

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 584 OF 2018

Dr. Geeta Mallikarjun Patil,
Age :- 48 years, Occ. Service,
Professor and Head of the Department
of English, Dr. Babasaheb Ambedkar
Marathwada University,
Aurangabad.

... **PETITIONER**

V E R S U S

1. Vice – Chancellor,
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad.
2. Officer on Special Duty,
Dr. Walmik Sarwade,
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad.
3. Registrar, Dr. Sadhana Pande,
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad.
4. Mustajeeb Khan, Associate Professor,
Department of English and Foreign
Students Cell, Dr. Babasaheb Ambedkar
Marathwada University, Aurangabad.

... **RESPONDENTS**

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Mr. N. B. Khandare, Advocate for Petitioner
Mr. Rajendra Deshmukh, Senior Advocate i/b. Mr. Devang R.
Deshmukh for Respondents.

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**CORAM : DIPANKAR DATTA, C.J.
& S.V. GANGAPURWALA, J.**

DATE : 18TH SEPTEMBER, 2020.

1] Rule. Rule made returnable forthwith. Heard finally on consent of the learned Advocates appearing for the respective parties.

2] The petitioner is a Professor in the Department of English of Dr. Babasaheb Ambedkar Marathwada University, Aurangabad (hereafter “the University”, for short). By an order dated March 14, 2017, the petitioner was designated as the Head of the Department of English w.e.f. April 1, 2017 for a period of three years. Soon thereafter, upon receipt of a complaint alleging dereliction of duty on the part of the petitioner, the Vice Chancellor of the University in purported exercise of powers conferred by Section 106 of the Maharashtra Public Universities Act, 2016 (hereafter “the Act”, for short) constituted an Enquiry Committee comprising of a retired District Judge and two practicing Advocates, to enquire into the allegation levelled against her.

3] Questioning the order of the Vice Chancellor constituting such committee, the petitioner presented this writ petition seeking, *inter-alia*, orders for quashing of such order of the Vice Chancellor as well as to declare that constitution of the Enquiry Committee is *ultra-*

vires the provisions of the Act. The writ petition was considered on several occasions prior to its formal admission; however, there being no order of stay operating in the field, the Enquiry Committee proceeded to complete the task entrusted to it.

4] It is alleged by the University that though the Enquiry Committee sought to conduct enquiry upon service of notice to the petitioner, she did not cooperate. The stand of the petitioner has been that she had presented herself before the Enquiry Committee but, in fact, no enquiry was conducted. Be that as it may, we need not detain ourselves long by embarking on an investigation as to which of the aforesaid two versions is correct. In our opinion, the writ petition can be decided finally even without arriving at a finding in that regard and on other grounds to which we shall hereafter advert.

5] The Enquiry Committee constituted by the Vice Chancellor submitted a report, which was adverse to the interest of the petitioner. On acceptance of the said report, the Vice Chancellor passed a further order directing that the petitioner should be relieved of the responsibility of Head of the Department of English but she may continue to discharge functions as a Professor in the Department of English. She was also asked to hand over charge to one Dr. Ambhore, Professor of the Department of English, who would henceforth function as the Head of the Department.

6] Upon such order of the Vice Chancellor being communicated by the Registrar of the University vide his letter dated March 31, 2018, the petitioner applied for amendment of the writ petition by filing a civil application. The prayer for amendment was granted and the civil application stood allowed. As a consequence of such amendment, the petitioner was permitted to lay a challenge to the communication dated March 31, 2018 of the Registrar, referred to above.

7] Mr. Khandare, learned Advocate representing the petitioner advanced two fold submissions :-

(i) The Vice chancellor is not an authority as defined in Section 26 of the Act; on the contrary, he is an officer of the University and his powers and duties are circumscribed by Section 12 thereof. The reply affidavit of the University suggests that the Enquiry Committee was constituted by the Vice Chancellor in exercise of power conferred by Section 106 of the Act and not in terms of Section 12(7) thereof, which provides for powers to be exercised in an emergency. However, Section 106 confers powers on the authorities of the University to appoint a committee with suitable terms of reference for any specific task, and such committee shall consist of members of the same authority constituting such a

committee and also of such other persons as that authority may nominate.

