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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9720 OF 2016

1. Dr. (Prof) Rosario Pascoal D'Souza

Age 50 Yrs., Occ. Service, R/at. Gloria,
112, 'D' Ward, Subhash Lane, At & Post
Ajara, Tal. Ajara, Dist. Kolhapur – 416 505.

...Petitioner

Versus

1. State of Maharashtra

Through its Secretary, Medical Education
& Drugs Department, Mantralaya,
Mumbai 400 032.

**2. Maharashtra University of Health
Sciences,**

Dindori Road, Mhasrul, Nashik 422 004.

3. The Registrar,

Maharashtra University of Health
Sciences, Nashik, Dindori Road, Mhasrul,
Nashik – 422 004.

4. Disha Shikshan-V-Vikas Kendra,

Gadhinglaj, Having its Office at, Plot No.
P-19, MIDC, At/ Post., Badyachiwadi, Tal.
Gadhinglaj, Dist. Kolhapur.

**5. E.B. Gadkari Homoeopathic Medical
College and Hospital,**

Plot No. P-19, MiDc, At/Post:
Badyachiwadi, Tal Gadhinglaj,
Dist. Kolhapur

...Respondents

Mr. Prashant Bhavake, Adv. for the Petitioner.

Mr. B.V. Samant, AGP for Respondent No.1.
Mr. R.V. Govilkar, Adv. for Respondents Nos. 2 and 3.
Mr. U.H. Pawar, Adv. for Respondents Nos. 4 & 5.

**CORAM: B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.**
DATED: 18th July 2017

PC:-

J U D G M E N T :- (Per Riyaz I. Chagla J.)

1. Rule. Rule made returnable forthwith. Heard by consent.

2. The Petitioner by the present Petition is challenging the impugned order dated 28th March 2016 passed by Respondent No.2 and signed by Respondent No.3 cancelling the approval granted for the appointment of the Petitioner in for post of 'Professor' for five years.

3. The Petitioner is an MD (Homoeopathy) by qualification. The Petitioner was appointed in the post of Demonstrator at Respondent No.5 medical college on 1st December 1991. Thereafter the Petitioner was appointed as lecturer on 1st June 1994 and as Reader on 1st July 1998

and Professor on 30th March 1994. By an order dated 30th March 2004, Respondent No.4 Educational Institution appointed the Petitioner as Principal of Respondent No.5. Respondent No.2 granted approval to the appointment of the Petitioner in the post of Professor of Anatomy on 25th June 2004. On 5th November 2004, the Respondent University granted approval for appointment of Petitioner in the post of Principal.

4. A complaint came to be submitted by one ex-student of Respondent No.5 college against the Petitioner with the Respondent University. The Petitioner was informed of the complaint by the Respondent University and the complaint was submitted by one Reena Dadasaheb Nangre, ('the complainant') who had completed her BHMS Education in the year 2010. The Petitioner was informed that a hearing was arranged on 30th September 2015 at the Head Quarters of the Respondent University and the Petitioner was informed to remain present. The Petitioner pursuant to the notice appeared before Respondent No.3 and submitted his written submissions and denied the allegations made in the

complaint. Since the complainant was not present at the hearing, the Respondent University adjourned the hearing. The Respondent University fixed the hearing for alternate dates but the Petitioner was unable to attend the hearing. The Petitioner was informed by the Respondent University to give the Internship Completion Certificate to the complainant and that if the Internship Completion Certificate of the complainant was not issued, its duplicate Internship Completion Certificate will be issued directly by the University to the complainant. On 4th November 2015, the Petitioner claims to have by speed post and mail sent letter to complainant and asked her to collect her Internship Completion Certificate within seven days from the college. The Respondent University by letter-cum-notice asked the Petitioner to remain present for hearing on 16th November 2015. The Petitioner attended hearing and submitted written submissions before Respondents Nos. 2 and 3. The Petitioner claims to have submitted the requisite documents and the University gave acknowledgement of receipt. Respondent University issued letter-cum-show cause notice dated 15th December 2015, as to why the approval granted

for appointment of the Petitioner in the post of “Principal” vide order dated 5th November 2004, should not be cancelled for five years. The Petitioner gave a detailed reply to the show cause notice and requested the Respondent University to withdraw the notice and not to take action against the Petitioner.

5. On 2nd April 2006, the Petitioner received the impugned order dated 28th March 2016, signed by Respondent No.3, informing the Petitioner that in view of University Direction No. 2 / 2014, the approval granted for appointment of the Petitioner in the post of “Professor” vide order dated 5th November 2004 is cancelled for five years with retrospective effect from 25th February 2016.

