
(2019) 06 BOM CK 0104
In the Bombay High Court
Case No : Writ Petition No. 1300 Of 2019

Ku. Shipra Shivkumar Yadav

APPELLANT

Vs

Rashtrasant Tukdoji Maharaj And Ors

RESPONDENT

Date of Decision : 28-06-2019

Acts Referred:

Citation : (2019) 06 BOM CK 0104

Hon'ble Judges : R.K. Deshpande, J; Vinay Joshi, J

Bench : Division Bench

Advocate : M.V. Samarth, R.D. Bhuibhar

Final Decision : Allowed

Judgement

1] Rule made returnable forthwith.

Heard finally by consent of the learned counsel appearing for the parties.

2] The petitioner was registered for Ph.D. on 23.08.2013 in accordance with Direction No. 10 of 2011, brought into force on 17.06.2011 by the

Vice-Chancellor. Clause No. 14 which deals with the 'Tenure of Registration' under the said direction being relevant for the purposes of the present case, is reproduced below.

14. TENURE OF REGISTRATION :

The registration of the candidate shall be valid and shall remain in force for a period of 5 years from the date of registration and shall stand cancelled automatically on expiry of 5 years.

Provided that extension upto maximum period of 12 months shall be permissible in those cases which are recommended by the Guide and Head of the

Place of Research and the decision for extension shall be taken by Research and

Recognition Committee. The application for extension is required to be submitted at least 3 months prior to the date of expiry of registration. After expiry of extended period of registration, the candidate shall be required to apply for registration afresh following the *denovo* procedure.â??

The Tenure of Registration for Ph.D. remains valid for a period of five years from the date of registration and there can be an extension of maximum period of twelve months thereafter. In order to get such extension, the application has to be submitted at least 3 months prior to the expiry of registration.

3] In terms of the aforesaid provision, the Tenure of Registration of five years granted to the petitioner commenced on 23.08.2013 and came to an end on 22.08.2018. The petitioner claims to have applied for extension by further period of 12 months on 01.05.2018 i.e. within a period of 3 months before expiry of the tenure and the application was forwarded by the private courier service.

4] The stand of the University in paragraph 7 of the affidavit dated 04.03.2019 is as under;

â??7. It is submitted that, the petitioner had made application for the first time on 30.11.2018 to the Competent Authority of the answering

respondents, a copy whereof is annexed herewith as AnnexureÂ1, which was received in the inward section of the answering respondents bearing

Inward Entry No. 698 dated 30.11.2018. It is, therefore, submitted that though this communication bears date to be 01.05.2018, it was never submitted

to the answering respondent on 01.05.2018 as claimed by the petitioner, but for the first time it was submitted to the answering respondents on

30.11.2018.

The claim of the petitioner that the said communication was sent by Courier is also not substantiated by any material. The petitioner has not placed on

record any acknowledgement signed by the Competent Authority of the answering respondents thereby acknowledging the receipt of the said

communication.â??

According to the University, the application for extension was not made within the stipulated period of 3 months prior to the date of expiry of the

tenure of registration. The University informed by its communication dated 22.01.2019 that the application for one year extension is not accepted in

view of the provision of Direction No. 10 of 2011, which is impugned in the present petition.

5] We have heard the learned counsels appearing for the parties. The question as to whether the petitioner submitted her application on 01.05.2018 is

a disputed question of fact. Be that as it may, it is hard to believe that the petitioner applied for extension on 01.05.2018, in the absence of valid

acknowledgment produced on record. We have no hesitation to believe the stand of the University that the application for extension of tenure of

registration was submitted on 30.11.2018, which was not within the period of 3 months prior to the date of expiry of tenure of registration.

6] The matter, however, does not end here and we have to judge the specific stand of the University that the extension of tenure of registration was

governed by Direction No. 10 of 2011 and, therefore, in the absence of application for extension, the petitioner was not entitled to such extension. If it

is held that the extension is governed by Direction No. 10 of 2011, then obviously the petition will have to be dismissed.

7] Undisputedly, Direction No. 10 of 2011 was repealed/superseded by Direction No. 81 of 2016, brought into force on 01.12.2016. Clause 13

regarding tenure of registration contained therein is reproduced below.

13. TENURE OF REGISTRATION

The Ph.D. Programme shall be for the minimum duration of 3 years, including course work and a maximum of 6 years from the date of registration as

per the provisions of this Direction. The women candidate and persons within disability (more than 40% disability) may be allowed a relaxation of two

years on the maximum duration. In addition, the women candidates may be provided maternity leave/child care leave once in the duration of the Ph.D.

Programme for up to 240 days.

