
(2018) 08 MP CK 0172

In the Madhya Pradesh High Court

Case No : Recrimination Petition No. 135 Of 2015

Jiwaji University, Gwalior Thr.

APPELLANT

Vs

Shri Kanha Shiksha Prasar Prachar Samaj Kalyan Samiti Thr

RESPONDENT

Date of Decision : 21-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 23, 24, 24(xxxiv)

Citation : (2018) 08 MP CK 0172

Hon'ble Judges : Sheel Nagu, J;S.A. Dharmadhikari, J

Bench : Division Bench

Advocate : Deepak Khot, Alok Sharma

Final Decision : Dismissed

Judgement

1. Having regard to the similarity in factual and legal scenario, both the review petitions registered as RP No.135/2015 & RP No.136/2015 are heard

analogously and stand decided by the instant common order.

2. The present review petition has been filed after delay of

680 days as pointed by the Registry in filing this review petition for which I.A. No.3252/2016 & I.A. No.4186/16, applications for condonation of delay

are filed by the review petitioner. The said I.As. are inconsequential as there is no period of limitation prescribed under the writ jurisdiction under

Article 226 of Constitution of India. Only delay and latches is to be seen. Though these review petitions are filed after 2 years and 2 months of the

passing of order under review but since we propose to decide these review petition on merit the delay is condoned. Accordingly, I.A. No.3252/16 &

I.A. No.4186/16, applications for condonation of delay stand allowed.

3. Learned counsel for the rival parties are heard.

4. The solitary contention of the learned counsel for the review petitioner is that error apparent on the face of record has crept in due to the failure of

this Court to consider the impact of Section 24(xxxiv) of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 (hereinafter referred to as 'the

Adhiniyam of 1973').

4.1 For ready reference and convenience clause (xxxiv) of Section 24 is reproduced below :-

â?? Sec.24 (xxxiv) to recognize a member of the staff of an affiliated College or recognized Institution as a teacher of the University and withdraw

such recognition;â??

5. The respondents Shri Kanha Shiksha Prachar Samaj Kalyan Samiti & Majdoor Lokhit Samiti, registered societies under the Madhya Pradesh

Society Registrikaran Adhiniyam, 1973 impart B.Ed. Course which is affiliated to the petitioner/University, approached this Court in WP

No.7232/2012 assailing notification dated 11.07.2011 issued by petitioner/University inter alia imposing the condition of obtaining approval for the

teachers appointed under Clause 28(17) of College Code by the Executive Committee of the University as a condition precedent for temporary

affiliation by the University.

6. After hearing both the rival parties, the Division Bench of this Court by order under review quashed the said impugned condition by holding that

there is no provision in 'the Adhiniyam of 1973' empowering the University to impose such condition.

7. The learned counsel for the review petitioner contends by referring to the provision of Section 24(xxxiv) of the Adhiniyam of 1973 that the

Executive Council of University is empowered to recognize a member of the staff of an affiliated college or a recognized institution as a teacher of the

University. It is submitted that on the strength of the said statutory power which is coupled with the duty to do so, the impugned condition had been

imposed which has wrongly been set aside by the order under review.

8. A plane reading of Section 24 of the Adhiniyam of 1973 reveals that it relates to power and duties of the Executive Council which are enumerated

from clause (i) to clause (xlv) and are exercised and discharged by the said bodies in the university subject to the provisions of the Act, and the

Statutes, Ordinances or the regulations made thereunder. The said provision of Section 24 is a part of Chapter IV of the 1973 Adhiniyam providing for

various authorities of University one of which is the Executive Council constituted as per Section 23. The power and duties enumerated from clause

(i) to clause (xlv) under Section 24 are the parameters laid down by the Adhiniyam of 1973 within which the Executive Council discharge its duties

and exercises powers.

8.1 One of these powers/duties is to recognize the member of the staff of an affiliated college as a teacher of the University.

The language employed in Clause (xxxiv) of Section 24 clearly reveals that its application is limited to the field of recognizing a member of the staff of

an affiliated college or a recognized institution as a teacher of the University. Thus, as and when a faculty member of an affiliated college and a

recognized institution is required to be recognized as a teacher of the University then the Executive Council alone is conferred with the power and

duty to do so.

8.2 The above discussion clearly indicates that clause (xxxiv) of Section 24 of the Adhiniyam of 1973 does not relate to the process of recruitment and

appointment of member teaching staff in affiliated colleges other than the Government colleges as is the case herein. For the subject matter of

terms and conditions of affiliation of colleges other than the Government colleges the field is covered by Clause (xxvi) of Section 24 which is

reproduced below for ready reference and convenience:-

Sec.24(xxvi) to prepare a College Code laying down therein the terms and conditions of affiliation of colleges other than Government colleges;

9. Therefore, the field of recruitment and selection of the faculty members of the affiliated colleges other than the Government colleges is governed by

the Section 24(xxvi).

9.1 Section 17(2) of the College Code framed under the Statute No.28 laying down the mode of selection of teachers and as well as the constitution &

composition of the committee for recruitment and appointment of teaching staff in non-government affiliated colleges which has been already

reproduced in the order under review from page 4 to 7 and thus, does not need further reproduction.

9.2 Clause 17(2) of the College Code deals specifically with the issue of

recruitment and appointment of teaching staff in non-grantee affiliated colleges and the said provision does not provide for any prior approval of Executive Council provided the Selection Committee prescribed therein with appropriate quorum considers the candidates and approves them for appointment.

10. The reason for absence of requirement of any prior approval of the Executive Council as regards the appointment of teaching staff of non-

government affiliated college is obvious. The Selection Committee as the committee prescribed for this purpose under Section 17(2)(a) of the College

Code has four members which includes the Kulpati, one expert of the subject concerned and two members nominated by the Kulpati which means

that the University is adequately represented in the Selection Committee and therefore has a pivotal role in the process of recruitment of a teacher in

the non-government affiliated colleges, thereby rendering any further ratification by the University or by any of its bodies, redundant.

11. The above said discussion leaves this Court with no doubt that the view taken by the Division Bench of this Court while passing the order under

Review does not suffer from any error apparent on the face of record and thus does not warrant any interference in review jurisdiction.

12. Accordingly, the present petition stands dismissed.