

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

WRIT PETITION NO. 5015 OF 2019

Mahesh s/o Sharadrao Deshmukh,
Age 44 years, Occ. Service as Assistant
Professor, r/o. 'Shivam' Bus stand road
Parbhani Tq. & Dist. Parbhani.

... **Petitioner**

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Department of Agriculture,
Animal Husbandary, Dairy Development
& Fisheries, Mantralaya, Mumbai.
- 2) The Vice Chancellor,
Vasantnao Naik Marathawada Krishi
Vidyapeeth, Parbhani, Tq. &
Dist. Parbhani.
- 3) Vasantnao Naik Marathawada Krishi
Vidyapeeth, Parbhani, Tq. & Dist.
Parbhani, Through the Registrar.

... **Respondents.**

...

Advocate for the Petitioner : Mr. Y.P. Deshmukh, h/f Mr. A.D. Kaware
A.G.P. for Respondent No. 1 : Mr. S.B. Pulkundwar
Advocate for Respondent No. 2 & 3 : Ms. A.S. Jadhav h/f Mr. P.R.
Katneshwarkar

**CORAM : MANGESH S. PATIL &
S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 15.06.2023
PRONOUNCED ON : 24.07.2023**

JUDGMENT : (PER : MANGESH S. PATIL, J.)

Heard. Rule. Rule is made returnable forthwith. The learned A.G.P. waives service for the respondent No. 1. Learned advocate Mr. Jadhav h/f Mr. Katneshwarkar waives service for the respondent Nos. 2 and 3. At the

request of the parties, the matter is heard finally at the stage of admission.

2. The issue revolves around the controversy as to if the petitioner who has been serving as an Assistant Professor in the respondent No. 3-Agricultural University established under the Maharashtra Agricultural Universities Act, 1983 (hereinafter 'the Act') having acquired Ph.D. in Soil Science (Earth Science) subject from Swami Ramanand Tirth Marathwada University, Nanded which is not an Agricultural University established under the Act was qualified to apply pursuant to the advertisement dated 24.02.2009 for the post of Associate Professor of Agricultural Chemistry & Soil Science which, according to the advertisement required the incumbent applying for that post to be :

“(1) Ph.D. in respective subject with five years experience in teaching, research or extension education of which two years should be in the cadre of Assistant Professor or its equivalent. OR
Master's degree in respective subject with seven years experience in teaching, research or extension education of which three years should be in the cadre of Assistant Professor or its equivalent.

2. Evidence of published papers in recognized journals.”

3. Since the petitioner was not being even called for the interview in spite of his application and in spite of, according to him, he was eligible, he filed Writ Petition No. 248/2018. By an interim order dated 31.01.2018 the respondent No. 3-University was directed to invite the petitioner for interview by the selection committee. However, the result was to be kept in a sealed envelope. On a statement being made on behalf of the University and Vice Chancellor-respondent No. 2 that the issue regarding equivalence would be placed before the academic council, the interim order directed that the performance at the interview be kept in abeyance till the decision was taken by the academic council.

4. Accordingly, the academic council of the University passed a resolution in respect of subject No. 5 on 27.02.2018 with a majority of 44 out of 50 members that the doctorate awarded to the petitioner to be treated equivalent to the doctorate in Agricultural Chemistry and Soil Science prescribed by the respondent No. 3-University. It was also mentioned in the resolution that the resolution would not apply to other cases.

5. By the order dated 06.07.2018 the writ petition was disposed of since the limited prayer in the writ petition was satisfied. The petitioner was granted liberty to take appropriate proceeding if the grievance persisted.

6. Since the petitioner was not being appointed in spite of the decision of the academic council and pursuant to the liberty granted by this Court, the petitioner has preferred this petition with a prayer that the sealed cover be opened and the respondent No. 2 and 3 be directed to give an appointment to him as an Associate Professor, if his name was found to have been recommended by the selection committee.

