

(1983) 06 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 604A of 1982

Gangadhar Yeshwantrao Bansode

APPELLANT

Vs

Chancellor, Marathwada University and Others

RESPONDENT

Date of Decision : 14-06-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Marathwada University Act, 1974 — Section 2(30), 20(1), 23(1), 86

Citation : (1983) 2 BomCR 452

Hon'ble Judges : S.J. Deshpande, J;G.M. Khandekar, J

Bench : Division Bench

Advocate : S.C. Bora and S.K. Kadam, for the Appellant; S.S. Choudhari, G.P., and K.G. Nawandar, for the Respondent

Final Decision : Allowed

Judgement

S.J. Deshpande, J.—The petitioner seeks to challenge the letter written by the Secretary to the Chancellor, the Marathwada University dated 30th September, 1982 at Exhibit "G" and a further letter dated 8th October, 1982 issued by the Registrar of the Marathwada University. By these letters, the petitioner was informed that his membership of the Senate and the Executive Council of the Marathwada University has ceased.

2. There is no dispute about the facts in this petition. The petitioner was appointed as a Lecturer in the Department of Chemistry of Devgiri College, Aurangabad in the year 1975. He is a confirmed teacher on the regular teaching staff of the said College. A Certificate at Exhibit "A" to the petition describes that he is a confirmed teacher and he is selected and sponsored for doing research as Teacher-Research Fellow under the Faculty Improvement Programme of the University Grants Commission in Marathwada University, Aurangabad, and he has been sanctioned academic leave as per the University Grants Commission Rules of Faculty Improving Programme of the Teachers. The letter further describes :---

"Shri G.Y. Pathrikar is on regular pay-roll and is paid the salary from the College

every month regularly from the salary grants sanctioned by Maharashtra State and the salary of the substitute is paid from the University Grants Commission grants as per rules."

3. The petitioner says that he was elected as a Member of the Senate on 23rd March, 1978 from the Teachers' Constituency vide section 20(1)(b)(iii) of the Marathwada University Act, 1974 (Mah. Act No. XXV of 1974) (hereinafter referred to as "the said Act").

Subsequently, on 18th July, 1978, the petitioner was further elected as a Member of the Executive Council vide section 23(1)(viii) of the said Act for a period of three years. After the completion of three years, the petitioner was again elected as a Member of the Executive Council on 26th March, 1981 for a further term from 18th July, 1981 till the expiry of three years. The petitioner, being a Teacher, is the Member of the Senate and the Executive Council of the Marathwada University. The letter of the Registrar accepting his status as such is at Exhibit "B" which is dated 26th March, 1981. It states :---

"I am to State that under the provisions of section 23(1)(viii) of the Marathwada University Act, 1974 you have been declared elected to be the member of the Executive Council at the meeting of the Senate held on March 26, 1981.

Your term of office to the Executive Council will be for a period of 3 years from July 18, 1981 or till you remain as a member of the Senate, whichever is earlier."

4. In pursuance of a scheme sponsored by the University Grants Commission, the petitioner was selected for the Teacher Fellowship Programme. The University Grants Commission has sponsored a Teacher's Fellowship Programme under its Teachers' Fellowship Scheme. This scheme was in operation in the year, 1975 and an extract of the report for the year 1979-80 in respect of this scheme is on the record at page 22 of the Paper Book. It is disclosed from this report of the scheme that fellowships are available under the scheme, which are of two types : (1) short-time fellowship of one year's duration; and (b) long-term fellowship of three years' duration. Teachers selected under the award are entitled to a living expense allowance of Rs. 250/- per month from the University Grants Commission (in case the place of research is away from their normal place of duty) along with a grant of Rs. 1,500/- per annum for contingencies. The colleges concerned are entitled to the salary of the substitute who may be appointed in accordance with the rules framed by the State Government or the University concerned. It is not necessary to give the details of the scheme, because it is an undisputed fact that in pursuance of this scheme, the petitioner was selected under the terms of this scheme for the Teacher Fellowship.

