

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

**WRIT PETITION NO.2770 OF 2023**

Dr. Manoj s/o Uttamrao Mahajan,  
Age: 36 years, Occu: Lecturer,  
R/o Adarshnagar, Shirpur, Tal. Shirpur,  
Dist. Dhule

... Petitioner

Versus

1. Maharashtra University of Health Sciences,  
Through its Registrar, Nashik Division, Nashik  
Tal. And Dist. Nashik

2. Maharashtra University of Health Sciences, Nashik  
Through its Returning Officer/Election Officer,  
Tal. And Dist. Nashik

3. The Principal,  
Kisan Dnyanoday Mandal Gudhe's  
Homeopathic Medical College and Hospital, Shirpur,  
Tal. Shirpur, Dist. Dhule

... Respondents

...

Mr. D. S. Bagul, Advocate for the Petitioner  
Mr. S. P. Brahme, Advocate for Respondent Nos.1 & 2

...

**CORAM : NITIN W. SAMBRE &  
S. G. CHAPALGAONKAR, JJ.**

**DATE : 09.03.2023**

**PER COURT :**

1. The petitioner approaches this Court under Article 226 of the Constitution of India with the following prayer:-

*"B) By way of appropriate writ, order or directions in the like nature, the impugned order dated 23.03.2023 in respect of rejection of nomination paper by the respondent No.2 and the order dated 03.03.2023 passed by the office of respondent No.1, confirming the*

*order dated 23.02.2023 passed by the Returning Officer, may kindly be quashed and set aside and the nomination form submitted by the petitioner for the post of Teachers other than professors, be declared as valid one.”*

2. The Petitioner contends that he is a Lecturer duly appointed by the following due process of law. He was initially appointed as demonstrator with Homeopathic Medical College and Hospital at Shirpur, District Dhule and he possess the teaching experience from 20.02.2011 to 19.02.2015. Thereafter, he was promoted to the post of Associate Professor/Lecturer on 01.06.2015. He completed his Post Graduation degree during the period from 2018 to 2021 and he re-joined the college on 01.01.2022. According to the petitioner, he was having teaching experience of six (06) years. Thereafter, he was promoted to the post of Associate Professor (Reader) in the subject of Practice of Medicine. The petitioner further contends that the University has approved his services on the post of Assistant Professor (Lecturer) instead of Associate Professor (Reader).

3. The petitioner further contends that the Maharashtra University of Health Sciences, Nashik / respondent No.1 published an election program under The Maharashtra University of Health Sciences Act, 1998 [hereinafter referred to as ‘the Act’ for short] for election of Authorities. Section 23 of the Act provides for election/appointment of various members to constitute Senate. Section 23 (2) (p) of the Act provides for the election of five (05) Teachers (other than Professors) from amongst themselves as members of Senate.

4. The petitioner submitted his nomination form for election to Senate from the Teachers (other than Professors) Constituency. The scrutiny of nomination forms was conducted on 23.03.2023. The Returning Officer/ Election Officer rejected nomination of the petitioner only on the ground that the petitioner has not produced approved experience required for

valid nomination for member from the Teachers (other than Professors) Constituency.

5. The petitioner further contends that in pursuance of the provisions of appeal against rejection of nomination under circular dated 08.02.2023, he approached to the appellate authority. However, his appeal came to be rejected vide order dated 03.03.2023.

6. Learned Advocate Mr. D. S. Bagul appearing for the petitioner would submit that the petitioner possesses requisite teaching experience for valid nomination and election from the Teachers (other than Professors) Constituency for the election to Senate. However, the Returning Officer/Election Officer rejected his nomination form on the ground that the petitioner does not have approved teaching experience of five years. He would submit that the documentary evidence indicating teaching experience of more than five years has been placed on record along with the nomination form. The statutory provisions under the Act or the instructions for submitting the nomination issued by the Election Officer do not require the approved teaching experience certified by the University. He would submit that nomination of petitioner has been rejected for unsustainable reasons.

7. Learned Advocate Mr. S. P. Brahme appearing for respondent Nos.1 & 2 would submit that the petitioner had submitted his nomination form the Teachers (other than Professors) Constituency for election to Senate. He would invite attention of this Court to the definition of “Teacher” prescribed under Section 2(35) of the Act, which reads as under:

*“2. In this Act, unless the context otherwise requires : -*

*(1) ... ..*

*(2) ... ..*

*(3) ... ..*

(4) ... ..

(35) “teachers” means full time approved Demonstrators, Tutors, Assistant Lecturers, Lecturers, Readers, Associate Professors, Professors and other persons teaching or giving instructions on full time basis in affiliated colleges or approved institutions in the University.”

He would urge that plain reading of the definition of “Teacher” presupposes approval from the University. In absence of the University approval as a Teacher, one cannot claim to have teaching experience within the meaning of the Act. He would further urge that Section 22A of the Act prescribes that the Government may, in consultation with the Chancellor, by an order published in *Official Gazette*, specify the eligibility of conditions for being elected or nominated as a member of any authority of the University. In deference to the said provision, University Order dated 29/12/2011 is published prescribing the eligibility conditions for being elected or nominated as member of any authority of the University. He would invite attention of this Court to the eligibility conditions prescribed under schedule-I for being elected or nominated from the Teachers (other than Professors) Constituency. He would submit that minimum five (05) years experience as Assistant Professor or Lecturer is Mandatory. He would also urge that such experience must be as an Approved Teacher in light of the definition of Teacher under the Act.

