
(2016) 08 BOM CK 0025
In the Bombay High Court
Case No : Writ Petition No. 11074 of 2015

Madha Taluka Shikshan Prasarak Mandal	APPELLANT
Vs	
Prashant Kamalakar Narkhade	RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311

Citation : (2016) 5 AIRBomR 688 : (2016) 5 BCR 253

Hon'ble Judges : R.D. Dhanuka, J.

Bench : Single Bench

Advocate : Mr. N.V. Bandiwadekar i/by Mr. Mandar G. Bagkar, Advocates, for the Petitioner; Mr. C.G. Gavnekar i/by Mr. Suhas S. Deokar, Advocates, for the Respondent No. 1; Mr. S.D. Thokade, Advocate, for the Respondent No. 2; Mr. A.R. Metkari, AGP, for the Respondent

Final Decision : Disposed Off

Judgement

R.D. Dhanuka, J.—Rule, Respondents waive service. Heard finally.

2. By these two petitions filed under Articles 226 and 227 of the Constitution of India, both the petitioners have challenged part of the impugned order and judgment dated 23rd September, 2015 passed by the Presiding Officer, Savitribai Phule Pune, Shivaji and Solapur University and College Tribunal, Pune (for short the said Tribunal) in Appeal No.17 of 2012. By consent of parties, both the writ petitions were heard together and are being disposed of by a common order and judgment.

3. The petitioner in Writ Petition No.10207 of 2015 was appellant before the tribunal whereas the petitioners in Writ Petition No.11074 of 2015 were the original respondent nos. 1 and 2 in the appeal filed by the petitioner in Writ Petition No.10207 of 2015. By the said order and judgment dated 23rd September, 2015, the said Tribunal has allowed the appeal filed by the original appellant partly and had set aside the order of termination dated 21st August, 2012 w.e.f. 22nd August, 2012 issued by the management and directing the

management to reinstate the original appellant on probation. The petitioner in Writ Petition No.11074 of 2015 has challenged the order passed by the said tribunal insofar as the order of termination dated 21st August, 2012 passed by the management has been set aside. The petitioner in Writ Petition No.10207 of 2015 has impugned the part of the said order and judgment dated 23rd September, 2015 insofar as the tribunal has directed the management to reinstate him on probation. Some of the relevant facts for the purpose of deciding both these petitions are as under :-

4. For the sake of convenience, the petitioner in Writ Petition No.10207 of 2015 (original appellant) is described as the petitioner and the petitioners in Writ Petition No.11074 of 2015 are described as the management in the later part of the judgment.

5. On or about 13th May, 2010, the management issued an advertisement to fill up the post of full time assistant professor of Commerce in college run by the management. The petitioner was qualified holding M.Com. degree and NET and also having passed NET.

6. On 23rd June, 2010, the University selected the petitioner for the said post after holding interview of the candidates including the petitioner. On 30th June, 2010 the University Grants Commission issued a Regulation known as University Grants Commission (Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and Other Measures for the Maintenance of Standards in Higher Education) Regulation, 2010 which provided for a period of probation of 1 year extendable by a maximum period of 1 more year in case of unsatisfactory performance. In the said regulation, it was provided that the confirmation at the end of one year was to be automatic unless extended by specific order before the expiry of one year. It was however made incumbent on the part of the institutions to issue order of confirmation within 45 days of completion of probationary period.

7. On 21st August, 2010 the management issued an appointment order to the petitioner in which it was mention that his appointment was for one academic year. It is the case of the petitioner that the petitioner was however continued in the said post after one year also. On 29th July 2010 the Solapur University informed the Principal of respondent no.2 that the petitioner was selected on an open post as full time assistant professor in Commerce on probation.

8. On 15th February, 2011 the State of Maharashtra passed a resolution adopting the regulation issued by Universities Grants Commission with effect from 30th June, 2010. It is the case of the petitioner that on 7th March, 2011 the Vice-Chancellor of Solapur University issued a direction under section 14(8) of Maharashtra Universities Act, 1994 accepting the said decision of the State Government dated 15th February, 2011.

9. On 20th July, 2012 the management issued a notice to the petitioner informing that his probation period was expiring on 22nd August, 2012 and he

would be liable to be terminated on 22nd August, 2012. The respondent no.1 terminated the services of the respondent no.1 w.e.f. 22nd August, 2012. Being aggrieved by the said order of termination dated 22nd August, 2012, the petitioner filed an appeal before the said tribunal at Pune bearing No.17 of 2012 (SO) along with an application for interim reliefs. The said appeal filed by the petitioner was resisted by the management by filing reply before the said tribunal. The petitioner filed a counter affidavit to the said reply filed by the management along with the documents including the attendance sheets and the letter dated 26th March, 2013 issued by the Solapur University. The Solapur University also filed an affidavit on 10th August, 2015 before the said tribunal.