5. By a letter dated 21st September, 1981, the Registrar of the Marathwada University wrote to the Principal, Devgiri College that the petitioner has been selected by the Department for the award of Teacher Fellowship under the University Grants Commission Faculty Improvement Programme. As per the terms and conditions framed by the University Grants Commission, the College

authorities are required to continue to pay the salary along with all allowances to the teacher for the entire period of his fellowship in the Department of Chemistry. The Teacher Fellowship awarded to Shri G.Y. Bansod (the petitioner herein) is for three years. The College authorities are required also to give him the increments as and when due and protect his seniority and take him back in his substantive post on completion of his fellowship. The teacher is required to join the Department under the fellowship awarded to him by 1-10-1981 failing which the award may be withdrawn. The principal is also requested to issue a certificate that the teacher selected is a confirmed employee of the Senior College. Then, the second paragraph of the said letter is not very material, which refers to the payment of certain charges for rail or bus fare that would be admissible for joining the research and also return fare on completion of the fellowship by the shortest route. The third paragraph of this letter shows :---

"The College would be entitled to receive the salary (basic plus other admissible allowances) from the UGC towards the pay and allowances of the substitute who may be appointed in place of the teacher selected under the Faculty Improvement Programme as per rules and terms and conditions laid down by the University/the State Government under the recently-introduced salary revision of teachers in Colleges with the approval of the University to which the College is affiliated as well as with the approval of the State Government. The College may intimate the name, qualifications, etc., of the teacher appointed as substitute with the approval of the University/State Government. Then the Registrar has requested to intimate the date by which the teacher will be granted academic leave so as to enable him to take up the research in the department under the Teacher Fellowship Programme. This letter was, as stated earlier, addressed to the Principal of the College giving the conditions of the award of Teacher Fellowship under the University Grants Commission Scheme of the Faculty Improvement Programme.

6. In pursuance of the terms of the above letter, it appears that the college was pleased to sanction academic leave to the petitioner as per the rules of the University Grants Commission framed under the Faculty Improvement Programme for Teachers. He was awarded the Teacher Fellowship under the University Grants Commission's Faculty Improvement Programme for teachers and the petitioner says that he continues to be a teacher and he is taking regular salary from the college. The petitioner has also endorsed the necessary declaration to serve the institution and at the same time, the University has also given an undertaking to protect the total emoluments of the petitioner, who is a teacher, for the period of his academic leave and also to give the petitioner necessary increments as and when due. The University has further undertaken to take back the petitioner in his substantive post without affecting his seniority and other benefits enjoyed by him previously. The said declaration and undertakings are contained in Exhibit "E", which are not necessary to be quoted.

7. The petitioner says that he joined the Teacher Fellowship Programme on 1st

October, 1981 and he is getting the regular salary of a teacher. The petitioner says that being a member of the Senate and also the Executive Council of the University, the petitioner is taking active interest in the University activities also.

8. On 8th October, 1982, the petitioner received a letter that on some representation made to the Chancellor of the University, the Secretary to the Chancellor called for some information about the membership of the petitioner of the Senate and the Executive Council of the University. This letter is written by the Registrar of the University to the petitioner. It states that the Secretary to the Chancellor has now vide his letter dated September 30, 1982, informed the Vice-Chancellor about the ruling given by the Chancellor in this behalf. The Registrar states in this letter that the petitioner was elected to the Senate u/s 20(1)(b)(iii) of the said Act being a teacher in one of the affiliated colleges and the petitioner was elected to the Executive Council by the Senate in July, 1978 and further from 1981, u/s 23(1)(viii) of the said Act. The Registrar further stated in the said letter that the term "teacher" is defined in Statute 3 made u/s 2(30) of the said Act in accordance with the position of different section of the said Act and taking into consideration the petitioner's present status as being a full-time research student under the Faculty Improvement Programme, the petitioner was obviously not imparting any instruction in the college and, therefore, the petitioner should not be a "teacher" within the meaning of Statute 3 made u/s 2(30) of the said Act. The Registrar further goes on to state that the Secretary has further informed that since the petitioner was not a "teacher", the petitioner would cease to be a member of the Senate and consequently a member of the Executive Council. And, therefore, the Registrar has stated that the Petitioner has ceased to be the member of the Senate and also the Executive Council of the University, on the basis of the ruling given by the Chancellor, with immediate effect. The petitioner says that it was a bolt from the blue to the petitioner to have been informed that his membership has ceased without calling for any explanation and giving any opportunity to the petitioner for making his representation in this regard. This is the specific grievance made by the petitioner in paragraph 8 of the petition.

9. The petitioner then approached the Registrar by his application dated 11th October, 1982 demanding the copy of letter dated 30th September, 1982 containing the ruling of the Chancellor. A copy of letter dated 30-9-82 was issued to the petitioner, which is annexed to the petition as Exhibit "G". This letter is addressed to the Vice-Chancellor by the Secretary to the Chancellor. The subject of the letter is "Membership of Shri Gangadhar Y. Pathrikar, Teacher Fellow, on the Senate and the Executive Council".

