

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 WRIT PETITION NO.8619 OF 2022

Dr. Geeta Mallikarjun Patil
Age 52 years, Occ. Service
R/o. Profession and Head of
Department of English,
R/o. Dr. Babasaheb Ambedkar
Marathwada University,
Aurangabad

...Petitioner

Versus

1. Vice Chancellor
Dr. Babasaheb Ambedkar
Marathwada University,
Aurangabad
University Campus, Aurangabad
District Aurangabad
2. The Registrar,
Dr. Babasaheb Ambedkar
Marathwada University,
Aurangabad
University Campus, Aurangabad
District Aurangabad
3. The Director,
Examination and Evaluation
Department,
Dr. Babasaheb Ambedkar
Marathwada University,
Aurangabad
University Campus, Aurangabad
District Aurangabad
4. Pro- Vice Chancellor
Dr. Babasaheb Ambedkar
Marathwada University,
Aurangabad
University Campus, Aurangabad
District Aurangabad

...Respondents

Mr. Uday S. Malte, advocate for the petitioner
Mr. S.S. Tope, advocate for respondent Nos. 1 to 4

.....

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 4th JANUARY, 2023.**

ORAL JUDGMENT (PER, RAVINDRA V. GHUGE, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth prayer clauses "C" and "D" as under:-

"C) The impugned communication dated 11.10.2021 issued by Director, Examination & Evaluation Department & Circular dated 08-11.10.2021 to the extent of scoring the name of the petitioner for the English subject be quashed and set-aside and for that purpose necessary writ, orders may be issued.

D) Pending hearing and final disposal of this Writ Petition, the impugned communication dated 11.10.2021 issued by Director, Examination and Evaluation Department and Circular dated 08-11.10.2021 to the extent of scoring the name of the petitioner for the English subject be stayed and kept in abeyance with further direction to the respondents, their officers or anybody acting on their behalf to allow the petitioner to discharge the duties and responsibilities of the petitioner as a Head of Department for English Department."

3. After recording the submissions of the learned advocates for the respective sides, we have gone through the petition paper book,

with their assistance. We have also perused the rejoinder affidavit filed by the petitioner.

4. The petitioner is working as Professor in the department of English in the Dr. Babasaheb Ambedkar Marathwada University, Aurangabad (hereinafter referred to as “the University”). Being a Professor in the department, she was designated as Head of the department of English, vide communication dated 14.3.2017. This order was to take effect from 1.4.2017. Since the designation of HOD is a tenure assignment of three years, the petitioner assumed the charge of HOD on 1.4.2017 and her tenure was to end on 31.3.2020.

5. The University received certain complaints against the petitioner and by an order dated 31.3.2018, she was dislodged as the HOD in the light of the constitution of the inquiry committee, consisting of advocate Shri P.S. Paranjape (retired District and Sessions Judge), as a Chairman, Advocate Smt. Archana Gondhalekar and advocate Mrs. Ansari, who were members of the said committee. The petitioner, being aggrieved by the said action of the Vice Chancellor, who exercised powers under Section 106 of the Maharashtra Public Universities Act, 2016 (hereinafter referred to as “2016 Act”), approached this court, by preferring writ petition No. 584 of 2018. The inquiry committee had not concluded its proceeding and had undertaken the task assigned to it. Vide the judgment dated 18.09.2020, delivered by this Court [Coram: Dipankar Datta, C.J. (as

His Lordship then was) and S.V. Gangapurwala, J.], the petition was allowed after concluding that the powers under Section 106 of the 2016 Act, were not available to the Vice Chancellor to be utilized in the manner in which they were exercised as against the present petitioner. By allowing the petition, this Court issued the following directions:-

“ [a] The order of the Vice Chancellor constituting the Enquiry Committee, the report of such committee and the order of the Vice Chancellor, which was communicated by the Registrar by the impugned letter dated March 31, 2018, stand set aside.

[b] The aforesaid order would, however, not mean automatic re-designation of the petitioner as the Head of the Department of English, for, we find that Dr. Ambhore has been designated as the Head of the Department of English and his term of 3 years is scheduled to end on March 31, 2021; therefore, it would not be desirable to disturb the present arrangement particularly when Dr. Ambhore is not before us as a party.

[c] However, we make it clear that in the event the petitioner is otherwise qualified for being designated as the Head of Department once again, she shall be so designated on and from April 1, 2021, for the balance period of two years, which she could not serve as a result of the order of the Vice Chancellor asking her to hand over charge to Dr. Ambhore. Such reinstatement shall be subject to the condition that there is no adverse report against the petitioner in the meanwhile.

[d] We also make it clear that if indeed there is prima facie material against the petitioner to proceed against her departmentally, it shall be open to the University to follow the course mandated by the provisions of the Act.”

