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Court : Mumbai Aurangabad

Decided On : Oct-29-2015

Judge : S.V. Gangapurwala & V.K. Jadhav

Appeal No. : Writ Petition No. 8351 of 2013

Appellant : Nirmalkumar

Respondent : The Union of India Through its Secretary, Ministry of Human Resources Development Department of Secondary and Higher Education and Others

Advocate for Def. : Mr. A. S. Deshpande

Judgement :

S.V. Gangapurwala, J.

1. The petitioner seeks to challenge Regulation 9(18) of the Veterinary Academic Regulations, 2002 framed by the Maharashtra Animal and Fishery Sciences University, Nagpur as ultra virus to the Veterinary Council of India (Minimum Standards of Veterinary Education Degree Course- B.V.Sc. and A.H.) Regulations, 1993, so also the communication dated 21.09.2013 informing the petitioner that he

will not be allowed to complete B.V. Sc. and A.H. degree course by granting additional time.

2. Learned counsel for the petitioner states that the petitioner was admitted to B.V. Sc. and A.H. degree course in June, 2003. The petitioner has completed 8th semester, however is not allowed to appear for the 5th year 9th semester vide communication dated 21.09.2013 on the ground that the petitioner has failed to complete the course within 10 years. Learned counsel submits that when the petitioner had taken admission in June, 2003, the impugned Regulations of 2002 were not in force. The said Regulations cannot have retrospective effect as the said Regulations are made applicable from the academic year 2004-2005. According to learned counsel, when the petitioner had taken admission in Academic year 2003-2004, Regulations then existing and prevailing would be applicable. There was no Regulation in force thereby restricting period for completing B.V. Sc. and A.H. degree course.

3. Learned counsel for the petitioner relies on the judgment of this Court in **Writ Petition No. 3391/203 and connected writ petitions, dated 10th October, 2013** so also the judgment of this Court in the case of **Balasaheb s/o Datta Jiglekar Vs. Union of India**, reported in **2010 (5) All MR 215**. Learned counsel submits that the Central Government Regulations of 1993 do not lay down any outer limit for completion of the course. When the Regulations framed by the Central Authority do not prescribe the outer limit for completing the course, the University, by exercising the delegated powers, could not have prescribed any outer limit. According to the learned counsel, on this count also the Regulations, restricting number of years for completing the course, framed by the University, are ultra virus and beyond the powers and authority of the University.

4. Learned counsel for the petitioner relies on Part II of Regulations 1993. Learned counsel also relies on the judgment of the Apex Court in a case of **State of Rajasthan and ors. Vs. Basant Agrotech (India) Ltd. and others, reported in (2013) 15 SCC 1** to contend that the authority exercising powers of subordinate legislation cannot enact law with retrospective effect. The Delegate authority, exercising power of delegated legislation, can make rules only within four corners

of the powers laid down under the central enactment and no statute shall be constructed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Learned counsel also relies on the judgment in the case of **Vice-Chancellor, M.D.University, Rohtak Vs. Jahan Singh, reported in (2007) 5 Supreme Court Cases 77** and submits that the Central Government does not confer any power on the University to enact Regulations with retrospective effect. According to learned counsel, even if this Court upholds the Regulations framed by the University, still the same does not have retrospective operation and the petitioner is entitled to complete the course. Learned counsel submits that the petitioner be allowed to complete the course.

5. Mr. A. S. Deshpande, learned counsel for the respondent University and Mr. S.B. Deshpande, learned ASG submit that the central legislation gives power and authority to the university to frame Regulations. The said Regulations are not in any way derogatory or contrary to the Central Regulations. As the Central Regulations does not prescribe any outer limit, it was within the power of the university to prescribe the outer limit to complete the course. The same is within the ambit and purview of the rule making authority of the University.