10. On 23rd September, 2015, the said tribunal partly allowed the said appeal filed by the petitioner and has set aside the order of termination dated 21st August 2012 by directing the management to reinstate the petitioner on probation. This order and judgment of the said tribunal has been impugned by the said petitioner and also by the management by filing the aforesaid two writ petitions.

11. Mr. Bandiwadkar, learned counsel appearing for the management submits that the petitioner was appointed by the management purely on temporary basis. He placed reliance on the order of appointment issued by the management and would submit that the said order of appointment did not state that the said appointment was made on probation. He submits that the appointment of the petitioner was for one academic year which order of appointment was accepted by the petitioner without any demur or complaint. He submits that the appointment of the petitioner was on temporary basis and not on probation at all. It is submitted that the petitioner thus did not have any right to hold the said post and the service of the petitioner could be thus terminated by the management after expiry of the said period of one academic year based on the terms and conditions of the said order of appointment. It is submitted by the learned counsel that the management had found that the work of the petitioner was unsatisfactory and thus the management was right in terminating the services of the petitioner on that ground. He submits that the tribunal thus ought to have dismissed the appeal filed by the petitioner in to.

12. Without prejudice to the aforesaid submissions, it is submitted by the learned counsel for the management that even if the appointment of the petitioner was to be considered as an appointment on probation, according to the statutes framed by the respondent no.2 University, the probation period of the petitioner was for two years. The petitioner had admittedly not completed the said period of two years and thus he could not have claimed the permanency. He submits that since the work and conduct of the petitioner during the said probation period was not at all satisfactory, the management had rightly decided not to continue the services of the petitioner beyond the period of probation and not to confirm him in service. He submits that the management had accordingly passed a resolution on 16th August, 2012 which was followed by a notice of termination

dated 20th July, 2012. Learned Counsel invited my attention to the said notice dated 20th July, 2012 and would submit that it was clearly stated in the said notice that the work of the petitioner during the period of probation was not satisfactory and his services were terminated. He submits that the said termination by the notice dated 20th July, 2012 was a termination simpliciter without any stigma which is permissible in law. He submits that the order of termination issued by the management thus could not be considered as a punitive action on the part of the management.

13. It is submitted by the learned counsel that the said tribunal could not have rendered a finding that the services of the petitioner were terminated on account of the complaint against him which amounted to the penalty being imposed without holding any enquiry. He submits that the management was not required to conduct any enquiry against the petitioner in view of the petitioner having been appointed on temporary basis and even if was considered to have been appointed on probation, the services of the probation could be terminated if his work was found unsatisfactory during the period of probation. He submits that the services of the petitioner thus could be terminated by giving one month notice without conducting any enquiry which notice was admittedly issued by the management to the petitioner.

14. It is submitted by the learned counsel for the management that the management had not terminated the services of the petitioner due to any complaint received by the management against the petitioner. No such complaints were thus referred by the management in the resolution passed by it or in the notice of termination issued on 20th July, 2012 and thus the order of termination could not have been considered by the said tribunal as punitive termination which would have required an enquiry before issuing any such order of termination.

15. It is submitted by the learned counsel for the management that the tribunal even otherwise could not have directed the reinstatement of the petitioner to the said post in view of the fact that the said post on which the petitioner was appointed was no longer in existence in the college run by the management for want of sufficient students. The university had already declined to sanction full time post not only in respect of the said subject but also in respect of the other subjects. He submits that not a single post is sanctioned by the university in the college on a full time basis. The management is required to appoint the teachers on the clock hour basis. He submits that the department has also declined to sanction the grant in aid for old teaching post in the commerce faculty in respondent no.2 college including for the post of assistant professor in commerce which was occupied by the petitioner. In support of this submission, the learned counsel for the petitioner invited my attention to section 61 and more particularly section 61(e) of the Maharashtra University Act and would submit that if this court comes to the conclusion that there is no post available on which the petitioner was originally appointed in view of there being no students in the said

commerce faculty, the said tribunal could not have ordered reinstatement in favour of the petitioner and at the most could have ordered some compensation in his favour.

16. Learned counsel for the management also placed reliance on the provisions of section 51(8) and section 52 and would submit that since there was no amendment in the statute framed by the University, no reliance on the said regulation framed by the University Grants Commission or on the directions issued by the Vice-Chancellor could be placed by the petitioner.

