
(1998) 07 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 928 with Writ Petition No. 1031 of 1994

Jagannath Joshi and another

APPELLANT

Vs

North Maharashtra University and others

RESPONDENT

Date of Decision : 17-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

North Maharashtra University Act, 1989 — Section 11, 112, 2(1), 2(32), 2(33)

Citation : (1999) 4 BomCR 123

Hon'ble Judges : A.D. Mane, J;A.B. Palkar, J

Bench : Division Bench

Advocate : G.P., C.S. Deshmukh, A.B. Naik, S.S. Choudhari, for the Appellant;
S.R. Barlinge, for the Respondent

Judgement

A.D. Mane, J.—The Writ Petition No. 928 of 1994 is filed by the Principal of the College run by the respondent No. 4- Jamner Taluka Education Society, Jamner (hereinafter to be referred as "the Society" for short), whereas the Writ Petition No. 1031 of 1994 is filed by the Society respondent No. 4.

2. A common question is involved in these petitions, namely, whether the Executive Council of respondent No. 1 North Maharashtra University (for short "the University") has an authority to withdraw or cancel the approval by Vice-Chancellor to the appointment of Principal of the College run by respondent No. 4 society. These petitions are therefore disposed of by this common judgment.

3. In order to appreciate the grievance voiced by the petitioner it is necessary to have a look at the relevant introductory facts leading to these petitions. The facts can be obtained from Writ Petition No. 928 of 1994.

4. The petitioner joined respondent No. 4 Society-College by virtue of appointment order vide letter dated 2-7-1984 from the Secretary of the respondent No. 4 -Jamner Taluka Education Society, as a Principal of Arts and Commerce College, Jamner.

5. The letter dated 2-7-1984 inter alia states that :

The appointment was on the probation of two years and was made on the following terms and conditions. "1) The appointment is subject to the approval by the University of Poona and the Govt. of Maharashtra.

2) The service conditions will be governed by the rules and regulations of the University of Poona, Govt. of Maharashtra and the Jamner Taluka Education Society, Jamner, from time to time.

3) The services are liable to be terminated during the period of probation by notice/or payment of salary as per the University Statutes.

4) He will have to enter into a deed of contract/agreement as prescribed by the University of Poona".

It is undisputed that the petitioner accepted the appointment with aforesaid terms and conditions.

6. Vide letter dated 16-7-1984 the University of Poona informed the Secretary of respondent No. 4- society that the appointment of the petitioner as Principal of Arts and Commerce College, Jamner was approved by the Vice-Chancellor, Poona. It may be stated that the college run by respondent No. 4 society was then affiliated to Poona University prior to 1990 when respondent No. 1 University was established by Act known as "North Maharashtra University Act, 1989".

7. The petitioner completed his probation period satisfactorily and continuously worked as Principal of Arts and Commerce College of respondent No. 4 society until the difference arose between the members of the Managing Committee of the Society during 1992-1993.

8. On account of several complaints received from various sources including staff members of College of respondent No. 4 society who were working under the petitioner, the respondent No. 1 University issued a show cause notice dated 21/23-12-1993 communicating the petitioner as to why the approval of University for his appointment as a Principal of College run by respondent No. 4 society should not be withdrawn. It appears that the petitioner on receipt of show cause notice has made several correspondence requesting the University to supply with various documents as required in the show cause notice and ultimately denied every allegations contained in the show cause notice by his reply dated 18-1-1990. It appears that the University however did not consider the explanation of the petitioner as sufficient and hence initiated an enquiry into the charges levelled against the petitioner by appointing a committee headed by one Shri A.D. Wasave. On the basis of the enquiry report, the Executive Council of respondent No. 1- University took the decision and by letter dated 4-3-1994, the Registrar of respondent No. 1 University communicated the said decision of the Executive Council of respondent No. 1 University to the petitioner that the approval for his appointment as Principal of the College of Arts and Commerce,

Jamner was withdrawn with immediate effect and that petitioner shall not discharge his duties as the Principal of respondent No. 4-society.

