

(2004) 10 BOM CK 0054

Bombay High Court (Nagpur Bench)

Case No: M.C.A. No. 170 of 1997 in Writ Petition No. 1164 of 1987

Dayabhai Maoji
Ayurved
Mahavidyalaya

APPELLANT

Vs

Vinod Sitaram
Manaskhe and Others

RESPONDENT

Date of Decision: Oct. 12, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 114
- Nagpur University Ordinance - Ordinance 24

Citation: (2005) 2 ALLMR 672 : (2005) 2 BomCR 89

Hon'ble Judges: Sinha D.D., J; Joshi A.H., J

Bench: Division Bench

Advocate: A.M. Bapat, for the Appellant; A.M. Gordey, for respondent Nos. 1 to 5, B.P. Jaiswal and T.D. Khade, A.G.P., for the Respondent

Final Decision: Dismissed

Judgement

Sinha D.D., J.

Heard learned Counsel for the applicant as well as learned Counsel for the non-applicants.

2. Mr. Bapat, learned Counsel for the applicant in M.C.A. contended that the Division Bench of this Court vide judgment and order dated 11-3-1991 directed the respondents in the said writ petition to treat the petitioners in the said writ petition as Lecturers in the respondent No. 2 Dayabhai Maoji Ayurved Maha Vidyalaya, Yavatmal, with effect from the date on which they completed three years service as Demonstrators and to fix the salary of the petitioners as Lecturers from the date they are entitled as Lecturers and pay them the salary accordingly, along with the arrears and further directed respondent No. 1 Amravati University and respondent.

No. 3 Director of Ayurved, to secure the fixation of salary of petitioners in the pay scale of Lecturers. Mr. Bapat, learned Counsel for the applicant contended that the petitioners in the said writ petition those who are non-applicant Nos. 1 to 5 were Demonstrators in the College run by the respondent No. 2 in the writ petition who is applicant petitioner in the Misc. Civil Application. It is submitted that there is no promotional channel provided under the Rules and status of the Nagpur University/Amravati University, whereby the persons who are in the category of Demonstrators can be promoted to the posts of Lecturers. It is submitted that as per Ordinance No. 24, Chapter V, Clauses 38 and 39, the appointment of a teacher of the College shall be made by the Governing Body of the College, after inviting applications for the posts by public advertisement, and after considering the recommendations of the Selection Committee as per Clause 39. Mr. Bapat, learned Counsel for the applicant contended that the only procedure known as per the rules and ordinance, particularly Ordinance 24 for appointment of a teacher, is by inviting applications and on the basis of recommendations of the Selection Committee. However, in the instant case the respondents were working at the relevant time in the cadre of Demonstrator and were not entitled either by promotion or otherwise to hold the post of Lecturer except by following selection process contemplated by Clause 38 of Ordinance 24 i.e. by selection pursuant to the advertisement.

3. Mr. Bapat, learned Counsel for the applicant submitted that he was representing the college which was respondent No. 2 in the said Writ Petition No. 1164/87 and also stated before the Court that the petitioners in said writ petition those who are respondent Nos. 1 to 5 and 7, in view of the approval granted by the Nagpur University would be entitled to be treated as Lecturer from the date they came to be appointed as such and they were also be entitled to the pay scale admissible for Lecturers from the date of appointment as Lecturers and also to the arrears. However, that statement was made without understanding the provisions of Ordinance 24 of the Nagpur University which deals with the procedure for appointment to the post of Teacher/Lecturer. Mr. Bapat further contended that even if he has given concession before the Court that the respondents were entitled to be treated as Lecturers from the date they came to be appointed as such, that by itself, does not change the procedure contemplated by Clause 38 of Ordinance 24 of the Nagpur University, which provides that an appointment of a teacher of a college shall be made after inviting applications for the post by public advertisement and after considering the recommendation of the Selection Committee. It is, therefore, submitted that the conclusion arrived at and the direction given by the Division Bench of this Court vide judgment dated 11-3-1991 are not sustainable in law and therefore, the judgment needs to be reconsidered/reviewed and appropriate orders required to be passed in this behalf. In order to substantiate its contention, reliance is placed on the judgment of the Supreme Court reported in [Northern India Caterers \(India\) Ltd. Vs. Lt. Governor of Delhi](#), .

4. Mr. Jaiswal, the learned Counsel appearing for non-applicant /respondent No. 6 University adopted the arguments canvassed by learned Advocate Mr. Bapat for the petitioner and submitted that the directions given by the Division Bench of this Court are inconsistent with the procedure for appointment of Lecturer contemplated in Clause 38 of Ordinance 24 of Nagpur University as well as Amravati University (which has adopted the Ordinance 24 of the Nagpur University) cannot be sustained and prayed that the judgment be reviewed and appropriate orders should be passed.

