
(2003) 10 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 7330 of 2002

Shri Mahadeo Sahebrao Jadhav

APPELLANT

Vs

University of Pune

RESPONDENT

Date of Decision : 09-10-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9A
Constitution of India, 1950 — Article 14, 19(1), 309, 311
Maharashtra Universities Act, 1994 — Section 20, 20(1)

Citation : (2004) 1 ALLMR 16 : (2004) 1 BomCR 15 : (2004) 2 MhLj 331

Hon'ble Judges : S. Radhakrishnan, J

Bench : Single Bench

Advocate : A.V. Anturkar, for the Appellant; S.P. Saxena, for the Respondent

Judgement

S. Radhakrishnan, J.—By this Writ Petition, the Petitioner is challenging the Judgment & Order passed in Appeal No. 20/2002 by the Presiding Officer of the Pune Shivaji University and College Tribunal, Pune dated 4th December, 2002 whereby the Appeal filed by the Petitioner against the order of termination passed by the acting Registrar of the University of Pune, has been dismissed, hence the Petitioner challenges the order of termination dated 3rd September, 2002 passed by the Pune University.

2. The brief facts are that the Petitioner herein, prior to joining the Respondent University, had earlier worked with various private colleges affiliated to the Pune University for the period of 7/8 years. Subsequently on 20th June, 1996 the Petitioner joined the services of Pune University in its Finance Department as an Internal Auditor. This appointment of the petitioner was on probation for a period of two years. While the Petitioner was working as an Internal Auditor, on 6th May, 1997 an advertisement came to be published by the said Respondent Pune University in a daily newspaper "Sakal" for the post of Finance and Accountants Officer for which the Petitioner had applied. The Petitioner was called for an interview on 24th June, 1997 by the Selection Committee duly constituted by the

Management Council of the Respondent University. In the said interview, the Selection Committee duly selected the Petitioner and accordingly recommended him for appointment to the post of Finance and the Accounts Officer. The Management Council in its meeting held on 29th July, 1997 passed a Resolution thereby accepting the report of the Selection Committee for making appointment of the Petitioner for the post of Finance and Accounts Officer. It was also resolved in the said meeting to appoint the Petitioner on probation for a period of two years, in the post of Finance and Accounts Officer.

3. In pursuance of the said resolution of the Management Council of the Pune University had issued an order of appointment to the Petitioner dated 30th July, 1997 appointing him to the post of Finance and Accounts Officer, being a permanent post, and he was appointed on probation for a period of two years. In the said appointment letter, it was mentioned that the Petitioner's services will be governed by the provisions of the Maharashtra University Act, 1994 and the Ordinance, Statute and Rules thereunder. In view of the aforesaid letter of appointment dated 30th July, 1997 the Petitioner joined the services of the University of Pune on 1st August, 1997 as the Finance and Accounts Officer.

4. It appears that the then Vice Chancellor Dr. Vasant Govarikar while endorsing a copy of the letter dated 9th September, 1997 received by him from the Hon'ble Chancellor of Respondent University, had congratulated the Petitioner for his services rendered to the Pune University. It is the case of the Petitioner that during the entire period of services not even a single memo or letter was issued to him pointing out any irregularity in his services while performing his duties. It is the contention of the Petitioner that even his work was also appreciated by the Budget Committee for the financial year 1997-1998. On 1st August, 1998 the Petitioner was given an Annual Increment on completion of one year's service.

5. It appears that on 29th July, 1999 the Respondent University passed a resolution thereby terminating the services of the Petitioner. The said resolution alongwith the letter dated 29th July, 1999 was issued to the Petitioner, which letter the Petitioner contends, was not received by him till 31st July, 1999. Therefore it is the contention of the Petitioner that on completion of probation on 31st July, 1999 the Petitioner became a permanent employee. The Petitioner had challenged the aforesaid letter and the order dated 29th July, 1999 before the Presiding Officer, University and the College Tribunal, Pune Shivaji University, Pune. The University and the College Tribunal by its order dated 7th September, 1999 had allowed the Appeal of the Petitioner holding thereby the termination order passed by the Respondent University to be bad in law. Aggrieved thereby, the Respondent University had filed a Writ petition before this Court and this Court by its order dated 26th October, 1999 had disposed of the said Petition directing the Management Council of the Respondent University to take a decision on the judgment delivered by the University and the College Tribunal. Thereafter, as per the decision of the Management Council the Petitioner was made permanent in the post of Finance and Accounts Officer by a circular

bearing outward No. 11/2000 dated 8th February, 2000.