The letter as a whole may be quoted as follows :---

"With reference to the Registrar's Letter No. Acad/III/Ruling/82/2372 dated 5/6 May 1982, on the subject mentioned above, I am directed to convey the Chancellor's ruling in the matter as follows :-

"Shri G.Y. Pathrikar was elected on the Senate on one of the affiliated colleges u/s 20(1)(b)(iii) of the Marathwada University Act, 1974, and from the Senate he was elected to the Executive Council on 18-7-1978 for a period of 3 years u/s 23(1)(viii) of the Act *ibid*. The proviso to section 20(1)(b) of the aforesaid Act provides that a person elected under sub-clauses (i) to (xvi) of Clause (b) shall cease to be a member of the Senate as soon as he ceases to be a member of the electing body or bodies, as the case may be. Statute 3 of the Statutes made by the Senate provides that within the meaning of section 2(30) of the aforesaid Act, the term "teacher" means Principal, Dean of College, Professor, Associate Professor, Reader, Lecturer in the Senior Scale, Lecturer in the Junior Scale, Demonstrator, Tutor, Master of Method, Honorary Teacher, Part-time Teacher, Director of Physical Education or physical Instruction imparting instruction for not less than four periods a week or guiding research leading to a Ph.D. degree in any conducted, constituted or affiliated college or an institution or a University Department. Shri Pathrikar being a full-time research student under the Faculty Improvement Programme could not be imparting any instruction in the college, and therefore, he would not be a "teacher" as defined. Shri Pathrikar would, therefore, cease to be a Member of the Senate as also the Executive Council."

The petitioner says that the contention of the Chancellor reflected in the said letter that he has ceased to be a "teacher" within the meaning of section 2(30) of the said Act read with Statute 3 is not correct and he seeks to challenge, the same in this petition. Respondent No. 1 to the petition is Chancellor, Marathwada University; respondent No. 2 is the Vice-Chancellor of the Marathwada University. Respondent No. 3 is the Registrar and respondent No. 4 is the State of Maharashtra.

10. A return was filed by the Registrar-respondent No. 3 on behalf of respondents Nos. 2 and 3 and another return was filed by the Secretary to the Chancellor on behalf of respondent No. 1. The contention of the respondent in the return is that the petitioner has ceased to be a member of the Senate as he has been elected for Teacher Fellowship and it is further contended that the interpretation by the Chancellor on section 2(30) of the said Act read with Statute 3 is quite correct. It is further mentioned in the return u/s 86 of the Act, that there was no need to give any hearing to the petitioner as there is no such procedure laid down. The main ground on which the petition is resisted is that the petitioner has ceased to impart instruction, and a teacher who ceases to impart instruction ceases to be a "teacher" within the meaning of section 2(30) of the said Act read with Statute 3. It is further stated in paragraph 18 of the return of respondents Nos. 2 and 3 that during the academic leave the petitioner carries on research as a student and the substitute appointed in his place imparts instruction as a teacher within the meaning of the said Act. Therefore, it is stated that the interpretation put by the Chancellor is quite correct and the Chancellor was competent to decide this question u/s 86 of the said Act.

11. The return filed on behalf of respondent No. 1 is on the same lines and

maintains that the definition given in section 2(30) read with Statute 3 of the said Act disqualifies the petitioner from being a "teacher" within the meaning of the said Act. It is stated that the petitioner was elected as a member from the "Teachers" Constituency and under the provisions of section 20(1)(b)(iii) of the said Act if he ceases to be a member of the teachers' constituency, he cannot continue as an elected member of the Senate as well as the Executive Council. Respondent No. 1 relies on section 23(1) of the said Act and supports the ruling of the Chancellor given in this case. The factual position of selection of the petitioner and award of Teacher Fellowship is not disputed in the petition. The conditions of the award are also not disputed.

12. In view of the claim made in the petition and the replies by the respondents, the controversy narrows down to the determination of the status of the petitioner in the light of the provisions of the said Act.

13. Section 2 of the said Act is the definition. In Clause (30) of section 2, "teacher" is defined as follows :---

"Teacher" means a full-time Professor, Associate Professor, Reader, Lecturer, Demonstrator, Tutor, Master of Method or Director of Physical Education, if any, in any conducted, constituted or affiliated college or recognised institution in the University, and includes any other persons, imparting instruction or guiding research, whether serving full-time or part-time or in an honorary capacity, who are designated to be Teachers by the statutes made on the recommendation of the Academic Council.

Provided that any such statutes may also declare that any class of persons, whether serving full-time or part-time or in an honorary capacity, shall not be Teachers for the purposes of this Act."

In statute 3 of the statutes framed under the said Act, the definition of "Teacher" is as follows :---

"Within the meaning of section 2(30) of the Act, the term "Teacher" means Principal, Dean of a College, Professor, Associated Professor, Reader, Senior Lecturer, Lecturer in the Senior Scale, Lecturer in the Junior Scale, Demonstrator, Tutor, Master of Method, Director of Physical Education or Physical Instruction imparting instruction for not less than four periods a week or guiding research leading a Ph.D. degree in any conducted, constituted or affiliated college or an institution or recognised institution or a University Department."

