

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

WRIT PETITION NO.2763 OF 2023

Dr. Pravin Ramesh Gholap
Age: 38 years, Occu: Service,
R/o Golap Vasti Hanumantgaon
Tq. Rahata, District Ahmednagar

... Petitioner

Versus

1. The Registrar and Election Officer,
Maharashtra University of Health
Sciences, Dindori Road,
Mhasrul Nashik, Taluka

2. The Maharashtra University of
Health Sciences,
Dindori Road, Mhasrul Nashik,
Taluka & District Nashik,
Through it's Registrar

... Respondents

...

Mr. V. D. Hon (Senior Advocate) holding for Mr. A. V. Hon, 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) Issue a writ of certiorari or writ in the nature of certiorari
to quash and set aside the order dated 03.03.2023 passed by
the respondent No.1 Election Authority of M.U.H.S. Nashik in
an appeal filed by the petitioner and the order dated*

24.02.2023 thereby invalidating the nomination form of the petitioner.

C) Issue a writ of mandamus or writ in the nature of mandamus to the respondent No.1 to accept the nomination form of the petitioner for the elections to the various authorities/bodies of the Maharashtra University of Health Sciences, Nashik for the Elections of 2023.”

2. The petitioner contends that he is a Professor cum Vice-Principal at SMMPP's Ganpatrao Adke College of Nursing. He possesses the teaching experience of more than twelve years. His services are approved as Vice-Principle by respondent No.2 / University.

3. The petitioner further contends that the Maharashtra University of Health Sciences, Nashik / respondent No.1 published an election program under Maharashtra University of Health Sciences Act, 1998 [hereinafter referred to as 'the Act' for short] for election of Authorities. Section 36 of the Act provides for Board of Studies for every subject or group of subjects. Sub-section 2 of Section 36 of the Act prescribes for the constitution of the Board of Studies. Section 36 (2)(b) of the Act provides for the election of six Heads of Departments in affiliated colleges, other than principals, having not less than ten year's teaching experience, elected by the Heads of departments in affiliated colleges from amongst themselves.

4. The petitioner submitted his nomination form for election to Board of Studies from the Constituency of Heads of Departments in affiliated colleges. The scrutiny of the nomination was carried. A list of valid/invalid nominations came to be published on 24/02/2023. The nomination of the petitioner stands at Sr. No.11 with remark as "Invalid". The reason given is that, "A copy of approval letter of requisite ten years teaching experience is not attached".

5. The petitioner further contends that in pursuance of the provision 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 Senior Advocate Mr. V. D. Hon appearing for the petitioner would submit that the petitioner possesses requisite teaching experience for valid nomination and election from the Constituency of Heads of Departments in affiliated colleges for the election to the Board of Studies. However, the Returning Officer/Election Officer rejected nomination form on the ground that the petitioner does not have approved teaching experience of ten years. He would submit that the documentary evidence indicating teaching experience of more than ten 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 Returning/Election Officer do not require the approved teaching experience certified by the University. He would submit that the nomination of the petitioner has been rejected for unsustainable reasons. He would further urge that the respondents/authorities have adopted erroneous interpretation of the statutory provisions of the Act.

7. Learned Advocate Mr. S. P. Brahme appearing for respondent Nos.1 & 2 would submit that petitioner could have approached principle seat of this Court at Bombay. The cause of action pleaded in the petition arose at Nashik. No cause of action arose within territorial jurisdiction of this Bench. He would urge to return petition for presentation before appropriate seat. Learned Advocate Mr. S. P. Brahme would submit that petitioner had submitted his nomination form from the Constituency of Heads of Departments in affiliated colleges for election to the Board of Studies. 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 University approval as a Teacher, one cannot claim to have teaching experience within the meaning of the Act. He would invite attention of this Court to the eligibility conditions prescribed under University order dated 29/12/2011 issued in exercise of powers under Section 22A of the Act for being nominated from the Constituency of Heads of Departments in affiliated colleges. He would submit that as per clause 6 (2), minimum ten years teaching experience, including three years’ experience as the Head of the Department, as an approved teacher is mandatory. He would also urge that in absence of requisite experience of ten years as an approved teacher, nomination of the petitioner cannot be validated.

8. We have heard the learned Advocates appearing for the respective parties. So far as first objection raised on behalf of respondents regarding territorial jurisdiction of this Court, we find that the petitioner has submitted his nomination for election to the Board of Studies of respondent/Health University, having jurisdiction over entire State of Maharashtra. The constituency has electoral college from entire state of Maharashtra, including area under jurisdiction of this Bench. The petitioner has his permanent residence at Ahmednagar i.e. within jurisdiction of this Bench. The rejection of nomination may have impact on right of voters from this area. Hence, this Court is of the view that

fraction of cause of action to file writ petition finds place within the territorial jurisdiction of this Bench. In view of the law laid down by the Supreme Court in the case of **Kusum Ingots & Alloys Ltd. Vs. Union of India & Anr.** reported in (2004) 6 SCC 254, we have no hesitation to hold that the objection on the point of territorial jurisdiction raised by the respondents is liable to be rejected.

9. The petitioner submitted his nomination form for his election from the Constituency of Heads of Departments in affiliated colleges in election to the Board of Studies. Section 36(2)(b) of the Act provides that the Board of Studies shall consist of six Heads of Departments in affiliated colleges, other than principals, having not less than ten years' teaching experience, elected by the Heads of departments in affiliated colleges from amongst themselves. The provision of 36(2)(b) of the Act reads as under:

"36. (1) There shall be a Board of Studies for every subject or group of subjects as prescribed by the Statutes.

(2) The Board of Studies shall consist of, -

(a)

(b) six Heads of Departments in affiliated colleges, other than principals, having not less than ten year's teaching experience, elected by the Heads of departments in affiliated colleges from amongst themselves."

10. The plain reading of section 36(2) (b) nowhere speaks of the approved teaching experience of more than ten years. It simply prescribes minimum ten years' teaching experience. In that view of the matter, it is difficult to read requirement of approved teaching experience of ten years in the eligibility criteria as contended by respondents.

11. Learned Advocate Mr. S. P. Brahme appearing for respondent Nos.1 & 2 is urged 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, section 36 (2)(b) nowhere prescribes for minimum ten (10) years’ experience as an Approved Teacher. Pertinently, under the university order dated 29/12/2011 approved teacher having experience of 10 years is held eligible for nomination. The harmonious interpretation of clause 6 (2) of University Order R/W Section 36 (2)(b) of the Act cannot be interpreted to mean approved service of entire ten years is mandatory. In considered opinion of this Court, once candidate has been approved as Teacher and holds certificate of teaching experience of Ten years, including three years experience as HOD, his candidature must be accepted as Valid.

12. Learned Senior Advocate Mr. V. D. Hon 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, learned Senior Advocate Mr. V. D. Hon, 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. Learned Senior Advocate Mr. V. D. Hon has also 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 the Bodies of Studies from the Constituency of Heads of Departments in affiliated colleges, 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 ten years cannot be accepted. It is not disputed before us that the petitioner possess teaching experience more than ten years and he has placed on record requisite documents in support of the same. In that view of the matter, nomination of the petitioner could not have been rejected giving reason that his teaching experience as an approved teacher is less than 10 years. 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, the 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.)