

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAO) NO. 661/2020 IN LD-VC-MCA (REVIEW) NO. 7884/2020
IN WRIT PETITION NO. 5096/2006

Dr. Rajesh S/o Manikraoji Naik Vs. Vanijya Mahavidhyalaya Trust, Yavatmal & ors.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Pradeep S. Wathore, Advocate for applicant/petitioner.
Shri V. Dastane, Advocate for respondent Nos. 1 and 2
Shri J. B. Jaiswal, Advocate for respondent No. 3.

CORAM : A.S.CHANDURKAR AND VINAY JOSHI, JJ.
DATED : JANUARY 08, 2021.

Heard.

2. The petitioner/applicant Dr. Rajesh Naik, sought for review of the common judgment and order dated 13.03.2020 passed by this Court in Writ Petition No. 5096/2006 along with Writ Petition No. 5521/2006. Review petition has been filed on the premise that while passing impugned common order, this Court committed serious mistake or error apparent on the face of the record.

3. In order to appreciate the submissions, it would be apposite to make brief reference of the long drawn litigation. Respondent No. 1 Vanijya Mahavidhalaya Education Trust by public advertisement, has notified vacancy of one full time lecturer in commerce faculty . In pursuance thereof, the petitioner Dr. Naik applied, interviewed and was selected by first preference. Since the appointment was not given, petitioner Dr. Naik has filed Writ Petition No. 5096/2006 seeking writ of mandamus for

issuance of appointment order in accordance with the recommendation of selection Committee. The another Writ Petition No. 5521/2006 was filed by respondents for setting aside communication dated 25.09.2006 whereby University has directed them to issue appointment order to Dr. Naik. Both petitions were heard together by this Court. It was observed that a procedure laid down under Rule 3 of the Amravati University Rules (for short 'said Rules') was not followed and accordingly by setting aside the communication of University dated 25.09.2006, directions were issued for following prescribed procedure for appointment. Consequently, petition of Dr. Naik was came to be dismissed.

4. The learned counsel for petitioner has stressed on the point that, the respondent, Education Trust, without following prescribed procedure of obtaining prior approval of Vic-chancellor, has given several appointments on the date of selection itself. In that regard, he has filed pursis, quoting eight instances, where respondent has issued appointments on the date of selection itself. Therefore, according to him, the aspect of following procedure prescribed under the Rule 3 of the said Rules was mere formality. The respondents ought to have issued appointment to petitioner like others and would have complied with the formality subsequently.

5. One another ground has been raised in petition that in terms of Clause 27 of the Rule 3 of the Amravati University Rules 2000, these Rules are not applicable to the Commerce faculty. Learned counsel for respondents has pointed out that Clause 27 of the said Rules has been misquoted by petitioner to serve his own purpose. He took us through the text of original Clause 27 of the said Rules which state that the rules are also applicable to some other faculty. Apparently the petitioner has misquoted the rule

to give different meaning that the rules were only applicable to some different faculties. Thus, in our view, this is nothing but an effort to mislead the Court of law and therefore, for this reason alone the application is liable to be dismissed.

6. Be that as it may, we have given thoughtful consideration to the submission advanced by the petitioner. In terms of Sub-clause (18) of Rule 3 of the said Rules, the recommendation of Selection Committee has to be got approved from Vice-chancellor else it would be invalid. Sub-clause (19) of Rule 3 of the said Rules provides that within ten days from the date of interview, the report of Selection Committee has to be forwarded to the University for approval of Vice-chancellor. In case, the respondent desires to appoint another candidate than the candidate selected at first preference then it has to get prior approval of the Vic-chancellor as per Sub-clause (23) of the said Rules. As noted above, there is no dispute about applicability of those rules for appointment of Lecturer to the Commerce faculty. It is the only contention of petitioner that compliance of rules is mere formality and since those were not followed in other cases, he is also entitled for appointment before completing the procedure. Since the rules are in existence, we are afraid to issue such a direction which would mean to permit to flout the rules like happened in other cases. True, the instances quoted by petitioner shows that in past, the respondent committed irregularities but it does not confer any legal right to the petitioner to ask for repeating the same irregularities. Right of equality has no application in claiming irregularity or illegality.

7. The petitioner also stated that this Court in earlier round of litigation already issued similar directions vide order dated 18.06.2006. We have gone through the said order passed in

Writ Petition No. 4231/2006 which postulates that no similar directions were issued. There were rival complaints against each other therefore, this Court has directed Vice-chancellor to consider those complaints and to take appropriate decision. While deciding existing writ petitions, it was noticed that University Rules were not followed and therefore, directions were given to that effect.

8. We may recall that the scope of review is quite limited. An error apparent, means an error which strikes on mere looking and would not require any long drawn process of reasoning. We may refer the decision of the Supreme Court in *Lily Thomas, etc. Vs. Union of Indian, AIR 2000 SCC 1650*, wherein, it has been observed that the power of review can be exercised for correction of mistake and not to substitute a view. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. The error contemplated must be such which is apparent on face of the record and not an error which is to be fished out and searched. In view of such settled proposition, it is not permissible to re-examine the entire material and to reassess the correctness of the order under review.

9. In short, there was no error apparent on the face of the record nor any sustainable ground has been made out to invoke review jurisdiction. On facts also, we hold that the grounds canvassed in review were already considered and thus, review being devoid of merits, deserves to be dismissed and we do so accordingly.

10. At this stage , learned counsel for petitioner seeks to stay to the appointment on the post of lecturer in Commerce faculty for some period since he desires to challenge the order

before the higher forum. We have noted that though this Court vide order dated 13.03.2020 directed the respondents to follow procedure as laid down in Rule 3 of the said Rules within four weeks, still it was not complied for long period. Admittedly, till date, the appointment on concerned post was not made. Having regard to the said aspect, we direct that the respondents may complete the procedural aspect but no appointment shall be made on the concerned post for the period of four weeks from today.

JUDGE

JUDGE

Gohane.