

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

WRIT PETITION NO. 11980 OF 2019

Dr. Shankar S/o. Bhagwan Ambhore,
Age : 53 years, Occu. Service,
R/o. Plot No. 120, Pethe Nagar,
Bhawsingpura, Aurangabad.

...Petitioner.

Versus

1. Hon'ble Chancellor,
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad,
Raj Bhavan, Malabar Hill, Mumbai.
2. Dr. Babasaheb Ambedkar University,
Through its Registrar,
University Campus, Aurangabad.
3. Dr. Vilas S/o. Bhikaji Khandare,
Age. 48 years, Occ. Service,
Office at Shri Asaramji Bhandwaldar College,
Devgaon Rangari, Tq. Kannad, Dist. Aurangabad.
4. State of Maharashtra.

...Respondents.

WITH
WRIT PETITION NO. 12001 OF 2019

Dr. Shankar S/o. Bhagwan Ambhore,
Age : 53 years, Occu. Service,
R/o. Plot No. 120, Pethe Nagar,
Bhawsingpura, Aurangabad.

...Petitioner.

Versus

1. Hon'ble Chancellor,
Dr. Babasaheb Ambedkar Marathwada

University, Aurangabad,
Raj Bhavan, Malabar Hill, Mumbai.

2. Dr. Babasaheb Ambedkar University,
Through its Registrar,
University Campus, Aurangabad.

3. Dr. Appasaheb Bhausahab Humbe,
Age. Major, Occ. Retired,
Office at Shankarrao Patil Arts, Commerce
and Science College, Bhoom, Osmanabad.

4. State of Maharashtra. ...Respondents.

Mr. V.J. Dixit Senior Advocate i/b. Mr. S.V. Dixit, Advocate for the Petitioner.
Mr. S.N. Kendre, AGP for State / Respondent Nos. 1 & 4.
Mr. S.S. Vidwans, Advocate for Respondent No. 2.
Mr. S.S. Deshmukh, Advocate for Respondent Nos. 3.

CORAM : MANGESH S. PATIL, J.

Reserved on : 07.10.2020.

Pronounced on : 14.10.2020.

JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. Learned Advocates for the respondents waive service. With the consent of both the sides these petitions are heard finally and are being disposed of by this common judgment.

3. The petitioner is a Professor and Head of Department in Economics

subject in Smt. Dankunwar Mahila Mahavidyalaya, Jalna, possessing MA(Economics), M. Phil and Ph.D qualification having vast experience of teaching, having research projects to his credit and also works as a guide for the Ph.D. students and has authored few publications. He was nominated as a member of the Board of Studies (Economics) of respondent No. 2 / University by virtue of the provisions of Section 40 (2) (b) (ii) of the Maharashtra Public Universities Act, 2016 (herein after the 'Act'). He was subsequently elected as the Chairman of the Board of Studies (Economics). Being aggrieved and dissatisfied by his such nomination, respondent Nos. 3 in both these petitions made a representation to the respondent No. 1 who is the Hon'ble Chancellor of the University, under Section 140 of the Act. By separate orders of the same date i.e. 01.09.2019, respondent No. 1 held that petitioner's nomination to the Board of Studies (Economics) was not in accordance with the provisions of the Act and was *void ab initio*. Though separate orders were passed by the respondent No. 1 on the same date, the reasons and the grounds for coming to the conclusion being same, though the petitioner has challenged these orders by separate Writ Petitions, these are being disposed of by this common judgment.

4. As can be seen from the impugned orders, primarily the challenge to the

nomination of the petitioner to the Board of Studies is on two grounds. Firstly, he is a convict in an offence punishable under Section 353, 441 and 427 of the Indian Penal Code. Secondly, he is not eligible to be nominated by virtue of the provisions contained in Section 40 (2) (b) (ii) of the Act, since the college in which he works as a Head of the Department and Professor does not impart post graduation course in the relevant subject i.e. Economics.