17. It is submitted by the learned counsel for the management that the management had not issued any show cause notice on 20th July, 2012 as held by the said tribunal. He submits that on 21st August, 2012 the services of the petitioner had already come to an end by efflux of time and thus the said so-called letter of termination could not have been considered as an order of termination at all.

18. Learned counsel for the management invited my attention to clause 7.4.0 of the notification issued by the Government in the Gazette of India dated 18th September 2010 which provides that the Universities/State Governments shall modify or amend the relevant Act/Statutes of the Universities concerned within six months of adoption of these regulations. He submits that since the Solapur University has not amended the statute so as to reduce the period of probation from two years to one year, the said regulation issued by the University Grants Commission reducing the period of probation from two years to one year could not be implemented by the Solapur University and/or no reliance thereon could be placed by the petitioner.

19. Learned counsel for the petitioner, on the other hand, invited my attention to various annexures to the writ petition filed by the petitioner and would submit that the petitioner was appointed on probation by the College vide letter dated 21st August 2010. The appointment of the petitioner was subject to the final approval by the Solapur University, Solapur. He also placed reliance on the approval granted by the Solapur University on 29th July 2010 to the appointment of the three Assistant Professors including the petitioner on probation as full-time Assistant Professors. My attention is also invited to the letter dated 7th June 2011 issued by the Solapur University addressed to the management relating to "changes-in-staff approval letter." He submits that name of the petitioner was mention in the said letter, giving the date of his appointment as an Assistant Professor in the subject "Commerce" and stating that he was appointed on probation.

20. It is submitted by the learned counsel for the petitioner that the said tribunal has misread the statute no.198 framed by the Shivaji University which provides for the period of probation of 24 months from the date on which the teacher joins his duty. He submits that the said statute provides that the governing body shall assess the suitability of the teachers before the expiry of period of the

probation. It is submitted by the learned counsel that the University Grants Commission had admittedly issued a regulation referred to aforesaid on 30th June 2010 which provided that the minimum period of probation shall be one year and extendable by a maximum period of one more year in case of unsatisfactory performance. He submits that at the end of one year, the petitioner had attained the status of a permanent employee. It was incumbent on the management to issue an order of confirmation within 45 days of completion of probationary period. He submits that period of one year of probation was not extended by the management.

21. It is submitted that the said regulation framed by the University Grants Commission was wholly adopted by the State Government by its decision dated 15th February 2011. My attention is invited to the order dated 7th March 2011 issued by the Vice Chancellor of Solapur University by exercising powers under Section 14(8) of the Maharashtra Universities Act, 1994 thereby reducing the period of probation from two years to one year. He submits that the order issued by the Vice Chancellor was issued by exercising powers under Section 14(8) of the Maharashtra Universities Act, 1994 and the same was in conformity with the decision taken by the State Government by adopting the regulation framed by the University Grants Commission.

22. It is submitted that till such time an amendment to the statute was carried out by the Shivaji University, the said regulation framed by the University Grants Commission duly adopted by the State Government and followed by an order dated 7th March 2011 issued by the Vice Chancellor under Section 14(8) of the Maharashtra Universities Act, 1994 reducing the period of probation from two years to one year was binding on the Universities, the employees and staff of the Colleges affiliated to such Universities and also the colleges affiliated to university. It is submitted that admittedly the petitioner was already appointed as an Assistant Professor prior to the said regulation framed by the University Grants Commission on 30th June 2010 coming into force and thus the petitioner was governed by the said regulation framed by the University Grants Commission reducing the period of probation from two years to one year.

23. It is submitted by the learned counsel for the petitioner that merely because the period of probation was not mention in the appointment order issued by the management on 21st August 2010, the management could not raise a plea that the period of 24 months would be probationary period contrary to the regulation framed by the University Grants Commission which was duly adopted by the State Government and also by the Solapur University. He submits that the fact remains that the appointment of the petitioner was subject to the approval granted by the University. In the order of approval issued by the University, the petitioner was admittedly granted approval on probation.

24. It is submitted by the learned counsel for the petitioner that the said tribunal has misread the provisions of Section 52(1) of the Maharashtra Universities Act, 1994 by holding that the statute no.198 which provides for probation period of

24 months was not amended and thus the period of probation of two years could not have been considered as one year without bringing out any amendment to the statute. He submits that the Vice Chancellor of the University has been empowered under Section 14(8) of the Maharashtra Universities Act, 1994 to issue an order thereby implementing the regulation issued by the University Grants Commission which was duly adopted by the State Government of Maharashtra, till such time, the statute giving effect to the regulation framed by the University Grants Commission dated 30th June 2010 was amended.