6. Thereafter, the Maharashtra University Act, 1994 came to be amended with effect from 20th May, 2000. By the said amendment, Section 20(1)(c) was introduced, which reads as under:-

"The appointment of the Finance and Accounts Officer shall be for a term of five years if appointed by nomination and he will be eligible for reappointment for only one more term of five years."

7. The Petitioner at that time, apprehending the earlier conduct of the Respondent University, felt that the Respondent University may again take undue advantage of the amended provision to remove him from the said post after completion of five years service (which was to expire on 31st July, 2002), had filed a Regular Civil Suit bearing No. 1005 of 2002 before the learned Civil Judge, Sr. Division, Pune seeking thereby for a declaration and injunction against the University Authority from removing the Petitioner from the said post of Finance and Accounts Officer with effect from 31st July, 2002. It appears that the learned 5th Joint Civil Judge, Sr. Division, Pune by his order dated 31st July, 2002 had directed the Respondent University to maintain status quo in respect of the Petitioner's appointment till 1st August, 2002. There is no dispute that the said status quo order was continued from time to time till 12th September, 2002. In the said proceedings filed before the learned Civil Judge, the Respondent University had preferred an application u/s 9A of the CPC challenging thereby the jurisdiction of that Court to try the above suit. On 7th August, 2002 the learned Civil Court passed an order rejecting the application of the Respondent University and holding thereby that the Civil Court had the jurisdiction to try and entertain the said suit.

8. It appears that the Respondent University by its order dated 3rd September, 2002 had terminated the services of the Petitioner from the post of Finance and Accounts Officer. Aggrieved thereby the Petitioner had preferred an Appeal before the Presiding Officer of University and College Tribunal.

9. It may be noted here that aggrieved by the order dated 7th August, 2002 passed by the Civil Court holding that the Civil Court has jurisdiction to try and entertain the suit filed by the Petitioner, the Respondent University had approached this Court by way of Civil Revision Application, and this Court by its order dated 23rd September, 2002 had granted an ad-interim exparte relief in that Civil Revision Application and had issued a notice to the Petitioner returnable on 30th September, 2002. Thereafter, on 18th October, 2002 the said Civil Revision Application came to be disposed of by this Court, whereby the Petitioner was permitted to withdraw the Civil Suit with the liberty to prosecute the Appeal filed by the Petitioner before the University and College Tribunal which was filed earlier on 11th September, 2002. The learned Presiding Officer of the University and College Tribunal by his order dated 4th December, 2002 has dismissed the said Appeal filed by the Petitioner. Aggrieved thereby the Petitioner has filed the

present petition, challenging the same and his termination order.

10. Mr. Anturkar, the learned Counsel for the Petitioner sought to challenge the order of the University and College Tribunal on various grounds. Mr. Anturkar firstly contended that the Management Council as an appointing authority, is the only competent authority which can take a decision whether to terminate the services of the Petitioner or not, and the Vice Chancellor had no authority to terminate the services of the Petitioner. It may be noted here that though the Petitioner has also contended that the Respondent University had not disclosed as to under whose authority the termination order was passed, the learned Counsel for the Respondent University fairly produced before me the original records, which clearly indicate that the termination order was issued by the acting Registrar of University on the instructions from the Vice Chancellor.

