

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1406 OF 2015

1. Rahul S/o. Vedprakash Patil,
Age : 42 Years, Occu. : Agri. And Business,
R/o. : Plot No. 138, "Shivai",
N-3, Cidco, Aurangabad
2. Rajesh S/o. Gajanan Wankhede,
Age : 40 Years, Occu. : Agri.,
R/o. : "Om Gurudeo", Chandni Chowk,
At Post Savda, Taluka : Raver,
District : Jalgaon
3. Baburao S/o. Uttam Bhosale,
Age : 44 Years, Occu. : Agri.,
R/o. : Shivaji Nagar,
Taluka : Kadegaon, District : Sangli
4. Mukund S/o. Nagnath Dongre,
Age : Major, Occu. : Agri.,
R/o. : Mangrul, Taluka : Tuljapur,
District : Osmanabad
5. Bashir Amin Murtuja,
Age : 50 Years, Occu. : Agri.,
R/o. : 1076, R. C. Church Road,
Bajar Peth, Ratnagiri,
Taluka and District : Ratnagiri

.. **Petitioners**

Versus

1. The State of Maharashtra,
Through its Secretary,
Animal Husbandry, Dairy
Development and Fisheries Department,
Mantralaya, Mumbai
2. Maharashtra Animal and Fishery Sciences
University, Nagpur,
Through its Registrar

.. **Respondents**

Shri N. B. Khandare, Advocate for Petitioners.
Smt. A. V. Gondhalekar, Addl. G. P. for Respondent No. 1.
Shri P. G. Rodge, Advocate for Respondent No. 2.

CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.
DATE : 21ST JULY, 2016.

ORAL JUDGMENT (PER S. V. Gangapurwala, J.) :-

1. Rule.
2. Rule returnable forthwith. With the consent of learned counsel for respective parties taken up for final hearing.
3. Petitioners herein are nominated members of the Executive Council of Respondent No. 2. The Respondent / State issued notifications / orders on 28.1.2015 cancelling the nominations of the Petitioners as members of the Executive Council. The Petitioners have assailed the said notifications / orders vide the present writ petitions. As these writ petitions are based on same set of facts and involve common question of law so as to avoid rigmarole they are decided by the common judgment.
4. The Petitioners herein are nominated to the Executive Council constituted U/Sec. 26 (1) of the Maharashtra Animal and Fishery Sciences University Act, 1998. As per the orders nominating the Petitioners as members of the Executive Council the tenure to hold the office is 5 years from the date of order or depending upon the contingency as spelt out in the order of nomination. Pursuant to the said orders nominating the Petitioners the Petitioners started functioning as members of the Executive Council, abruptly the impugned notification is issued cancelling the nominations of the Petitioners as members of the

Executive Council.

5. Mr. Khandare, the learned counsel for the Petitioners submits that, the impugned orders cancelling the nominations of the Petitioners are bad in law, without authority and in transgression of the principles of natural justice. There is no provision entitling the Respondent / State from cancelling the nominations of the Petitioners. The Petitioners having been nominated are entitled to hold the office for a period of 5 years unless the Petitioners resign or are convicted by court of law for an offence involving moral turpitude as laid down U/Sec. 52 of the said Act of 1998. The learned counsel further submits that, the reliance placed by the Respondent / State on the doctrine of pleasure is not warranted and in contravention of the provisions of the Act and the Statute. The Statute entitles a nominated member to hold the office as a member of Executive Council for a period of 3/5 years. While revoking / cancelling the nominations of the Petitioners no reasons are given and as per the whims and fancies of the Respondent the orders have been passed, the same is illegal and deserves to be set aside. The learned counsel relies on the judgment of the Division Bench of this court in Writ Petition No. 3258 of 2015 dated 5.5.2015 and another judgment of the Division Bench in Writ Petition No. 2949 of 2015 dated 6.5.2016.

6. Mrs. Gondhalekar, the learned A. G. P. submits that, the Petitioners are nominated as members of the Executive Councils and are not elected. The Petitioners have not been elected nor have assumed the office of Executive Council by undergoing any selection process as such they do not have any right to post. The Petitioners were nominated as per the choice of the Government, as such, the Government has every right to cancel / revoke their nominations. As the Petitioners cannot claim any right to the said

office their nominations have been rightly rejected. The appointments of the Petitioners were at the pleasure of the Government and their removal is also at the pleasure of the Government. There is no provision in the statute which restricts the powers of the Government to cancel the nominations of the Petitioners.

7. Mr. Rodge, the learned counsel for the Respondent / University states that, in view of Section 55 of the Maharashtra Animal and Fishery Sciences University Act, 1998 Petitioner has to make a representation to the Vice Chancellor which would be forwarded to the Hon'ble Chancellor. Hon'ble Chancellor is authorised to decide on the said representation and his judgment would be final, as such, the present Petitions are not maintainable.

8. We have considered the submissions canvassed by leaned counsel for respective parties.

9. Before we proceed to deal with the contentions canvassed by the learned counsel for respective parties it would be appropriate to refer to the relevant provisions.

"THE MAHARASHTRA ANIMAL AND FISHERY SCIENCES UNIVERSITY ACT, 1998

Section 26

(1) The Executive Council of the University shall be the executive authority of the University and shall consist of the following members, namely :-

(i) The Vice-Chancellor ex-officio Chairman.

(ii) The Commissioner of Animal Husbandry or an Additional Director of Animal Husbandry, so nominated by the Commissioner.

(iii) The Commissioner, Fisheries or his nominee not below the rank of Joint Director of Fisheries.