25. It is submitted that till such time the statute is amended, the regulation framed by the University Grants Commission and adopted by the State Government and followed by the Universities by issuing an order under Section 14(8) of the Maharashtra Universities Act, 1994 through the Vice Chancellor was binding on the Universities, the management and also the staff of the Colleges. He submits that the regulation framed by the University Grants Commission and adopted by the State Government and direction issued by the Vice Chancellor by exercising powers under Section 14(8) of the Maharashtra Universities Act, 1994 has a force of law governing the conditions of the service of the petitioner in the respondent no.2-college and the same was binding not only on the petitioner but also on the management.

26. It is submitted by the learned counsel for the petitioner that though the college tribunal has granted relief to the petitioner for reinstatement to the said post on which the petitioner was appointed, the said college tribunal has erroneously not allowed the claim for back wages and has committed patent illegality by directing the management to reinstate the petitioner on probation. It is submitted by the learned counsel that since the period of probation was reduced from two years to one year and since the management had not granted any extension to the petitioner beyond the period of one year on the ground of unsatisfactory performance, on expiry of period of one year from the date of appointment of the petitioner, the petitioner had attained the status of permanency and thus the said college tribunal could not have deprived the petitioner of back wages. He submits that the services of the petitioner were not terminated on the ground of reduction of work-load or abolition of the post. The services of the petitioner were terminated by the management vide its order dated 21st August 2012 on the ground that the performance of the petitioner was not satisfactory.

27. It is submitted by the learned counsel for the petitioner that since the petitioner had already completed the probationary period of one year and the management had not terminated the services of the petitioner after expiry of one year on the ground that the performance of the petitioner was not satisfactory, the petitioner had attained the status of permanency and thus the services of the petitioner could not have been terminated by the management without conducting any enquiry required to be conducted under the statute governing the service conditions of the petitioner.

28. In his alternate submission, learned counsel for the petitioner submits that the management is required to maintain the record regarding the work of the petitioner and is required to submit an assessment report through the Principal. He submits that the said college tribunal has recorded the finding of fact that remarks in the assessment report were written by the Principal and the President of the Management Committee on 30th June 2012 whereas, the notice of termination was issued on 20th July 2012 prior to the expiry period of probation. He submits that the management had alleged before the said college tribunal that there were complaints against the petitioner and the work of the petitioner was not found satisfactory. He submits that the termination of services of the petitioner were thus not a termination simpliciter but had cast a stigma upon the petitioner. It was thus mandatory on the part of the management to hold an enquiry as contemplated under the statute applicable to the petitioner and the management.

29. Learned counsel for the petitioner placed reliance on the following judgments of the Supreme Court and this Court :-

(i) T.P. George & Ors. v. State of Kerala & Ors., reported in 1992 Supp (3) SCC 191;

(ii) B. Bharat Kumar & Ors. v. Osmania University & Ors. and other connected matters, reported in (2007) 11 SCC 58;

(iii) Beena Inamdar v. University of Pune & Ors., reported in 2012 (1) ALL MR 787;

(iv) Suresh Patilkhede v. Chancellor, University of Maharashtra & Ors., reported in 2012 (6) ALL MR 336;

(v) P. Suseela & Ors. v. University Grants Commission & Ors., reported in (2015) 8 SCC 129;

(vi) Unreported judgment of this Court in the case of Maharashtra Federation of University & College Teachers Organisations v. The State of Maharashtra & Ors. delivered on 23rd December 2015 in Writ Petition No.2081 of 2013 and other connected matters.

30. Mr. Bandiwadekar, learned counsel for the management in rejoinder placed reliance on the notification issued by the Government in the Gazette of India dated 18th September 2010 and more particularly clause 7.4.0 thereof and also various provisions of the Maharashtra Universities Act, 1994 and would submit that since there was no amendment carried out to the provisions of the Maharashtra Universities Act, 1994 or the statute issued by the Shivaji University for reducing the period of probation from two years to one year, no reliance on the said regulation framed by the University Grants Commission could be placed and the same do not have any statutory force of law. He submits that the college tribunal was right in holding that the Vice Chancellor could not have invoked the provisions of Section 14 (8) of the Maharashtra Universities Act, 1994 on the

ground that the statute prescribing the period of probation was already in place.

