

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

WRIT PETITION NO. 3171 OF 1997

- 1 Mahatma Gandhi Mission
Trust, Nanded.
Through its Chairman.
- 2 The Dean,
Mahatma Gandhi Mission's
Medical College and Hospital,
N-6, CIDCO, Aurangabad.

...PETITIONERS

-VERSUS-

- 1 Dr.Manohar Balwant Pisolkar,
Age : Major, Occupation : Service,
R/o 5-6-57/3, Khadkeshwar,
Aurangabad.
- 2 Dr.Manik S. Bharaswadkar,
Age : Major, Occupation : Service,
R/o Plot No.156, N-3, CIDCO,
Aurangabad.
- 3 The Registrar,
Dr.Babasaheb Ambedkar Marathwada
University, Aurangabad.
- 4 University and College Tribunal,
Dr.Babasaheb Ambedkar Marathwada
University, Aurangabad,
University Campus, Aurangabad.

...RESPONDENTS

...

Advocate for Petitioners : Shri V.D.Salunke.
Advocate (amicus curiae) for Respondent 1 : Shri Aashish Manglani.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th January, 2017

Oral Judgment :

1 Respondent No.4 being a formal party, stands deleted from the proceedings.

2 The Petitioner/ Management is aggrieved by the judgment of the University and College Tribunal, Aurangabad dated 19.06.1997 by which Appeal No.BAMU-07/1997 filed by the Appellant/ Respondent No.1 herein was allowed and the Appellant was restored to the position of the Head of the Department of Medicine in the Petitioner/ Establishment.

3 This Court had not granted interim relief to the Petitioner while admitting this petition on 14.01.1998.

4 The issue raised in this petition is as to whether, the assignment of a Head of the Department (HoD) in the University or a College could be termed as a “Post” and whether, taking away of the charge of the Head of the Department from an individual, would amount to reduction in rank?

5 Since the learned Advocate for the original Appellant/ Respondent No.1 herein has stopped appearing in the courts and has

withdrawn himself from these proceedings due to his old age and ill health, I appointed Shri Aashish Manglani, learned Advocate, to represent the cause of Respondent No.1/original Appellant.

6 Both the learned Advocates jointly submit that Respondent No.1/ original Appellant as well as Respondent No.2, who was appointed in place of Respondent No.1 as HoD, have retired from service about 16 years ago and this matter is left of an academic interest. They submit that considering the impugned judgment of the Tribunal, this Court would have to deal with the issue as to whether, the posting of an employee as a Head of the Department, would amount to a substantive appointment and whether, it could be termed as being a “post”.

7 It is in this backdrop that I have considered this petition and have heard the learned Advocates for the respective sides at length.

8 The admitted factors emerging from the submissions of the learned Advocates and the record available are as under:-

- (a) Both the teachers i.e. Respondent No.1/Appellant Dr.Manohar Pisolkar and Respondent No.2 Dr.Manik S.Bharaswadkar, had quit their earlier employments and joined the Petitioner/ Management as teachers.

- (b) The Appellant was appointed as an Associate Professor on 10.10.1992 and Respondent No.2 joined the organization on 26.03.1997.
- (c) The Appellant was subsequently promoted and was appointed as a Professor in Medicine as like Respondent No.2.
- (d) The record reveals that the Appellant was not formally appointed as a regular Head of the Department by any specific order.
- (e) By order dated 26.03.1997, Respondent No.2 was appointed as the Head of the Department of Medicine on the very first date of his joining the Petitioner/ Management as a Professor in Medicine.
- (f) After considering the pleadings of the litigating sides, the University Tribunal has allowed the appeal and has concluded that the Appellant be restored to the position of the Head of the Department of Medicine in place of Respondent No.2, whose appointment as the Head of the Department was challenged by the Appellant.

9 The Appeal of the Appellant was entertained by the University and College Tribunal under Section 59 of the Maharashtra Universities Act, 1994, which reads as under:-

"59. *Right of Appeal.*

- (1) *1) Notwithstanding anything contained in any law or contract for the time being in force, any employee (whether a teacher or other employee) in any university, college or recognised institution (other than that managed and maintained by the State Government, Central Government or a local authority), who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank by the university or management and who is aggrieved, shall have a right of appeal and any appeal against any such order shall lie to the Tribunal:*

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a court or Tribunal in any case where the matter has already been decided by a court or Tribunal of competent jurisdiction or is pending before such court or Tribunal on the date of commencement of this Act or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the management at any time before the date on which this Act comes into force and in which case the period for filing and appeal has expired.

- (2) *Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of services, or reduction in rank, as the case may be :*

Provided that, where such order was made before the date of commencement of this Act, such appeal may be made if the period of thirty days from the date of receipt of such order has not expired.