11. Mr. Anturkar, the learned Counsel for the Petitioner, in support of his contention that the Management Council alone had the authority to terminate the services of the Petitioner, has relied upon the resolution passed by the Management Council dated 12th September, 2002, which resolution reads as under:-

"As a competent authority Management Council has confirmed the services of Shri M.S. Jadhav, Finance and Accounts Officer on 1st August, 1999. The Maharashtra Govt. by issue of an ordinance has amended Section 20(c) of Maharashtra University Act, 1994 on 12th May, 2000. This amendment is made after the Management Council had confirmed the services of M.S. Jadhav, Finance and Accounts Officer. Therefore, the amendment made on 12th May, 2000 in Section 20(c) of Maharashtra Universities Act, 1994 is not applicable to M.S. Jadhav, Finance and Accounts Officer and as such the action of the University in terminating his services being illegal is hereby set aside. It is further resolved to take a serious note of the lapse committed by the University administration in infringing the rights of the Management Council. The Council, therefore, instruct the administration not to indulge into taking independent decision on any matter that falls within the preview of Management Council. Similarly any information regarding the policy matters of the University should be passed in presented and submitted to the Court of Law or any other body or agency only in consultation and in tune with the resolutions adopted by the Management council. It is further made clear that the University position submitted to the Court of Law is not the position of an officer of the University but a product of the policy decision adopted in a democratic manner by the Competent Authorities."

12. Mr. Anturkar, the learned Counsel for the Petitioner has therefore submitted that the Management Council is the supreme authority is the University and the Vice Chancellor cannot override the Management Council. In support of his contentions Mr. Anturkar, the learned Counsel for the Petitioner relied upon a judgment of this Court in the case of University of Pune Vs. Vidya Kisan Gargote, wherein this Court while interpreting the provisions of Maharashtra Universities

Act, 1994 dealing with the power of Vice Chancellor vis-a-vis Management Council has clearly held as under:-

"The Vice Chancellor had no authority in law to unilaterally override the Resolution of the Management Council, without referring the same back to the Management Council for its reconsideration and even ultimately if the differences were to still persist, the only authority to resolve the same was the Chancellor."

13. The second line of argument of Mr. Anturkar is that the Petitioner's services were confirmed with effect from 31st July, 1999 and this is clear from the resolution of the Management Council dated 8.12.1999 wherein the Management Council had taken a decision in pursuance of the directions given by this Court in Writ Petition No. 5268 of 1999 date 26th October, 1999. In the said meeting the Management Council had resolved that the Petitioner should be confirmed on the post of Finance and Accounts Officer of the University, hence services could not be terminated in view of subsequent amendment to the Maharashtra Universities Act, 1994.

14. Mr. Anturkar, the learned Counsel for the Petitioner has therefore contended that the aforesaid amendment to Section 20 of the Maharashtra Universities Act, 1994 which came into force from 20th May, 2000 cannot take away the vested right of the confirmation of the Petitioner in the said post of Finance and Accounts officer with effect from 31st July, 1999. To put in other words, the aforesaid amendment with effect from 12th May, 2000 did not have any retrospective operation.

15. In support of his contentions, Mr. Anturkar, the learned Counsel for the Petitioner has referred to and relied upon the judgment of the Hon'ble Supreme Court in the case of Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, . In the said judgment there was a challenge with regard to the amendment to pension rules whereby the retrospective reduction was made. However, the Hon'ble Supreme Court has clearly held that the pension will be as admissible under rules in force at the time of retirement and as such, retrospective reduction of pension was held to be unreasonable and arbitrary.

16. Mr. Anturkar, the learned Counsel for the Petitioner also referred to and relied upon another judgment of the Supreme Court in the case of P. Tulsi Das and Others Vs. Govt. of A.P. and Others, , wherein the Hon'ble Supreme Court has observed as under:-

"such rights, benefits and perquisites acquired by the teachers concerned cannot be said to be rights acquired otherwise than in accordance with law or brushed aside and trampled at the sweet will and pleasure of the Government, with impunity. Consequently, we are unable to agree that the legislature could have validly denied those rights acquired by the appellants retrospectively not only depriving them of such rights but also enact a provision to repay and restore the amounts paid to them to the State. The provisions of the Act, though can be

valid in its operation "in future" cannot be held valid insofar as it purports to restore status quo ante for the past period taking away the benefits already available, accrued and acquired by them."