9. This order of dated 4-3-1994 is challenged not only by petitioner but also by the respondent No. 4 -Jamner society inter alia on the ground that the Executive Council of respondent No. 1 University has no power or authority in law either in Act or Ordinance or Statute to withdraw the approval once granted to the appointment of the petitioner as the Principal of respondent No. 4 society.

10. On behalf of the respondent No. 1 and 2 i.e. University and Registrar, affidavit-in-reply is filed by the Deputy Registrar of respondent No. 1 University. It is submitted that the inquiry committee made the inquiry and submitted the inquiry report; and after careful consideration of the report of the Enquiry Committee headed by Shri A.D. Wasave, the Executive Council passed Resolution No. A/113/94 during the meeting held on 24-2-1994 whereby the approval granted to the petitioner as the Principal of Arts, Science, and Commerce College, Jamner was withdrawn and accordingly petitioner was served with the order on 4-3-1994. It is submitted that the University has power, authority, and jurisdiction to grant approval for appointment of the Principal of the College affiliated to the University in accordance with the provisions of Statute 413(B) and therefore the University has also authority, power, and jurisdiction to withdraw the approval granted by it. It is further submitted that the petitioner was required to discharge the duties and responsibilities according to the provisions of Statute 414. However, he failed in his duties and he did not discharge the responsibilities according to the rules and therefore the University in accordance with the Statute referred to above was competent to withdraw the approval to the appointment of the petitioner as the Principal.

11. Mr. C.S. Deshmukh, learned Senior Counsel appearing for the petitioner in Writ Petition No. 928 of 1994 urged that the Executive Council has no jurisdiction, power or authority to take any disciplinary action against the petitioner. It is submitted that the petitioner is an employee of respondent No. 4-Society which is competent to take a disciplinary action or pass any order under the relevant Statute namely Statute No. 414. Although the petitioners appointment as Principal of College run by the respondent No. 4 society was approved by the Vice-Chancellor on 16-7-1984, such approval becomes final and conclusive, therefore, the Executive Council has no authority to withdraw the approval once given by the Vice-Chancellor. It is therefore submitted that the impugned order dated 4-3-1994 is null and void, ineffective and inoperative. The same is bad in law being without any authority.

12. Mr. Deshmukh, learned Senior Counsel further urged that the Executive Council of respondent No. 1 University has even no power to initiate action against the petitioner as Principal of the College though affiliated to the University under the relevant statute. In other words it is urged that the Executive Council has no legal authority or power whatsoever to cancel or revoke the approval given by the Vice-Chancellor to the appointment of the petitioner as

Principal. In this context it is submitted that the Statute framed under Poona University are still in force by virtue of the provisions of section 112(2) of the North Maharashtra University Act, 1989 since no statutes have been framed by the respondent No. 1 University in that behalf. There is no provision for withdrawal of approval to the appointment of the petitioner as Principal under the Statutes or Ordinance framed under the Act.

13. Mr. Naik, learned Counsel appearing in companion petition namely, respondent No. 4 - society. While supporting the contention of Mr. Deshmukh, Senior Counsel for the petitioner also urged that neither the Vice-Chancellor nor the Executive Council has power to withdraw the approval either under the Act, Statutes or Ordinances and therefore, power which is exercised by the Executive Council of respondent No. 1 University is without authority in law. It is therefore submitted that not only the action to initiate the enquiry against the petitioner was without jurisdiction but decision of the Executive Council of respondent No. 1 University was without any authority in law and, therefore, the impugned order is liable to be quashed and set aside.