5. Mr. Gordey, learned Counsel appearing on behalf of non-applicant/ respondent. Nos. 1 to 5 submitted that in the instant case the respondent Nos. 1 to 5 at the relevant time were Demonstrators working with the petitioner's college. It is further contended that the State Government has taken a policy decision in the year 1975 in view of the recommendations issued by the University Grant Commission. As per the said decision of the State Government, those who are at the relevant time holding the post of Demonstrator and who possess the full qualification for being appointed as lecturer in the university/college, will be so appointed and designated and will be given U.G.C. scale of lecturer. Mr. Gordey, learned Counsel for respondent Nos. 1 to 5 further states that the State of Maharashtra had issued G.R. dated 25th October, 1977, and as per Clause 13 of the said Resolution, the conversion of the posts of Demonstrator /teacher in non-Government Colleges of Arts, Science, Commerce faculty shall be upgraded with effect from the beginning of the academic session 1975-76. Mr. Gordey, learned Counsel, therefore, contended that by virtue of the above referred Government decision and circular then passed on the recommendations of U.G.C., the post of Demonstrator was upgraded and is re-designed as lecturer and therefore, in the instant case the procedure contemplated in Clause 38 of Ordinance 24 is not attracted and therefore, the decision rendered by this Court dated 11-3-1991 is just and proper. Mr. Gordey, learned Counsel, further contended that the petitioner-college was represented by the lawyer, who in fact conceded to this position and after extending concession in this regard, it is now not open for the learned Counsel to deviate from the said concession, which was unconditional and without any reservation. Even on this short ground the M.C.A. is not maintainable.

6. Mr. Gordey, the learned Counsel further contended that the power of this Court in review is limited and it is only in certain circumstances such as the fact available on record and not pleaded or some statement which is made inadvertently de hors of the record and not otherwise. In the instant case, the ground for review put forth before this Court by the petitioner is altogether different which was neither raised in the return filed by the college in the earlier writ petition nor was pleaded before the earlier Bench and therefore, in a situation like this, the application for review itself is not maintainable, particularly when there is no error apparent on the face of record in the judgment.

7. We have considered the contentions canvassed by the respective Counsel, perused the judgment dated 11-3-1991 passed by the Division Bench of this Court which is impugned in the present M.C.A. as well as the decision of the Government taken in 1975 and the G.R. dated 25th October, 1977 as well as the provisions of Ordinance 24, Clause 38. At the outset we must express that the order dated 11-3-1991 passed by the Division Bench of this Court is on the following undisputed facts;

(i) That the respondent No. 1 to 5 came to be appointed as Demonstrators on various dates between 6-1-79 to 10-8-79 with the petitioner college Ayurved Mahavidyalaya, Yavatmal and were confirmed on 23-12-1981.

(ii) The educational qualification of respondent Nos. 1 to 5 was B.A.M..S. and they were registered as Medical Practitioner.

(iii) The Principal of applicant Ayurved College wrote to the Deputy Registrar, Nagpur University, Nagpur, on 6-9-1981 and to the Vice Chancellor of Nagpur University on 16-7-1981 whereby these authorities were informed that the respondent Nos. 1 to 5 were eligible to be promoted to the post of lecturer.

(iv) The Registrar, Nagpur University, Nagpur, wrote to the Principal of the petitioner college on 10-8-1981 stating that all the Demonstrators may be deemed to be lecturers with effect from the date on which they completed three years experience and till then they may be continued as Demonstrators.

(v) The Managing Committee of the petitioner-college passed Resolution bearing No. 4 in the meaning held on 18th September, 1982 that the respondent Nos. 1 to 4 should be promoted with effect from 1st April, 1982 and respondent No. 5 should be promoted with effect from 1-10-1982 and provisional promotional orders were accordingly issued on 23-9-1982.

8. Apart from these undisputed facts which were before the earlier Division Bench, the stand of the learned Counsel for the applicant/petitioner who was respondent No. 2 in the said writ petition is reflected in para 3 of the order of the Division Bench dated 11-3-1991 and reads thus: -

"Mr. A.M. Bapat, learned Counsel for the respondent No. 2 very fairly stated before us that the petitioners, in view of the approval granted by the Nagpur University, would be entitled to be treated as lecturers from the date they came to be appointed as such and they will also be entitled to the pay scale admissible for lecturers from the date of appointment as a lecturer and also to the arrears."

This was the specific stand taken by the learned Counsel for the petitioner before the earlier Division Bench on behalf of the college.

9. It is also considered by the earlier Division Bench that the Amravati University was established with effect from 1st May, 1983 and since it was the successor to Nagpur

University would be bound by all the actions of the Nagpur University. The Division Bench of this Court in view of the above referred undisputed facts as well as the specific stand taken by the petitioner-college, passed the following order which reads thus: -

"In the result, we direct the respondents to treat the petitioners as lecturers in respondent No. 2 D.M.M. Ayurved Mahavidyalaya, Yeormal, with effect from the date on which they complete three years" service as Demonstrators and to fix the salary of the petitioners as lecturers from the dates they are entitled to be appointed as lecturers and pay them the salary accordingly along with the arrears and we further direct the respondent No. 1 Amravati University and the respondent No. 3 Director of Ayurved to secure the fixation of the aforesaid salary of the petitioners in the pay scale of lecturer. We direct that the fixation of pay shall be made within two months from today and the arrears, if any, shall be paid within four months. The rule is made absolute in these terms. No order as to costs."