(iv) The Dairy Development Commissioner or Additional Dairy Development Commissioner or his

nominee not below the rank of Joint Director.

(v) The Commissioner, Agriculture or his nominee not below the rank of Additional Director of Agriculture.

(vi) The Principal Chief Conservator of Forests or his nominee, not below the rank of Conservator of Forests.

(vii) Director of the University.

(viii) Deans of the Faculties.

(ix) One eminent scientist in the field of Veterinary or Animal Science with adequate experience of active research to be nominated by the Chancellor in consultation with the Vice-Chancellor.

(x) Two Progressive livestock breeders or fisheries breeder to be nominated by the Pro-Chancellor.

(xi) One representative from the Indian Council of Agricultural Research or Indian Veterinary Research Institute.

(xii) One representative from Indian Council of Medical Research.

(xiii) Three members of the Maharashtra Legislative Assembly elected by the Assembly, from amongst its members.

(xiv) Two members of the Maharashtra Legislative Council elected by the Assembly, from amongst its members.

(xv) The Chairman of Animal Husbandry and Dairy Committee of six Zilla Parishads, one each from the Revenue Division, in the State to be nominated by the Pro-Chancellor.

(xvi) One representative to be nominated by the Veterinary Council of India.

(xvii) One representative each from Dairy, Fisheries and Poultry Industries nominated by the Chancellor.

(xviii) One eminent woman social worker to be nominated by the Chancellor.

(xix) One Chairman each from the Dairy, Poultry and Fisheries Co-operative Societies to be nominated by the Pro-Chancellor.

The Registrar shall be the ex-officio Secretary of the Executive Council.

(2) (a) A member elected by the Maharashtra Legislative Assembly or the Maharashtra Legislative Council shall cease to be a member of the Executive Council as soon as he ceases to be a member of the electing body.

(b) The Chairman of the Animal Husbandry Committee of any Zilla Parishad who becomes a member of the Executive Council under clause (xv) of sub-section (1) shall cease to be a member of the Executive Council as soon as he ceases to be the Chairman of the said Committee or on the expiry of the period of one year from the date of his appointment to the Executive Council, whichever is earlier.

(c) The Chairman of the Dairy, Poultry or Fisheries Co-operative Society, which becomes a member under clause (xix) shall cease to be a member of the Executive Council as soon as he ceases to be the Chairman of the said society.

(d) The term of the office of the members of the Executive Council other than the ex-officio members shall be Five years.

Section 52

(1) Save as otherwise provided, any member of any authority or body of the University may resign his office by letter addressed to the Vice-Chancellor, through the Registrar, and on the Vice-Chancellor accepting the resignation, the office of such member shall become vacant:

Provided that, where any member is appointed or nominated on any such authority or body by the Chancellor, he may resign his office by letter addressed to the Chancellor, and his resignation shall be effective and his office shall become vacant when the resignation is accepted by the Chancellor.

(2) Any member of any authority or body of the University shall cease to be a member thereof on his being convicted by a court of law of an offence which involves moral turpitude.

Section 55

If any question arises regarding the interpretation of any provision of this Act or any Statute or Regulation or, as to whether a person has been duly nominated, elected, appointed, co-opted or has become, or is entitled to be, a member of any authority or body of any University, the matter may be referred on petition by any person or body directly affected or suo motu by the Vice-Chancellor to the Chancellor, who shall, after giving the person or body affected a reasonable opportunity of being heard and after taking such advice as he deems necessary, decide the question, and his decision shall be final."

10. As far as the contention of Mr. Rodge of applicability of Section 55 of the Maharashtra Animal and Fishery Sciences University Act, 1998 is concerned the same need not detain us. The said provision would be inapplicable to the controversy involved in the present Petitions. The said provision refers to the dispute or interpretation of any provision of the Act, Statute or

Regulation or as to whether a person has been duly nominated, elected, appointed, co-opted or has become or is entitled to be a member of any authority or body of any University. Naturally, the said disputes can be referred to the Hon'ble Chancellor. In the present Petitions the issue is with regard to the cancellation of the nominations of the Petitioners which does not appear to be within the purview of said provision.

11. There cannot be any dispute with the proposition that, if, the 'doctrine of pleasure' is applied the same has unbridled power to remove the person who has been nominated but then, the said power is to be prescribed by the Statute. In the present case, the Statute nowhere give right to the Government to remove the members nominated at its pleasure. The only provision dealing with the ceasession of the membership even of a nominated member is section 52 of the Act of 1998. Only two contingencies are provided therein i.e. the member may resign or he is convicted by a competent court for an offence involving moral turpitude save and except the same there is no other provision dealing with the ceasession of membership of a nominated member to the Executive Council.

12. Even if, it is assumed that the State has exercised its powers and has acted at its pleasure still even applicability of the said doctrine has not been properly resorted to by the Respondent in as much as no cause is spelt out in the orders cancelling the nominations of the Petitioners. The orders does not state the reason nor the affidavit states that the cause existed for cancelling the nominations of the Petitioners the Government cannot act arbitrarily. The orders does not whisper about the cause, the same is not reflected even by the circumstances nor by the affidavit in reply filed by the Respondents.

13. As this court in Writ Petition No. 2949/2015 vide order dated 6.5.2016 had observed that, even while invoking the 'doctrine of pleasure' it is imperative that cause must exist in absence thereof the orders cancelling the nominations are bad in law.

14. In light of the above, the impugned notifications and orders are quashed and set aside. Rule is made absolute in terms of prayer clause "A".

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]

sam/July.16