8. We have heard the learned Advocates appearing for the respective parties.

9. The petitioner submitted his nomination form for his election from the Teachers (other than Professors) Constituency in election to Senate. Section 23 (2) (p) of the Act provides that the Senate shall consist of the various members which includes five teachers (other than Professor) elected from amongst themselves. The State of Maharashtra in exercise

of powers under Section 22(A) of the Act after consultation with the Chancellor prescribed the eligibility conditions for being elected or nominated as a member of the authority of the University. The schedule prescribes the eligibility condition for being elected as a member of Senate from the Teachers (other than Professors) Constituency under Section 23(2)(p) of the Act. The eligibility criteria state as under:

*“Teachers (Five) Section 23 (2)(p)*

*(1) Who is not holding the post of Professor.*

*(2) Shall possess Post Graduate degree in Health Sciences.*

*(3) Minimum 5 years’ experience as Assistant Professor or Lecturer*

*(4) Published minimum 2 Research Papers in peer reviewed or referred National or International Research Journals*

*Enrolled Students of Health Science of the affiliated Colleges”*

10. The plain reading of the qualifying criteria/eligibility condition nowhere speaks of the approved teaching experience as Assistant Professor or Lecturer. It simply prescribes minimum five (05) years’ experience as Assistant Professor or Lecturer. In that view of the matter, it is difficult to read “approved service” of five (05) years in the eligibility criteria.

11. Learned Advocate Mr. S. P. Brahme appearing for respondent Nos.1 & 2 would urge that, in view of the definition under Section 2(35) of the Act, to constitute a “Teacher” within meaning of the Act, one must have approved service as a Teacher. However, we find it difficult to accept the said contention, particularly when, the eligibility criteria prescribed under the University Order dated 29/12/2011 nowhere prescribes for minimum five (05) years’ experience as an Approved Teacher. Pertinently, under the in instructions for nominations dated 08/02/2023 published by election / returning officer, the experience certificate of five years’ service issued by the Dean is made mandatory. Although the self-attested copy of approval as Assistant Professor or Lecturer is required, same cannot be interpreted

to mean approved service of entire five years is mandatory. In considered opinion of this court, once candidate has been approved as Assistant Professor or Lecturer and possess teaching experience certificate of five years, his candidature must be accepted as Valid.

12. Learned Advocate Mr. D. S. Bagul appearing for the petitioner invited attention of this Court to the Judgment of the Supreme Court of India in the matter of **Maharashtra University of Health Sciences and Others Vs. Satchikitsa Prasarak Mandal and Others** reported in (2010) 3 SCC 786. The Paragraph Nos.23 and 24 of the Judgment, reads thus:

*“23. The definition of teachers under Section 2(35) is wide enough to include even unapproved teacher. In fact the said definition has two parts, the first part deals with full time approved Demonstrators, Tutors, Assistant Lecturers, Lecturers etc. and the second part deals with other persons teaching or giving instructions on full time basis in affiliated colleges or approved institutions in the University. Even though the approved teachers and those ‘other persons’ who are teaching and giving instructions fall in two different classes both are encompassed with the definition of teacher under Section 2(35) of the Act. The word ‘and’ before ‘other persons’ is disjunctive and indicate a different class of people.*

*24. A class is a conceptual creation taking within its fold numerous categories of persons with similar characteristics. Here in the group of ‘other persons’ fall those who, on full time basis, are teaching or giving instructions in colleges affiliated with the University and they are also teachers even if they are unapproved. This seems to be the purport of Section 2(35) of the Act.”*

Referring to these observations, Mr Bagul, learned Advocate for appellant, would urge that even unapproved Teachers are covered within the meaning of definition of “Teacher” prescribed under Section 2(35) of the Act. He would urge to adopt harmonious construction of the definition of “Teacher” that would be in consonance with the object of legislation. Mr Bagul invited our attention to the Judgment of this Court in the matter of **Balasaheb Shivajirao Pawar Vs. Registrar and Election Officer, Maharashtra University of Health Sciences, Nashik & Others** reported in 2013 (3) Mh.L.J 820. This Court observed that for the

purpose election to senate from the Professor's Constituency, the approved service as a Teacher is not required and even the teaching experience for the period of unapproved services can be counted for the purpose of eligibility.

13. In light of the authoritative pronouncements by the Supreme Court of India as well as this Court in the Judgments (*Supra*), we have no hesitation to hold that the rejection of the nomination of the petitioner on the ground that he does not possess approved teaching experience of five (05) years cannot be accepted. It is not disputed before us that the petitioner possess teaching experience more than five years and he has placed on record requisite certificate in support of the same. In that view of the matter, nomination of the petitioner could not have been rejected. This court holds that interpretation adopted by the respondents is contrary to the provisions of law. Upshot of the discussion above lead us to conclude that the petition deserves to be allowed as prayed for. Hence, following order:

### **ORDER**

[i] The order impugned dated 24.02.2023 rejecting the nomination form of the petitioner by respondent no.2 and the order dated 03.03.2023 passed by respondent no.1 confirming the order dated 24.02.2023 passed by the Returning Officer are hereby quashed and set aside.

[ii] We hereby direct the respondent/Returning Officer to consider and accept the nomination form of the petitioner for contesting the election of the respondent/university from respective category without insisting on the condition of necessary experience as a approved teacher provided he is otherwise qualified.

[iii] We request the learned counsel for the respondent – University to communicate the operative part of the order to the concerned authority keeping in mind that today is the last date for withdrawal of the nomination.

[iv] The writ petition stands disposed of accordingly.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

Sameer