14. Shri S.C. Bora, learned Advocate for the petitioner, first of all contended that the letter dated 8th October, 1982 and the ruling given by the Chancellor, which is reflected in the letter dated 30th September, 1982, communicated to the petitioner, is quite illegal. No one attacked these letters on the principal ground that assuming that the petitioner was disqualified on the basis of the interpretation put by the respondents on the relevant section, he had no opportunity to represent his case. He was not given any chance to put forth his

case before the Chancellor and the ruling given by the Chancellor in the absence of any explanation of the petitioner on the record is violative of principles of natural justice. He contended that section 86 of the said Act does not authorise the Chancellor to exercise his powers disregarding the principles of natural justice. Section 86 of the said Act runs as follows :---

"If any question arises regarding the interpretation of any provision of this Act, or any Statutes, Ordinance, Regulation or Rule or whether a person has been duly elected or appointed as, or is entitled to be, a member of any authority or body of the University, the matter may be referred, on petition by any person or body directly affected, or suo motu by the Vice-Chancellor to the Chancellor who shall, after taking such advice as he thinks necessary, decide the question and his decision shall be final :

Provided that, such reference shall be made by the Vice-Chancellor to the Chancellor only upon a requisition signed by not less than twenty-five members of the Senate."

It is true that the said section does not lay down any procedure. The learned Advocate for the petitioner contended that the Chancellor is to decide the question and his decision is final u/s 86. In this case, on what basis the Chancellor made inquiries and how the information reached him is not known. The petitioner's status as an elected member of the Senate and the Executive Council was in dispute. The Chancellor might have been guided by any advice he has taken and may be right also, but the decision of the Chancellor affecting the status of the petitioner causes injury to his legal right and this injury, being serious, has affected adversely his status and, therefore, a hearing was necessary under the principles of natural justice. Shri Bora relied on a judgment of the Supreme Court in *A.K. Kraipak, and others v. Union of India and others* AIR 1970 A.C. 150 wherein it was laid down that whenever a complaint is made before a Court, that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. In the present case, the following three facts are apparent; the petitioner had an elected status; the petitioner was member of the Senate : he was elected for a term of three/six years and his term had not expired. He was entitled to enjoy this status for a full period of three years. Against this background, if his status was affected by any order passed by the Chancellor, it was essential that he must have been given an opportunity to present his case or to participate in any inquiry made by the Chancellor in this regard. The Supreme Court has observed in the above judgment that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. The Supreme Court was dealing with the case of an administrative authority like a selection board and the question whether

administrative authorities act quasi judicially was also answered by the Supreme Court and it is now beyond controversy that the concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially is in essence, nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. In the facts of this case, it is clear that the petitioner's status as an elected member was in dispute and it must be implicit in the provisions as found in section 86 of the said Act that the authority like the Chancellor was vested with the power to decide the question and it must be inferred that the question could not be decided except by following the principles of natural justice in such matters.

15. The learned Advocate for the respondents contended that as there is no procedure provided u/s 86 of the said Act to give any notice to the petitioner before deciding this question, the failure to give notice is not fatal to the case. It was also contended that since the question decided by the Chancellor has got finality u/s 86 of the said Act, it cannot be reopened. It was stated that it was not necessary to follow the principles of natural justice and to give any opportunity to the petitioner in this matter. We are afraid that the contention raised by the respondents cannot be accepted. Apart from the above ratio laid down by the Supreme Court in the said judgment, which we have quoted above, it is now well settled that the principles of natural justice must be followed in a case where a petitioner's right is being taken away. The violation of the principles of natural justice makes the decision of any authority valid. Kindly see (*Ridge and Baldwin and others*) (1964) A.C. 40, wherein it is observed that alternatively, where natural justice is not observed, that is akin to acting without jurisdiction and results in the decision being a nullity. This was a case of a dismissal of a chief constable and it was against this background that the provisions of the Act, which was being considered in this particular case, provided that the order was final and binding that it was held by the House of Lords that not following the rules of natural justice is akin to acting without jurisdiction. Here the Watch Committee's decision was in dispute before the Court. The petitioner in this case has a legitimate grievance that before an adverse ruling was given by the Chancellor, he was entitled to notice of the grounds on which the Chancellor has based his decision. The question of natural justice is to be appreciated in its spirit. Whether the power could be exercised by the Chancellor having regard to the rules of natural justice, that is, by giving the petitioner notice of the grounds and allegations which the Chancellor was deciding, is a matter to be considered in this case. The petitioner here was deprived of his office. This office is of an elected member of the Senate. It is an office of a public character. He was entitled to the enjoyment of this office by virtue of his election for a period of three years as the term of the office was yet to be completed. It is well-settled that the requirement of natural justice cannot be limited only to give adequate hearing, but there must be adequate notice of the grounds, which are to be met by the petitioner and for which he must have a