- (3) *Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.*

- (4) *Every appeal shall be accompanied by a fee of four hundred rupees which shall not be refundable and shall be credited to the university fund :*

Provided that it shall be lawful for the State Government to revise, by notification in the Official Gazette , such fees as it may deem fit from time to time.”

10 The High Court of Calcutta, in the matter of *Smt.Amiya Sen Gupta vs. Smt.Anjali Sen Gupta and others*, (**Civil Revision Case No.3583/1960, judgment dated 26.11.1963**), had dealt with the issue of a senior teacher being incharge of the Department. It was concluded that taking away of the charge and appointing another teacher in place of the earlier teacher as the Head of the Section, would not amount to reduction in rank.

11 The Honourable Supreme Court (three judges Bench), in the matter of *K.Gopaul vs. Union of India*, **AIR 1967 SC 1864**, dealt with the issue of as to whether, the appointment of the Head of the Department would amount to a substantive appointment. It was concluded in paragraph 5 as under:-

"5. *On behalf of the appellant, these Orders of the Government have been challenged on three grounds. The first ground urged is that, by transferring the appellant and posting him as Accommodation Controller, he has been reduced in rank and this reduction in rank was ordered without complying with the provisions of Art.311 of the Constitution. This submission is based on the circumstance that, according to Entry 13 in Appendix II which is referred to in subsidiary definition (ii) of Rule 9 of Part 1 of*

the Fundamental Rules of the Madras Government, the I.G.R. has been declared, to be the Head of a Department, while the Accommodation Controller is not the Head of a Department. We cannot accept the submission that the mere fact that the post of Accommodation Controller, to which the appellant has been transferred, has not been designated as the post of a Head of the Department necessarily involves any reduction in rank. In fact, it is well-known that in Government service, there may be senior posts, the holders of which are not declared as Heads of Department, while persons holding comparatively junior posts may be declared as such. The rank in Government service does not depend on the mere circumstance that the government servant, in the discharge of his duties, is given certain powers. In the case of the appellant, it is to be noticed that, from the very initial stage, it was laid down that, on being transferred to the post of the Accommodation Controller, he was still to continue to draw pay in the scale of Rs. 1,200-100/2-1,400 which was the scale in which he was drawing his pay while working in the post of I.G.R. The appellant was, thus, not sent to a post carrying a lower scale of pay. This point was further urged on the basis that the post of Accommodation Controller was held by an Officer who, on relief by the appellant, was promoted to the post created in the grade of a Deputy Secretary to Government (non-I.A.S.). From this fact it was sought to be inferred that the post of Accommodation Controller was lower in rank than the post of a Deputy Secretary to Government, and it was urged that the post of I.G.R. was of a rank higher than that of a Deputy Secretary. The argument completely fails in view of the appellant's own affidavit showing the method of recruitment to the post of I.G.R. The appellant stated that the method of recruitment for the post of I.G.R. was from two sources. One was by promotion of the Inspector of Registration Offices or District Registrars, and the other recruitment by transfer from Deputy Collectors or Assistant Secretaries to Government. The second method of

appointment to the post of I.G.R. makes it clear that this post is equated with that of a Deputy Collector or Assistant Secretary to Government because persons holding those posts can be appointed as I.G.R. by mere transfer. If the post of I.G.R. had been senior to that of the Deputy Collector or Assistant Secretary to Government, the appointment could not have been made to that post by mere transfer, but would necessarily have involved promotion. The submission made on behalf of the appellant that the post of I.G.R. is higher in rank than that of a Deputy Secretary is thus clearly wrong. In fact, the post is lower in rank than that of a Deputy Secretary and is equated with that of an Assistant Secretary. It has not even been suggested anywhere that the post of Accommodation Controller is lower in rank than that of an Assistant secretary to Government or a Deputy Collector. On the other hand, the information given to us in the course of the arguments showed that, under the Rules, the Accommodation Controller works directly under the control of the Government, while the I.G.R. is subordinate to the Board of Revenue. We, consequently, find no force at all in the plea that the posting of the appellant as Accommodation Controller, when he was holding the post of I.G.R. amounted to reduction in rank."

