

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13966 OF 2021

Bhaskar S/o. Dhanaji Salvi,
Age- 64 years, Occ- Principal,
as Principal of People's Education Society's
College of Physical Education, Nagsenvan,
Aurangabad,
R/o. Plot No. 07, New Nandanvan Colony,
Bhujbal Nagar, Near Chandmari Masjid,
Aurangabad.

....Petitioner

VERSUS

1. Dr. Shivaji S/o Tulshiram Suryawanshi
Age: 48 years, Occu. Not known,
R/o. Plot No. 3 and 4, Indradhanush,
Deepnagar, Bhavsinghpura,
Aurangabad.
2. The Hon'ble Vice Chancellor,
Dr. Babasaheb Ambedkar Marathwada
University,
Aurangabad- 431004.
3. Peoples Education Society (Mumbai),
Through its Deputy Chairman,
348, Anand Bhawan,
Dr. Dadabhai Naoroji Road,
Fort, Mumbai-400 001.

....Respondents

ALONG WITH
WRIT PETITION NO. 4020 OF 2022

1. Peoples Education Society (Mumbai)
Through its Chairman,
Anandraj S/o. Yashwantrao Ambedkar
Age: 61 years, Occ: Social Work
Office at: 348, Anand Bhawan,
Dr. Dadabhai Naoroji Road, Fort,
Mumbai.

2. Peoples Education Society (Mumbai)
Through its Deputy Chairman,
Dr. Datta S/o. Ganesh Deshkar,
Age: 82 years, Occ- Deputy Chairman
Office at: 348, Anand Bhawan,
Dr. Dadabhai Naoroji Road, Fort,
Mumbai.

....Petitioners

VERSUS

1. Dr. Shivaji S/o Tulshiram Suryawanshi
Age: 48 years, Occu. Nil,
R/o. Plot No. 3 and 4, Indradhanush,
Deepnagar, Bhavsinghpura,
Aurangabad.
2. The Hon'ble Vice Chancellor,
Dr. Babasaheb Ambedkar Marathwada
University,
Aurangabad- 431004.
3. Bhaskar S/o. Dhanaji Salvi,
Age- 64 years, Occ- Principal,
People's Education Society's
of Physical Education, Nagsenvan,
Aurangabad,
R/o. Plot No. 07, New Nandanvan Colony,
Bhujbal Nagar, Near Chandmari Masjid,
Aurangabad.

....Respondents

.....

Writ Petition No. 13966/2021

Mr. Vijay V. Deshmukh, Advocate for the Petitioner.

Mr. P.R. Katneshwarkar h/f. Mr. N.T. Tribhuvan, Advocate for
Respondent No 1.

Mr. Sumit S. Agrawal, Advocate for Respondent No. 2.

Mr. S.V. Dixit, Advocate for Respondent No. 3.

Writ Petition No. 4020/2022

Mr. S.V. Dixit, Advocate for the Petitioners.

Mr. P.R. Katneshwarkar h/f. Mr. N.T. Tribhuvan, Advocate for
Respondent No 1.

Mr. Sumit S. Agrawal, Advocate for Respondent No. 2.

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 12th JULY, 2022

PRONOUNCED ON: 19th SEPTEMBER, 2022

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocate for the parties.

2. Since these petitions raise similar question of law and fact, they were heard together and are being decided by this common judgment.

3. For the convenience, facts of Writ Petition No. 4020/2022 are taken into consideration.

4. This petition filed under Article 226 and 227 of Constitution of India, impugns the judgment and order dated 29.11.2021 passed by the learned Presiding Officer of University and College, Tribunal, Aurangabad, in Appeal No. BAMU-09/2021, which is as follows:-

ORDER

- (i) *APPEAL NO. BAMU-09 OF 2021 is partly allowed.*
- (ii) *The impugned order passed by G.C. 21.08.2021 in complaint no. 14 OF 2019 is set aside. Complaint no.*

14 OF 209 is remanded to the G.C. for fresh consideration, after giving opportunity of hearing to the appellant after joining the appellant as Respondent No. 3, in the complaint. G.C. to dispose of the remanded complaint application within 3 months from the date of appearance of parties.

