

(2001) 11 BOM CK 0008
In the Bombay High Court
Case No : Writ Petition No. 5875 of 2000

University of Pune

APPELLANT

Vs

Vidya Kisan Gargote

RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:

Maharashtra Universities Act, 1994 — Section 14(5), 14(6)

Citation : (2002) 2 BomCR 117 : (2002) 1 BOMLR 805 : (2002) 2 MhLj 540

Hon'ble Judges : S. Radhakrishnan, J

Bench : Single Bench

Advocate : S.C. Dharmadhikari and Girish Kulkarni, instructed by M.G. Kulkarni, for the Appellant; A.V. Anturkar, for the Respondent

Final Decision : Dismissed

Judgement

S. Radhakrishnan, J.—By this petition, the petitioner-University of Pune is challenging an order dated 3rd March, 2000 passed by the learned Presiding Officer, Pune/Shivaji University and College Tribunal, Pune University, Pune, in Appeal No. 13 of 1998, whereby the learned Presiding Officer of the Tribunal has set aside the order of termination dated 15th June, 1998. By the aforesaid termination order dated 15th June, 1998, the services of the respondent who was working as the Deputy Finance Officer, were terminated w.e.f., 16th June, 1998.

2. By the aforesaid impugned order dated 3rd March, 2000 the Tribunal has also declared that the respondent was in continuous service on the post of Deputy Finance Officer from 17th June, 1996 and she had become confirmed Deputy Finance Officer from 17th June, 1998 and was entitled to all benefits of continuous service from 17th June, 1996 on the post of Deputy Finance Officer. The Tribunal had also directed the Pune University to continue the respondent in service and observed that the order of reinstatement not passed as the Tribunal had already stayed the termination order by interim stay on 16th June, 1998. The petitioner University was also directed to release the annual increments of

the respondent and pay her difference in salary within two months from the date, of that order dated 3rd March, 2000.

3. The brief facts are that the respondent had originally joined the petitioner University on 18th July, 1994 as an Assistant Finance Officer. Thereafter in the month of July, 1995 the petitioner University had released an advertisement in newspapers for the post of Deputy Finance Officer. On 4th December, 1995 the respondent was duly interviewed by the Selection Committee duly constituted by the University of Pune, and on 28th May, 1996 the respondent was appointed as an Officer on Special Duty (Finance) in view of her selection. Thereafter, on 30th September, 1996 one Mr. Dharmadhikari was promoted to the post of Deputy Finance Officer on a temporary basis as per standard code rule 3(2)(d). In the month of November, 1997 the petitioner University had again promoted temporarily Mr. T. G. Taure, the Assistant Finance Officer to the post of Deputy Finance Officer as per the standard code rule 3(2)(d). On 15th June, 1998 the University of Pune had issued an order of termination to the respondent herein. Aggrieved by the aforesaid termination order the respondent had filed the aforesaid Appeal No. 13 of 1998 before the University Tribunal on 16th June, 1998. On the very day itself, i.e. on 16th June, 1998 the University Tribunal had passed an interim order of stay in the aforesaid Appeal No. 13 of 1998, which reads as under:--

"Heard learned Advocate Shri Langote for Appellant. Appellant is in continuous service from 18-7-1994. I have gone through all papers. The services are terminated with effect from 16-6-1998 after office hours. Hence, the urgent interim order is necessary. Hence Ad interim stay for termination order dated 15-6-1998 is granted till further orders. Issue show cause notice to respondent as to why stay should not be confirmed, Returnable on 25-6-1998."

4. It appears that in the meanwhile, the respondent had also filed a Writ Petition before this Court being Writ Petition No. 3278 of 1998 seeking writ of mandamus against the petitioner University to publish the outcome of the interview conducted in the month of December, 1995 for the appointment of Deputy Finance Officer on the basis of the advertisement published in the month of July, 1995. On 8th October, 1998, a Committee appointed by the petitioner University viz. Dr. Shivajirao Kadam Committee had submitted a report in favour of the respondent herein. Subsequently, the Management Council on 4th January, 1999 had considered the said Committee report and had recommended the appointment of the respondent as a Deputy Finance Officer by their Resolution dated 4th January, 1999- On 22nd March, 1999, the petitioner University had also partially implemented the aforesaid Resolution dated 4th January, 1999 passed by the Management Council, by giving a letter to one Mr. S. M. Ahire confirming him to the post of Deputy Registrar.