14. On the other hand Mr. Chaudhari learned Counsel appearing for the respondent No. 1 and 2 contended that by virtue of provisions contained section 25 Clause (xi) there is residuary power vested with the Executive Council to revoke the approval granted to the petitioner by the Vice-Chancellor and, therefore, the impugned order is well supported by law. It may be stated that Mr. Chaudhari as well as Mr. Barlinge learned. Counsel for intervenor urged that the petitioner has resorted to the alternative remedy of the appeal before the College Tribunal; therefore, this Court would not be justified in entertaining the petition. The petition is, therefore, liable to be dismissed.

15. Therefore there arises threefold question for our consideration:

Firstly whether the Executive Council was competent to initiate Departmental inquiry against the petitioner. Secondly whether the impugned order is without jurisdiction or without any legal authority in law and thirdly whether the petition is liable to be dismissed merely because the petitioner has resorted to alternate remedy of filing appeal before the College Tribunal on account of subsequent development after filing the writ petition.

16. The first and second questions are mixed questions of law and in finding answers to these questions, it becomes necessary for us to make a reference to the relevant provisions contained in the North Maharashtra University Act, 1989 (for short the Act) and the Statutes of University of Poona which are applicable to the facts of the present case.

17. Section 2 of the Act defines various items in sub-sections (2) thereof such as "affiliated College", "College", "Principal", "Statutes", "Teacher", "Teacher of University", "University" etc.

18. Clause (1) of section 2 of the Act defines "affiliated college". "Affiliated

college" means a college affiliated u/s 53, and includes a college deemed to be an affiliated college u/s 112.

19. Section 53(3) requires a college to apply for affiliation to the University Registrar within the time-limit fixed by the Ordinance made in that behalf and shall satisfy the Executive and Academic Councils - in various aspects.

Clause (b) sub-section (3) of section 53 provides that:--

"For the college for which affiliation is sought, a separate Local Managing Committee shall be constituted by the Management, which shall consist of not less than seven and not more than fifteen members, of whom the Principal shall be one (who shall also be the Secretary of such Committee), two shall be other teachers in the college elected by such teachers from amongst themselves and one shall be an employee (not being a teacher) in the college elected by such employees from amongst themselves. The members so elected shall hold office for a term of three years from the date of their election. The Local Managing Committee shall keep true and proper accounts of the income and expenditure of the college, and shall have such other duties and functions as may be assigned to it by the Management. The Local Managing Committee shall perform such duties and discharge such functions subject to the control and supervision of the Management".

20. In this context, we may point out provision of section 58 of the Act which inter alia provides that,

"Every college which was an affiliated college before the commencement of this Act and which is deemed to be affiliated to the University under this Act shall also constitute within a period of six months from such commencement a local managing committee of an advisory committee for the College as required by Clause (b) or (c), as the case may be, of sub-section (3) of section 53.

Section 59 however deals with the power of approval of affiliation of the Executive Council and no where in the Act power is vested with Executive Council about the internal management of the affiliated College in the matter of disciplinary action against its employees.

On the contrary, Statute 433 which is germane to the issue reads as under:

"Authorities competent to inflict penalties:

"The power to inflict penalties on the teacher of university Department/Conducted College shall vest in the Executive Council and in case of teacher in the affiliated College/Recognised Institution in its Management".

Statute 433-A lays down, the Procedure for inflicting Penalties; whereas Statute 431 lays down, the grounds for taking any disciplinary action against a teacher:

Now expression "teacher" as defined in Clause (32) of section 2 of the Act, means a full-time Professor, Associate Professor, Reader, Lecturer, Demonstrator,

Tutor, Master of Method or Director of Physical Education, if any, in any conducted, constituent 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 Teacher by the Statutes made on the recommendation of the Academic Council:

Therefore, the word "teacher" as used in Statute 433 will have to be understood to mean "teacher in the affiliated College" as defined in subsection (32) of section 2 of the Act; and not the teacher of the University.

On the other hand, sub-section (33) of section 2 of the Act, however defines "Teacher of the University" which means a full-time, part-time or honorary Professor, Associate Professor, Reader or Lecturer or such other person as may be appointed or recognised for imparting instruction or guiding research in the University or in any college or institution conducted by the University and is designated to be a Teacher of the University by the Statutes made on the recommendation of the academic Council".