7. The learned advocate Mr. Deshmukh for the petitioner would vehemently submit that in fact nothing has remained to be decided and only a direction is to be given to the respondent Nos. 2 and 3 for opening the sealed envelop and if the petitioner's name has been recommended by the selection committee, to appoint him. He would submit that in Writ Petition No. 248/2018 the respondent Nos. 2 and 3 had volunteered to take up the subject of equivalence to the academic council. The academic council has passed a resolution which is in favour of the petitioner. Already he has appeared for the interview and it was merely a matter of taking further steps of opening the envelop and appointing the petitioner. Nothing further needs to be decided when the academic council in its wisdom which is a body constituted under the Act and which is regulated by the Marathwada Agricultural University Statute 1990 has pondered upon and has resolved

about the equivalence of the petitioner's educational qualification and particularly the Ph.D. degree as being compliant with the requisite eligibility criteria prescribed in the advertisement.

8. Per contra, the learned A.G.P and the learned advocate for the respondent Nos. 2 and 3 would submit that though there is no dispute about the rest of the events described herein above, there is a serious dispute as to the power and competence of the academic council to take a decision which is *ex facie* inconsistent with the provision of Section 9 of the Act. It has been clearly overlooked while passing the resolution and also it is beyond the competence of the academic council. They submit that the subject of equivalence will not come under the purview of the academic council and in any case, exercise of such powers in respect of the present controversy is *de hors* the provisions of the Act.

9. The learned advocate Ms. Jadhav further submitted that a similar issue regarding equivalence of the degrees conferred by other Universities with the degrees to be conferred under the Act had cropped up in the matter of **Godavari Shivajirao Pawar Vs. The State of Maharashtra and others in Writ Petition No. 4129/2017**. By the order dated 01.10.2019, it was *inter alia* held that in view of Section 9 of the Act a Ph.D. degree to be conferred by an Agricultural University constituted under the very same Act in the subject of Agriculture Botany could not have been awarded by a non Agricultural University and the incumbent was held not eligible to apply for the post of Associate Professor in Agricultural Botany. The decision was challenged by the incumbent before the Supreme Court in Petition(s) for Special Leave to Appeal (C) No(s). 5075-5076/2020. By a speaking order dated 31.03.2022 the Special Leave Petition along with connected petitions was dismissed.

10. We have considered the rival submissions and perused the papers including the decision of the Supreme Court in the matter of **Godawari**

Shivajirao Pawar (supra). In our considered view, the observations of the Supreme Court are decisive enough to seal the fate of this matter. With respect, we reproduce the order which reads thus :

“ Heard counsel for the parties.

Admittedly, the degree of Ph.D. in Agriculture Botany possessed by the petitioner is not from an Agricultural University. The University which has awarded him the degree is Swami Ramanand Teerth Marathwada University (SRTM), who, in its affidavit filed in the proceedings has made it clear in Para 4(e) (iv) and (v) that Swami Ramanand Teerth Marathwada University (SRTM) never award any degree pertaining to Agriculture and the word (Agriculture) affixed before the word “Botany” in case of the petitioner is because of some misconception.

The further statement made by the University is that it has no branch of any agricultural subject as well as it does not have any such faculty and the University, till date, has not conferred any degree to Ph.D. pertaining to the agricultural faculty because the University is not competent to do so and it is further apparent from the prohibition prescribed under Section 9 of the Maharashtra Agriculture University Act holding that no non-agricultural university can confer the degree from the faculty of Agricultural, veterinary and fisheries.

The extract of the affidavit filed by the Swami Ramanand Teerth Marathwada University (SRTM) in para 4(e) (IV) and (V) is quoted hereunder :-

“IV. Botany is ultimately has the nexus with the agricultural field but still then it is a separate branch of the science and not only the agricultural science and as such the degree awarded by this university a pure degree from the faculty of Botanical Science.

V. It is specifically submitted that probably under some misconception, the word (Agriculture) is affixed before the word “Botany” in case of the petitioner and

so he is presuming that the said degree is the degree from the agricultural study however it is specific submission of this university that this university has no branch of any agricultural subject as well as it does not have any such faculty.”

The above facts have been considered by the High Court extensively in its impugned judgment dated 01.10.2019 before us.