31. It is submitted that the Vice Chancellor had no occasion to issue a letter which is purported to have been issued by exercising powers under Section 14(8) of the Maharashtra Universities Act, 1994. He also placed reliance on Section 52 of the Maharashtra Universities Act, 1994 in support of his submission that unless the amendment is carried out to the statute, the said regulation issued by the University Grants Commission reducing the period of probation from two years to one year could not have been relied upon by the parties. Learned counsel for the management distinguishes the judgment relied upon by the learned counsel for the petitioner on the ground that in none of the judgments relied upon by the petitioner, there was an issue of amendment of the statute and thus would submit that none of the judgments would assist the case of the petitioner.

32. It is submitted by the learned counsel for the management that there are only 6 students in the First Year B.Com., 7 students in the Second Year B.Com. and 6 students in the Third Year B.Com. There is no work load sanctioned by the University and thus the college tribunal could not have passed any order of reinstatement in favour of the petitioner.

33. Learned counsel appearing for the respondent no.3- University supported the case of the management and would submit that since there was no amendment in the statute framed by the Shivaji University for reducing the period of probation from two years to one year and since the said statute was in force, the Vice Chancellor could not have issued any letter purportedly under Section 14(8) of the Maharashtra Universities Act, 1994. Upon a query raised by this Court, learned counsel for the university states that the said letter issued by the Vice Chancellor under Section 14(8) has not been withdrawn by the Vice Chancellor or by the University or has not been challenged by the university.

34. Mr. Gavnekar, learned counsel for the petitioner lastly submitted that if upon the reinstatement of the petitioner, it is found that there is no work load sanctioned by the university and the petitioner cannot be given any work in the respondent no.2 College, in that event, the petitioner can be declared as surplus. As and when there is any suitable vacancy on the said post in any other college, the petitioner would be eligible for the appointment in the said suitable post.

REASONS AND CONCLUSIONS:-

35. Findings and Conclusions of the tribunal are summarised as under :-

(a) After considering the guidelines framed by the University Grants Commission adopted by the Vice-Chancellor as per the statute 198 and section 14(8) of the Maharashtra Universities Act, 1994 it is held that the probation period will have to be accepted as two years and not one year. When the notice of termination and the order of termination were issued to the petitioner, the petitioner was not a confirmed teacher and his services could not have been terminated on the

ground of unsatisfactory performance during the period of probation. Though there was no mention about the period of probation in the letter of probation, in the approval letter issued by the Solapur University, there was mention that the approval was for appointment of probation. There was no specific mention about the period of probation in the approval letter issued by the Solapur University.

(b) The Principal of the College and the President of the Management Committee had written remarks on the assessment reports on 30th June, 2012 whereas the notice of termination was dated 21st July, 2012 and date of termination was 22nd August, 2012. The reports were not placed before the management committee two months prior to the expiry of the period of probation. The procedure prescribed for termination of the services of the probation on the ground of unsatisfactory performance was strictly not followed. The management had contended that there was ample material to assess the performance of the petitioner which included the complaint, reports and other documents which were filed on record to show that the petitioner was not obeying the orders and had committed various acts showing that his performance was not satisfactory.

(c) Though in the notice of termination it was only mention that after period of termination was over, services of the petitioner shall be terminated, in the order of termination it was mention that his performance was unsatisfactory and there were complaints against him. Such an order cannot be considered as an order of termination simpliciter on the ground of unsatisfactory performance. If there were complaints, then it was necessary to verify whether the complaints were true or not, it was necessary to give an opportunity of hearing and to hold departmental enquiry to find out whether there was any substance or truth in those complaints. Since the said order was passed without following the principles of natural justice, the same was liable to be set aside.

(d) The tribunal construed section 61 of the Maharashtra Universities Act which provided for power of universities and colleges tribunal to grant appropriate reliefs and held that the tribunal while granting reliefs to an employee, can reinstate the employee on a post which he was holding or to some lower post. It is held that since the petitioner was a probational and had not completed his probation period satisfactorily as required under statute 198(1) of reinstatement, he will be reinstated as a probational because notice of termination was already issued before completion of the probation period.

(e) Since the notice of termination was already prior to the completion of the probation period, it cannot be said that the petitioner had completed the period of probation satisfactorily and thus he could not be treated as confirmed employee. The petitioner was already informed by the management by referring to Government Resolution dated 29th December, 1999 that the strength of students had fallen and minimum required students in commerce faculty were not available, the grant-in-aid was reduced and he would not be entitled to wages and thus it would be difficult for the management to pay the back wages and thus the petitioner would not be entitled to relief of continuity of services.

