submissions have been considered by the Grievance Committee or even referred to, in the report dated 9.7.2012. The submission made on behalf of the respondent nos. 1 to 3 that the petitioner had not filed any document before the Grievance Committee and therefore, the Grievance Committee was justified in relying on the circulars dated 19.7.1997 and 27.5.1997 is liable to be rejected. Firstly, it is the case of the petitioner that the Government Resolution, granting stay to the circulars dated 19.7.1997 and 27.5.1997, was placed before the Grievance Committee. A copy of the Government Resolution is annexed to the petition. Assuming that it was not placed, still it was necessary for the Grievance Committee to make a reference to the submission made on behalf of the petitioner about the stay to the circulars. The Grievance Committee would have been then justified in rejecting the submission of the petitioner on the ground that he had not produced the Resolution, staying the circulars. However, the ground raised by the petitioner in regard to the stay of the circulars has not been referred in the report of the Grievance Committee at all. So also, the case of the petitioner that the seniority of the petitioner ought to have been reckoned from the date of his initial appointment on 30.11.1992, was also not considered by the Grievance Committee. There is hardly any consideration of the submissions made by the parties on the issue of seniority. It was expected of the Grievance Committee to

have considered the submissions made on behalf of the petitioner before submitting the report dated 9.7.2012.

9. It appears from the impugned communication, issued to the petitioner dated 12.7.2012 that there was not only a report of the Grievance Committee but the Management - Council had also taken a decision on the issue. A reference to the same is made in the opening words of the communication dated 12.7.2012 and also in paragraph no. 3 of the communication. It is conspicuous to note that though the communication dated 12.7.2012 makes a reference to the decision of the Management Council, it is the case of the respondent nos. 1 to 3 in the reply filed in this Court that the Management Council had approved the decision of the Hon''ble Vice-Chancellor u/s 14(7) of the Act of 1994 only on 25.7.2012. If that is so, there should not have been a reference to the Management Council's decision in the communication dated 12.7.2012 at all.

10. Since the decision of the Hon''ble Vice-Chancellor u/s 14(7) of the Act of 1994 was never communicated to the petitioner at all, the Counsel for the respondent nos. 1 to 3 was asked in that regard. A pursis was filed on 18.3.2012 along with two documents Annexure R - 2 and Annexure R - 3. Annexure R - 2 are the notings of the Superintendent, which show that the Hon''ble Vice-Chancellor should exercise the power u/s 14(7) of the Act of 1994, as the list of the heads of the departments was to be submitted before 16.7.2012 for the election of the Board of Studies. It is stated in the notings that if the Hon''ble Vice-Chancellor is willing to accept the report of the Grievance Committee by exercising power u/s 14(7) of the Act of 1994, the same may be approved and signed by the Hon''ble Vice-Chancellor. It is necessary to note that there are more than five signatures below the said note. It is difficult to understand whether the Hon''ble Vice-Chancellor has actually signed on the note. Even if the Hon''ble Vice-Chancellor has signed on the note, there is no remark of the Hon''ble Vice-Chancellor in regard to either acceptance or the rejection of the report of the Grievance Committee or in regard to the exercise of the power u/s 14(7) of the Act of 1994. It was expected of the Hon''ble Vice-Chancellor to have recorded some reasons for holding that there was an emergency which required immediate action to be taken without following the normal procedure of sending the report of the Grievance Committee to the Management Council u/s 57 of the Act of 1994. The power u/s 14(7) of the Act of 1994 could be exercised by the Hon''ble Vice-Chancellor only if he is satisfied that there are reasonable grounds to believe that there is an emergency which requires immediate action to be taken. There is nothing on the document at Annexure R - 2 to show that the Hon''ble Vice-Chancellor was satisfied or the Hon''ble Vice-Chancellor believed that there were reasonable grounds which required immediate action to be taken. So also, the order of the Hon''ble Vice-Chancellor u/s 14(7) of the Act of 1994 was not supplied to the petitioner at all. It was necessary for the respondent no. 1 to have supplied the copy of the order of the Hon''ble Vice-Chancellor u/s 14(7) of the Act of 1994 to the petitioner. If the petitioner was aggrieved by the action taken by the Hon''ble Vice-Chancellor u/s 14(7) of the

Act of 1994, he was entitled to prefer an appeal to the Management Council within a period of 30 days in view of the proviso to Section 14(7) of the Act of 1994. It was impossible for the University to supply a copy of the order of the Hon"ble Vice-Chancellor u/s 14(7) of the Act of 1994 to the petitioner as there was no such order in existence. The note submitted by the Superintendent is merely signed by the Hon"ble Vice-Chancellor without a remark in regard to the acceptance of the report or a remark in regard to the exercise of the power u/s 14(7) of the Act of 1994. The entire action of the respondent nos. 1 to 3 is in violation of the provisions of the Maharashtra Universities Act. Serious prejudice has been caused to the petitioner in view of the inaction on the part of the Grievance Committee to consider the submissions of the petitioner and the further inaction on the part of the authorities to follow the provisions of the Act. There is nothing on record to show that the Hon"ble Vice-Chancellor had indeed accepted the report of the Grievance Committee or had exercised the power u/s 14(7) of the Act of 1994 for specific reasons. The submission made on behalf of the respondent nos. 1 to 3 that it is the usual practice in the University and of the Hon"ble Vice-Chancellor to just sign the office note and not to make any remark or record any reasons for either accepting the report while invoking the power u/s 14(7) of the Act of 1994 is outrageous. I have already referred herein above, the fact about the existence of the mere signature of the Hon"ble Vice-Chancellor on the said note along with the signatures of five other persons, if at all the Hon"ble Vice-Chancellor has really signed the same. Merely placing the report of the action taken by the Hon"ble Vice-Chancellor u/s 14(7) of the Act of 1994 before this Court is not enough as it was expected of the Hon"ble Vice-Chancellor to at least make some order while exercising the power u/s 14(7) of the Act of 1994. It is unfortunate that in this case there is none. Neither the report of the Grievance Committee dated 9.7.2012 nor the communication dated 12.7.2012 can be sustained.

11. Hence, for the reasons aforesaid, the writ petition is allowed. The impugned communication dated 12.7.2012 as also the Grievance Committee's report dated 9.7.2012 are quashed and set aside. The matter is remanded to the Grievance Committee for deciding the complaint filed by the respondent no. 6 afresh on merits in accordance with law. The Grievance Committee should decide the complaint as early as possible and within a period of three months from the date of appearance of the parties before the Grievance Committee. The Grievance Committee is expected to fix the first date of hearing in the month of April, 2013 and inform the parties about the same. Rule is made absolute in the aforesaid terms with no order as to costs.