5. As far as first ground is concerned, the respondent No. 1 has refuted it by referring to and relying upon the fact that the petitioner was subsequently granted a benefit under Section 4 of Probation of Offenders Act, 1958, and by virtue of Section 12 of that Act the person dealt with under that provision does not suffer disqualification attaching to the conviction. It is necessary to note at this very juncture that the respondent Nos. 3 in these petitions and their learned Advocate Mr. Deshmukh have not sought to impugn such conclusion of the respondent No. 1 and therefore, one need not delve in that respect.

6. As can be appreciated the second ground being put forth by the respondent Nos. 3 has found favour with the respondent No. 1 in concluding that he was not eligible to be nominated under the category provided for nomination to the Board of Studies contained under Section 40 (2) (b) (ii), in

following words in paragraph No. 29 (x) (in Writ Petition 11980/2019) and paragraph 34 (l) (in Writ Petition No. 12001/2019) which in verbatim is as under :

“29. (x) Section 40 (2) (b) (II) of the Act states that a person for being eligible for nomination on the Board of Studies shall be recognised PG teacher in affiliated college offering post graduate programme in the concerned subject. Dr. Ambhore is a recognised PG teacher in Smt. Dankunwar Women’s College, Jalna, affiliated to BAMU. However, as clarified by the Vice Chancellor, the said College does not have PG programme in the concerned subject i.e. Economics. Thus, Dr. Ambhore seems to be not eligible for nomination on the Board of Studies in Economics.”

7. The entire controversy primarily revolves around interpretation of the provision of Section 40 (2) (b) (ii) of the Act. Since it is a matter of interpretation of that provision, it is necessary to emphasize at the outset that as can be seen from the print of the Bare Act from the Government Printing Press, it was published on 11.01.2017 in Marathi, and its translation in English was published. Marathi is the language of the State Legislature. It has been submitted by the learned Advocate Mr. Deshmukh for respondent No. 3, the dispute pertains to the interpretation of the legal provision and

therefore, as far as possible, the language in which a statute is published should be the relevant factor for its interpretation. In this peculiar case, there seems to be some confusion being created by virtue of the English translation of the provision of Section 40 (2) (b) (ii) to which I shall advert to a little later.

8. Before turning to the rival submissions, therefore, it would be appropriate to reproduce the provision in Marathi as well as its English translation, both from the Government Publication, which read as under :

“४०. (२) (ख) (दोन) - संबंधित विषयातील पदव्युत्तर अध्ययनक्रम देऊ करणा-या संलग्न महाविद्यालयांमधील किंवा मान्यताप्राप्त परिसंस्थांमधील किंवा पदव्युत्तर केंद्रांमधील मान्यताप्राप्त पदव्युत्तर अध्यापकांमधून दोन अध्यापक.”

“40. (2) (b) (ii) – two teachers from amongst recognized post-graduate teachers in affiliated colleges, or recognized institutions or post-graduate centers offering post-graduate programme in the concerned subject.”

9. Learned Senior Advocate Mr. Dixit took me through the papers regarding the Educational qualification of the petitioner showing that he is a teacher in Economics and particularly the letter dated 06.07.2002 issued by the Director, Board of College and University Development (Exhibit 'A' in Writ Petition No. 12001/2019) whereby he was recognized by the University as a Post Graduate teacher in Economics. Learned Senior Advocate then pointed out by referring to the letter dated 16.06.2016 addressed by the Principal of Babasaheb Ambedkar College of Arts and Commerce, Aurangabad, to the Principal of the petitioner's college (page No. 28 in Writ Petition No. 12001/2019) showing that the course of Post Graduation in Commerce of petitioner's college was duly recognized. Learned Senior Advocate then also referred to the letter dated 27.08.2014 addressed by the Deputy Registrar of the Education Department of the respondent No. 2 /University addressed to the petitioner's College intimating that the college was recognized as a research center in Commerce for the period of three years from the academic year 2014-2015. Learned Senior Advocate would, thereafter, submit that so far as the educational qualification of the petitioner being an expert in Economics and also the fact that the college in which he is working also imparts Post Graduation course in Commerce is unassailable.

