

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

WRIT PETITION NO.7278 OF 2016

1. Ananta s/o Vishwanath Dhotre,
Age: 34 years, Occu. Service as
Assistant Professor, Dairy Engineering
2. Nitin s/o Wamanrao Shinde
Age: 36 years, Occu. Service as
Assistant Manager (Quality Control),

Both C/o. College of Dairy Technology,
Warood, At present R/o.Aurangabad,
Tq. Dist. Aurangabad.

PETITIONERS

VERSUS

The Registrar,
Maharashtra Animal and Fisheries
Science University,
Phutala Lake Road, Nagpur,
Dist. Nagpur – 400 001.

RESPONDENT

...

Mr.Sachin S. Deshmukh, Advocate for the
petitioners.
Mr.P.G.Rodge, Advocate for Respondent / Sole.

...

**CORAM: S.S.SHINDE &
V.K.JADHAV, JJ.**

Reserved on : 12.07.2016
Pronounced on : 13.07.2016

JUDGMENT: (Per S.S.Shinde, J.):

1. This Petition is filed with the following prayers:

(B) By issuing writ of certiorari or any appropriate writ, order or directions in the like nature, to quash and set aside the impugned resolution No.32 and 33 of 2016 passed by the respondent – University, by which it has been resolved, not to issue 'No Objection Certificate' to the academic officer / staff of the university seeking admission to the Ph.D. course outside the respondent university for academic year 2016-2017.

(C) By issuing writ of mandamus or any appropriate writ, order or directions, the respondent be directed to issue "No Objection Certificate" in favour of petitioners along with consequential relieving order, so also conferring the necessary consequential service benefits to the petitioners, forth

with, enabling the petitioners to join and participate in the counseling, which would be held on 14/07/2016 at "National Dairy Research Institute Karnal", (Haryana), and for that purpose necessary directions be issued.

2. The learned counsel appearing for the petitioner submits that the respondent University was not justified while passing the impugned Resolution Nos.32/2016 and 33/2016, thereby resolving not to issue "No Objection Certificate" to the petitioners seeking admission to Ph.D. Degree Course, outside the respondent University, while ignoring the fact that, the petitioners are allowed to appear for the examination and their applications are duly recommended by the Association Dean and further Resolution by the Academic Council recommending the NOC in favour of the petitioners. It is further submitted that it is not open for the

respondent University to assign the reason of inadequate staff, while refusing to grant NOC, admittedly when the petitioners were permitted to appear for examination and the Academic Council of University has recommended to issue the same, as such the impugned Resolution is in utter defiance of the principle of estoppels and doctrine of legitimate expectations.

3. The learned counsel appearing for the petitioners invited our attention to the pleadings in the Petition and the various documents placed on record and submits that once the recommendation is given by the Association Dean and there is further recommending the NOC in favour of the petitioners, the respondent University should have issued NOC. He submits that the petitioners have satisfied the condition of completion of probation vis-a-vis rendering five years continuous service, the

petitioners ought to have been issued study leave, sanctioning order and relieving order, however, the same has been declined by the respondent University solely on the ground of paucity of staff. It is submitted that the paucity of staff cannot be a reason to deny the opportunity to the petitioners to prosecute higher studies, more so when the petitioners have appeared for the examination with prior permission of the University and also secured 4th and 5th rank in the order of merit. It is submitted that though the petitioners are serving and the respondent is situated within the territorial jurisdiction of the Bombay High Court Bench at Nagpur, one of the petitioners is resident of Aurangabad. In support of their contention that the writ can be issued to any authority located within State of Maharashtra, the learned counsel for the petitioner placed reliance on the reported judgment of the Supreme Court in the

case of *Khajoor Singh Vs. Union of India*¹. Therefore, he submits that the Petition deserves to be allowed.

4. The learned counsel for the petitioner relying upon the judgment in the case of *Dr.Suresh Samadhan Ghoke Vs. Maharashtra Animal and Fishery Sciences Univesrity* (Writ Petition No.6432/2014 with Writ Petition No.6433/2014, decided on 01.08.2014) and submits that in similar facts situation, the Division Bench of the Bombay High Court Bench at Aurangabad has allowed the Petition.

5. On the other hand, the learned counsel appearing for the respondent relying upon the averments in the affidavit-in-reply and annexures thereto made following submissions.

6. He submits that the petitioners are

1 1961 AIR (SC) 532

in service in the College of Dairy Technology, Warood, District Nagpur and the Resolution Nos.32/2016 and 33/2016 impugned in this Petition is passed by the Academic Council for the respondent University, which is situated at Nagpur. Therefore, the Petition ought to have been filed at the Bombay High Court Bench at Nagpur and therefore on this ground alone, the Petition deserves to be rejected.