6. It is, therefore, obvious that the Vice Chancellor was permitted to direct that the charge of HOD be handed over to the petitioner w.e.f. 1.4.2021 for the balance period of two years, after the incumbent HOD completed his tenure on 31.3.2021. Such handing over of the charge to the petitioner was subject to the condition that there was no adverse report against the petitioner in the interregnum. Clause [d] of the order dated 18.09.2020, reproduced above, clearly indicates that the University was at liberty to proceed against the petitioner in departmental proceedings, by following the procedure laid down under the Act, Statutes and Ordinance, if there was *prima facie* material against her.

7. It is an admitted position that the petitioner was not subjected to any departmental proceedings till today, after the above judgment was delivered. Not even a show cause notice was issued to her, though the learned advocate for the University has vehemently contended that there are several complaints against the petitioner and more particularly, the University had received a complaint from a student, who was a citizen of the Republic of Yemen. According to the learned advocate for the University, who has strenuously opposed this petition in the light of the affidavit in reply filed on 17.11.2022, that there was enough material against the petitioner which led to the passing of the impugned order.

8. This brings us to the impugned order dated 11.10.2021, which

is actually a communication issued by the Director, Examinations and Evaluation Department, to the extent of divesting the petitioner of the responsibility of being the chairperson of the Viva-Voce & Open Defence of the Thesis Committee. It is very clear to us that she was never dislodged as HOD by the impugned communication. It is undisputed that the University issued a communication dated 30.3.2021, in the light of the judgment of this Court, dated 18.9.2020, thereby appointing the petitioner as HOD to complete her tenure as HOD up to 31.3.2023. The petitioner took the charge of HOD from 01.04.2021.

9. Since we are dealing with the contention of the University as set out in its affidavit in reply, it would be apposite to advert to clause [d] of the directions issued by this Court, in paragraph 12 of the judgment dated 18.9.2020. This court had granted liberty to the University to proceed against the petitioner in departmental proceedings, if there was *prima facie* material against the petitioner. If the University does not desire to initiate any departmental proceedings against the petitioner, it would presuppose that there is no material available against the petitioner with the University, which can be the basis for issuing a charge sheet and initiating departmental proceedings. It is in this backdrop, that we have assessed the contentions of the learned advocate for the University in view of the affidavit in reply filed.

10. The Deputy Registrar, Ph.D. Section of the University, Dr. Ganesh Raybhan Manza, has entered the affidavit in reply, dated 17.11.2022. It is submitted that the petitioner is a professor in English subject and is designated as HOD. She is recognized as a 'Research Guide' in English subject, since 20.11.2008. Certain students have been allocated to the petitioner by the University for research work, even today. The University administration has received several complaints from research students regarding the misbehaviour of the petitioner while she discharges her function as a Research Guide. Serious allegations, like demanding illegal gratification, withholding of progress reports submitted by the students, manipulation of the record etc. are noticed from such complaints. Some newspapers carried the news of manipulation done by the petitioner. The students' and teachers' Union also made representations to the University to initiate stringent action against the petitioner. It was also contended that the image of the post graduation (P.G.) department was tarnished. An explanation was called for from the petitioner, vide communication dated 9.3.2016 and the petitioner has tendered her reply on 31.3.2016.

11. It cannot be ignored that the above referred complaints, show cause notice and the explanation tendered by the petitioner, were already considered by this court, when the judgment dated 18.9.2020 was delivered. Yet, the University has canvassed before us that such material is available and therefore, the University relied upon

Ordinance 67(H)(3) of the University while passing the impugned orders. It has further stated in the affidavit in reply that the petitioner has interfered in the administration, committed academic lapses, financial irregularities / malpractices / willful / perpetual negligence of duties and activities involving moral turpitude. These are allegations against her. The proposal was placed before the learned Vice Chancellor of the University to issue appropriate orders in terms of Section 12(7) of the 2016 Act.

12. Having perused the affidavit in reply, we find that the University has dug out old complaints, made against the petitioner, which were being gone into by the three members committee, constituted by the University. This action was set aside by this Court, vide judgment dated 18.9.2020. Now the material, that is placed before us by the University, is as regards the communication dated 30.9.2021, received from the Embassy of Republic of Yemen. Based on the said letter dated 30.9.2021, the University replaced the petitioner from the committee which was vested with the powers to conduct 'Viva-Voce' & 'Open Defence of the Thesis' Committee, Ph.D. Research Advisory Committee (RAC) and the Department Research Committee (DRC). Based on such pleading, the learned advocate for the University has strenuously canvassed that this Court should refrain from granting any relief to the petitioner.

13. Ordinance 167(H)(3) of the University, reads as under:-

“167(H) Cancellation of Guideship:

Recognition granted as a research guide to reader shall be cancelled, in the following cases :-

1.

OR

2.