10. The learned Senior Advocate Mr. Dixit, however, by referring to the provision contained in Section 40 (2) (b) (ii) (supra) in English strenuously submitted that the provision only requires the teacher to be nominated should be amongst recognized Post Graduate teachers from affiliated colleges. He would emphasize that a comma used after the words 'affiliated colleges' followed by 'or' is suggestive of the intention of the legislature in separating the Post Graduate teachers in affiliated colleges and the teachers from the concerned subject from recognized institutions or Post Graduate centers offering Post Graduate program. In other words, he would submit, the words 'Post Graduate program in concerned subject' only qualify the 'recognized institutions' or 'post graduate centers' and is not applicable to 'a recognized post graduate teachers in affiliated colleges'. In short, according to him, any Post Graduate teacher from affiliated colleges is eligible to be nominated under this clause and it is not necessary that even in respect of Post Graduate teachers in affiliated colleges having no post graduate program in the concerned subject would be eligible. The learned Senior Advocate, therefore, submitted that though there is no post graduate program in Economics in the petitioner's college it makes no difference and he continues to be eligible being a Post Graduate in Economics.

11. Per contra, Mr. Deshmukh for respondent No. 3 and also the learned AGP and Advocate Mr. Vidwans strenuously submitted that in order to make a Post Graduate teacher eligible to be nominated under this clause, the institute or the affiliated college where he is working must have a Post Graduate program in the concerned subject. They would submit that Section 41 of the Act prescribes powers and duties of Board of Studies and would emphasize that the whole purpose of having a Board of Studies is to recommend the Management Council through the concerned faculties from the Academic Council for introduction of new diplomas finalizing syllabi, course structure, evaluation of schemes recommending books, preparing the panels of papers setters, examiners, moderators, design a curricula etc. is suggestive of the purpose and object behind the constitution of a Board of Studies for a subject or a group of subjects. Though the petitioner is a post graduate or even a doctorate in Economics, he does not have the requisite experience of teaching the students of Post Graduate courses in the relevant subject i.e. Economics. Therefore, though individually and academically he is qualified in the subject, that is not the only purport of this provision contained in Section 40 (2) (b) (ii) of the Act. In addition to such educational qualification the teacher is also expected to have sufficient teaching experience at the Post Graduate level. It is only then he would be of some help in discharging functions as a member of

the Board of Studies under Section 41.

12. The learned Advocates then point out that the Act as is published in Marathi which is a language of the State Legislature is more clear and its English translation admits of some confusion. Even otherwise, the words 'concerned subject' contained in the provision are of paramount importance and are equally applicable and qualify the eligibility of a teacher from all the three categories namely affiliated colleges, recognized institutions and post graduate centers. According to them the condition to be satisfied by a teacher is three fold. He must be a post graduate teacher. He must be working in the affiliated college or recognized institution or post graduate center offering post graduate program and that such post graduate program has to be in the concerned subject. Thus according to them when the institute in which the petitioner is the professor and Head of the Department does not have a post graduate program in Economics, he was not eligible to be nominated under this clause. The learned advocates, however, fairly concede that as far as educational qualification and experience of the petitioner is concerned the respondents do not dispute it.

13. The careful reading of the provision contained in Section 40 (2)(b) (ii) of the Act, in my considered view, clearly mandates that for a teacher to be

nominated under that provision, apart from being a post graduate in the concerned subject, the institute in which he is working also must have a Post Graduate program in the concerned subject i.e. Economics in the matter in hand. There is no dispute about the petitioner being a post graduate in Economics and has been teaching Economics for many years. However, it also stands admitted that the college in which he is working does not have a post graduation program in Economics. Without indulging into the fact as to whether the statute which is published in Marathi and subsequently translated in English, the former being the language of the State Legislature should be looked into and even without indulging in any exercise of linguistically examining as to if the English translation is correct or otherwise, even the English translation in my view does not create any confusion, more so, if one minutely takes into consideration the entire scheme of Section 40 which reads thus :

“Section 40. (1) There shall be a Board of Studies for every subject or group of subjects prescribed by the Statutes. The Board of Studies shall be the primary academic body of the university.