(iii) Respondent No. 2 is directed to decide the grant or refusal of the approval to the appellant as Regular Principal, after examining whether due procedure is followed by the management at the time of selection of appellant as Regular Principal, Respondent No. 2 shall verify whether the appellant possess required qualification and whether selection committee was duly approved by Pro Vice Chancellor. This task shall be completed within one month, from the date of this order.

iv) Appellant and Respondent Nos. 1 to 3 are directed to remain present before G.C. on 15.12.2021.

(v) Till decision of complaint no. 14 OF 2019, additional charge of principal shall be handed over to Respondent No. 1 Shri. Shivaji Tulshiram Suryawanshi.

(vi) Parties to bear respective costs.

(vii) Copy of the Judgment be sent to Respondent No. 2 for necessary action and compliance of order passed by this Tribunal.

5. Respondent No. 3 filed said appeal arraying respondents no. 1, 2, and the petitioners as party respondents.

In the appeal, respondent No. 3 challenged the decision of Grievance Committee in Complaint No. 14/2019, filed by respondent No. 1, under section 79 of the Maharashtra Public University Act, 2016 (for short 'said Act').

6. In the complaint Respondent No. 1/Dr. Suryawanshi has raised a grievance that respondent No. 3/Mr. Salvi is appointed by the Management as in-charge Principal and University has given approval to the said appointment, though respondent No 3 is retired as professor from another college. In fact, he is the only professor on the pay roll of college. He therefore, claimed that the appointment of respondent No. 3 and approval granted to him is illegal and should be set aside and proposal filed by the Management on 17.06.2019 be decided and he be granted approval as in-charge Principal.

7. The Grievance Committee passed order on 21.08.2021 after hearing respondent No 1 and after perusal of record, holding that, respondent No. 1 is the only professor on the establishment of the College and Management should have appointed him as in-charge Principal and the University is expected to grant approval logically to his appointment. It is

further held that though respondent No. 3 filed intervention application, nowhere in the said application he has contended that he is presently working as professor in the College, therefore, his claim cannot be considered as genuine.

8. The decision of the Grievance Committee is challenged by respondent No. 3 by filing Appeal No. 9/2021. The Tribunal allowed the appeal and set aside the order of the Grievance Committee passed in favour of respondent No. 1 and remanded the matter back to the Grievance Committee for fresh consideration after giving opportunity of hearing to respondent No. 3. The complaint is directed to be decided within three months from the date of appearance of the parties. The University is further directed to decide grant or refusal of approval to respondent No. 3, as regular principal after examining whether due procedure is followed by the management at the time of selection of respondent No. 2 as regular principal. The University is directed to verify whether respondent No. 3 possess required qualification and whether the selection committee was duly approved by Pro Vice Chancellor. Consequential directions are issued by the College Tribunal, in the judgment impugned herein. The management therefore has

challenged the said decision of the Tribunal by this petition.

9. Respondent No. 3 by filing Writ Petition No. 13966/2021 has challenged the said decision of the Tribunal.

10. Writ Petition No. 14494/2021 is filed by Dr. Shivaji Tulshiram Suryawanshi, respondent No. 1 herein, challenging the order passed by the Presiding Officer, University and College Tribunal, Aurangabad in Appeal No. BAMU-09/2021, to the extent of Clause No. II of the said order, whereby the matter is remanded back to the Grievance Committee.

11. During the pendency of this petition, respondent no. 1 reached the age of superannuation on 30th June, 2018 and accordingly, Writ Petition No. 14494/2021 is disposed of as *infructuous*, by order dated 12th July, 2022.

12. Heard the learned advocates for the petitioner and the learned advocates for the respondents. Perused the writ petition memo, grounds raised therein and the impugned order.