6. Learned counsel rely on the judgment of Division Bench of this Court in a case of **Nitesh Purshottam Nandeshwar Vs. Vice Chancellor, Mah. Animal and Fisheries Sciences University and others in Writ Petition No. 4508 of 2009, dated 14th December, 2010.**

7. Mr. A. S. Deshpande, learned counsel further submits that Central Council, in 2008, prescribed outer limit of 8 years, however the same is not applied to the petitioner. The more beneficial Regulation is applied to the petitioner, wherein 10 years time is given to complete the course. After the Regulations are modified by the Central Government, the University, in 2010 also modified the Regulations prescribing outer limit of eight years to complete the course. However, the same is not applied to the petitioner and he has been given benefit of more beneficial legislation as existing. The learned counsel further submits that it is not a case of retrospective application. It is within the power of the academic bodies to prescribe

a particular curriculum.

8. It is further submitted that the petitioner is expected to clear the course within 5 years. Much latitude has been given to the petitioner. Even in 10 years, the petitioner could not complete the course. The Regulations are framed in the year 2002. When the petitioner took admission in June, 2003, the said Regulations were already on Statute Book. The Regulations were made applicable from the academic year 2004-2005. For those students already admitted, opportunity was given to enable them to complete the course till extended period. According to learned counsel, the Regulations of 2002 are not being operated retrospectively but are operated prospectively. They are framed in 2002 and made applicable from 2004-05 giving ample opportunity to all the students to complete the said course.

9. We have considered the submissions canvassed by the learned counsel for the respective parties. Before proceeding to deal with the submissions canvassed by the learned counsel for the respective parties, it would be relevant to refer to Regulations relied by the parties. Relevant Regulations are reproached as under:

(1) Part II of Veterinary Council of India (Minimum Standards of Veterinary Education Degree Course- B.V.Sc. And A.H.) Regulations, 1993 Part II- Course of Study:

(1) Description: A Degree course of BVSC and AH shall comprise of a course of study consisting of curriculum and syllabus provided in these Regulations spread over five complete academic years including a compulsory internship of six months' duration undertaken after successful completion of all credit hours provided in the syllabus. During the course of study, there shall be training in a teaching Veterinary hospital, live-stock (including avian) farms and field training in Veterinary Institution as part of the course.

(2) Duration of semester/academic year:

(a) First semester in the respective academic year of B.V.Sc.and A.H. Classes shall be completed and evaluated by middle of December every year before the

(semester) break.

(b) Similarly, the second semester in the academic year shall be completed by the end of the second semester final examination conducted prior to semester break/vacation for the year.

(c) It is essential that each academic year covers at least 210 days of instruction including time spent for examination.

(3) Clause 9 (18) of the Maharashtra Animal and Fishery Sciences University Academic Regulations (2002)

9(18). Graduation requirement:

A student undergoing instructions at the degree shall have to complete successfully the requisite course determined by the Academic Council from time to time. In addition, such student shall also have to achieve a minimum CGPA 5.00 in the 10 point scale.

A student who has successfully completed the course described over I to IX semesters and who has obtained CGPA of at least 5.00 shall work as internee at the places approved by the University for a period of six months. The student shall be considered eligible for the award of B.V. Sc. and A.H. Degree only after satisfactory completion of the internship programme.

Maximum period of completion of B. V. Sc. and A.H. degree programme shall be 10 years from the date of admission of student.

10. Reading of Central Regulations 1993 it is manifests that the said Regulations only prescribe the nature of curriculum and syllabus provided in these Regulations spread over complete five academic years including a compulsory internship of six months, after successful completion of all credit hours provided in the syllabus. It also prescribes about two semesters in each year. Except the same, no further aspect is provided in the said Regulations with regard to the duration of the course within which the same is to be completed.

The University Act empowers the respondent University to frame Regulations. Once the powers are vested to frame Regulations, it was within the power of the University to frame Regulations, regarding aspects as are detailed in the rule making power. There cannot be a debate with the proposition that the authorities of the University while framing Regulations of 2002 were exercising power of delegated legislation. There also cannot be dispute with the proposition that the delegated legislation has to supplement and not supplant the parent statute.

11. It cannot be a matter of debate that the academic council, the management or both the bodies of the Maharashtra Animal and Fishery Sciences University, Nagpur cannot frame Regulations contrary to the Regulations framed by the Veterinary Council of India. If the State legislation is in conflict with the Central Legislation, though the former is purported to have been made under Entry 25 of the Concurrent List, but in fact encroaches upon the legislation including subordinate legislation made by the Centre under Entry No. 25 of the Concurrent List or to give effect to Entry No. 66 of the Union List, it would be void and inoperative. The moot question would be whether the Regulations of 2002 framed by the University are contrary to Central Regulations 1993.

