

(2017) 04 BOM CK 0129
In the Bombay High Court
Case No : 5445 of 2016

Narayanam Narsimha Murthy S/o Narayanam Srinivasa
Charyulu

APPELLANT

Vs

Rashtrasant Tukdoji Maharaj Nagpur University Maharaj Bag
Road, Nagpur, through its Registrar, & Ors.

RESPONDENT

Date of Decision : 19-04-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 04 BOM CK 0129

Hon'ble Judges : B.R. Gavai, A.S.Chandurkar

Bench : DIVISON BENCH

Advocate : H. V. Thakur, N. S. Khubalkar

Judgement

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner principally seeks a declaration that he would be entitled to claim the date of his Ph.D. registration as 2-8-2012 on which date his Ph.D. registration application was accepted by the Research and Recognition Committee.

2. Brief facts relevant for deciding the writ petition are that the petitioner being qualified for being registered as a research student for Doctorate of Philosophy (Ph.D.) in the faculty of commerce with the respondent No.1 University sought registration of his research topic on 14-01-2011. When this application was made, it is the case of the petitioner that the field was governed by the provisions of Ordinance No.33 of 2008 framed by the University. As per clause 11(a) of the said Ordinance, a candidate was required to submit his thesis within a period of five years from the date on which his application was approved by the Research & Recognition Committee (RRC). In the meanwhile, on 18-04-2011, the Vice Chancellor of the University issued direction No.7 of 2011 by which the eligibility criteria and procedure for registration of candidates for obtaining Ph.D. came to be prescribed. Yet again on 17-07-2011, Direction No.10 of 2011 came to be issued with regard to the same subject matter by which conduct of Ph.D.

entrance test (PET) was mandated. The petitioner appeared for the said entrance test and cleared the same on 28-12-2011. Thereafter in October 2012, Direction No.10 of 2011 was repealed and it was replaced by Direction No.29 of 2012. On 22-10-2012, the petitioner was informed by the University that the RRC in its meeting held on 02-08-2012 had accepted his application for registration of Ph.D. Degree. The petitioner's date of registration was treated as 15-01-2011. The petitioner thereafter commenced his research work under the impression that the research period of five years for submitting his thesis would commence from the date when his application was approved by the RRC. Hence, on 12-08-2016 he moved an application to the Controller of Examinations for correcting the date of his Ph.D. registration as 02-08-2012 instead of 15-01-2011. By the communication received on 20-08-2016 the petitioner was informed that no extension could be granted for submitting his thesis and that the period for doing the same expired on 14-01-2016 which was five years from the date of his application for registration as a research student. Being aggrieved, the petitioner has filed the present writ petition.

3. Shri H. V. Thakur, learned counsel for the petitioner submitted that the University was not justified in holding that the date of the petitioner's Ph.D. registration was 15-01-2011 when he had applied for registration and in fact it should have been held that the petitioner was liable to submit his thesis within a period of five years from 02-08-2012 when his application was approved by the RRC. According to him when on 14-01-2011 the petitioner had applied for being registered as a Ph.D. student, the provisions of Ordinance No.33 of 2008 were in operation and as per Clause 11(a) of said Ordinance a candidate was required to submit his thesis within a period of five years from the date on which his application was approved by the RRC. By moving such application on 14-01-2011 which was received by the University on 15-01-2011, a vested right accrued in favour of the petitioner under Clause 11(a) of Ordinance No.33 of 2008. The subsequent repealing of Ordinance No.33 of 2008 by direction No.7 of 2011 would not adversely affect the case of the petitioner inasmuch as applications for registration received by the University before 18-04-2011 had been saved. He further submitted that for the same reason Direction No.10 of 2011 which came into effect on 17-07-2011 would also not have the effect of placing the petitioner in a disadvantageous position. Clause 8(b)(i) of Direction No.10 of 2011 would also not apply to the case of the petitioner. He then submitted that even otherwise the PET prescribed by Direction No.10 of 2011 was cleared by the petitioner on 28-12-2011. As the RRC had accepted the petitioner's application form for registration on 02-08-2012, the period of five years was required to be reckoned from that date. Though the petitioner had sought extension of a period of twelve months, this was on the assumption that the thesis was to be submitted within a period of five years from 15-01-2011. He then referred to various provisions of the Maharashtra Universities Act, 1994 to urge that any subsequent modification or introduction of a new Ordinance could not be applied retrospectively to the prejudice of the petitioner. He therefore submitted that the

date 02-08-2012 be taken as the date from which the period of five years would commence as on said date his application was approved by the RRC.