reasonable opportunity to put his case. The petitioner in this case did not have any hearing of the kind required by the rules of natural justice. In the case where rights of citizens are involved, the Court will have to necessarily see that there is an inquiry and necessity to act judicially, that is, by giving opportunity to the aggrieved party to place his case, is a must. This is the principle of fairness and it is on this principle that the order of the Chancellor in this case is assailed by the petitioner. If this grievance is accepted, the petition must succeed only on this point as it is undisputed that the petitioner was not given any opportunity before the ruling of the Chancellor was made in this case. Replying on the ratio laid down in the above two cases, we hold that in this matter, on the facts of this case, the petitioner was being deprived of his important right as a member elected to the Senate and the Executive Council of the University. It was not correct on the part of the Chancellor to have made inquiries and give a decision without following the principles of natural justice. It may be that the Chancellor has performed an administrative task, but the effect of his decision is deprivation of a right of the petitioner. Whenever an authority is vested with a power to make inquiry and give final decision and if it affects the right of the party, the authority performs a quasi judicial task and if such quasi judicial task is performed disregarding the principles of natural justice, the consequence of this is that the decision of the said authority is not in accordance with law. We therefore, hold that the ruling of the Chancellor in this case is vitiated by the violation of the principles of natural justice.

16. We have heard both the parties on the controversy raised in this petition in regard to the interpretation of section 2(30) of the said Act. The contention of the learned Advocate for the petitioner is that the definition of "teacher" contains two parts. According to him, imparting of instruction or guiding research is not a necessary condition for a teacher to be so within the meaning of definition clause under the said Act. It was contended by the learned Advocate for the petitioner that the word "and" used in the said definition is an adjective conjunction. It joins two independent clauses. The teacher is defined as a full-time professor, associate professor, reader, etc. The petitioner is a lecturer. It was contended that he is appointed to the post of a lecturer and there is no condition that he must first impart instruction in order that he may occupy that post. It may be that the appointment to the post involves imparting instruction, but inasmuch as the definition as it stands in the first clause, a further condition of imparting instruction should not be attached to the word "teacher" used in section 2(30) of the said Act.

17. In order to interpret this definition, it is important to bear in mind certain principles of interpretation. The petitioner claims to be a lecturer. His claim is based on the fact that he is appointed as a lecturer. This right which the petitioner has claimed, is a right within the domain of his status. It is his legal status as a teacher, which is to be determined, on the basis of the definition given in the said Act. The definition given in the said Act shows that the words of the first part of the clause do not put any condition except that he must be a full-

time professor, associate professor, lecturer, tutor, reader, etc., in any conducted, constituted or affiliated college or recognised institution in the University. The word "means" has been used. When the word "means" has been used by the Legislature, whether this word exhausts the contents of the term defined, is to be seen. In our opinion, the first clause before the word "and" in this definition completely exhausts the significance of the term defined and there is no scope for any other inter-relation or construction of the word "teacher" in any other sense. On the plain reading of the words used in section 2(30) of the said Act, the word "teacher" must mean a person, who is appointed to the post of a professor, associated professor, lecturer, etc. Once he is appointed of that post, he is a full-fledged "teacher" within the meaning of section 2(30) of the said Act.

18. The word "and includes" which are used in this definition will now have to be considered. The words "and includes" denote and suggest that the meaning of "teacher" contained in the first clause has been enlarged and word "includes" is ordinarily employed to denote something less of category than those mentioned in the first or earlier clause and such others have been included, who fall outside the category that precedes it and the wording of the definition shows that any other person than a teacher imparting instruction or guiding research, whether serving full-time or part time or in an honorary capacity who is designated to be Teacher by the statutes made on the recommendation of the Academic Council is included in the said definition. This clause requires two things in order that it includes any other person other the teachers who are already appointed. The word "includes" shows that something which is not included in the previous clause is added and this is added with a qualification of imparting instruction or guiding research and by a further condition that they are designated to be teachers by the statutes. Therefore, the designation by the statutes and imparting of instruction or guiding research as full time or part time or in an honorary capacity will only give any other person the character of a teacher. The proviso is that any such statute may also declare that any class of persons, whether serving full-time or part-time or in an honorary capacity, shall not be teachers for the purposes of this Act. Reading the proviso with the other disjunctive clause mentioning the two conditions, it is possible to infer that the meaning of the word teacher" as found in the first clause is different than the meaning to be given to the other clause which states that any other person also may be a teacher provided he is imparting instruction or he is designated as such. In our opinion, the word "includes" here must be and is a word of extension and it is so held, then the contention of the petitioner that he is only appointed as a lecturer and, therefore, he is a "teacher" within the meaning of section 2(30) of the said Act seems to be well-founded.