Mr. Barlinge learned Counsel for the intervenor tried to contend that the word "teacher" as used in Ordinance/Statute 433 speaks the teacher of University which includes teacher as defined in Clause (32) of section 2 of the Act.

21. We however find no merit in his contention. There is clear distinction between definition of "teacher" and "Teacher of the University" as defined in aforesaid Clauses (32) and (33) of section 2 of the Act. On plain reading of these two clauses it is not possible to hold that "teacher" of University includes "teacher" in the affiliated College. In this context we may refer to the Statute 433. It clearly speaks about the authorities competent to inflict penalties in case of "teacher of University" and "teacher" in the affiliated college. The statute 433 says that in case of teacher of the University Department/Conducted College, the competent authority is the Executive Council but in case of teacher in the affiliated College/recognised institution the competent authority is its Management for purpose of inflicting penalties. Moreover, Statute 433-A prescribes the procedure for initiation of Departmental Enquiry. It begins with saying that :

"On a complaint being received against a teacher or suo moto, the competent authority as specified in Statute 433 shall first determine itself and record in writing or have it determined by any person or committee appointed by it for the purpose, if there is a prima facie case against the teacher for infliction of either minor penalty/pen allies or major penalty/penalties."

Emphasising on the word "Competent Authority" as specified in Statute 433, we have no doubt in mind that in case of teacher in affiliated college the competent authority to initiate departmental inquiry is the management of the College and not the Executive Council of the University. Therefore action of the Executive Council respondent No. 1 University in initiating the departmental inquiry by

constituting the committee headed by Shri Wasave was without jurisdiction.

22. Mr. Choudhari, learned Counsel for the respondent No. 1 and 2 no doubt tried to contend that the Executive Council retains the residuary power u/s 25 of the Act. Section 25 deals with the powers and duties of the Executive Council.

Sub-section (xli) provides that the Executive Council shall exercise all the powers of the University, not otherwise provided for in Act or the Statutes, and all the other powers which are required to give effect to the Act, or the Statutes, Ordinances and Regulations; andp

Sub-section (xl) of section 25 of the Act, inter alia, provides that the Executive Council shall exercise such other powers and perform such other duties as may be conferred or imposed on it by the Act, the Statutes, Ordinances and Regulations.

23. Mr. Barlinge, learned Counsel for the intervenor does not stress the aforesaid provisions of the Act but submits that Clause (xxxii) of section 25 would be relevant which confers the powers of the Executive Council either to recognise any member of the staff of a college or recognised institution as Teacher of the University, and to withdraw such recognition.

In order to appreciate the submissions of Mr. Choudhari, learned Counsel for the petitioner as well as Mr. Barlinge learned Counsel for the intervenor, we may first turn to Statute 413, which deals with the appointment of Head of the University Department/Principal/Vice-Chancellor.

The relevant Statute 413 is as under:-

(A) Appointment of the Head of the University Department:

The Vice-Chancellor shall appoint the Head of the Department. If there is only one Professor in the University Department, he shall be designated as Head of the University Department, and if there is no Professor and only one Reader such Reader shall be designated as Head of the Department. If there are more than one Professor/ " Reader the Vice-Chancellor may nominate one of them as Head of the Department for a period of three years.

(B) Appointment of Principal:

1. Principal of the College may be appointed from amongst the teachers of the College or by direct recruitment through selection, and this post shall be considered as non-vacation post.

2. The appointment of Principal of the College shall be made by the Competent Authority on the recommendation of the Selection Committee consisting of the following :

(a) Chairman, Governing Body of the College.

(b) One Member of the Governing Body.

(c) Two nominees of the Vice-Chancellor.

(d) One nominee of the Director of Higher Education.