17. Mr. Anturkar, the learned Counsel for the Petitioner referred to and relied upon the affidavit of the Petitioner dated 21st August, 2003 wherein in paragraph No. 3 the Petitioner has mentioned in an almost similar case of Mr. Shivaji Mali, the Finance and Accounts Officer of Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, who was appointed there on 13th July, 1996 and was confirmed and his services have not been terminated in view of the amendment to the Maharashtra Universities Act, 1994. Referring to the said illustrative case, Mr. Anturkar has submitted that the services of Mr. Mali in the aforesaid case, on exactly identical facts and circumstances as that of Petitioner herein, have not been terminated by Dr. Babasaheb Ambedkar Marathwada University. In paragraph No. 4 of the said affidavit, he has referred to another illustration of North Maharashtra University Jalgaon wherein Shri D.M. Shinde, was appointed as Finance and Accounts Officer on 4th October, 1991 and was confirmed on 3rd October, 1993 and his services have not been terminated. In the said affidavit dated 21st August, 2003 there is also a reference to the Finance and Accounts Officer of the Swami Ramanand Teerth Marathwada University Nanded, whose services have not been terminated in spite of an amendment in the year 2000.

18. Mr. Anturkar, the learned Counsel for the Petitioner has therefore contended that the termination order of the Petitioner which was passed on 3rd September, 2002 was solely on the ground that the Petitioner had completed five years service and in view of the amended provisions of Section 20 of the Maharashtra Universities Act, 1994, the Petitioner was not entitled to be continued.

19. To the aforesaid affidavit of the Petitioner dated 21st August, 2003 there is an affidavit in reply filed by the Respondent University mentioning therein that some of the Universities in the State of Maharashtra might not have followed the amended provisions of Section 20(1)(c) of the Maharashtra Universities Act, 1994 and accordingly might have continued their officers beyond that tenure, which amendment came into force with effect from 20.5.2000. Therefore, the contention of the Respondent University in the said affidavit in reply is that the action taken by the Respondent University to terminate the services of the Petitioner was strictly in consonance with the amended provisions viz. Section 20(1)(c) of the Maharashtra Universities Act, and that there was nothing wrong in the said termination.

20. Mr. Saxena, the learned Counsel for the Respondent University at the outset made it clear that there is no abolition of the post of Finance and Accounts Officer. It is the contention of Mr. Saxena, the learned Counsel for the Respondent University that in view of the aforesaid amendment of Section 20(1)(c) of the Maharashtra Universities Act, the said post of Finance and Accounts Officer has become a tenure post. He has stated that the termination of the petitioner's services was solely on the ground that the Petitioner is not entitled

to continue beyond the tenure of 5 years in the light of the amendment Section 20(1)(c) of the Maharashtra Universities Act, 1994.

21. In support of his contentions, Mr. Saxena, the learned Counsel for the Respondent University referred to and relied upon another judgment of the Supreme Court in the case of P. Balakotaiah Vs. The Union of India (UOI) and Others, . However, the facts and circumstances of the said case are different, in the sense, in the said matter the issue was that of the termination of services of a trade unionist. In the said case, the Supreme Court has observed that the appellant may have no doubt a fundamental right to form associations under Article 19(1)(c), but there is no fundamental right to be continued in employment by the State, and when the services are terminated by the State there cannot be complaint of infringement of any constitutional rights, when no question of violation of Article 311 arises. Mr. Saxena thereafter referred to various judgments of the Hon''ble Supreme Court wherein the Hon''ble Supreme Court has held that the Government always has a right to change the terms and conditions of the Government servants during their services and such a change will not affect the right of the employees under Article 14 of the Constitution of India, and Article 311 also will not come into play. In that behalf, the learned Counsel Mr. Saxena for the Respondent University referred to and relied up[on the judgments of the Supreme Court in the case of The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , and in the case of Mithilesh Kumar and Another Vs. Prem Behari Khare, , wherein the Hon''ble Supreme Court has held that in a given case there may be a necessary implication of retrospective effect. The Hon''ble Supreme Court has clearly held that such a retrospective effect need not be always express, but from an overall construction if it could be retrospective, the same ought to be given retrospective status. Mr. Saxena, the learned Counsel for the Respondent University also referred to and relied upon the judgment of the Supreme Court in the case of Dr. L.P. Agarwal v. Union of India and Ors. 1992 LAB. I.C. 1807 wherein the Supreme Court has held that in case of tenure appointment the concept of superannuation does not arise, inasmuch as it is only a tenure post. Whereas in the instant case the Petitioner was already made permanent as a Finance and Accounts Officer and subsequently the post has been made a tenure post.