13. It appears from the record that there is dispute in the management in respect of validly elected trustees, who run the petitioner/college. The dispute in the trustees is pending before the Joint Charity Commissioner. Due to the said dispute, in many colleges run by the management, regular principals were not appointed, which caused difficulties in the administration in respect of admission of students and payment of salary to the staff. Considering this, Government issued a resolution dated 13.10.2011, thereby permitting to handover the charge of post of principal to senior most Ph.D. holder professor, having 15 years of experience as professor of such college. It appears that such experienced professors were not available in many colleges run by the management. Therefore, vide resolution dated 15.03.2012, Government allowed to handover additional charge of principal to the senior most professor working in such college. If such eligible professor is not available then the charge of principal was to be given to senior most professor working in the said college. Said additional charge was only be given for one year, and then regular principal has to be appointed by the respective college.

14. Perusal of complaint application no. 14/2019 reveals that respondent No. 1 has challenged the approval granted to the appointment of respondent No. 3 as in-charge principal and has sought direction to take decision on the communications dated 05.08.2019, 16.08.2019 and 27.08.2019 and 21.09.2019 and has also claimed unpaid salary from June 2019, so also regular salary.

15. The Grievance Committee by its order directed to appoint respondent No. 1 as in-charge principal and further directed the University to consider grant of approval to his appointment.

16. The Tribunal has set aside the order passed by the Grievance Committee on the ground that intervention application filed by respondent No. 3 was not considered and opportunity of hearing was not given to respondent No. 3, who claims to be appointed as regular Principal. Since, respondent No. 3 was claiming right as only regular Principal, approval granted by University on 16.11.2021 as in-charge Principal is contrary to the Government Resolution dated 15.03.2012. Said approval as in-charge Principal was passed despite the status quo order was in

operation and therefore same is null and void and not binding. The Tribunal has further observed that till today grant of permanent approval as regular Principal to respondent No. 3 by Pro Vice Chancellor is not decided by the University and therefore, before passing final order in Complaint No. 14/2019, Pro Vice Chancellor can be directed to decide legality of appointment of respondent No. 3 as regular Principal and thereafter order of grant or refusal of the approval to the appointment of respondent No. 3 as regular Principal can be passed.

17. In the light of above findings recorded by the Tribunal and on going through record and after giving due consideration to the rival submissions of the parties, this Court is of the opinion that the Tribunal is justified in remanding the matter back to the Grievance Committee.

18. All these disputed questions of fact that whether appointment of respondent No. 3 was after following due procedure, whether approval was rightly granted to the appointment of respondent No. 3 and whether respondent No. 1 was eligible and entitled to be appointed on the post of Principal,

can be effectively considered and adjudicated upon by the Grievance Committee. The University is within its authority to take decision on grant or refusal of approval to respondent No. 1 as regular Principal, in terms of directions given by the Tribunal in clause (iii) of the impugned order.

19. There is no patent perversity in the order passed by the Tribunal nor there appears any gross or manifest failure of justice. This Court while exercising writ jurisdiction under Article 227 of Constitution of India cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the Tribunal is a possible view. No case is made out in these petitions pointing out that the Tribunal while remanding the matter back has abused elementary principles of justice or has committed manifest error of law patent on the face of the record or has occasioned miscarriage of justice.

20. No prejudice is likely to be caused to the parties by remanding the matter back to the Grievance Committee, wherein parties are entitled to agitate their claims and put forth their respective contentions. No fault can be found with the approach of the Tribunal in remanding the matter back to the Grievance

Committee. No illegality or perversity is found in the order impugned in the present petitions. Writ petitions being devoid of merit are dismissed. No costs.

Rule is discharged.

21. At this stage, the learned advocate for the petitioner prays for continuation of interim relief. Interim relief granted by this Court to continue for a further period of six weeks from today.

[NITIN B. SURYAWANSHI, J.]