The recommendation of the Selection Committee shall be subject to the approval of the Vice-Chancellor. If the Vice-chancellor does not approve the decision of the Selection Committee, he shall record his reasons in writing thereof and return it to the Selection Committee for reconsideration. After reconsideration, if the Selection Committee desires to pursue its original proposal, it shall refer the matter again to the Vice-Chancellor for his decision, which shall be final.

3.

4.

Statute 413(B) as hereinabove reproduced undoubtedly provides that the appointment of Principal of the College on the recommendation of the Selection Committee shall be subject to the approval of the Vice-Chancellor. It is contended on behalf of the respondent No. 1 and 2 that the power of approval conferred on the Vice-Chancellor is emergency power. This contention, in our opinion, is devoid of any merit.

24. Section 11 of the Act deals with the powers and duties of the Vice-Chancellor. The Clause (7) of section 11 provides that :-

"The Vice-Chancellor shall exercise such other powers and perform such other duties as prescribed by the Statutes, Ordinances and Regulations. The question is whether Clause (7) of section 11 confer an emergency power on the Vice-Chancellor."

25. It is clear from Statute 413 that on the recommendation of the Selection Committee appointment of Principal is made subject to the approval of the Vice-Chancellor. In other words, the powers are conferred on the Vice-Chancellor under the Statute whether to approve or not to approve the recommended action of the Selection Committee for appointment of the Principal of the Private College affiliated to the University. If we have regard to Statute 413(B) read with Clause 7 of section 11 of the Act it is beyond reason to think that power conferred on the Vice-Chancellor by the Statute is an emergency power, which is subject to any review by the Executive Council of the respondent No. 1 University.

26. In the circumstances, we find no force in the contention of Mr. Choudhari that power which is given to the Vice-Chancellor under the Statute 413 is emergency power and it is reviewable by the Executive Council by virtue of Clauses (xl) and (xli) of section 25 of the Act. Clauses (xl) and (xli) of section 25 have no application in view of express provision contained in Statute conferring power on the Vice-Chancellor in case of approval of appointment of the Principal on recommendations of the Selection Committee. It is clear from Clauses (xl) and (xli) that it is only in absence of any provisions either in the Act, Statute or Ordinance or Regulation, powers exercised by Vice-Chancellor or any other

authority under the Act would be reviewable by the Executive Council of the University under the Act. Since we find that there is express provision in Statute 413(B) none of the clauses would have application to confer powers on the Executive Council to revoke the approval given by the Vice-Chancellor in exercise of his power under the Statute 413(B). We also find no force in the contention of Mr. Barlinge learned Counsel appearing for intervenor that Clause (xxxii) of section 25 reserves the power of the Executive Council to revoke the approval granted by the Vice-Chancellor.

Clause (xxxii) reads :

"Recognise any member of the staff of the College of recognised Institution as a Teacher of the University, and withdraw such recognition".

27. We have already pointed out the difference between the teacher of college which is affiliated to University and the teacher of the University or college/ institution conducted by the University. The provisions contained in Clause (xxxii) as hereinabove quoted deals with power to recognise any member of the staff of the college or recognised institution as a teacher of University, and it also has a power to withdraw such recognition after any member of the staff of the college or recognised institution as a teacher of the University. In other words, the Clause (xxxii) deals with a matter of recognition of the member of the staff of a college or recognise institution as a teacher of the University . It does not deal with an appointment of teacher of affiliated College including Principal of the College. Therefore, the submission of Mr. Barlinge, Counsel for the intervenor is also devoid of any merit.

28. Now, incidentally, it is necessary to consider whether the approval once given is revocable for any reason whatsoever. It is well established principle that when the Act prescribed as particular body to exercise power it must be exercised only by that body.

29. In the present case, as seen above the Vice-Chancellor, in exercise of his powers under the Statute 413(B) gave approval to the appointment of Principal. It is not that the Vice-Chancellor passed the impugned order of withdrawal of approval to the appointment of the petitioner as the Principal of the College run by respondent No. 4. The impugned order is however passed by the Executive Council of the respondent No. 1 University without jurisdiction.

