

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

WRIT PETITION NO. 7657 OF 2016

Niranjan Chittaranjan Helkar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri V. M. Mane, Advocate for the Petitioner.

Shri B. A. Shinde, A.G.P. for the Respondent No. 1.

Shri S. S. Tope, Advocate for the Respondent No. 2.

Shri R. N. Dhorde, Senior Advocate i/by Shri B. T. Bodkhe,
Advocate for Respondent Nos. 3 and 4.

Shri S. B. Talekar, Advocate h/f Talekar & Associates, for the
Respondent No. 5.

CORAM : S. V. GANGAPURWALA

K. L. WADANE, JJ.

DATE : 03RD OCTOBER, 2016.

PER COURT :

. Mr. Mane, the learned counsel for the petitioner states that, the respondent Nos. 3 and 4 have appointed the petitioner as Assistant Professor for English subject from S.C. category. The selection process was conducted. In the selection process the name of the respondent No. 5 was at Sr. No. 1 and the petitioner was at Sr. No. 2. The learned counsel submits that, the respondent No. 5 was issued with appointment order. He did not join the post. As such, the respondent Nos. 3 and 4 issued appointment order to the petitioner. Vide the impugned

communication the university has directed the respondent/institution to terminate the services of the petitioner and to issue appointment order to the respondent No. 5. The learned counsel submits that, the university does not have any such powers to direct termination of service of the petitioner.

2. Mr. Tope, the learned counsel for the respondent No. 2/university submits that, the selection committee was constituted. One of the representative was the member of the university. The selection committee as per statute 219(A) has conducted the interview and respondent No. 5 was placed at Sr. No. 1 and petitioner was placed at Sr. No. 2. However, college had issued appointment order to the petitioner. The respondent No. 5 had made various complaints to the university. Considering the said complaints and the report of the selection committee, the respondent No. 3/institution was directed to take steps. The respondent No. 4 communicated to the university that appointment order was sent to the respondent No. 5 through courier and the office of the courier did not find address of the respondent No. 5, as such the appointment order could not be served upon him and thereafter appointment order was issued to the petitioner on 13.04.2016. According to the learned counsel the conduct of respondent Nos. 3 and 4 and the petitioner depicts collusion with each other and depriving more meritorious candidate from appointment order being issued. The learned counsel further submits that, vide various communications,

attitude of respondent Nos. 3 and 4 can also be considered, wherein respondent Nos. 3 and 4 responded that, if respondent No. 5 feels some illegality, he is free to approach the Court. The learned counsel submits that, as the appointment of the petitioner is improper, by keeping away more meritorious candidate, the order is rightly passed by the university. The university has got every right even to refuse approval so also to withdraw the affiliation and recognition of the respondent No. 4.

3. Mr. Talekar, the learned counsel for the respondent No. 5 submits that, at no material point of time the respondent No. 5 received any appointment order from respondent Nos. 3 and 4. The appointment order was not sent by post, nor through courier. According to the learned counsel though the respondent No. 5 was at Sr. No. 1 and more meritorious, the institution has favoured the petitioner by issuing appointment order to the petitioner. The respondent No. 5 was issued call letter by post and it is received by him on same address. No such appointment order was ever issued to respondent No. 5. The same is illegal.

4. We have considered the submissions canvassed by the learned counsel for respective parties. The report of the selection committee is placed on record. It appears that, the respondent No. 5 was at Sr. No. 1 and the petitioner was at Sr. No. 2. The selection was for only one post. No doubt, from the report of selection committee, it appears that, the respondent No. 5 was

shown as more meritorious.

5. Naturally, the person who is at Sr. No. 1 is to be issued with appointment order. The respondent No. 4 has filed affidavit in reply admitting that the selection committee selected two candidates in the order of preference and recommended the said names. Accordingly appointment order was issued to the respondent No. 5 on 04.04.2016. In the affidavit it is stated that, the appointment order was returned back with an endorsement that address is not found. The same according to the respondent No. 4 was sent by courier. No appointment order was sent by post, though call letter was sent to respondent No. 5 by post and received by him on same address. According to the respondent No. 4, the respondent No. 3 has appointed the petitioner who is at Sr. No. 2 as per the selection list.

6. The university, no doubt, has right to refuse approval to the appointment made by the institution, if the same is not in accordance with law and the same is not in conformity with the rules. It has to make appointment as per the merit in the selection process. In the selection process the respondent No. 5 was at Sr No. 1. Why the appointment order was not issued by the registered post is not made clear. The university certainly can refuse approval, so also is entitled to cancel affiliation and recognition, if the directions are not complied with and the provisions of law are flouted U/Sec. 81 of the Maharashtra

Universities Act.

7. Though the university may not have authority to direct the college to terminate the service of particular employee, it can take further action against the institution, if the institution fails in adhering to the rules and statute.

8. Upon having observed as above, the college need not terminate the services of the petitioner on the basis of the impugned communication. It is for the college to take whatever steps, it wants to take. However, may not terminate the service only at the dictates of the university. We have considered the present petition on the touch stone of the impugned communication challenged in the present writ petition and not on other facts.

9. With these observations, the writ petition is disposed of. No costs.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]