

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2599 OF 2013

Karmachari Sangh, MHADA and Anr.	}	
	}	Petitioners
versus		
Union of India and Ors.	}	Respondents

Mr. Sunil Dighe for the petitioners.

Mr. M. S. Bharadwaj for respondent no. 1.

Mr. Umashankar Upadhyay - Assistant
Government Pleader for respondent no. 2.

Ms. Sharmila U. Deshmukh for
respondent nos. 3 and 4.

Mr. Rui A. Rodrigues with Mr. Abhishek
Tripathi for respondent no. 6.

Mr. Rupesh Bobde for respondent no. 7.

Ms. Meena Doshi for respondent no. 8.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- FEBRUARY 15, 2017

P.C. :-

1. This writ petition under Article 226 of the Constitution of India, at the instance of the first petitioner union and the second petitioner, an aggrieved candidate, puts in issue a promotional order dated 17th April, 2013 issued by respondent nos. 3 and 4

promoting respondent no. 5 on ad-hoc basis as Deputy Chief Engineer (MS.R.D.), Mumbai Housing and Area Development Board, a unit of the Maharashtra Housing and Area Development Authority (MHADA).

2. The argument of the petitioners is that the promotional post requires a candidate to possess a degree (Bachelor of Technology) and from a statutory university. That is how the requirement in the rules and regulations for promotion would read. Similarly, if a Government Resolution is relied upon to promote respondent no. 5 on ad-hoc basis, even that postulates that the candidate must possess a degree styled as Bachelor of Technology from a statutory university. Therefore, respondent no. 9 university, which is deemed to be a university, cannot be termed as a statutory university. Secondly and in any event, the certificate awarded by this university does not indicate that respondent no.5 has undergone the studies, which are required for a degree course. The order of promotion itself says that respondent no. 5 possesses the B. Tech. degree not by undergoing any studies and undertaking research, but by the process of distance education. The distance education means education from a distance, in the sense the candidate does not attend the regular classes nor is taught in a class room as is ordinarily understood. He only

registers himself for such a distance education course. He makes correspondence with the university and even his skills, if at all, are tested from a distance. He does not have any direct contact nor undertakes any project under the guidance of his teachers. This would hardly satisfy the requirement of the rules and regulations.

3. We do not have the benefit of any argument from respondent no. 5. He and his advocate are absent though duly served. However, there is an affidavit filed in reply to this writ petition by respondent no. 5. In this affidavit, filed on 10th March, 2014, the fifth respondent denies all the allegations. He relies upon two documents. He submits that he has demonstrated that respondent no. 9 college is recognised by the University Grants Commission (UGC), All India Council for Technical Education, the Distance Education Council (DEC) and also by the Government of Maharashtra. He relies upon Government Resolution dated 13th December, 2006, which declares a list of approved colleges for Government services and the name of Janardan Rai Nagar Rajasthan University is shown at Sr. No. 209 of the said list. Then, in para 31, respondent no. 5 relies upon a letter addressed by the sixth respondent (UGC). That is of November, 2007. It is submitted, therefore, that both these documents would enable

him to contend that he was duly qualified and eligible for the promotion.

4. However, Mr. Dighe learned counsel appearing for the petitioners would submit that there is a difference between a university created by a statute and styled as a statutory university and any entity deemed to be a university. The MHADA is a statutory authority and performing public functions. It must have the best professionals as its hands. The professional course will have to be undertaken and completed in a recognised set up. It is only when there are all the facilities and amenities to complete the course, particularly in engineering, that such promotion can be earned. It is, thus, the professional competence which is required. Mr. Dighe, therefore, invites our attention to page 47 of the paper book, namely a letter of the All India Council for Technical Education and importantly, an affidavit filed by the UGC. The UGC, in the detailed affidavit filed in this writ petition, speaking through its Education Officer, has elaborately stated the facts with regard to respondent no. 9 university. It is stated that this was awarded a deemed to be university status from 12th January, 1987. However, it has not been permitted by the UGC to open any study centre or any off-campus centre or to affiliate any institute. In para 32 of this affidavit, it is stated that the Distance

Education Council, vide its letter dated 3rd August, 2005 has clarified that the distance education programmes run by respondent no. 9 university have not been recognised, as major deficiencies were found in their delivery system and self instructional materials. The documents in that regard are relied upon and it is submitted that the UGC has directed the Registrar of respondent no. 9 university that its distance education programme has not been recognised by the DEC and should be discontinued forthwith.

5. On 17th November, 2015, this affidavit is filed and from what we gather on a reading of the same is that the UGC has found serious deficiencies and defects in the working of respondent no. 9 university. This may be a subsequent development according to the learned counsel appearing for respondent nos. 3 and 4 in the sense that this affidavit came later on before this court and in these proceedings. The MHADA has no occasion, therefore, to know as to how the matter has to be approached as far as the technical issues are concerned.

6. We are of the clear opinion that the promotional order has been passed on 17th April, 2013. The certificate that is relied upon by respondent no. 5 is dated 22nd November, 2011. However, the deemed university status and particularly the

distance education programme of respondent no. 5 is in jeopardy from August, 2005. The UGC affidavit, therefore, indicates that the distance education programme of respondent no. 9 university was not approved or recognised course.

7. We need not say anything more for we find that the promotional order passed on 17th April, 2013 grants only an ad-hoc promotion. The clause 4 of the promotional order clarifies that respondent no. 5 has been promoted on the basis of the degree certificate, copy of which is at page 34 of the paper book, but, if, later on this degree is found to be not valid or any report is made available questioning its legality and validity, then, respondent no. 5 would be visited with an order of demotion and he would not be entitled to hold the promotional post.

8. It is relying upon these terms and conditions of the order of promotion and since it is on ad-hoc basis, we direct respondent nos. 3 and 4 to commence the process and even if the promotion is now no longer an ad-hoc or is a permanent one, still, in the light of the serious allegations made by the petitioners and the affidavit of the UGC and the clarification from the All India Council for Technical Education and the Distance Education Council, respondent nos. 3 and 4 shall issue a show cause notice and call upon respondent no. 5 as to why the order of promotion

should not be withdrawn and he be demoted to the lower post in accordance with the rules because of the records now made available and to respondent nos. 3 and 4. We are informed that the Vice President and the Chief Executive Officer of MHADA will issue such notice calling upon respondent no. 5's explanation and on receipt of the same, he would take the requisite action in accordance with law. The show cause notice would be issued and the necessary action would be completed within a period of two months from the date of receipt of a copy of this order.

9. Needless to clarify that if the rules and regulations of MHADA require a hearing to be given to respondent no. 5, then, even that opportunity be extended to him. If the rules and regulations require and contemplate a reasoned order to be passed, then, a reasoned order shall also be passed and the proceedings be concluded as above.

10. Needless to clarify that the outcome of the proceedings shall also be made known to petitioner no. 1 trade union. While we clarify that we have only noted the rival contentions, this order shall not be treated as an expression of opinion on the rival contentions.

11. The writ petition is disposed of in the aforesaid terms.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)