OR

(3) Involved in violation of rules such as gross administrative and all types of academic lapses, financial irregularities and malpractices willful and perpetual negligence of duties and activities involving moral turpitude.”

As such, any allegation of misdeeds calling for action under Ordinance 167(H)(3), will have to be proved in a departmental enquiry, by following the due process of law. Mere allegations cannot justify action under Ordinance 167(H)(3).

14. Section 12 (7) of the 2016 Act, reads as under:-

“12. (1) to (6)

(7) If there are reasonable grounds for the Vice-Chancellor to believe that there is an emergency which requires immediate action to be taken, or if any action is required to be taken in the interest of the university, he shall take such action, as he thinks necessary, and shall at the earliest opportunity, report in writing the grounds for his belief that there was an emergency, and the action taken by him, to such

authority or body as shall, in the ordinary course, have dealt with the matter. In the event of a difference arising between the Vice-Chancellor and the authority or body whether there was in fact an emergency, or on the action taken where such action does not affect any person in the service of the University, or on both, the matter shall be referred to the Chancellor whose decision shall be final:

Provided that, where any such action taken by the Vice-Chancellor affects any person in the service of the university, such person shall be entitled to prefer, within thirty days from the date on which he receives notice of such action, an appeal to the Management Council.

Explanation: - For purposes of this sub-section, action taken by the Vice-Chancellor shall not include disciplinary action taken against any employee of the university."

15. It cannot be disputed that the senior most teacher in the department, by rotation, is invested with the authority of HOD of the department. This assignment is neither a promotion nor does it make the said teacher superior to others. The seniority of the teachers, beginning from the Professors to the Readers, has to be considered. By rotation, the Professors and Readers get the chance to officiate as HOD. The said HOD gets a right to be a part of certain committees and discharge duties officiating as the chairperson. Dislodging the HOD from such committees and replacing him/her with any other official of the University, would not be a good practice and may not be permissible until a particular legal process is followed by following the provisions under the 2016 Act, Ordinance or the Statutes.

16. The case of this petitioner has to be viewed differently in the light of the judgment of this court, dated 18.9.2020, by which the University was given an option to avoid posting the petitioner as HOD, if there is any adverse report against her in between the date of the judgment and 31.3.2021. The communication dated 30.9.2021, from the Embassy of the Republic of Yemen was received by the University. Yet, the University permitted the petitioner to proceed to discharge functions as HOD and did not utilize the liberty granted by this Court in clause [d], under paragraph 12, reproduced above. With such liberty, the University would have been within its powers to initiate departmental action against the petitioner. On the one hand, the university refrained from initiating such action and on the other hand, the Director of Examinations and Evaluation Department, appointed a person from the Social Science faculty as the Chairperson of the Viva-Voce & Open Defence of the Thesis Committee and also dislodged the petitioner from RAC and DRC.

17. The justification canvassed by the University is that as the petitioner indulges in illegal gratification, tortures the research students, manipulates the record and causes delay in research work. These are allegations which cannot be a foundation for adverse action unless proved. We find that the University was not remediless. The Vice Chancellor was wrongly advised to exercise his emergency powers. We are of the view, that this case would not justify the

exercise of emergency powers. When the university received the complaint from the Embassy, it could have initiated appropriate action as was permissible under the act and in the light of the liberty granted by this Court. If the University was having such material with it, it could have utilized the liberty granted by this Court and could have initiated departmental proceedings against the petitioner.

18. What emerges from the record of this case, is that the University is attempting to indicate that the petitioner is such a teacher, who cannot be allowed to perform important functions as chairperson of particular committees. On the other hand, the University does not proceed against the petitioner by initiating departmental proceedings which could be the most appropriate action. We are intrigued by such approach of the University.

19. In the above facts, accepting such a stand taken by the University and upholding the impugned action, would give leverage to the University to divest the HOD of the authority to be the chairperson of certain committees, without resorting to the legally acceptable procedure of initiating disciplinary action for proving the charges that have been levelled by the University.

20. In view of the above, this petition is partly allowed. The impugned circular dated 8-11.10.2021 and the communication dated 11.10.2021, stand quashed and set aside. Since the petitioner has

not been divested of her assignment of HOD and no other person has been foisted in her place as HOD, the petitioner would be entitled to participate in the meetings and business conducted by those committees of which the petitioner would be a member or the chairperson, in her capacity of being HOD, until 31/03/2023. Nevertheless, if the University has any material against the petitioner and desires to initiate disciplinary action, it would be at liberty to do so, as is prescribed under the provisions of law, applicable to such departmental proceedings.

21. Needless to state, as the petitioner continued to be HOD from 1.4.2021, in view of the order of this Court dated 18.9.2020, her tenure as HOD, would conclude by efflux of time, on 31.3.2023.

22. Rule is made partly absolute in the above terms.

23. No order as to costs.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

rlj/