5. On 16th November, 1999 this Court disposed of the aforesaid Writ Petition No. 3278 of 1998 in view of the statement made by the petitioner University to complete the formalities of appointment of the petitioners as Deputy Finance

Officer. Finally on 3rd March, 2000, the University Tribunal had decided the Appeal No. 13 of 1998 of the respondent and confirmed the petitioner on the post of Deputy Finance Officer. The order of termination dated 15th June, 1998 was set aside and the respondent herein was declared to be in the continuous service on the post of Deputy Finance Officer from 17th June, 1996. The Tribunal has also observed that the respondent had become confirmed Deputy Finance Officer from 17th June, 1998 and was entitled to all the benefits of continuous service from 17th June, 1996 on the post of Deputy Finance Officer.

6. The respondent herein has filed a detailed affidavit in reply in this Petition contending that pursuant to the aforesaid order of the University Tribunal, dated 3rd March 2000, the Management Council of the petitioner University had passed a Resolution on 18th October, 2000, being the Resolution No. M-236/2000. The said resolution reads as under :--

"It is resolved that "As per the order dated 3-3-2000 of the Presiding Officer, .Pune-Shivaji University Tribunal, Pune and the selection committee report, Mrs. Vidya Kisan Gargote be and hereby confirmed on the post of Deputy Finance Officer in Finance Department of the University of Pune."

7. After the aforesaid resolution dated 18th October, 2000, the petitioner University had also issued a letter dated 24th October, 2000 whereby the respondent was confirmed on the post of Deputy Finance Officer and the said letter was served on the respondent on 25th October, 2000. Thereafter, it appears that on the very same day, the respondent had also filed the joining report dated 25th October, 2000, and the same was handed over to the Deputy Registrar through the Finance and Accounts Officer. There is no dispute that the petitioner University had passed the aforesaid resolution whereby the respondent was confirmed as the Deputy Finance Officer on the basis of the Tribunal's order dated 3rd March, 2000 and also of the selection committee report. There is also no dispute that the petitioner University had issued a letter dated 24th October, 2000 whereby the respondent was confirmed to the post of Deputy Finance Officer and that the said letter was served on the respondent on 25th October, 2000. The only dispute is that, the petitioner University contends that the said letter was served on the respondent at 6.30 p.m. and the joining report of the respondent dated 25th October, 2000 was handed over to Shri S. R. Joshi, the Deputy Registrar (Admn.) by the Finance and Accounts Officer personally on 25th October, 2000 at 7.15 p.m. Therefore the contention of the petitioner University is that the respondent did not join during the morning session of 25th October, 2000-but only in the afternoon session.

8. The respondent has produced various records to indicate that the respondent had joined as Deputy Finance Officer on 25th October, 2000 and that she had also performed the duties as Deputy Finance Officer on the very same day. It appears that the petitioner University was closed on 26th October, 2000 to 29th October, 2000 on account of Divali festival. Suddenly the petitioner University had adopted a volteface, turned turtle and issued a letter to the respondent

dated 30th October, 2000 whereby the earlier letter dated 24th October, 2000 was cancelled. The said letter dated 30th October, 2000 is rather cryptic and does not give any reason as to why the earlier letter dated 24th October, 2000 was cancelled.

9. The learned Counsel appearing for the petitioner University did not dispute that the selection committee had in fact selected and found the respondent to be suitable as Deputy Finance Officer and that they had shown her at Serial No. 1 in their report. Similarly, the learned Counsel for the petitioner University does not dispute that the Management Council had considered the selection committee report as well as the impugned order passed by the Tribunal dated 3rd March, 2000 and had accordingly passed a resolution on 18th October, 2000 whereby the respondent was confirmed on the post of Deputy Finance Officer in the Finance Department of the University of Pune. There is no dispute by the learned Counsel for the petitioner University that the University did issue the letter dated 24th October, 2000 whereby the respondent was confirmed on the post of Deputy Finance Officer. There is also no dispute that the respondent had filed the joining report on 25th October, 2000.