No authority of the University, as delineated in Section 26 of the Act, having appointed the Enquiry Committee, the action of the Vice Chancellor in constituting the relevant committee is without jurisdiction.

(ii) The report of the Enquiry Committee, for whatever it is worth, was not supplied to the petitioner prior to acceptance of the same by the Vice Chancellor and resulting in the impugned order, which was communicated by the Registrar of the University by his letter dated March 31, 2018. Such order visited the petitioner with civil consequences, since the petitioner was relieved of the responsibility of functioning as the Head of the Department of English without being heard. Taking into consideration and accepting the report of the Enquiry Committee, which is an important material, without even supplying the same to the petitioner is in clear breach of the principles of natural justice.

8] On behalf of the University, an additional affidavit has been filed today, which is taken on record. In the said affidavit, we find an admission to the effect that the report of the Enquiry Committee, prior to its acceptance by the Vice Chancellor, was not supplied to the petitioner. Indeed, there is a suggestion that the

petitioner never asked for it. We are of the considered opinion that the same is not at all a relevant issue. It is trite that if any material is sought to be considered against any person to his detriment by an authority, it would be the duty of such authority to furnish the same irrespective of whether it is asked for or not. If any authority is required, we may usefully refer to the decision of the Supreme Court reported in ***AIR 1994 SC 1074 (Managing Director, ECIL, Hyderabad vs. B. Karunakar)***. We are conscious that B. Karunakar (supra) relates to supply of enquiry report in connection with departmental/domestic enquiry but the principles laid down would squarely apply in a case of the present nature.

9] Insofar as the issue of constitution of the Enquiry Committee is concerned, Mr. Deshmukh, learned Senior Advocate representing the University, in his usual fairness, has conceded that the power under Section 106 of the Act is reserved for the authorities of the University to exercise and may not have been exercised by the Vice Chancellor.

10] In that view of the matter, we are left to decide whether and to what extent the petitioner would be entitled to the reliefs, as claimed in this writ petition.

11] We have no manner of doubt, while agreeing with the

submission of Mr. Khandare, that the Vice Chancellor could not have exercised the power of constituting the Committee to enquire into the conduct of the petitioner in purported exercise of power conferred by Section 106, which ultimately led to the order relieving her of the additional responsibility of Head of the Department of English and handing over of charge by her to Dr. Ambhore. Any order passed by an authority without jurisdiction is regarded as *coram non judice*. Therefore, we have no hesitation in holding that the action of the Vice Chancellor in constituting the Enquiry Committee (without jurisdiction) is not sustainable in law. Regarding the other order of the Vice Chancellor, which was communicated by the Registrar vide his letter dated 31st March, 2018, we also have no hesitation to hold that the Vice Chancellor, before accepting the report of enquiry, should have supplied the same to the petitioner. Without supplying copy of the report, the action taken by the Vice Chancellor appears to be in clear breach of the principles of natural justice.

12] For the aforesaid reasons, the writ petition succeeds to the extent mentioned hereinbelow :-

[a] The order of the Vice Chancellor constituting the Enquiry Committee, the report of such committee and the order of the Vice Chancellor, which was communicated by the Registrar by the impugned letter dated March 31, 2018, stand set aside.

[b] The aforesaid order would, however, not mean

automatic re-designation of the petitioner as the Head of the Department of English, for, we find that Dr. Ambhore has been designated as the Head of the Department of English and his term of 3 years is scheduled to end on March 31, 2021; therefore, it would not be desirable to disturb the present arrangement particularly when Dr. Ambhore is not before us as a party.

[c] However, we make it clear that in the event the petitioner is otherwise qualified for being designated as the Head of Department once again, she shall be so designated on and from April 1, 2021, for the balance period of two years, which she could not serve as a result of the order of the Vice Chancellor asking her to hand over charge to Dr. Ambhore. Such reinstatement shall be subject to the condition that there is no adverse report against the petitioner in the meanwhile.

[d] We also make it clear that if indeed there is *prima facie* material against the petitioner to proceed against her departmentally, it shall be open to the University to follow the course mandated by the provisions of the Act.

13] The Rule is made absolute on the above terms. There shall be no order as to costs.

[S.V. GANGAPURWALA,J]

[CHIEF JUSTICE]

grt/-