30. The Statute 413(B) which confers power on Vice-Chancellor to give approval to the appointment of the Principal of the affiliated college does not contain any provision for either to withdraw the approval or revoke the same at any time thereafter. That means the power once exercised is not reviewable and the appointment of the Principal of affiliated College becomes final, and, it is irrevocable. If we were to accept the argument of the Counsel of the respondent that the approval is revocable, it would mean that the entire provision contained in Statute 433 and 433-A would be nugatory.

31. The very purpose of giving approval was satisfied when the petitioner had complied with the terms and conditions as contained in letter dated 16-7-1984. Therefore, on further requirement was to be fulfilled by the petitioner after his appointment as Principal of respondent No. 4 -College when his appointment was approved by Vice-Chancellor as required under Statute 413(B). Once the petitioner was appointed he becomes the employee of the respondent No. 4 - society and it is only the management which is competent authority to initiate the disciplinary action against the petitioner. There would arise no question to withdraw the approval of his appointment as the Principal of the College by any authority.

32. We, therefore, find that the exercise of power by Executive Council of respondent No. 1 University was totally illegal in the matter of issuing show cause notice and withdrawing approval to the appointment of the petitioner as the principal of the College run by the respondent No. 4.

33. Now coming to the argument of Mr. Choudhari, as well as Mr. Barlinge, learned Counsel for the respondent and intervenor respectively on the point of non-maintainability of the Writ Petition No. 928 of 1994 as the petitioner has resorted to a remedy of Appeal subsequent to the filing of the petition, Mr. Deshmukh, learned Senior Counsel for the petitioner as well as Mr. Naik learned Counsel for the Management urged that once it is found that the impugned order is without jurisdiction or without authority in law this Court will not be precluded in exercising its extra-ordinary power under Article 226 of the Constitution of India. In this behalf Mr. Deshmukh learned Senior Counsel for the petitioner invited our attention to a decision in a case reported in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhvani and Another, .

The authority cited supra lays down that:

"The rule that the party who applied for issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a rule which courts have laid down for the exercise of their discretion..... The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Article 226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or honest and that in all other cases, courts should not entertain petitions under Article 226, or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy."

34. Similarly, Mr. Naik, the learned Counsel for the management relied on another ruling in case of Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, . The Supreme Court reiterated the ratio that, "It is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition, when an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy"

35. In the first place there is no dispute that the petitioner filed appeal before the College Tribunal against the order passed by the Management in 1996 whereby virtually the services of the petitioner were terminated. In this petition the petitioner however, challenges the order passed by the Executive Council of respondent No. 1 University revoking the approval to his appointment as Principal of respondent No. 4 Society/College.

36. In the instant case, we have reached to the conclusion that, the Executive Council of the respondent No. 1 had no power, authority or jurisdiction to review or exercise such powers to withdraw the approval once granted to the appointment of the Principal under the Statute 413 and, therefore, the order passed by the Executive Council either by way of review or suo motu on enquiry in disciplinary proceeding was a nullity, without jurisdiction and without any authority of law. Such an order would, therefore, be challenged before the High Court by petition under Article 226 of the Constitution of India and as such we find no merit in the argument advanced on behalf of the respondents that since the petitioner has resorted to alternate remedy this petition should not be entertained and dismissed on that ground alone.

In conclusion, we find that the impugned order dated 4-3-1994 deserves to be quashed and set aside and, accordingly the petitions are allowed. The impugned order is quashed and set aside.

However, there shall be no order as to costs.

Certified copy is expedited.

Mr. Barlinge learned Counsel appearing for intervenor submits that the effect of this order may be stayed for 15 days as the intervenor desires to file and appeal before the Apex Court.

On hearing the Counsel for both the sides the request is, however, rejected.

37. Petition allowed.