10. The learned Counsel for the petitioner University contends that though the Management Council might have passed the Resolution, on 18th October, 2000 whereby the respondent was confirmed on the post of Deputy Finance Officer, however, the said resolution was not legally sustainable since the learned Counsel contends that the only authority under the Maharashtra Universities Act, 1994 who could make the appointment is the Vice-Chancellor and not the Management Council and therefore, the learned counsel for the petitioner University contends that the Vice-Chancellor had instructed the Registrar of Pune University to issue the letter dated 30th October, 2000 whereby the earlier letter dated 24th October, 2000 stood cancelled. In this context, it would be relevant to note the powers and duties of Vice Chancellor as per section 14 of the Maharashtra Universities Act, 1994, especially under Sub-sections (5), (6) and (10) of Section 14 of the said Act, which read as under:--

Section 14 :-- Powers and Duties of Vice Chancellor. 14(5) "It shall be the duty of the Vice-Chancellor to ensure that the directives of the State Government if any and provisions of the Act. Statutes, Ordinances and Regulations are strictly observed and that the decisions of the authorities,, bodies and committees which are not inconsistent with the Act. Statutes, Ordinances or Regulations are properly implemented."

14(6) "The Vice-Chancellor may defer implementation of a decision taken or a resolution passed by any authority, body or committee of the university if, he is of the opinion that the same is not consistent with the provisions of the Act. Statutes, Ordinances or Regulations or that such decision or resolution is not in the interest of the university and at the earliest opportunity refer it back to the authority, body or committee concerned for reconsideration in its next meeting with reasons to be recorded in writing. If differences persist, he shall within a

week, giving reasons submit it to the Chancellor for decision and inform about having done so to the members of the authority, body or committee concerned. After receipt of the decision of the Chancellor, the Vice-Chancellor shall take the action as directed by the Chancellor and inform the authority, body or committee concerned accordingly.

14(10) "The Vice-Chancellor shall be the appointing and disciplining Authority for officers of the university of the rank of Assistant Registrar and of the rank equivalent thereto and above."

11. A perusal of the above provisions indicate that the Vice Chancellor shall be the appointing authority for the officers of the university of the rank of Assistant Registrar and of the rank equivalent thereto and above as stated under Sub-section (10) of Section 14 of the said Act. As provided under Sub-section (5) of Section 14 of the Act, the Vice-Chancellor is duly bound to ensure that the provisions of Maharashtra Universities Act, 1994 and of the Statutes, Ordinances and Regulations are strictly observed and also the decision of the authorities, bodies and committees are properly implemented. Under Sub-section (6) of Section 14 of the Act, the Vice-Chancellor may defer the implementation of a decision taken or a resolution passed by any authority, body or committee of the University if he is of the opinion that the same is not consistent with the provisions of the Act, Statutes, Ordinances or Regulations or that such decision or resolution is not in the interest of the university, and at the earliest opportunity, he shall refer it back to the authority, body or committee concerned for reconsideration with reasons to be recorded in writing and if differences still persist, the Vice-Chancellor shall within a week by giving reasons submit it to the Chancellor for his decision and accordingly inform about having done so to the members of the authority, body or committee concerned, and after receipt of the decision of the Chancellor, the Vice-Chancellor shall take the action as directed by the Chancellor and inform the authority, body or committee concerned accordingly.

12. In the instant case, the Management Council is undoubtedly the principal executive authority concerned which had passed the aforesaid Resolution dated 18th October, 2000. Till date, the said Resolution has not been revoked by the Management Council. If the Vice-Chancellor were to feel that the said Resolution was contrary to the provisions of the Act, he was duty bound to refer it back for its reconsideration, before implementation, which has not been done at all. In fact the Vice-Chancellor did not defer implementation and the same was implemented by issuance of Jetter dated 24-10-2000. On the contrary, the Vice-Chancellor has unilaterally taken a decision to override the said decision of the Management Council and had directed issuance of the aforesaid letter dated 30th October, 2000. Under the provisions of Section 14(5), the Vice-Chancellor was duty bound to implement the decisions of the authority. The concerned provisions of Sub-section (6) of section 14 of the Act, clearly contemplates that if the Vice-Chancellor is of the opinion that the decision taken or any resolution