12. The University has authority to frame regulations. If the regulations framed by the University are in conflict with the Central Regulations, the same would be repugnant to the Central Regulations and would be inoperative. Whether the same is in conflict will have to be determined by examination of both the regulations. MAFSC Academic Regulations 2002 has to be in accordance with Central Regulations 1993. The University has right to control education and set standards to the extent it would not impinge on standards of any institution set forth by the Central Regulation. It should not adversely affect the standard laid down by the Central Regulations. Perusal of the Central Regulations 1993, it is abundantly clear that the said regulation only prescribes the curriculum and the syllabus for a degree course of B.V. Sc. and A.H. spread over 5 complete academic years, including a compulsory internship of six months duration undertaken after successful completion of all credit hours provided in the syllabus. The said regulation does not provide any maximum period for completing the course. Vide Regulations of 2002, more particularly Regulation 9(18) provides for maximum

period of completion of B.V.Sc. and A.H. Degree programme within 10 years from the date of admission of students. In case Central Regulation 1993 would have provided for an outer limit for completing course, then the University certainly could not have exercised any power or authority to provide for a different maximum outer limit for completing the said degree course as that would have been repugnant to the Central Regulations. The Central Regulation is silent about outer limit. Regulations of 2002 by providing for the said outer limit for completion of the course has supplemented the Regulations of 1993 and has not supplanted it and nor it can be said to be repugnant. The Central Regulations of 1993 has only laid down the curriculum, syllabus and duration of the academic year with duration of compulsory internship. Regulations of 2002 are in accordance with Regulations of 1993. It does not lay down different standard of education or curriculum, however, to maintain the standard of education and to further the purport of the Central Legislation, has fixed the outer limit for completion of the course of 10 years. For the course of five years prescribed by Central Regulations of 1993, the University has put restriction that the candidate should complete the said course within 10 years. The same is to maintain and uplift the standard of education. Candidates cannot have vested right to continue the course in perpetuity. Vide the Regulations of 2002, the course of 5 years is allowed to be completed in 10 years. Cohesive reading of Central Regulations 1993 and Regulations of 2002 would lead us to irresistible conclusion that Regulations 2002 are only supplementing the Central Regulations 1993 which is silent on the outer limit to complete the course of five years. The Regulations 2002, as such, are only supplementing and not supplanting the Central Regulations.

13. The next issue which requires consideration is, whether the said Regulations of 2002 can be said to have retroactive/retrospective effect.

14. Undisputed factual matrix as emerges is, in June, 2003 the petitioner has taken admission to B.V. Sc. Course. The Regulations of 2002 which were framed in 2002 itself were made to operate from the academic years 2004-05. The question would be, when the said Regulations were made applicable in 2004-2005, whether the said Regulations would apply to the students who had taken admission to the course in June 2003, more particularly when the said Regulations

were brought on the statute book in 2002, however implementation was made 2004-2005.

15. Section 1(iii) of the Regulation 2002 itself lays down that the said Regulation shall come into force from the academic year 2004-2005 and shall be applicable to all the students irrespective of their year of admission.

16. In the present case, the Regulations of 2002 are brought into effect from the academic year 2004-2005 irrespective of the date of admission of the students. It is not a case the date of commencement of the said regulations is earlier to its enactment, it is certainly subsequent to its enactment. The terms of the said regulations are clear and unambiguous. When the petitioner took admission in June, 2003, the Regulations were already framed. They were to be made effective from the year 2004-2005, irrespective of the date of admission of the students, thereby sufficient notice was given even to those students who were admitted in the year 2003 that the said regulations are being brought into effect from the year 2004-2005. The same cannot be said to be retrospective. Regulations of 2002, more particularly section 1(iii) clearly lays down the date of operation of the said regulation. The Regulation itself is crystal clear. The date of operation has been notified in the Regulations itself. It cannot be said that they are made operational with retrospective effect. The same will have to be given effect to.

17. In the light of above, the writ petition is dismissed, however with no order as to costs.

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