12 The Madras High Court, while dealing with the similar issue of the Head of the Department, in *Dr. Alagappan vs. Annamalai University*, **1994 LAB I.C. 289**, has concluded in paragraphs 10 and 11 as under:-

"10. *The issue raised in this case depends upon as to how the Court construes sub-section (3) of Section of the Act. It is seen that Section 19(3) of the Act, as extracted above, contains two limbs. The Head of every Department shall be the Professor of the Department or the Reader, if there is no Professor in that Department. In this case, there is no dispute that the petitioner was the only Professor in the year 1984*

and as such he was appointed as the Head of the Department in the year 1984. If there is more than one Professor in the Department, the Vice-Chancellor has got the power to appoint any person as Head of the Department among the Professors and Readers. It is seen that under Section 2(f), "Teachers" means Professors, Readers, Lecturers, Tutors and such other persons as give instructions to or take part in the training of the students. So Professor comes under the definition of Section 2(f) of the Act. From the hierarchy in the service as shown in Section 2(f) of the Act, Head of the Department is not a post. The posts are only 'Professors', Readers', lecturers and such other persons as mentioned in Section 2(f) of the Act. So I am not able to understand the arguments of Mr. G. Subramaniam, the learned senior counsel for the petitioner' that there is a reduction in rank, in this case. Simply because the petitioner had continued to be the Head of the Department for nine years, he is made permanent. The petitioner still holds the post of Professor. The third respondent has replaced the petitioner as Head of the Department. The Head of the Department cannot be said to be a post. So I am of the view that the arguments of the learned senior counsel for the petitioner based upon the principle of reduction in rank is wholly misconceived. The arguments of the learned senior counsel for the petitioner, relying upon the decision in *Government Branch Press v. D.B. Belliappa*, AIR 1979 SC 429: (1979 Lab IC 146). That the Head of Department is a post is wholly misconceived. As rightly contended by Mr. R. Krishnamoorthy, the learned senior counsel for the respondent University, there is no reduction in emoluments etc. It is seen from the order confirming the petitioner as Professor dated 27-10-1986, that the Professor has been confirmed as Professor with effect from 15-08-1986. So by virtue of that he is the sole professor he had the advantage of being the Head of Department under the first limb of Section 19 of the Act. It is also seen from the Resolution No. 46 of the Meeting of the Syndicate of the Annamalai University, dated 28-07-1990, the

transfer of academic staff of the Directorate of Distance Education to other teaching Departments of the University vice versa for better management and for giving opportunities to the individuals for direct involvement in teaching departments is given and it will be carried out at the discretion of the Vice-Chancellor. So I do not think that there is any infirmity in transferring the third respondent to the Department of Tamil as Professor. When once the power of the University is conceded, the transfer of teaching staff from the Directorate of Distance Education to other teaching departments of the University can be done. There cannot be any doubt that there are two Professors in the Department of Tamil at least from the date of transfer of the third respondent herein to the Department of Tamil. In such case of transfer, the second limb of Section 19(3) of the Act comes into operation. A plain reading of the Section 19 of the Act will clearly show that the power to appoint the Head of Department is given to the second respondent, the Vice-Chancellor of the University. As such, I do not see any infirmity in the order impugned appointing the third respondent herein as the Head of Department in the place of the petitioner herein. Since I take the view that no question of reduction in rank arises on the facts and circumstances of this case, on a plain reading of the Act ad Statutes of the University, I do not think it necessary to consider the decisions referred to by the learned senior counsel for the petitioner in extenso. In fact, these decisions, relied on by the learned senior counsel for the petitioner will not apply to the facts of this case. Only when there is post and a person is appointed to the post is reduced in rank, the question of reduction in rank will arise. Here 'Head of the Department' is not a post. The post is 'Professor'. As such a I have already stated, since the petitioner continues to be the Professor even now no question of reduction in rank arises.

11. *It is useful to refer to the decision in K. Gopal v. Union of India, AIR 1967 SC 1864, which arose*

under Article 311 of the Constitution of India. In that case, the petitioner therein was confirmed as Inspector-General of Registration and a head of the department in Madras State and he was transferred to the post of “Accommodation Controller” a post carrying the same scale of pay. The legality of the transfer was challenged on the ground that the transfer resulted in reduction in rank firstly because the later post was not the post of a Head of Department and secondly because the post of Inspector-General of Registration was superior in rank. This argument was repelled by the Supreme Court and it observed as follows: (at p. 1867)

“.....We cannot accept the submission that the mere fact that the post of “Accommodation Controller” to which the appellant has been transferred has not been designated as the post of a head of the department necessarily involves any reduction in rank. In fact, it is well known that in Government service there may be senior posts, the holders of which are not declared as Heads of Departments, while persons holding comparatively Junior posts may be declared as such. The rank in Government service does not depend on the mere circumstances that the Government servant in the discharge of his duties is given certain powers...”

It is also well settled that the work ‘rank’ refers to a person qualified not to his particular place in the same cadre for higher hierarchy of the service. The principle laid down by the Supreme Court in the above mentioned case squarely applies to the facts of this case and the petitioner herein cannot claim as a matter of right to continue as Head of the Department, when another person is appointed as Head of the Department under the second limb of Section 19(3) of the Act, by Vice-Chancellor of the respondent-University.