(f) From the statute 198, it was clear that the matter of probation was governed by the statute and the statute was already in existence providing for two years probation. Reliance is placed on section 14(8) of Maharashtra Universities Act, 1994 which provides for the powers and duties of the Vice-Chancellor of Universities in Maharashtra and it is held that the powers under section 14(8) could be exercised only when no statute was made. It is held that since in this case statute 198 was already in existence which provided for two years period of probation, if the period of probation was reduced to one year from two years as per UGC Guidelines, then amendment in statute was required. It is held that only because the UGC Guidelines were adopted by the Vice-Chancellor, it was difficult to say that without amendment in the statute, the probation period would be reduced from two years to one year. It is held that in the light of statute 198, probation period will have to be accepted as two years and not one year.

36. The tribunal though had set aside the order of termination dated 21st August, 2012 w.e.f. 22nd August 2012, directed the management to reinstate the petitioner herein on probation. It is held that the petitioner being not a confirmed employee, he would not be entitled to relief of continuity in service. In the operative part of the order, the said tribunal did not award any back wages to the petitioner. The petitioner as well as the management being aggrieved by the part of the said order and judgment delivered by the said tribunal have filed the aforesaid two separate two writ petitions.

37. The questions that arise for consideration of this court are :-

(a) Whether the University Grants Commission (Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and Other Measures for the Maintenance of Standards in Higher Education) Regulation, 2010 issued by the University Grants Commission which provide for a period of probation of one year and extendable by a maximum period of 1 more year in case of unsatisfactory performance, had any statutory force of law and was binding on the colleges, the universities and teachers though there was no amendment to the Maharashtra Universities Act, 1994 or to the statute framed by the university?

(b) Whether the probation period of the petitioner was two years one year ?

(c) Whether the services of the petitioner were terminated for unsatisfactory performance and if so, whether the management was required to conduct an enquiry against the petitioner before terminating his services of such grounds?

(d) If the termination of the services of the petitioner is set aside by the tribunal, whether the petitioner could be reinstated on probation by the tribunal or ought to have been given reinstatement on the original post with continuity of services and back wages?

38. I shall first decide the question as to whether the regulation issued by the University Grants Commission in the year 2010 prescribing for various

qualifications and providing for period of probation of one year has any statutory force without any amendment to the provisions of the Maharashtra Universities Act, 1994 or to the statutes framed by the Shivaji University.

39. There is no dispute that under the statutes framed by the Shivaji University, period of probation provide was two years. There is no dispute that under the said regulation framed by the University Grants Commission on 30th June 2010, period of probation provide was one year. There is also no dispute that on 15th February 2011, State of Maharashtra passed a resolution adopting the regulation framed by the University Grants Commission. On 7th March 2011, the Vice Chancellor of Solapur University issued a direction under Section 14(8) of the Maharashtra Universities Act, 1994 incorporating the said decision of the State Government dated 18th September 2010 w.e.f. 30th June 2010.

40. It is not in dispute that the petitioner was appointed as an Assistant Professor of Commerce in the college run by the management on 23rd June 2010 i.e. prior to the date of the issuance of the said regulation by the University Grants Commission.

41. Division Bench of this Court in an unreported judgment in the case of Maharashtra Federation of University & College Teachers Organisations (supra) has dealt with this issue in great detail. Division Bench of this Court has construed the provisions of Section 20 of the University Grants Commission Act, 1956 (UGC Act) and after considering the provisions of the UGC Act and also considering the total scheme of the UGC Act and intention behind the same, has held that the provisions of the University Statutes cannot be read in isolation without reading qualification so prescribed by the University Grants Commission which binds all concerned, including University, College and Teachers. It is held that the University, the State Government, therefore, are under obligation to follow and take note of qualifications so declared by the University Grants Commission for appointments and for grant of benefits so announced.

42. Division Bench of this Court has also adverted to the judgment of the Supreme Court in P. Suseela & Ors. (supra) in which the constitutional validity of the University Grants Commission Regulations 2009 under which NET/SET qualification was held to be the minimum eligibility condition for recruitment and appointments of lecturers/teachers in University/Colleges/Institutions was upheld. In the said judgment of the Supreme Court, it was declared that the Central Government directions were prospective and would apply to the appointments made after those 2009 regulations and everybody needs to follow those directions issued under Section 20 of the UGC Act.

43. Division Bench of this Court in the said judgment has also considered the judgments of the Supreme Court in the cases of Kalyani Mathivanan v. K.V. Jeyaraj & Ors., reported in (2015) 6 SCC 363 and State of Maharashtra & Ors. v. Asha Bidkar & Ors. decided on 25th March 2015 in Civil Appeal No.10759 of 2013. It is held by the Division Bench that while dealing with the provisions of

the Maharashtra Universities Act, 1994, Sections 5(9), 5(60), 14(8) and the UGC Act, Sections 12(d), 14, 26(1)(e), it is noted that the qualification prescribed by the UGC, though not provide in the State University Act or the Statute, the University is not absolved from abiding by the qualifications prescribed by the UGC. It is held that the same was in the background that all the Universities are affiliated to the UGC specifically for the grant and related benefits. It is held that upon referring to various Supreme Court judgments, it is conclude that all the Universities or the Colleges affiliated to such Universities are bound by UGC Regulations issued by the UGC and non-compliance, if any, can be excused by relaxation only by the UGC, if a case is made out and not as of right.