22. With regard to the issue of retrospective effect, Mr. Saxena, the learned Counsel for the Respondent University referred to and relied upon the Judgment of the Hon''ble Supreme Court in the case of S.S. Grewal Vs. State of Punjab and others, . In the said case explanatory or clarificatory of earlier enactment was held to be retrospective. Whereas in the instant case, it is a case of making the post a tenure post and not a case of clarification of earlier enactment, hence the above judgment will not apply in this case. He also referred to the judgment of the Supreme Court in the case of Dr. S.K. Kacker Vs. All India Institute of Medical Sciences and Others, , wherein the Supreme Court has held that the incumbent after expiry of tenure loses his right to continue in the earlier post. In the said case it was held that once he opted for a tenure post, he lost his lien on the

earlier post. The above case will have no application in the instant case. Mr. Saxena, the learned Counsel for the Respondent University also referred to the judgment of the Supreme Court in the case of Lily Thomas etc. v. Union of India and Ors. AIR 2000 SCW 1760. This judgment has no direct application in the facts and circumstances of this case.

23. In support of his contention, Mr. Saxena, the learned Counsel for the Respondent University also referred to and relied upon the judgment in the case of Sarwan Kumar and Anr. v. Madan Lal Aggarwal AIR 2003 SCW 819 wherein the Court has held that the Court does not legislate but only interprets the law which is in force. The above judgment has no application in the instant case. The above judgment has no application in the instant case. Mr. Saxena has also referred to and relied upon the judgment of the Supreme Court in the case of P.U. Joshi and Ors. v. The Accountant General, Ahmedabad and Ors. 2003 (1) All I S L J 239 wherein the Hon"ble Supreme Court has held that no-one can claim that the rules of appointment can never be changed. In the above matter certain departments were amalgamated due to exigencies of the State. The Supreme Court has held that the State has right to bifurcate departments or amalgamate depending on exigencies and no employee can claim that he has a right to continue only in a particular cadre or particular department. The above judgment also will not apply in the present case.

24. Thereafter, Mr. Saxena, the learned Counsel for the Respondent University referred to and relied upon the another judgment of the Hon"ble Supreme Court in the case of B.S. Vadera Vs. Union of India (UOI) and Others, , wherein while interpreting the scope of Article 309 of the Constitution of India, the Supreme Court has held that in the absence of any statutory provisions, the President can always direct the rules to be prospective or retrospective and there is no restriction found in Article 309 in that behalf to make the rules to be operative retrospectively or prospectively. The above judgment will not be of any assistance to the Respondent as the same applies with regard to the rules framed by the President of India as governed under Article 309 of the Constitution of India, which is not the case in the instant case.

25. Mr. Saxena, the learned Counsel for the Respondent University has contended that the Petitioner was told while being appointed that he will be governed by the provisions of the Maharashtra Universities Act and therefore, now in view of the fact that Section 20 of the Act has been amended with effect from 12.5.2000 the said post is made a tenure post, and hence, the Petitioner cannot continue beyond the period of five years.

26. Mr. Saxena has contended that the Government always has a right to change the rules and there is no need for the Government to obtain consent of the employees for changing the said rules. Mr. Saxena also contended that none of the vested right of the Petitioner is affected by the said amendment to Section 20 of the Maharashtra Universities Act. He also contended that the termination of the Petitioner's services on 3rd September, 2002 was not really the termination,

but as his tenure appointment came to an end his services also came to an end. Mr. Saxena finally contended that there is nothing erroneous or illegal in the order passed by the University and the College Tribunal which is impugned by the Petitioner herein. Mr. Saxena has submitted that as the Petitioner was occupying the tenure post and the term of tenure came to an end, the Petitioner had no right to continue thereafter, and in view thereof, the services of the Petitioner came to an end, and as such the Petitioner cannot claim that he is entitled to continue in the said post.