10. It is, therefore, evident that the petitioner-college in fact has initiated the process of up-gradation of the post of Demonstrator to the post of lecturer by writing to the Registrar, Nagpur University and the Vice Chancellor in this regard and when the present petitioner was informed by the Nagpur University vide letter dated 10-1-1981 that all the Demonstrators may be deemed to be lecturers from the date on which they complete three years experience, the Resolution-is also passed in this regard by the petitioner-college in the meeting held on 18th September, 1982 and granted a promotion/up-gradation to the respondent Nos. 1 to 5 in the post of lecturer with effect from 1st April, 1982 so far as respondent Nos. 1 to 4 are concerned and from 1-10-1983 so far as respondent No. 5 is concerned. The petitioner-college also issued the provisional promotion orders accordingly. It is, therefore, evident that right from the beginning it is at the behest of the petitioner/applicant college, the process is initiated for promoting the respondents to the post of lecturer and the Nagpur University also considered the issue and granted approval and sanction to the said process and therefore, the promotions were effected by the college. It is not only that the college has taken the above referred steps in promoting the respondents 1 to 5 to the post of lecturers but the learned Counsel for the petitioner who was appearing for the respondent No. 2 college before the earlier Division Bench made a categorical statement referred to herein above justifying the process of promotion initiated by the college as just and proper and according to law. It is, therefore, evident that the petitioner-college is responsible for initiating process of up-gradation of the post of Demonstrators to the post of lecturer by writing letters to the university and Vice Chancellor. The university also considered this aspect and granted approval to the said process, on the basis of which a Resolution is passed by the petitioner-college. It is, therefore, clear that post of Demonstrators was up-graded on behest of the college and the stand of the college in this regard is not only specific but the same is loud and clear and is also completely binding on them. It is impermissible in law for the

petitioner-college now to change the vary stand in the present proceeding and canvassed that the up-gradation done by them by passing resolution to the post of Demonstrators was not right. It is well settled that power of review of this Court are restrictive in nature and are required to be exercised only in cases where the error is apparent on the face of record and the party is not entitled to seek review of the judgment merely for the purpose of re-hearing and a fresh decision of the case. The normal principle is that the judgment pronounced by the Court is final and the departure from that Principle is justified only when the circumstances of a specific and compelling character make it necessary to do so. Similarly, this Court while exercising review jurisdiction does not sit as an Appellate Court and is, therefore, not entitled to consider the same issue once again, which is already concluded in the earlier judgment. The present review application, therefore, can be dismissed even on this short ground since in the present review application none of the contingency mentioned herein above exists requiring this Court to exercise the power of review.

11. Even otherwise the Government decision of 1975 and G.R. dated 25th October, 1977 reads that the Government had decided to discontinue the post of Demonstrator, the Government has taken decision in view of the recommendations of the U.G.C., to appoint or promote such Demonstrators who had full qualification for being appointment as lecturer in the university/ college and also decided to give U.G.C. pay scales to such lecturers. It also reads that such promotion, appointment/up-gradation was with effect from the beginning of the academic session 1975-76. At this stage we asked Mr. Jaiswal, the learned Counsel for the Amravati University, to show any other Government Resolution or decision, repealing or modifying or altering the above referred decision of the Government. However, Mr. Jaiswal, learned Counsel for the Amravati University was unable to point out to us any Government Resolution or decision in this regard. In absence, thereof, we are left with no option but to consider the stipulation mentioned in the decision of Government dated 15th April, 1975 as well as Government Resolution dated 25th October, 1977. The decision of the Division Bench of this Court dated 11-3-1991, even on merit, in view of the above referred Government Resolution and the decision, also cannot be said to be bad in law.

12. It is no doubt true that so far as Ordinance 24 of the Nagpur University and Nagpur University is concerned, there is a procedure which is contemplated/provided for a fresh appointment to the post of lecturer. However, in the instant case, the contingency and the context both is entirely distinct and different and therefore, the judgment of the Division Bench of this Court dated 11-3-1991 cannot be faulted, particularly in the review jurisdiction of this Court.

13. Simultaneously, we cannot close our eyes to the fact that the Division Bench has rendered impugned decision in the year 1991 and more than one decade is already passed. The directions given by the Division Bench in the said judgment are implemented more that decade ago and therefore, even from this point of view, it

will be difficult for us to reopen the issue once again, particularly in review jurisdiction of this Court.

13-A. There is no quarrel about the law laid down by the Apex Court referred to herein above. However, it is difficult to appreciate as to how the said decision can support the contention of the learned Counsel for the petitioner.

14. For the reasons stated herein above, the contentions canvassed by the learned Counsel for the applicant/petitioner are misconceived. No case is made out for interference. Mis. Civil application is dismissed accordingly. No order as to costs.