(2) The Board of Studies shall consist of the following members, namely : –

(a) head of the university department or institution in the relevant subject :

Provided that, where there is no university department in the subject, the Board shall, at its first meeting co-opt the head of the department who is recognized for imparting teaching to post graduate students in an affiliated college or a recognized institution having post graduate teaching in that subject;

(b) six teachers having minimum ten years teaching experience, nominated by the Vice-Chancellor in Consultation with the Dean of the respective faculty, from the following categories, namely : –

(i) one teacher from amongst the full time teachers of the university departments in the relevant subject;

(ii) two teachers from amongst recognized post-graduate teachers in affiliated colleges, or recognized institutions or post-graduate centers offering post-graduate programme in the concerned subject;

(iii) three teachers from affiliated colleges and recognized institutions other than heads of departments;

(c) three heads of departments from affiliated colleges and recognized institutions to be elected from amongst the collegiums of heads of departments of affiliated colleges and recognized institutions.

(d) the Board of Studies, at its first meeting, shall, –

(i) Subject to the provisions of section 65, elect one of the members as a chairperson of the board of the studies from amongst its members :

Provided that the member to be elected as a chairperson of Board of Studies shall be a post graduate recognized teacher imparting teaching to post graduate students; and thereafter co-opt–

(ii) one professor from other universities; and

(iii) four experts as under :-

(A) a person holding a rank not lower than that of Assistant Director, in national laboratories or institutions; or recognized institutions or industry or experts in the related field having published at least one reference book in the subject; or at least

three research papers in recognized national or international journals;

(B) an eminent scholar in the subject;

(C) an eminent person from the subject-related industries or association or professional body;

(D) person having at least ten years working or ownership an advisory or consultancy experience in the field relevant to the subject.

(E) top rankers of the Final Year Graduate and Final Year Post Graduate examination of previous year of the concerned subject as invitee members for discussions on framing or revision of syllabus of that subject or group of subjects for one year.”

A careful perusal of the language of the entire provision leaves no manner of doubt that wherever necessary the legislature has specifically emphasized and qualified the persons or the institutions by using the words ‘relevant subject’, ‘that subject’, ‘concerned subject’, ‘in the subject’, ‘to the subject’, (emphasized herein above). The very constitution of the Board of

Studies which is expected to discharge the powers and duties conferred upon it by virtue of Section 41 of the Act, essentially requires and emphasize that a Board of Studies is constituted for every subject or a group of subject meaning thereby it is the subject wise constitution of Board of Studies which is contemplated by the Statute.

14. For instance, as can be seen from the list of Chairman, Board of Studies, elected for the year 2017/2018 by respondent No. 2 / University dated 17.04.2018 (Exhibit 'F' in Writ Petition No. 2001/2019) the Board of Studies have been classified in four categories namely Humanities, Science and Technology, Commerce and Management and Inter Disciplinary Studies. Again, as many as thirteen subjects fall under the category of Humanities which includes Economics, thirteen subjects are included in Science and Technology category. There are five subjects under Commerce and Management category which includes Business Economics and seven subjects fall under Inter Disciplinary Studies category.

15. It is, therefore, quite evident that the legislature intended that there should be a Board of Studies which would help the Academic Council and Management Council of the University in designing a curricula, suggesting modification to the courses, recognizing the reference books, approving the

panel of paper setters, examiners, etc. If such is the state of affairs, there remains no manner of doubt that the legislature in its wisdom has provided for nomination of teachers not only who themselves are post graduate in the subject but also have experience in imparting education to a post graduate course in that subject. Needless to state that being a post graduate in a subject is not the same thing as a teacher teaching a post graduate course. There is essentially a vast difference between the two. The wording of the provision of Section 40 and understanding the scheme of constitution of a Board of Studies leaves no manner of doubt that it is only a Post Graduate teacher who has the experience of teaching a post graduate course in the concerned subject are eligible to be considered for nomination under the provision of 40 (1) (b) (ii). Therefore, when the petitioner is admittedly a teacher from an institute where there is no Post Graduate program in Economics, he was indeed ineligible to be nominated under this provision as member of the Board of Studies in Economics of respondent No. 2 / University. This is what has been precisely held by respondent No. 1 in the impugned order.