27. After having considered the arguments of both sides at length, two basic issues arises in this case. Firstly whether the said amendment to Section 20 of the Maharashtra Universities Act, 1994 should be given retrospective effect by necessary implication. Secondly, whether the Vice Chancellor can unilaterally decide to terminate the services of the Petitioner contrary to the resolution of the Management Council.

28. As far as the first issue is concerned, a bare reading of Section 20(1)(c) of the Maharashtra Universities Act, 1994 indicates that with effect from 20.5.2000 the said post of Finance and Accounts Officer has been made a tenure post. Wordings in the said amended provisions of Section 20(1)(c) does not in any manner indicate that the same can be retrospective, inasmuch, there are no express words to indicate that the same has been made retrospective. Now the question is to see whether by a necessary implication such a retrospective effect can be given. The wordings clearly indicate that the appointment of the Finance and Accounts Officer shall be for the term of five years if appointed by nomination and he shall be eligible for reappointment for only one more term of five years. The aforesaid provision does not in any way indicate that the Legislature by any necessary implication intended to give such a retrospective effect. Now in the light of both the judgments cited by the learned Counsel Mr. Anturkar, the Petitioner after getting appointed in the post and being confirmed by the Management Council he had a vested right to continue in the said post. The learned Counsel Mr. Anturkar for the Petitioner has rightly contended that such a right cannot be taken away by a surmise or by necessary implication. The judgments referred to by the learned Counsel for the Petitioner specially in the case of *Chairman, Railway Board and Ors. v. C.R. Rangadhamaiah and Ors.*, *P. Tulsi Das and Ors. v. Government of A.P. and Ors.* clearly indicate that where an employee has a vested right, the Legislature cannot take away the same by giving retrospective effect. In the light of the above, I hold in favour of the Petitioner that there is no retrospective effect in Section 20(1)(c) of the Maharashtra Universities Act, 1994 and the said provision would only be effective from 12.5.2000 and not retrospectively. In the sense it would govern the appointments made on or after 12.5.2000 and not prior thereto where the employees have already been confirmed and made permanent.

29. As far as second issue i.e. whether the Vice Chancellor could override the Management Council, while interpreting the various provisions of Maharashtra

Universities Act, 1994 in the case of University of Pune Vs. Vidya Kisan Gargote, I have already taken a view that the Vice Chancellor has no authority in law to unilaterally override the resolution of the Management Council without referring the same back to the Management Council for its reconsideration and even ultimately if the differences were to still persist, the only authority to resolve the same was the Chancellor. Therefore the second issue is also answered in favour of the Petitioner as the Vice-Chancellor cannot override the Management Council.

30. Under the aforesaid facts and circumstances, the impugned order passed by the University and the College Tribunal cannot be sustained specially in view of the fact that the University and the College Tribunal has erroneously interpreted the provisions of Section 20(1)(c) of Maharashtra Universities Act, 1994 when there cannot be any retrospective effect to such an amendment of Section 20(1)(c) of the Maharashtra Universities Act, 1994. The impugned order of the University and the College Tribunal is also unreasonable and perverse. Rule is therefore made absolute in terms of prayer Clauses (A). It is also made clear that the Petitioner will have continuity of service and all the consequential benefits.

31. In view of the fact that the Petitioner has been put to untold misery and sufferings, the Respondent University shall pay compensatory costs of Rs. 10,000/- to the Petitioner.

32. After delivery of the above judgment, the learned Counsel for the Respondent prays for stay of this judgment and order for a period of six weeks from today. The learned Counsel for the Petitioner very strongly opposes the same. However, having regard to the facts and circumstances of the case, the request of the learned Counsel for Respondent cannot be denied. This judgment and order shall stand stayed for a period of six weeks from today.

33. Parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary or the Section Officer/Associate.