The consequence of another person replacing the petitioner is taken care of under sub-section (4) of Section 33 of the Act which reads as follows:-

“.....Any person nominated or elected in his capacity as a member of a particular body or the

holder of a particular appointment, shall, if he ceases, to be a member of that body, or the holder of that appointment, as the case may be, for a period of more than three months or if he goes on leave for a period of not less than six months, cease to be a member of the authority or the body of the University concerned.....”

When once he is replaced and another person is appointed as Head of the Department, Sub-section (4) of Section 33, mentioned above, comes into operation, and the petitioner ceases to be a member of the Dean of the Faculty. In view of sub-section (4) of Section 33 of the Act, I do not think that the petitioner can claim to be a member of the Dean of the Faculty."

13 This Court (Coram : R.V.Ghugre, J.) has dealt with an identical issue as like in this case, in **Writ Petition No.10612/2016** in the matter of *Suresh Renukadas Halhalli vs. Bashwaraj Vishwanathappa Dharne and others*, decided on 19.10.2016. The University Tribunal had concluded that taking away the charge of the Principal and handing over the said charge to the another professor, would amount to reduction in rank and as such, the appeal of the aggrieved teacher could be entertained under Section 59 of the Maharashtra Universities Act, 1994. This Court had concluded that an in-charge Principal would not be a substantive appointee and taking away of the temporary charge of the Principal to be replaced by another person as an in-charge Principal, would not amount to reduction in rank.

14 Considering the law as is laid down in the matters of K.Gopaul vs. Union of India (supra) and Dr.Alagappan vs. Annamalai University (supra), it is trite that the Head of the Department is not a substantive appointment. It would not be a substantive post which would lead to the conclusion that taking away of the charge of the HoD would amount to reduction in rank.

15 The University Tribunal in the impugned judgment in paragraph 7 has observed as under:-

“7. Section 2(14) of Marathwada University Act, 1974 defines 'Head of the Department' as the teacher principally responsible for instruction, training or research in a department, Maharashtra Universities Act, 1994 does not provide for definition of Head of the Department teaching a particular subject or a group of subjects in a college as prescribed in the statute means a department in context of constitution of Board of Studies under Section 37 of Maharashtra Universities Act, 1994. It is true that Head of the Department is not a separate post and does not carry special scale of pay but it is a designation or a position or a status which is definitely higher than that of professor, because the privileges administrative powers, rights and duties attached to it. The test whether, the post carries special scale of pay or not is not a determining factor. This is a peculiar position or post which does not carry special pay, but it is recognized by the statute and the incumbent enjoys certain privileges and has to perform certain duties and is accountable to the management and the University. The Medical Council of India in a Booklet prescribing minimum standard requirements for a medical college for 100

admissions annually, has laid down that each of the Department of Medicine, Surgery and their Specialties and Obstetrics and Gynecology shall have a head of the Department of the status of a professor who shall have over all control of the department. If there are more professors in a Department all cannot be designated as Head of the Department and the Management will have to designate one of them only as Head of the Department.”

16 It is, therefore, apparent that even the Tribunal concluded that the Head of the Department was not a separate post. It did not carry a special scale of pay and would not amount to a substantive appointment. It is only that the Head of the Department, in my view, is the senior-most amongst the equals. In fact, several Universities in the State of Maharashtra have introduced a statute by virtue of which the Head of the Department is by rotation and the rotation is extended right from the position of Professors till the rank of the Readers in the Post-Graduate Departments. Every two years, a new person is posted as the Head of the Department thereby, giving an opportunity to several senior professors and readers to hold the charge of the Head of the Department.

17 Notwithstanding the above, the University Tribunal has exercised jurisdiction under Section 59 concluding that the Appellant had suffered reduction in rank, for the reason that the Head of the Department carries a status and he has to perform certain functions. He is required to

attend the meetings. At times, he is required to vote in the meetings. He has a chance of being elected to the Board of Studies. In my view, these factors are not decisive and significant to conclude that the appointment of the Head of the Department would amount to an appointment on a "post" and as such, taking away of the charge of the Head of the Department would result in reduction in rank. The University Tribunal has considered such factors which cannot be said to be decisive and determinative factors.

18 In the light of the above, this Writ Petition is allowed. The impugned judgment of the University Tribunal dated 19.06.1997 is quashed and set aside. Appeal No.BAMU-07/1997 preferred by Respondent No.1/ Appellant was, therefore, untenable under Section 59 of the Maharashtra Universities Act, 1994 and stands dismissed. Rule is made absolute in the above terms.

19 Considering the assistance rendered by Shri Manglani, learned Advocate, his fees in this matter are quantified at Rs.7,500/- (Rupees Seven Thousand Five Hundred), which shall be paid by the High Court Legal Services Sub Committee, Aurangabad Bench, Aurangabad.