44. In my view, the principles of law laid down by the Division Bench of this Court after adverting to various judgments of the Supreme Court holding that the regulation framed by the University Grants Commission are binding upon all the Universities, teachers and Colleges affiliated to such universities squarely apply to the facts of this case. There is no dispute that period of probation provide in the said regulation of 2010 by the University Grants Commission is for one year. I am respectfully bound by the judgment of the Division Bench of this Court in the case of Maharashtra Federation of University & College Teachers Organisations (*supra*).

45. It is not in dispute that the period of one year probation was not extended for another period of one year by the University on the ground of unsatisfactory performance. It is also not in dispute that the services of the petitioner were not terminated by the management before expiry of one year. In my view, even if an amendment was not brought in the provisions of the Maharashtra Universities Act, 1994 or in the statute framed by the Shivaji University thereby reducing the period of probation from two years to one year, the University as well as the management cannot be allowed to raise a plea that in absence of any such amendment to the statute or to the provisions of the Maharashtra Universities Act, 1994, the management or the University is not bound by such regulation issued by the University Grants Commission. In my view, till amendment to the provisions of the Maharashtra Universities Act, 1994 or to the provisions of the statutes framed by the Shivaji University so as to reduce the period of probation from two years to one year is carried out, the University as well as the Colleges affiliated to the University Grants Commission is bound by such regulation issued by the University Grants Commission which has statutory force of law, till such time an amendment is brought to the University Act or Statute.

46. In my view, the said tribunal had committed an error in the impugned judgment by holding that without amendment in the statute, probation period could not be reduced from two years to one year or that the Vice Chancellor of the Solapur University could not have issued any order under Section 14(8) of the Maharashtra Universities Act, 1994 without amendment in the statute framed by the Shivaji University. In my view, the said tribunal thus could not have held that the period of probation was not reduced from two years to one year as per

the regulation issued by the University Grants Commission and thus the petitioner had not attained status of a permanent Assistant Professor on completion of a period of one year from the date of his appointment.

47. Though the said tribunal had taken a view that in the letter of appointment issued to the petitioner, it was not provide that the appointment of the petitioner was on probation, approval granted by the University clearly indicated that the appointment of the petitioner was on probation, the said tribunal in my view erroneously held that the petitioner did not become permanent upon expiry of a period of probation of one year and continued to be on probation for two years. In my view, the finding of the said tribunal that the period of probation was not reduced from two years to one year is contrary to the law laid down by this Court in the case of Maharashtra Federation of University & College Teachers Organisations (supra) and deserves to be set aside on that ground itself.

48. In my view, there is thus no merit in the submission of the learned counsel for the management that the said regulation issued by the University Grants Commission in the year 2010 which prescribed for a period of probation as one year had no statutory force of law for want of appropriate amendment in the provisions of the Maharashtra Universities Act, 1994 or in the statutes framed by the Shivaji University.

49. Division Bench of this Court in the case of Beena Inamdar v. University of Pune & Ors.(supra) has held that neither the University established or incorporated by a Central Act, a Provincial Act or a State Act nor the Colleges affiliated to such Universities can disregard the UGC Regulations. It is held that mere fact that the qualifications prescribed by the University Grants Commission are not provide in the State Universities Act or in the Statutes and the Regulations framed thereunder would not absolve the university from abiding by the qualifications so prescribed by the University Grants Commission and failure to abide it would run the risk of denial of the grants by the University Grants Commission. In my view, judgment of the Division Bench of this Court in the case of Beena Inamdar (supra) applies to the facts of this case. I am respectfully bound by the said judgment.

50. A perusal of the order dated 7th March 2011 passed by the Vice Chancellor on behalf of the Solapur University under Section 14(8) of the Maharashtra Universities Act, 1994 clearly indicates that the said order/directive is issued by the Vice Chancellor based on the resolution dated 15th February 2011 passed by the Government of Maharashtra adopting and implementing the said regulation issued by the University Grants Commission w.e.f. 30th June 2010. In the said order/directive issued by the Vice Chancellor of the Solapur University, it is made clear that the said directive shall be operative until the amended statues or directives are assented by the Chancellor and Governor of Maharashtra. It is not in dispute that the Solapur University has not withdrawn the said order/directive issued by the Vice Chancellor of the Solapur University under Section 14(8) of the Maharashtra Universities Act, 1994 till date which is in conformity with the

resolution passed by the Government of Maharashtra dated 15th February 2011 adopting and implementing the University Grants Commission Regulations of 2010 issued by the University Grants Commission which is in force.