6. The Petitioner being aggrieved by impugned order has filed the present Petition.

7. Shri Bhavake, learned Advocate for the Petitioner has submitted that the show cause notice and impugned order are both issued in violation of the principles of natural justice

and no proper opportunity was granted to the Petitioner to defend charges levied in the show cause notice. Shri Bhavake has submitted that after giving show cause notice, the Respondents Nos. 2 and 3 had not granted opportunity of hearing to the Petitioner and straight away passed impugned order. Shri Bhavake contended that Respondents Nos. 2 and 3 had not served the complaint to the Petitioner prior to passing of the impugned order and this was clearly in breach of principles of natural justice. Shri Bhavake has submitted that the Petitioner had flatly denied all allegations in the show cause notice, in both his written submissions / explanations. Shri Bhavake submitted that the show cause notice was given in respect of the proposed action of cancelling approval granted to the post "Principal" but the impugned order had gone contrary to the show cause notice and cancelled the approval granted to the Petitioner to the post of "Professor". Shri Bhavake contended that the impugned order has been passed without application of mind and hence the same is required to be quashed and set aside.

8. Shri Bhavake has also contended that the impugned

order has been issued contrary to the University Direction No.2 / 2014. Clause 10.3 of Direction No. 2 / 2014 provides thus:-

“If any Teacher or Principal / Dean / Director of the affiliated college / recognized institute creates obstacle in the smooth functioning of the University or any authority or committee of the University or if any Principal / Dean / Director of the affiliated College / recognised Institute has not permitted any Teacher to perform the duties allotted by the University, without any reason, in such circumstances, the Vice Chancellor may freeze, cease the approval granted to the appointment of the concerned Teacher / Principal / Dean / Director of the affiliated College and recognised institute for such a period as he deems fit which extend to 5 years”.

9. Shri Bhavake has contended that the allegations in the show cause notice dated 15th December 2015 does not meet with the above directions for freezing or ceasing of approval / recognition granted by the University. The impugned order passed relying upon said provision is unwarranted and has been issued without considering the applicability of the above direction.

10. Shri Govilkar, learned counsel for the Respondents

Nos. 2 and 3 submitted that the video in the CD produced by complainant is relied upon by the Respondents Nos. 2 and 3 to show that the Petitioner had demanded the said sum of Rs. 50,000/- from the complainant and had in that manner created obstacles for the smooth functioning of University by claiming that he could “manage” University officers and employees for issuing the University's Internship Completion Certificate. Shri Govilkar has claimed that the video in the CD clearly shows the Petitioner making such demands on the complainant and his conduct has been taken into consideration by Respondents Nos. 2 and 3 in passing the impugned order. Shri Govilkar has submitted that the Petitioner has not bothered to attend the previous hearings which the University had fixed and Respondent No.2 had to fix a fourth hearing of the Petitioner, which the Petitioner had attended. Shri Govilkar has contended that at the said hearing, the Petitioner himself had admitted the contents of the Video in the CD and had stated that he was present in the video. The Petitioner has unable to give satisfactory answers to the question asked to him on the basis of conversation in the video. Shri Govilkar has submitted that the due to

misconduct of the Petitioner his approval granted to the post of “Professor” is cancelled for five years w.e.f. 25th February 2016 and the said decision had been conveyed to the Petitioner vide letter dated 20th March 2016.

11. Shri Bhavake has submitted that the CD relied upon by the complainant had not been given to the Petitioner. Shri Bhavake has tendered a transcript of the contents of the CD, and submitted that the charges which Shri Govilkar has contended has not been borne out from the CD. The complaint which has been lodged against the Petitioner for having asked to complainant to pay sum of Rs.50,000/- to “manage” the University officers and employees for issuing University's Internship Completion Certificate also does not appear in Video in the CD.

12. After hearing the arguments, we are of the considered view that the show cause notice has not given sufficient particulars of the offence which the Petitioner is alleged to have committed. We are of the view that the show cause notice is in fact contrary to the impugned order, in that by the

show cause notice the Petitioner was asked to show cause as to why the appointment of the Petitioner to the post of “Principal” should not be cancelled for five years, but in the impugned order the approval granted to the Petitioner to the post of “Professor” is cancelled for five years with retrospective effect from 25th February 2016. We are of the considered view that the transcript of the video contained in the CD also does not bear out the charges alleged levied by Respondents Nos. 2 and 3 against the Petitioner. We are of the considered view that the Petitioner has not been given a proper opportunity of hearing by Respondents Nos. 2 and 3 prior to passing of the impugned order. We are of the considered view that the impugned order by cancelling the approval / recognition granted by the University for appointment of the Petitioner to the post of “Professor” is contrary to clause 10.3 of University Direction No.2 / 2014.

13. We accordingly allowed the Petition with the following order:

ORDER

- (a) Rule is made absolute in terms of prayer clause (b).
- (b) However, it is made clear that if the Respondent University desires to take any action against the Petitioner, same can be taken only after the Respondent University follows the principles of natural justice.
- (c) The Writ Petition is disposed off in the above terms.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)