19. The learned Advocate for respondents Nos. 2 and 3 contended that in the context and object, which is sought to be achieved by the said Act, and especially by the Teacher Fellowship award, imparting of instruction is a necessary condition for being a "teacher". Generally, this would be correct. But, in the special context of the definition given in this Act, as the Legislature has not

chosen to give that particular character to the word "teacher" we are not inclined to accept the contention made by the respondents. The words used in a definition must be given such interpretation which would advance the object of the Act. The purpose of fellowship in this particular case is to advance the learning and standard of the teacher himself. It is designated as Teacher Fellowship. It was contended rightly by the petitioner that the very fact that the Fellowship is designated as such indicative of the fact that the continuance of the status of a person holding the post of a teacher is necessary. Merely because some research is done and some work of student is done by the teacher in pursuance of the terms of the fellowship, it cannot be said that the teacher is converted into a student. The definition of the word "teacher" in this particular Act does not warrant any such construction.

20. The respondents in this connection relied on a judgment of the Kerala High Court in support of their contention. The said judgment is *S. Balaraman v. The Chancellor, University of Kerala* and another I.L.R.1980 Ker 256. This was a judgment delivered by a Division Bench of that Court on a reference having been made to it by a Single Judge. A copy of the said decision was presented to us during the course of hearing and the definitions of "teacher" and "student" were considered by the learned Judges of that High Court. Section 2, Clause (27), of the Kerala University Act, 1974, defines the expression "teacher" as follows :---

" "teacher" means a principal, professor, associated professor, assistant professor, reader, lecturer, instructor, or such other person imparting instruction or supervising research in any of the colleges or recognised institutions and whose appointment has been approved by the University."

Clause (24) of the same section 2 of that Act give the definition of "student" as follows :---

" "student" means a part-time or full-time student receiving instruction or carrying on research in any of the colleges or recognised institutions."

The learned Advocate for the respondents relied on this decision wherein the Kerala High Court has said that the petitioner therein ceased to be a "teacher" because he was receiving instruction and not imparting it.

21. We are unable to accept this contention that the decision of the Kerala High Court can be made applicable to the facts of the present case, for that decision is quite distinguishable on two grounds. In the case with which that High Court was dealing, the member of the Senate, the teacher concerned, was on deputation from 1st September, 1977 to 31st August, 1978 and as per the conditions of the order of deputation, Ext. P-3, he was to qualify himself as a fellow in M. Phil. Course in Aquatic Biology and Fisheries. The terms of Ext. P-3 are not mentioned in the said judgment. We do not know what were the actual terms and conditions of Ext. P-3 and whether that deputation disqualified the petitioner therein to be a teacher cannot be decided on a mere reference to the fact that he was deputed and he was to have a further study. In our case, the terms and conditions for

Teacher Fellowship are admitted by the respondents. The petitioner's status as a teacher continues for three years; he is granted academic leave; his emoluments on the post are protected; his seniority is maintained; and his lien on the post is also maintained and he is to get the seniority from the point from which he left the post for Teacher Fellowship. In the present case, all the benefits including the seniority and the right to post are protected and the petitioner continues to hold that post in the eyes of law. In the case before the Kerala High Court, it is not possible to say whether the person sent on deputation was enjoying such benefits under the terms of that deputation.

22. Secondly, the definition given in that judgment is clearly distinct, because the word "or" is used there and it is possible to say that the person "imparting instruction or supervising research in any of the colleges" can duly qualify the word "teacher" used in that definition. The definition of "teacher" is also followed by the definition of student and it is the antithesis between the two definitions which was considered by the Kerala High Court and it is held that while the "teacher" imparts instruction, the "student" receives it. This was the antithesis between the "teacher" and the "student" which was a part of the discussion before the Kerala High Court and, therefore, it held that the teacher while receiving instructions becomes a student. The question is whether a "teacher" designated as Teacher Fellow ceases to be a "teacher", merely because for the purposes of further research, he follows certain functions like a student. In the present case, the petitioner claims to have an award of Teacher Fellowship. The word "teacher" is defined in dictionaries, but we need not go to them when the Act itself has defined the word. The fellowship means a companionship in some work. If fellow is interpreted in that sense, we do not see how a "teacher" by following some companionship in study ceases to be a teacher and becomes a student. In our opinion, the judgment of the Kerala High Court is of no assistance to the respondents. The terms and conditions of Teacher Fellowship set out in letter. Exhibit "C", do not show that there was any restriction imposed on the petitioner's activities. It may further be noted that the teacher fellowship means fellowship for teacher. So, the continuance of the status of a teacher is an essential element in the expression "teacher fellowship". So, it is not possible to hold that the petitioner has ceased to be a "teacher" by pursuing fellowship in this case.