After we have heard counsel for the parties, we find no reason to interfere in the impugned order passed by the High Court.

The Special Leave Petitions are, accordingly, dismissed.

Pending application(s), if any, shall stand disposed of.

11. As can be seen, the entire emphasis in prescribing the qualification for the post of Associate Professor has been on the doctorate degree in respective subject as distinguished from a doctorate in relevant subject. There is a marked distinction between the two. ‘Respective’ discipline would strictly mean the discipline for which the incumbent should hold a doctorate degree. This does not admit of any variance. As against this, ‘relevant’ discipline would connote a doctorate in some subject wherein few aspects of the ‘respective’ discipline may be covered. We are emphasizing this to negate the arguments of the learned advocate for the petitioner who attempted to demonstrate that the petitioner’s doctorate in Soil Science (Earth Science) is a part of the subject Agricultural Chemistry and Soil Science. This Court not being an expert in these subjects has its own limitations in appreciating this line of argument. However, the advertisement provided for the requisite qualification and expressly mentioned that the incumbent should have Ph.D. in ‘respective subject’. Admittedly, though there could be some similarity in respect of the topic of soil science, the doctorate degree of the petitioner is not in the ‘respective subject’ albeit it may be in ‘relevant subject’.

12. This is what precisely is the stand of the respondent Nos. 2 and 3 in the affidavit in reply. The decision of this Court in the matter of **Godawari Shivajirao Pawar (supra)** has been upheld by the Supreme Court by the speaking order.

13. When the petitioner has acquired Ph.D. in Soil Science (Earth Science) conferred upon him by a University which is not an Agricultural University namely Swami Ramanand Teerth Marathwada University (SRTM), by virtue of Section 9 of the Act, the petitioner's degree cannot be treated at par with the Ph.D. in Agricultural Chemistry and Soil Science.

14. Section 9 of the Act reads as under :

“ Notwithstanding anything contained in any Act relating to the establishment Prohibitions of any non-agricultural University in the state, no such University shall be competent to award any degrees, diplomas, certificates or other academic distinctions in Agriculture, Veterinary Science and Fishers.

Provided that, nothing in this section or section 40 shall apply, to the Yashwantrao Chavan Maharashtra Open University established under Section 3 of the Yashwantrao Chavan Maharashtra open University Act, 1989 or any institution of higher learning or studies recognised by that University under clause (xxiii) of sub-section (1) of that Act; and that University shall be competent to award any degrees, diplomas, certificates or other academic distinctions in Agriculture, Veterinary Science and Fisheries”.

15. In view of such statutory bar for the recognition of any degree or diploma to be conferred by a non-agricultural University in the State in respect of Agriculture, Veterinary Science and Fisheries, allowing the petitioner's Ph.D. degree to be treated as equivalent to the Ph.D. degree awardable under the Act in Agricultural Chemistry and Soil Science would be clearly in flagrant violation of this bar.

16. True it is that the respondent Nos. 2 and 3 had taken a stand during pendency of the Writ Petition No. 248/2018 of referring the subject of equivalence to the academic council and subsequently the academic council has also resolved to treat the petitioner's Ph.D. degree as equivalent to the Ph.D. in Agricultural Chemistry and Soil Science. But there cannot be an estoppel against law. If Section 9 creates a bar to the recognition of educational qualification in agricultural subjects by non-agricultural universities, even if the academic council has resolved in favour of the petitioner, it will not supersede the statutory bar.

17. Apart from this, interestingly, even the academic council does not seem to be sure about its decision inasmuch as, the resolution passed by it expressly puts a rider that the decision of the academic council taken pursuant to the directions of this Court would not apply to other cases. If this is the state of affairs and the manner in which the academic council has taken a decision, no weight can be attached to such a decision even if the exercise was volunteered by the respondent Nos. 2 and 3 and was undertaken pursuant to the directions of this Court.

18. In view of such state of affairs, we do not find any substance in the writ petition. It is dismissed.

19. Rule is discharged.

(S.G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

mkd/-