passed by any authority, body or committee of the University is not consistent with the provisions of the Act, the Vice-Chancellor may defer the implementation of the said decision or resolution, and he may refer it back to the said authority, body or committee concerned for reconsideration with reasons in writing. Thereafter, if the differences still persist, then the Vice-Chancellor shall submit the same to the decision of the Chancellor for his decision, and thereafter, the Vice-Chancellor shall take action as directed by the Chancellor. Therefore, in the instant case even if the Vice-Chancellor were to feel that the decision was contrary to the provisions of the Act, he ought to have referred it back to the Management Council for reconsideration before implementation and thereafter if there were still differences persisting the Vice-Chancellor was very much required to send the same to the decision of the Chancellor. In the instant case the Vice-Chancellor has totally ignored the mandatory provisions of Sub-sections (5) and (6) of section 14 of the Maharashtra Universities Act, 1994 whereby he was duty bound to refer the same to the Management Council for reconsideration. The Vice-Chancellor had absolutely no power whatsoever to direct the Registrar to issue the aforesaid letter dated 30th October, 2000, which amounts to virtually canceling the Resolution passed by the Management Council, being the principal executive authority of the University. The Vice-Chancellor had no authority in law to unilaterally over-ride 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 learned Counsel for the petitioner University who is appearing not only for the Vice-Chancellor but also on behalf of the Management Council, contends that even though the Management Council had agreed to abide by the Judgment of the University Tribunal dated 3rd March, 2000, by its Resolution dated 18th October, 2000, the University still has the right to challenge the order passed by the University Tribunal. In this context, it is relevant to note that under the Maharashtra Universities Act, 1994 the Management Council shall be the principal executive authority and the Vice-Chancellor is also the Chairman of the said Management Council. There is no dispute that on 18th October, 2000 the Vice-Chancellor also had attended the said Management Council Meeting which had agreed to abide by the University Tribunal's Judgment dated 3rd March, 2000. The learned counsel for the petitioner has also very fairly conceded that the Vice-Chancellor had not recorded any protest or dissent on 18th October, 2000 when the said Resolution was passed. In fact, it is rather strange that the Vice-Chancellor who was a party to the said Resolution dated 18th October whereby the judgment of the University Tribunal was accepted and acted upon, has resiled back on the same and had directed the Registrar to issue a letter dated 30th October, 2000 thereby seeking to cancel the earlier letter dated 24th October, 2000, which he could not have done at all.

14. The learned counsel for the petitioner University has also sought to contend that in view of the fact that the respondent had already challenged the

subsequent letter of cancellation dated 30th October, 2000, before the University Tribunal by way of another Appeal which came to be finally dismissed, this Court ought not to hold that the respondent is entitled to be confirmed on the post of Deputy Finance Officer. A perusal of the order passed by the University Tribunal makes it clear that the Tribunal has treated the aforesaid order dated 30th October, 2000, to be "non-est" since the Tribunal had already granted an ad-interim stay to the termination order. The learned Counsel for the petitioner University has also contended that though the Management Council might have passed the Resolution dated 18th October, 2000 whereby it was agreed to abide by the decision of the University Tribunal dated 3rd March, 2000 and though the University had issued a letter dated 24th October, 2000, still the University could challenge the impugned order passed by the Tribunal on 3rd March, 2000. It is rather strange that when the Management Council, being the principal executive authority of the University which had agreed to abide by the University Tribunal's Judgment dated 3rd March, 2000, still the learned Counsel for the petitioner University states that the University is desirous of challenging the impugned order, which is totally impermissible, inasmuch as the aforesaid Resolution dated 18th October, 2000, still stands and the same has not been revoked. In fact, the said Resolution dated 18th October, 2000 has been acted upon by issuance of a letter dated 24th October, 2000 and also the respondent taking charge on 25th October, 2000 and performing the work as Deputy Finance Officer as indicated hereinabove. This challenge by the University is patently unsustainable in law, inasmuch as, once having resolved to abide by the judgment of the University Tribunal, the petitioner University cannot turn round and say that it can still challenge the said order of the Tribunal. In any event as indicated hereinabove, the Vice-Chancellor of Pune University could not have unilaterally directed the Registrar to issue the above letter dated 30th October, 2000 overriding the Management Council Resolution dated 18th October, 2000, hence the petitioner University is directed to allow the respondent to work as a Deputy Finance Officer, forthwith.

15. Under the aforesaid facts and circumstances, I do not find any merit whatsoever in the above petition. Writ Petition stands dismissed with compensatory costs quantified at Rs. 10,000/-.

16. The learned counsel for the petitioner University seeks continuation of the ad-interim order granted by this Court on 20th November, 2000 for a period of four weeks from today. Ad-interim order granted by this Court on 20th November, 2000 shall continue for a period of four weeks from today.

17. Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar of this Court.