

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.996 OF 2015
WITH
CA 2670/2015 WITH CA/3322/2016**

Dr. Shaikh Saleem s/o Shaikh Chand
Age 57 years, Occu. Service
R/o Plot No.16, Maulana Azad
Housing Society, Rouza Baug,
Aurangabad, District-Aurangabad.

..PETITIONER

VERSUS

1. Dr.Babasaheb Ambedkar Marathwada
University, Aurangabad,
University Campus, Aurangabad
Through its Registrar
2. The Director
Board of college and University
Development, Dr. Babasaheb Ambedkar
Marathwada University, Aurangabad.
3. Maulana Azad Educational Trust,
Dr.Rafik Zakeria Campus,
Roajaj baug, Aurangabad,
Through its Chairman/Secretary
District Selection Committee.

..RESPONDENTS

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Mr.V.D.Hon, Senior Counsel with Mr.Sayyed Tauseef
Yaseen, Advocate for the Petitioner;

Mr.S.K.Kadam, AGP for State;

Mr.S.G.Chapalgaonkar, Advocate for Respondent Nos.2
and 3.

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**CORAM : R.M.BORDE &
P.R.BORA,JJ.**

DATE : 15th March, 2016.

ORAL JUDGMENT (PER:- R.M.BORDE,J.)

1) Heard. Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, the petition is taken up for final disposal at admission stage.

2) The petitioner is functioning as Director of the Millennium Institute of Management, Roza Baug, Aurangabad, since 2003. He is objecting to order dated 12.1.2015 passed by the Director, Board of College and University Development, Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, thereby directing withdrawal of the approval accorded by the university to the appointment of the petitioner as a Director in the year 2006. The petitioner claims that he fulfills the requisite eligibility criterion for appointment to the post of Director and as such, taking into consideration the application of the petitioner as well as after observing the procedure prescribed under the relevant Regulations, he came to be appointed on the post of Director of the aforesaid institute

of management.

3) It is the contention of the petitioner that his name has been recommended by the duly constituted selection committee and on consideration of the recommendations the institution has appointed him as a Director in the year 2003.

4) A proposal was moved for according approval to the appointment of the petitioner in the year 2003 and the university appears to have acted upon the proposal and accorded approval to the appointment of the petitioner only in the year 2006.

5) On 8.4.2013 a complaint was received by the university, questioning appointment of the petitioner as a Director. On consideration of the said complaint; report of the committee, appointed by the university for investigating into the complaint; after issuing show cause notice to the petitioner and on receiving reply

to the show cause notice and on considering the said reply, the university came to the conclusion that the petitioner does not fulfill the eligibility criterion for appointment to the post of Director and as such, by order dated 27th March, 2014, the university passed an order of withdrawal of the approval accorded to the appointment of the petitioner in the year 2006.

6) The said adverse order issued against the petitioner was subjected to challenge at the instance of the petitioner in Writ Petition No.3058/2014. During the course of hearing of the said petition, the university took a decision to withdraw the order impugned in that petition, which satisfied the grievances raised by the petitioner and as such, the said petition was disposed of.

7) Although the respondents before the court, i.e. university authorities asserted their intention to take steps in view of the complaint

received against the petitioner, the court did not express any opinion in that regard.

8) The learned Counsel appearing for the petitioner contends that after withdrawal of the impugned order in the earlier writ petition, it was not permissible for the university authorities to consider the grievances raised in the complaint, which was also the basis for issuance of the earlier order dated 27th March, 2014. It is also the contention of the petitioner that since no leave of the court was sought, it was impermissible on the part of the university authorities to act upon the complaint on second occasion.

9) We, however, refrain to express any opinion on the contentions raised by the petitioner in this regard, since we are remanding the matter and directing re-consideration of the grievances/issue raised by the petitioner in the instant petition once again.

10) It is not a matter of dispute that while issuing second order i.e. order dated 12.1.2015, which is being impugned in the instant petition, the petitioner has not been extended any opportunity of hearing. The contention of the petitioner, that adverse order has been issued against him without observing the principles of natural justice and as such the same deserves to be quashed and set aside, is liable to be accepted.

11) The petitioner also contends that the University Ordinance No.168-B is not attracted in the instant case since it was framed in 2005 whereas the petitioner has been appointed to the post of Director in 2003. The Ordinance No.168-B cannot have retrospective application. It is also contended that the petitioner fulfills the requisite norms prescribed by AICTE and since he was permitted to be continued to serve from 2003 to 2015; and that there is no complaint in

respect of his functioning as a Director, it was not permissible for the university to issue the impugned order after a lapse of about ten years of his appointment to withdraw the approval accorded to his appointment.

12) As has been stated herein above, since the matter is being redirected to university for consideration, we refrain from expressing any opinion on the objections raised by the petitioner in the instant petition and it would be open for the petitioner to raise all these objections before the university authorities. The order impugned in this petition since has been issued without observing the principles of natural justice, we deem it appropriate to quash and set aside the same and direct the university authorities to re-consider the issue after extending an opportunity of hearing to the petitioner. It is specifically made clear that this Court has not expressed any opinion as regards merits of the contentions raised by the

petitioner in the instant petition. It would be open for the petitioner to raise all the issues before the university authorities and it would be open for the university authorities to consider the matter afresh.

13) Rule is accordingly made absolute to the extent specified above. There shall be no order as to costs. Pending civil applications stand disposed of.

sd/-
(P.R.BORA)
JUDGE

sd/-
(R.M.BORDE)
JUDGE

bdv/