16. Perhaps alive to the vulnerability of the case of the petitioner on this count, learned Senior Advocate Mr. Dixit made a frail attempt to salvage some

ground by pointing out that even if the petitioner's college does not run a Post Graduate course in Economics, Economics itself is an essential part of any Commerce faculty. As mentioned earlier, he pointed out as to how respondent No. 2 / University has recognized the petitioner's college as a research center in Commerce and it also runs a post graduate course in Commerce. He also pointed out that though the Economics subject falls under the category of Humanities, the Business Economics is also a subject falling under the category of Commerce and Management for which there is a separate Board of Studies as can be seen from the publication dated 17.04.2011 (Exhibit 'F'). He also pointed out that even for the previous tenure the petitioner was appointed as a member of the Board of Studies in Economics and had completed the tenure and was allowed to do so. The learned Senior Advocate also pointed out as to how even Gondwana University, Gadchiroli by notification No. 68/2018 dated 08.05.2018, has nominated the petitioner as a co-opted member of the Board of Studies in Economics. He, therefore, would submit that when the petitioner possess the requisite educational qualification and has already worked in the same capacity in respondent No. 2 / University earlier and is recognized as such by the Gondwana University, the respondent No. 1 ought not to have reached the conclusion of his being not eligible.

17. The learned Advocates for the respondents controverted these submissions by asserting that as far as the previous tenure of the petitioner it is inconsequential. In the present matters, the petitioner's eligibility is being questioned. Even if he was nominated and worked as a member of Board of Studies of Economics previously, that fact does not make him eligible, if nobody had challenged his appointment previously that does not preclude a subsequent challenge. So far as the decision of Gondvana University, Gadchiroli is concerned, they would point out that the petitioner has been appointed under Section 40 (2) (a) and not under Section 40 (2) (b) (ii). Besides, if and when somebody raises an objection, even the petitioner's appointment by the Gondvana University could also be a subject matter of judicial scrutiny.

18. Once it has been found that going by the scope and mandate of Section 40 (2) (b) (ii) of the Act, a teacher having post graduation and imparting teaching in an institute running some post graduate course in some subject is not the purport of the provision which mandates that even institute where the teacher is working should have a post graduate course in the concerned subject, the submission of the learned Senior Advocate Dixit seems to be rather emotional. Merely because a Commerce faculty essentially has Economics as one of the subjects in its curriculum that cannot partake

requirement of post graduation course in economics. As can be appreciated from the categories of Board of Studies mentioned herein above, subject Economics falls under Humanities where as Business Economics falls under Commerce and Management category. When admittedly, the petitioner's college does not have a post graduate course in Economics, the controversy does not take long to rest.

19. It is trite that a mistake or an error cannot be a precedent. Similarly, there cannot be an estoppel against law. Therefore, merely because the petitioner could earlier complete the tenure as a member of the Board of Studies in Economics and that even now he is being so recognized by Gondavana University, Gadchiroli, that does neither make him eligible to be so nominated nor could there be a bar to question his nomination as has been done in the present matters. Therefore, the submission of learned Senior Advocate Mr. Dixit cannot be accepted.

20. Mr. Dixit, the learned Senior Advocate made another feeble attempt to draw a parity with one Dr. H.G. Vidhate, who is also a recognized post graduate teacher in Commerce, who teaches subjects relating to Commerce in A.D. College, District Beed, in the subject Business Economics has been held in the selfsame orders to be eligible to be nominated under this very provision.

The learned Advocate would submit that in spite of the petitioners being similarly placed, a contrary view has been taken by the respondent No. 1. Learned Senior Advocate would point out that the institute where Mr. Vidhate is working does not offer post graduate program in Business Economics but the subject is taught as a part of M.Com.

21. As can be seen from the impugned order, so far as Dr. H.G. Vidhate is concerned, it has been observed in the impugned orders that he is a teacher in A.D. College, District Beed, which offers post graduate program (M.Com) which is concerned with the subject Business Economics. Though apparently, the submission of learned Senior Advocate is attractive, it needs to be borne in mind that what is essential and provided by Section 40 (2) (b) (ii) is that the teacher himself be a post graduate and should be teaching in any Institute having a post graduate course. Unless it is demonstrated that there can be a post graduate course of M.Com exclusively in Business Economics, the case of the petitioner does not stand on the same footing as that of Dr. Vidhate. He is a post graduate, teaching in an institute which offers post graduate program i.e. M. Com which includes business Economics as a subject. There is clear distinction between the case of the petitioner and that of Dr. Vidhate. Therefore, the petitioner is not entitled to claim any benefit on this count.