4. Per contra, Shri N. S. Khubalkar, learned counsel for the respondents justified the stand taken by the University that 15-01-2011 was the appropriate date for reckoning the period of five years for submission of the petitioner's thesis. According to him during period when Ordinance No.33 of 2008 was holding the field, the petitioner's application for registration dated 14-01-2011 had not been placed before the RRC and only on 02-08-2012 was the meeting of the RRC held at which point of time Direction No.10 of 2011 was holding the field. He submitted that the petitioner's case would therefore governed by the provisions of Direction No.10 of 2011. He then submitted that in the meeting of the Deans held on 18-10-2006 it had been resolved that the effective date of registration for Ph.D. was to be the date on which the application for registration was submitted. In the meeting of the Board of Examinations held on 13-11-2006 this decision was approved. He therefore submitted that even on this basis, 15-01-2011 was the date on which the petitioner had made an application for registration and therefore the period of five years would commence from the said date. He further relied upon the Notification dated 02-07-2011 to urge that 15-01-2011 was the correct date from which the period of five years would commence. He further justified the action of the University in refusing to grant extension for completing the research work as the extension was not sought prior to three months from the period of expiry of five years as reckoned from 15-01-2011. He therefore submitted that viewed from any angle, it was incumbent upon the petitioner to have completed his research work within a period of five years from 15-01-2011. According to him the writ petition was liable to be dismissed.

5. We have heard the learned counsel for the parties at length and we have perused the documents filed on record. We have also given due consideration to their respective submissions.

6. It is not in dispute that on 14-01-2011 the petitioner had applied to the Controller of Examinations for being registered as a research student in Ph.D. This application was received by the University on 15-01-2011. On the day when the petitioner had submitted his application, the field was governed by Ordinance No.33 of 2008 which came into effect from 18-10-2008. As per Clause 6 of said Ordinance, every application for registration was required to be placed for consideration before the RRC. The RRC could either accept, reject or suggest necessary modifications in the same. Said clause then stipulates that after the application of a candidate is accepted by the RRC, the registration of such candidate would be considered to be final. Clause 11(a) of the said Ordinance requires a candidate to submit his thesis within a period of five years from the date on which his application is approved by the RRC. Clause 23 of said Ordinance states that the provisions of that Ordinance would be prospective in nature.

7. Ordinance No.33 of 2008 came to be repealed on 18-04-2011 on account of introduction of Direction No.7 of 2011. As per Clause 2 of this Direction, it came into force with effect from the date of its issuance which was 18-04-2011. Ordinance No.33 of 2008 was repealed as per Clause No.16 thereof. It is relevant to note that as per Clause No.17 of Direction No.7 of 2011, it was clarified that the applications for registration received by the University as well as all pending cases in which registration had been granted would be governed by the respective Ordinances even though repealed. Clause 17 reads thus:

"17. Saving clause: Notwithstanding the repeal of Ordinance No.2 of 2005 and 29 to 35 of 2008 it is clarified that the applications for registration received by the University as well as all pending cases in which registration has been already granted will continue to be governed by the respective Ordinances even if repealed with effect from issuance of this Direction."

From the aforesaid, it is crystal clear that despite repeal of Ordinance No.33 of 2008, the applications for registration that were received by the University were to be governed by the repealed Ordinances. It is not in dispute that the petitioner's application for registration was received by the University on 15-01-2011 when Ordinance No.33 of 2008 was holding the field. In view of this specific saving clause, the submission made on behalf of the respondents that the case of the petitioner would be governed by Direction No.10 of 2011 as his registration application was placed before the RRC on 02-08-2012 therefore cannot be accepted. Upholding said submission made on behalf of the respondents would render the saving clause of Direction No.7 of 2011 nugatory.

8. Much emphasis was sought to be placed by the learned Counsel for the respondents on the notification dated 02-07-2011 issued by the Controller of Examinations. As per this notification, Clause 8(b) of Direction No.10 of 2011 was sought to be amended and the date of submission of the Ph.D. registration form was to be considered as the date of registration after approval of the RRC. As we have held that the applications for registration that were already received when Ordinance No.33 of 2008 was in vogue would be saved and the provisions of Direction No.7 of 2011 would not apply, there is no question of further application of Direction No.10 of 2011 or amended Clause 8(b) thereof. For said reason, we do not find it necessary to go into the question whether Clause 8(b) of Direction No.10 of 2011 could have been amended by issuing a notification by the Controller of Examinations.

9. The matter can be viewed from another angle. Though the application for registration made by the petitioner was received by the University on 15-01-2011, the same was placed before the RRC only on 02-08-2012. This delay cannot be attributed to the petitioner and it is the University which alone is responsible for the same. The petitioner having applied when Ordinance No.33 of 2008 was holding the field and while repealing said Ordinance, it was categorically stated that pending applications would be governed by that Ordinance, the University is not justified in taking a stand that the period of five

years for completing thesis work would commence from 15-01-2011 by relying upon the provisions of Direction No.10 of 2011. In any event, the petitioner has also cleared the PET on 30-12-2011 though this was not the requirement under Ordinance No.33 of 2008. Merely because the petitioner had sought extension of time to complete his thesis cannot be a factor that can be held against the petitioner when it has been found that his case is governed by Ordinance No.33 of 2008. We therefore find that the petitioner is entitled for relief in that regard.

10. In view of aforesaid discussion, it is held and declared that the petitioner's case would be governed by Ordinance No.33 of 2008 which was holding field on the date on which the petitioner made his application for Ph.D. registration that is 14-01-2011 and consequently in view of Clause-11(a), the petitioner would be entitled to submit his thesis within period of five years from the date on which his application was approved by the RRC that is from 02-08-2012.

11. Rule is made absolute in aforesaid terms with no order as to costs.