The aforesaid Clause is subsequently amended by another Direction No. 11 of 2017 brought into force on 13.04.2017. The aforesaid Clause 13 is

substituted as under;

13. Tenure of Registration

Full time Ph.D degree program shall be for the minimum duration of three years and part-time Ph.D. degree program shall be for the minimum

duration of the four years and six months including course work and a maximum of 6 years for full-time as well as for part-time Ph.D. program

from the date of registration as per the provisions of this Direction. The women candidates and persons with disability (more than 40% disability) may be allowed a relaxation of two years in the maximum duration for both the Ph.D. programs. In addition, the women candidates may be provided maternity leave/child care leave once in the duration of the Ph.D. Programme for up to 240 days.â??

The effect of bringing into force Direction No. 81 of 2016 changing the Clause regarding Tenure of Registration, read with subsequent amendment in

the Direction No. 11 of 2017 brought into force, is that 5 years tenure of Registration contained in Clause 14 of Direction No. 10 of 2011 stands

superseded and instead of it, a maximum period of 6 years from the date of registration is made available. There is also a relaxation of 2 years

provided to women candidates. Thus, the maximum tenure of registration for women candidates would be of 8 years and there is no provision or

requirement to apply for extension of the tenure of registration or to grant it, as ;is contained in Clause 14 of the Direction No. 10 of 2011.

8] Undisputedly, the tenure of five years of registration granted to the petitioner expired on 22.08.2018. By this time, the Direction No. 81 of 2016 and

No. 11 of 2017 were brought into force on 01.12.2016 and 13.04.2017 respectively, providing the Tenure of Registration of six years with extension of

two years to women candidates with disability and 240 days addition on account of maternity leave/ child care leave. The question is whether the

petitioner could avail the benefit of Direction No. 81 of 2016 and No. 11 of 2017.

9] Relying upon the saving Clause 20 in the Direction No. 81 of 2016, Shri Bhuibhar, the learned counsel appearing for the respondent University has

urged that the case of the petitioner would still be governed by Direction No. 10 of 2011 and she would not be entitled to benefit of clauses of tenure

of registration contained in Direction Nos. 81 of 2016 and 11 of 2017.

10] In order to appreciate this contention, we reproduce below the saving Clause 20 in the Direction No. 81 of 2016.

â??20. SAVING CLAUSE :

Notwithstanding anything contained herein, it is clarified that all cases in which registration has been already granted, the same shall continue to be

governed by the respective Ordinances and Directions even if repealed by virtue of other Direction, the procedure of submission of thesis and

evaluation shall be governed by the said Ordinances/ Directions, notwithstanding their repeal.â?? (Emphasis supplied)

11] No doubt that the saving clause starts with the non obstante clause of notwithstanding anything contained in Direction No. 81 of 2016 and the

clarification is issued that all the cases in which registration has already been granted, the same shall continue to be governed by the respective

Ordinances and Directions even if repealed by virtue of other Direction. We can understand if the clause would have stopped running at that point of

time. If that had not been so then the petitioner was not entitled to benefit of the repealing Direction No. 81 of 2016 and No. 11 of 2017. The addition

of portion which we have emphasized above is to clarify the position that only the procedure of submission of thesis and evaluation is to be governed

by the repealed Directions. What is saved is the submission and evaluation of thesis in Clause 16 which comes subsequent to Clause 14 regarding

Tenure of Registration. There is no saving of Clause 14 of the Direction No. 10 of 2011 regarding tenure of registration atleast in the cases where the

tenure expired after coming into force of subsequent Directions.

12] According to Shri Bhuibhar, the learned counsel appearing for the University, the Clause of submission and evaluation of thesis cannot be read in

isolation and it is interÂlinked with Clause No.14 of Tenure of Registration in the Direction No. 10 of 2011. He has invited our attention to Item (1) in

subÂclause (A) of Clause 16 in Direction No. 10 of 2011, which states that Ph.D. candidate has to publish one research paper in a standard refereed

journal/monograph before the submission of the thesis for adjudication, and produce evidence for the same in the form of acceptance letter or the

reprint.

13] We do not find that Clauses 14 and 16 in the Direction No. 10 of 2011 are interlinked. The intention of the legislature in saving clause is clarified

that the operation of Direction No. 10 of 2011 is restricted only in respect of two categories i.e. (i) the procedure of submission of thesis and (ii)

evaluation. Obviously, the submission of thesis by the petitioner and its evaluation shall be governed by Direction No.10 of 2011.

14] We, therefore, hold that the impugned communication dated 22.01.2019 rejecting the claim of the petitioner for extension of Tenure of Registration

on the basis of provision of Direction No. 10 of 2011 cannot be sustained and the

Tenure of Registration shall be governed by Clause No. 13 in

Direction No. 81 of 2016 read with amended Clause No. 13 introduced by Direction No. 11 of 2017. The petitioner cannot, therefore, be prevented

from submission of thesis before expiry of six years from 23.08.2013. If the case is made out, she would also be entitled to further extension being

woman candidate as per the amended Clause 13 of Direction No. 11 of 2017. The writ petition is, therefore, allowed.

Rule is made absolute in above terms. No order as to costs.