22. Senior Advocate Dixit submitted that the petitioner is also questioning the manner in which the impugned orders have been passed by resorting to the provision of Section 140 of the Act. By pointing to the wording of the provision he would submit that it is only on a reference to be made by the Vice Chancellor that the Chancellor can act under that provision and reply to the queries. He would strenuously submit that respondent Nos. 3 are not aggrieved persons and even there is no reference made by respondent No. 2 through its Vice Chancellor as contemplated under the proviso to that Section and therefore, the very basis for initiating the proceedings before respondent no. 1 is faulty. The learned Senior Advocate would also submit that apart from such an error, even no opportunity of being heard was extended to the petitioner while passing the impugned orders. It is only in one of the matters (Writ Petition No. 11980/20) that the petitioner was served with a notice sans any accompaniments. He could barely manage to send a reply to that notice. In the other matter (Writ Petition No. 12001/19) he was not even served with any notice. In neither of the matters he was ever called upon to remain present and argue the matter. Even there was no proper communication of the impugned orders. The learned Senior Advocate then submitted that the impugned orders having been passed even while discharging the power under Section 140 of the Act without following the principles of natural justice are

liable to be quashed and set aside.

23. The learned Advocates for the respondents would point out that admittedly the petitioner was served with the notice at least in one of the matters and was aware about the proceeding taken up before respondent No. 1 under Section 140 of the Act, and pursuant thereto, he had also sent the reply. Therefore, it is not that the impugned orders have been passed *ex parte*. Learned Advocate Mr. Deshmukh would then refer to and rely upon the decision in **Dharmpal Satyapal Limited Versus Deputy Commissioner of Central Excise, Gauhati and others, (2015) 8 SCC 519**, and submit that the principles of natural justice is not inflexible. It all depends upon the fact situation of the matter. If the hearing is not going to change the ultimate conclusion reached by the decision maker then there is no need to extend such opportunity of being heard when on an independent scrutiny the respondent No. 1 has come to a conclusion that the petitioner was not eligible to be nominated under Section 40 (2) (B) (ii) of the Act.

24. As far as the interpretation and scope of Section 140 and its proviso is concerned so also the challenge to the impugned orders on the ground of those being passed without following the principles of natural justice, in my considered view the argument and the discussion now becomes merely

academic. Having found and concluded that the petitioner was not eligible to be nominated as a member of Board of Council in Economics by resorting to the provision of Section 40 (2) (b) (ii), the power of respondent No. 1 and the manner in which the impugned orders are passed become inconsequential. I, therefore, do not intend to indulge in that discussion. It is better to leave that part of the controversy to be decided and interpretation to be put in an appropriate proceeding.

25. Upshot of the above discussion is that there is no error committed by the respondent No. 1 while passing the impugned orders holding the petitioner to be ineligible for being appointed under Section 40 (2) (b) (ii) of the Act. The Writ Petitions fail and are liable to be dismissed.

26. The Writ Petitions are dismissed. Rules are discharged.

(MANGESH S. PATIL, J.)

27. After pronouncement of the judgment, Mr. V.J. Dixit, learned Senior Advocate instructed by Mr. S.V. Dixit, Advocate for the petitioner, requests to continue the ad-interim order passed on 30.09.2019 for a further period of six

weeks to enable the petitioner to approach the Supreme Court.

28. Mr. S.S. Deshmukh, learned Advocate for respondent No. 3, in both the petitioners, strongly opposes the request.

29. By the order dated 30.09.2019, it was specifically directed that the nomination to the Board of Studies of Economics in place of the petitioner to be deferred until further orders. Now since the Writ Petitions are being dismissed, the petitioner wants to approach the Supreme Court. In the interest of justice, the interim direction not to nominate anybody in place of the petitioner can continue for a further period to enable the petitioner to approach the Supreme Court. Hence, the nomination to the Board of Studies of Economics in place of the petitioner may not be made for a period of six weeks from today.

(MANGESH S. PATIL, J.)