

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

WRIT PETITION NO. 11239 OF 2015

College of Entrepreneurship Vocational
Guidance and Career Counselling A'bad.
Through its Principal
Satish Sampatlal Surana .. Petitioner

Versus

Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad through
its Registrar and others .. Respondents

Shri P. B. Shirsath, Advocate for the Petitioner.
Shri S. S. Thombre, Advocate for Respondent Nos. 1 and 2.
Mrs. Kalpalata Patil Bharaswadkar, Advocate for the
Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

CLOSED FOR ORDERS ON : 12.04.2017

ORDER PRONOUNCED ON : 03.05.2017

ORDER (Per S. V. Gangapurwala, J.) :-

. Petitioner has filed the petition for following reliefs :

- (B) Issue a writ of mandamus or writ in the nature of mandamus thereby directing the Respondent No. 1 University to take an appropriate legal action against the Respondent No. 3 for his high handed and

illegal action thereby causing loss of valuable one year to the students of Petitioner College admitted for the year 2013-2014 and 2014-2015 and for that purpose issue necessary writ, order or directions.

- (C) Issue a writ of mandamus or writ in the nature of mandamus thereby directing the Respondents to pay an appropriate compensation for the loss of valuable one year of the students of Petitioner College admitted for the year 2013-2014 and 2014-2015 and for that purpose issue necessary writ, order or directions.

2. Mr. Shirsath, the learned counsel for the petitioner states that, as far as the claim of compensation is concerned, the same would not be pressed in the present petition. The petitioner would take up appropriate proceedings in respect of the same as may be advised. The petitioner is granted permission to run the Post Graduate diploma course in Education Vocational Guidance and Career Counselling since the year 2006. Thirty Six students are admitted with the petitioner college for the year 2013-2014. The said course is of one year. According to the learned counsel, the respondent No. 3 was appointed as a examiner for conducting viva-voce examination of the students. The learned counsel submits that, the respondent No. 3 did not conduct the viva-voce examinations properly. The respondent No. 3 demanded money

from the students, so also asked irrelevant questions and questions out of the syllabus. The students had made written complaints to the petitioner.

3. The learned counsel further submits that, the respondent No. 3 in high handed and illegal manner did not even award proper marks and adopted a scale down method, which is not known. The learned counsel submits that, the case of the respondents that viva-voce examination has to be conducted by one internal examiner and external examiner is erroneous. There is no concept of internal examiner to conduct the viva-voce examination. The examiner to conduct the viva-voce is appointed by the university and he has to allot the marks out of 100. In the present case, the respondent No. 3 allotted marks and reduced it by 50% on the ground that internal examiner is not appointed by the petitioner college. The respondent No. 3 purposefully failed the students. The action of the respondent No. 3 is illegal by virtue of which the students of the petitioner college have to face hardship. The learned counsel submits that, the respondent No. 3 was not eligible to be appointed as an examiner in as much as he was a member of the Management Council and could not have been appointed in view of Sec. 32 of the Maharashtra Universities Act.

4. The learned counsel further submits that, the students of the college approached the respondent No. 1/university and

pointed out the illegal act of the respondent No. 3 and requested to conduct necessary enquiry and claimed compensation. The respondent No. 1 appointed three member enquiry committee. The said committee submitted its report holding that there is no provision for appointment of internal examiner. The report submitted by the enquiry committee is accepted by the respondent No. 1 vide resolution No. 14. Thereafter, issued new mark sheets and declared the students passed in viva-voce examination. By virtue of the illegal acts of the respondent No. 3, the valuable career of one year of the students of the petitioner college is lost. Necessary enquiry deserves to be conducted against the respondent No. 3. The learned counsel submits that, even the Controller of Examination has no authority to issue any instructions with regard to conducting of examination and allotment of marks. The same is within the purview of academic council and different information was submitted to the petitioner under Right to Information Act, makes this position clear.

5. Mr. Thombre, the learned counsel for respondent Nos. 1 and 2 submits that, the Controller of Examination has issued circular on 17.09.2009 making it clear that for every examination there would be internal and external examiner who would independently give the marks. The same is applicable for dissertation and viva-voce. Clauses 1, 2 and 3 of the said circular make this position clear. According to the learned counsel, the Controller of Examination has also intimated the petitioner vide

letter dated 14.08.2014 that, the result of the students of the petitioner college of theory paper and oral examination is ready, it has not yet received the marks of internal examination/assessment and had asked the petitioner to submit it at the earliest. The delay was being caused at the end of the petitioner. The petitioner admitted under its letter dated 22.08.2014 that the person deputed by the petitioner had submitted the marks in the wrong department and the same is submitted again, it was submitted on 25.08.2014. According to the learned counsel, the respondent No. 3 acted as per the instructions of the Controller of Examination

6. Mrs. Patil, the learned counsel for the respondent No. 3 submits that, the questions asked in viva-voce were concerned with the subject ability and wanton allegations are made about respondent No. 3 demanding money. The same is made with oblique motive by the petitioner. The internal examiner was not appointed. The three member committee appointed by the respondent No. 1 did not seek any information from the respondent No. 3 and submitted the report unilaterally.

7. We have considered the submissions canvassed by the learned counsel for respective parties. As the prayer for compensation is not pressed, we need not dilate upon the same.

8. The matter would now be restricted with regard to prayer

of the petitioner to direct enquiry and action against the respondent No. 3.

9. It would not be worthwhile to enter into the debate, whether the respondent No. 3 was eligible to be appointed as examiner being a member of Management Council. It was under the order of the Controller of Examination dated 23.06.2014, the respondent No. 3 was appointed as an external examiner. Pursuant to the said order, the respondent No. 3 had conducted the viva-voce. The appointment of the respondent No. 3 at the relevant time was not objected by the petitioner, nor by any student.

10. The gravamen of the contention of the petitioner is with regard to the approach of the respondent No. 3 in giving the marks by adopting scale down method. According to the petitioner, there is no provision for appointment of internal examiner, whereas the respondents are relying upon the circular issued by the Controller of Examination in the year 2009, which states about appointment of internal and external examiner for the purpose of viva-voce. The three member committee appointed by the university while submitting its report had observed that, there does not appear any provision of internal examiner and external examiner. The respondent No. 3 was appointed by the Controller of Examination. It appears that, he had followed the instructions issued by the Controller of

Examination as per the circular of the year 2009. It appears that, subsequently committee has resolved to give the marks without scaling down the same and the students were held to have passed. Because of the same the year of the students cannot be said to have been lost, as after the report of the three member committee the students have been given total marks as was allotted without scaling down.

11. From the facts on record, it does not appear that the respondent No. 3 had acted malafide or had purposefully adopted the scaling down method. He has properly acted as per the instructions/circular issued by the Controller of Examination, who had appointed him to conduct the viva-voce of the students of the petitioner college. We are not deciding here whether the Controller of Examination is authorized to issue such instructions, as the same is not the matter in issue. We have to only see whether the respondent No. 3 has acted bonafide or not. There is nothing on record to even remotely suggest that the respondent No. 3 asked the question beyond the syllabus or had demanded any amount from the students, except bald statement. Considering the fact that, the respondent No. 3 must have given less marks under bonafide belief that the internal examiner also has to award the marks based on the circular issued by the Controller of Examination. It would not be appropriate now to further direct any enquiry, nor it would serve any purpose.

12. Considering the above, the writ petition is disposed of. No costs.

[SANGITRAO S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

bsb/May 17