

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

WRIT PETITION NO.11615 OF 2019

Dr. Pankaj s/o Bhanudas Hase

.. Petitioner

Versus

The Maharashtra Anil and Fishery
Sciences University, Futala Talao
road, Nagpur thorough its Vice
Chancellor and anr.

.. Respondents

Mr Hemant Surve, Advocate for petitioner

Mr P.G. Rodge, Advocate for respondents no.1 and 2

**CORAM : S.V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 11.10.2019

ORAL ORDER :

1. Mr Surve, learned Advocate for the petitioner submits that the respondent, on untenable grounds has rejected the application of the petitioner for prosecuting Ph.D. course. Learned Advocate for the petitioner submits that the petitioner is working as Assistant Professor in the respondent-University, Udgir. On concocted facts, false first information report was lodged against the petitioner. The petitioner came to be acquitted. The reasons mentioned in the impugned communication declining to issue no objection certificate to the petitioner are (i) shortage of staff; (ii) the application is not routed from proper channel and (iii) the departmental enquiry is pending against the petitioner, and that is why the application cannot be considered. The last date for submitting written notes of arguments in the enquiry was 3.9.2019. It is only for the Enquiry Officer to submit the report to the disciplinary authority. Learned Counsel further submits that shortage of staff cannot be the ground for refusing no

objection certificate. Where only two posts are available, one of the person is given permission to prosecute his Ph.D. course in that case, only 50% staff would remain. If the petitioner is permitted, still there would not be more 22% vacancy. Learned Advocate further submits that the resolution passed by the Executive Council also suggests that 10% of the Assistant Professors and other staff working in the University or college can be given permission to prosecute Ph.D. course. Only two persons have been given permission. 10% would come to 3.64 and if the petitioner is considered, he would be the third person. Same will be within the limit of 10%, as permissible by the University. The learned Counsel further submits that the application of the petitioner has been routed from proper channel. Recommendation has also been made. Learned Advocate further submits that the petitioner is ready to give an undertaking that in case in the departmental enquiry some adverse order is passed against the petitioner, the petitioner is ready to face the consequences. This Court, under Article 226 of the Constitution of India may consider equity also. The petitioner would lose his one year and the same would not be compensated in terms of money.

2. Learned Advocate for respondents submits that the chart has been given. It demonstrates that the University is facing shortage of staff. The application is also not routed through proper channel and departmental enquiry is pending against the petitioner. The resolution has been passed by the Executive Council to the effect that the applications of the Academic Officers and Academic Staff due for Ph.D. but who are under suspension or facing Departmental Enquiry cannot apply.

3. We have considered the submissions advanced by the learned Counsel for respective parties. We are not much impressed by the ground of shortage of staff or the application is not routed through the proper channel. The petitioner has filed on record the application and the recommendation dated 22.5.2019. As far as shortage of staff is concerned, it appears that the total sanctioned strength is of fifteen and eleven persons are working, there are vacancies of only four posts.

4. No doubt, a person has got the right to prosecute his higher studies so as to be eligible for promotional post and if the petitioner gets Ph.D., degree, that would be asset for the University.

5. The only impediment is the resolution of the Academic Council bearing Resolution No.54/2019. Clause 11 of the said resolution reads thus :

"11. The application of Academic Officers and Academic Staff due for Ph.D. but who are under suspension or Departmental Enquiry shall not be submitted to the University for NOC."

6. The departmental enquiry cannot be said to have concluded till the decision is taken by the Disciplinary Authority. May be the role of Enquiry Officer is over. The resolution is not a subject matter of challenge. The resolution is not for a singular person. It is the policy decision taken by the authorities as per the statute. We cannot presume animus on the part of the authority of the

University, more particularly Academic Council, when the same is one of the apex bodies of the University.

7. In light of the policy decision taken by the respondent - University not to grant no objection certificate for prosecuting Ph.D. course to the persons under suspension or against whom departmental enquiry is pending, we cannot come to the aid of the petitioner.

8. In light of the above, Writ Petition stands disposed of. No costs.

(ANIL S. KILOR, J.)

(S.V. GANGAPURWALA, J.)

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