23. On behalf of respondents Nos. 1 and 4, the learned Government Pleader appeared and supported the arguments made by respondents Nos. 2 and 3. No other contention was raised on behalf of respondents Nos. 1 and 4 by the learned Government Pleader.

24. The definition clause in statute serves particular purpose. It assigns certain meanings to certain words and those meanings are to be given throughout the Act. The thing defined in the Act has to be confined to the context in which the word is used and all other instances and incidents, which may be attached, cannot be attributed to enlarge or diminish the meaning of a word defined in the

Act. It does not, therefore, follow that, as the teacher is defined in this Act and the word "teacher" is being used in conjunction with fellowship for a particular functioning, it attracts all the incidents of a functioning of a student and, therefore, a teacher not imparting instruction ceases to be a teacher within the meaning of the said Act.

25. On the plain reading of the definition of the word "teacher" as used in section 2(30) of the said Act, it is not possible to accept the contention of the respondents that the petitioner has ceased to be a teacher within the meaning of the said expression given in the said Act. In our view, the word "teacher" used in the first part of the definition will have to be assigned its ordinary and natural meaning, that is, the person who is appointed to the post of a lecturer or to any other post, viz., professor, associate professor, etc., mentioned in the said definition as a "teacher". This meaning accords with reason and commonsense, because whenever, a "teacher" means professor or a lecturer, it must indicate that he is appointed to the post of a professor or lecturer etc. In this view of the matter, we think that since there is no qualification or any condition, mentioned in the first part of the definition, a teacher means a person appointed to the post of a lecturer or to the post of a professor or reader or to any other post, which is mentioned therein. We think that there is no necessity to import any condition of imparting instruction of him, as his appointment is to the post.

26. It was then contended by the respondents that Statute 3 requires that imparting instruction for not less than four periods a week or guiding research leading to a Ph. D. degree in any conducted, constituted or affiliated college or an institution or recognised institution or a University Department is necessary in order to make a person a teacher. Now, if this Statute 3 is taken to amplify the meaning of the word "teacher" under in section 2(30) of the said Act, we think that the said Statute 3 is beyond the powers of the authorities concerned. Section 38 of the said Act provides for the manner for making the statutes. In sub-section (4) of section 38, it is said :---

"Every statute passed by the Senate shall be submitted to the Chancellor who may give or withhold his assent thereto or refer it back to the Senate for consideration."

The copy of the statutes, which is handed over to us during the time of hearing, does not show that any assent was given to it by the Chancellor. It does not express anywhere that such an assent has been given. Normally, it should show that they are assented by the Chancellor as provided by section 30(4) of the said Act. However, we are just mentioning this fact as it has come to our notice. We are assuming that these statutes are valid and they are assented by the Chancellor, although there is no express assent shown on the statutes as such. These statutes are framed u/s 37 of the said Act, which falls in Chapter V, headed as "Statutes, Ordinances and Regulations." Section 37 of the said Act itself states as follows :---

"Subject to the conditions prescribed by or under this Act, the Senate may make statutes to provide for all or any of the following matters namely :-"

"The wording of section 37 "subject to the conditions prescribed by or under this Act" restricts the power of the Senate to make statutes which may not either extend the meaning of the terms used in the Act or curtail the provisions of the Act. The words "prescribed by or under this Act" clearly show that section 2(30) of the said Act could not have been varied or altered by adding further conditions by the statutes. Statute 3 in the present case inasmuch as it adds the condition of imparting instruction to the word "teacher" used in section 2(30) of the said Act goes beyond its power referred u/s 37. It is not necessary for us to decide whether Statute 3 is beyond the powers of the senate. However, on plain reading of Statute 3, we think that Statute 3 in prescribing a condition of imparting instruction has introduced a condition in the first part of the definition which the Act does not authorise. In our opinion, Statute 3 is in conflict with the provisions of first part of definition given in section 2(30) of the said Act, and, therefore, to that extent, it will not be operative to control the definitions given in the said Act, and, therefore, the respondents cannot place any reliance on Statute 3 to support their action."