7. The Academic Council is necessary party, however, the petitioners have not added the Academic Council as party respondent. Merely because the petitioners are permitted to appear for the examination would not accrue any right in their favour so as to issue no objection certificate. The accreditation of the respondent University has been made by the ICAR in the year 2010 and thereafter, after 5 years the accreditation of the respondent University

will have to be made by the ICAR in this year. There is shortage of Academic Officers (teaching staff) and also Academic staff in the respondent University and if all the standards of teaching and academic standard with the help of available Academic Officers (teaching staff) and other academic staff are maintained in the University in that case only the ICAR used to grant accreditation. It is submitted that the recent accreditation of four Agricultural Universities in the State has been put on hold by the Accreditation Board of ICAR, New Delhi due to lack of qualified staff for teaching and non maintenance of other standards in the said Universities. Therefore, on account of paucity of Academic Officers and other Academic Staff, the respondent University could not maintain the teaching standards and other standards with the help of available qualified staff for proposed accreditation of

the respondent University in this year by the ICAR and in that even the ICAR may refuse accreditation to the respondent University or to put on hold such accreditation. It is submitted that the non accreditation of the University may lead to loss of financial grants (Rs.12 crores per year) from funding agency i.e. ICAR which is very necessary for the further development, education and research work of the respondent University and the University will not get 15% students for Under Graduate (Dairy & Fisheries) programme and 25% students for Post Graduate (M.V.Sc.) programme from the ICAR due to non accreditation of the University. In view of the above counts, the Academic Council of the respondent University by the Resolution Nos. 32 and 33/2016 under challenge in this Writ Petition unanimously taken a policy decision and resolved that in view of the shortage of Academic Officers / Staff and ban of

Government to fill up 50% vacant posts, not to issue "No Objection Certificate" to the Academic Officers / Staff of the University including to the petitioners for admission to Ph.D. degree course outside the University for the academic year 2016-17. It has also been resolved by the said Resolutions not to relieve those staff members, who have been issued NOC for Ph.D./M.V.Sc. degree programme for the year 2016-17. However, this part of the impugned Resolution has been suppressed by the petitioners in this Writ Petition. The said policy decision of the Academic Council of the respondent University is based on the well founded objects and sound reasons and the same needs no interference of this Court.

8. We have given careful consideration to the submissions of the learned counsel for the petitioners and the learned counsel appearing for the respondent. At the outset

it is necessary to mention that the petitioners are rendering the services within territorial jurisdiction of the Bombay High Court Bench at Nagpur. The respondent is situated at Nagpur within jurisdiction of the said Bench. Therefore, we find considerable force in the argument advanced by the respondent that the Writ Petition should have been filed at Nagpur. Be that as it may, we have considered the submissions of the petitioners on merits and we are unable to persuade ourselves to grant any relief for the reasons stated herein below. As it is evident from the perusal of the reply filed by the respondent that the respondent University may likely to face refusal of accreditation to the respondent University from ICAR due to lack of qualified staff for teaching and non maintenance of other standards in the said Universities. Therefore, the respondent has taken a policy

decision, by passing the impugned resolutions, resolving that in view of shortage of Academic Officers / Staff and ban of Government to fill up 50% vacant posts, not to issue No Objection Certificate to the Academic Officers / Staff of the University including the petitioners for admission to Ph.D. degree course outside the University for the academic year 2016-17. Therefore, the said Resolutions would operate *qua* all the Officers / Staff of the University. There is no any arbitrary exercise of power or denial of NOC in favour of the petitioners by singling out the petitioners.

9. The facts of the case in the case of *Dr.Suresh Samadhan Ghoke (supra)* vis-a-vis the present case can be distinguished inasmuch as in the facts of that case, though ground of paucity of staff was agitated by the University, the documents were placed on record before the Court showing that as a

matter of fact the University issued an advertisement for filling in 11 posts of Assistant Professors in the faculty of Veterinary medicine. At the relevant time, the stand taken by the University was that they are short of Associate Professors. Therefore, it was observed by the High Court that the respondent has already taken steps for recruiting Assistant Professors. Therefore, after recording the satisfaction that the respondent has already taken steps for recruiting Assistant Professors, the ground taken by the University about paucity of staff was disapproved and this Court allowed the said Writ Petition.

10. It is not necessary for us to give elaborate reasons. Suffice it to say that the respondent has taken conscious decision for more than one reasons and the said decision has been made applicable to all the Academic Officers and Academic staff. Therefore, we

are unable to persuade ourselves to grant any relief to the petitioners, hence, the Writ Petition stands rejected.

Sd/-

[V.K.JADHAV]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE

DDC