51. In my view, since the period of probation was for one year under the said regulation issued by the University Grants Commission, the petitioner had attained status of a permanent Assistant Professor on the date of expiry of one year from the date of his appointment and thus the services of the petitioner could not be terminated on the ground of alleged unsatisfactory performance without conducting an enquiry into those allegations/complaints against the petitioner alleging unsatisfactory performance. In my view, the direction issued by the said tribunal that the petitioner shall be reinstated on probation is *ex facie* perverse and contrary to the law laid down by the Supreme Court in the case of *P. Suseela & Ors. (supra)* and the judgments of the Division Bench of this Court in the cases of *Maharashtra Federation of University & College Teachers Organisations (supra)* and *Beena Inamdar (supra)* and thus deserves to be set aside.

52. In so far as the view taken by the said tribunal that there were various complaints alleged to have been received by the management against the petitioner during the period of probation and the services of the petitioner were terminated on the ground of unsatisfactory performance during the period of probation and thus his services could not have been terminated without conducting any enquiry is concerned, no infirmity with the said part of the order can be found. In my view, there is no merit in the submission of the learned counsel for the management that the order of termination issued against the petitioner did not cast any stigma and thus his services could be terminated without conducting any enquiry during the period of probation. In my view, since the petitioner had attained the status of a permanent Assistant Professor upon completion of the period of probation of one year, his services could not have been terminated by the management without conducting an inquiry in view of the complaints alleged to have been received by the management against the petitioner which were referred in the order of termination. This part of the impugned order passed by the said tribunal is thus upheld.

53. In so far as the submission of the learned counsel for the management that there were few students in the First Year B.Com., Second Year B.Com. and Third Year B.Com. and there were no work-load sanctioned by the University, and thus no order of reinstatement could have been passed by the said tribunal is concerned, a perusal of the record indicates that the services of the petitioner were not terminated on the ground that there was no work-load sanctioned by the university in so far the said post on which the petitioner was appointed as an Assistant Professor the college run by the management is concerned. In my view, the said tribunal has thus rightly granted the relief in favour of the petitioner for reinstatement of the petitioner in the college run by the management.

54. In my view, since the termination of the services of the petitioner by the

management was illegal, the tribunal ought to have granted relief of continuity of service with back wages in favour of the petitioner. Be that as it may, if it is ultimately found that the work-load is not sanctioned by the university in so far as that post is concerned, the university and college can declare the petitioner as surplus and his appointment then can be dealt with in accordance with the provisions of the Maharashtra Universities Act, 1994. In that situation, if there is any suitable vacancy on the said post in any other college affiliated to the Solapur University, the petitioner would be eligible to the appointment on the said suitable post. In my view, learned counsel is right in his submission that the university and college tribunal though held that the termination of the services of the petitioner were illegal, the tribunal had illegally rejected the relief for back wages and continuity of service.

55. I therefore pass the following order :-

(a) Writ Petition No.11074 of 2015 is dismissed. Rule is discharged. No order as to costs;

(b) Writ Petition No.10207 of 2015 is allowed in terms of prayer clause (a). The management is directed to reinstate the petitioner in the post of full-time Assistant Professor in the subject Commerce in the respondent no.2 college with continuity of service and other benefits. It is made clear that if the work-load is not available in the respondent no.2 college in respect of the said post for the petitioner, the petitioner shall be declared as surplus and shall be appointed on a suitable post in any other college as may be recommended by the university with the same benefits. Rule is made absolute in aforesaid terms. No order as to costs.

R.D. Dhanuka, J.

At this stage, Mr. Bandiwadekar, learned counsel appearing for the management applies for stay of operation of the order allowing the Writ Petition No.10207 of 2015 and submits that during the period of stay, the management would not appoint any other person to the said post of Assistant Professor in the subject Commerce. Statement is accepted.

Operation of this order allowing the Writ Petition No.10207 of 2015 is stayed for a period of eight weeks from today. It is made clear that during this period of stay, without prejudice to the rights and contentions of the management, the management would be at liberty to apply to the University and the Government to declare the petitioner as surplus. If any such proposal is made by the management, the said proposal can be decided by the University as well as the Government independently.