28. The respondents have relied on the proviso to section 20(1)(b) of the said Act, which deals with the cessation of the membership of elected persons. The petitioner was elected from the constituency of teachers. The proviso consists of several clauses. It is not necessary to recite all those clauses. The proviso states as follows :---

"Provided that, a person elected under sub-clauses (i) to (xvi) of Clause (b), shall cease to be a member of the Senate as soon as he ceases to be a member of the electing body or bodies, as the case may be."

The petitioner is a member of the Senate, which is one of the authorities mentioned u/s 19 of the said Act. The words used in the proviso that "a person shall cease to be a member of the Senate as soon as he ceases to be a member of the electing body or bodies, as the case may be", requires to be considered. The reference to electing body or bodies, in the case of the petitioner must mean reference to his constituency, that is, the body of teachers. Under Statute 28, framed u/s 20 of the said Act, it is provided that teachers, other than principals of autonomous, conducted, constituted or affiliated colleges, heads of recognised Institutions, or heads of University Departments, shall elect twenty-five teachers from amongst themselves under the provision of section 20(1)(b)(iii) of the Act; and in Statute 29, it is provided thus :---

"In the case of elections to the Senate u/s 20(1)(b)(iii) of the Act..... the Registrar shall have a roll prepared of all the teachers..... in the preparation of the roll of teachers, the names of only such teachers shall be included in the roll as are, on the date of preparation, teachers as defined in section 2(30) of the Act, except the Library Staff and non-teaching staff in the

University and colleges."

As we have held that the petitioner is a teacher within the meaning of that expression as defined in section 2(30) of the said Act, the petitioner continues to be holding the status of a teacher as defined under the said Act. It requires to be noticed that belonging to the class of teachers is itself belonging to a certain profession, such as the profession of divinity, profession of law or profession of medicine. The petitioner in order to become a teacher must have been qualified in some branch of learning and it must be held that on the basis of such qualifications, he is appointed to hold the post of a lecturer. The fact that he holds the posts of a lecturer means that he has some status in service. This status of being a lecturer cannot be terminated except on the abolition of the post which he holds or his termination from service in accordance with the rules. The petitioner, once he is appointed to the post of a lecturer, must continue in his post as a teacher till he himself resigns or he is terminated. His status as a teacher cannot come to an end merely by pursuing some activity, which is not otherwise inconsistent with his calling. In this view of the matter, we do not think that the petitioner ceases to be a member of electing body, that is, the petitioner ceases to be a member of the teachers' body in accordance with the said proviso.

29. We do not think that the activity of Teacher fellow can in any way come in the way of the representation of the constituency in the Executive Council. In this connection, it was specially contended by the respondents that a substitute, who is appointed in place of the petitioner, will be entitled to represent and will be a competent person to represent the constituency. It was mentioned that a substitute can be appointed, but it was not specifically shown that any substitute is working in place of the petitioner. We are assuming for the purpose of arguments that a substitute is appointed in place of the petitioner. However, in view of the special undertaking given by the University in this case and the protection guaranteed to the petitioner, as also that his emoluments attached to the post of a lecturer are fully protected, it is not possible to say that a substitute, who will work in his place can deprive him of him of his benefits of that post. If that view is correct, we do not see how a substitute appointed in place of the petitioner can affect his right to represent the constituency of which he is an elected member. In our opinion, the appointment of a substitute in place of the petitioner cannot deprive the petitioner of his right to hold his elected office and we think it unreasonable that an elected person should be deprived of his office merely because he has been awarded a fellowship, although the award itself does not mention any such condition by reason of which his rights in any way are going to be affected. We have seen the conditions of the award, but there is nothing in the conditions and the terms of the award to show that the Teacher Fellowship award given to the petitioner is exclusively of such character that any other activity is excluded.

30. There is another reason why the contention of the respondents has got to be rejected. The petitioner is working in the same premises. He is not away from

the place of study. He is not away from the place of the University. In case petitioner would have been away from the place of the University, it is quite possible to say that it would have been practically impossible for the petitioner to participate in the proceedings of the Executive Council or the senate as elected member thereof. In this case, as the petitioner is not away from the place of the University campus, the meetings of the Executive Council and the Senate, which are held in the same campus, can be attended by him. In this view of the matter, it will be most unreasonable to deprive the petitioner of his right to represent the constituency of which he is a duly elected member. Both on the ground of expediency and on the ground of law, as we have mentioned above, we think that the contention of the petitioner that he cannot cease to be a "teacher" is well-founded.

31. In the result, the petition is allowed. Writ of certiorari quashing the letter of the Secretary to the Chancellor dated 30th September, 1982 and that of the Registrar, Marathwada University, Aurangabad, dated 8th October, 1982 to issue. Rule earlier issued is made absolute with costs against respondents Nos. 2 and 3 only.