



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.4125 OF 2023

Dr. Prashant S/o Shaligramji Kadu,
aged about 50 years, Occ.: Service,
R/o. Plot No.22, Mahalaxmi Housing
Society, Beltarodi Road, Manish Nagar,
Nagpur – 440 037. **PETITIONER**

...V E R S U S...

- 1) The Hon'ble Chancellor,
Rashtrasant Tukadoji Maharaj Nagpur
University, having Office at Raj Bhavan,
Mumbai.
- 2) The Vice-Chancellor,
Rashtrasant Tukadoji Maharaj Nagpur
University, Jamnalal Bajaj Administrative
Building, Mahatma Jotiba Phule Educational
Premises, Campus Square to Ambazari T-Point
Road, Nagpur.
- 3) Rashtrasant Tukadoji Maharaj Nagpur
University, through its Registrar,
Office at Jamnalal Bajaj Administrative
Building, Mahatma Jotiba Phule Educational
Premises, Campus Square to Ambazari T-Point
Road, Nagpur – 440 033.
- 4) Dr. Shalini Munindra Sakharkar,
aged about 58 years, Occ.: Service,
R/o. Swami Samarth Nagri, Pipla Road,
Besa, Nagpur – 440 037. **RESPONDENTS**

Mr. F. T. Mirza, Advocate for Petitioner.
Mr. J. J. Chandurkar, Advocate for Respondent Nos.2 and 3.
Mr. B. G. Kulkarni, Advocate for Respondent No.4.

CORAM: **ANIL S. KILOR, J.**
DATE: **25th SEPTEMBER, 2023.**

ORAL JUDGMENT:

Rule. Rule is made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the rival parties.

2. The order dated 16.06.2023 passed by the Hon'ble Chancellor in the petition filed by respondent No.4 under Section 105(5) of the Maharashtra Public Universities Act, 2016 cancelling the advertisement published on 13.06.2022 for appointment of Dean, Faculty of Inter-Disciplinary Studies and the appointment of petitioner as Dean Faculty of Inter-Disciplinary Studies, is under challenge.

3. The facts which are relevant to decide the controversy involved in the present petition, in short as under:

On 29.04.2021 the notice of appointment of Dean of all four faculties was published and in pursuance to the said advertisement three Deans were appointed except the Dean faculty of Inter-Disciplinary Studies.

4. Thereafter second employment notice for appointment of Dean Faculty of Inter-Disciplinary Studies was

published on 18.10.2021. However, as nobody was found suitable no appointment was made.

5. Thereafter on 04.03.2022 the Academic Council invoking powers under section 33 (1)(i) of the Universities Act resolved that person belonging to any faculty be considered eligible for the post of Dean for the faculty of Inter-Disciplinary Studies.

6. In pursuance to the same the third employment notice for appointment of Dean faculty of Inter-Disciplinary Studies was published on 13.06.2022 and interviews in pursuance to the same were conducted by the Committee constituted under Section 105 of the Universities Act on 08.12.2022, wherein the petitioner was selected as Dean for the faculty of Inter-Disciplinary Studies.

7. However, in the meantime on 20.07.2022 direction Nos.27 and 28 of 22 were issued by the Vice-Chancellor allocating subjects to each faculty and this was the ground for raising a challenge before the Hon'ble Chancellor to the appointment of the petitioner by preferring the petition under Section 105(5) of the Universities Act, which came to be allowed by the impugned order. Hence, this petition.

8. Mr. Mirza, learned counsel for the petitioner would submit that the direction Nos.27 and 28 of 22 were issued by Vice-Chancellor allocating subjects to each faculty on 20.07.2022 that is after the date of employment notice for appointment of Dean faculty Inter-Disciplinary Studies. He, therefore, submits that the rules of the game cannot be changed in the middle of the game and for this purpose he has relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Gopal Krushna Rath v. M.A.A. Baig (Dead) by LRs. and others*** reported in ***(1999) 1 SCC 544***.

9. He further submits that the resolution which was passed on 04.03.2022, the same is still in force and since the advertisement which was issued on 13.06.2022 was in pursuance of the said resolution which has not been interfered by the Vice-Chancellor, cancelling the advertisement is illegal and contrary to law. He, therefore, submits that the impugned order passed by the Hon'ble Chancellor is illegal and it needs to be quashed and set aside.

10. On the other hand Mr. Kulkarni, learned counsel for the respondent No.4 has argued that the direction Nos.27 and 28 of 22 though issued on 20.07.2022 that is after the advertisement

dated 13.06.2022, however, considering the fact that those directions were issued by the Vice-Chancellor who could have halted the process of selection and could have issued fresh advertisement in pursuance to the said direction. However, instead of doing so he proceeded with the selection process and selected the petitioner and thus he submit that the impugned order is just and proper and needs no interference.

11. Mr. Kulkarni has drawn attention of this Court to the reply of the respondent No.4 more particularly in para 12 of the reply to show that many of the legal points have not been dealt by the Hon'ble Chancellor. Para 12 read thus:

12. It is submitted that the role of respondent No.2, the Vice-Chancellor is of vital importance and it is evident that the Vice-Chancellor had failed in his statutory duties and had become party the illegalities.

a) The present incumbent Vice-Chancellor did not issue directions over a period of two years from 08.08.2020 to 20.07.2020.

b) Earlier two advertisements were issued for the post of Dean of the faculty of Inter Disciplinary Studies by prescribing eligibility criteria as contemplated by the provisions of section 34 of the Act, the directions issued by the State Government as per letter dated 22.05.2017 and the resolution of Academic Council dated 27.06.2017.

“Ph.D. degree in the concerned/allied/relevant discipline.”

- c) *The Vice-Chancellor was bound by the provisions of section 2 (35) of the Act.*
- d) *The Vice-Chancellor was equally bound by the provisions of section 34 of the Act.*
- e) *Then also the Vice-Chancellor had become party to the illogical, irrational and invalid resolution of the Academic Council dated 04.03.2022.*
- f) *The Vice-Chancellor had issued the advertisement dated 13.06.2022 by relying upon the resolution dated 04.03.2022 passed by the Academic Council even though the said resolution was in violation of the Government directions dated 22.06.2017, Academic Council resolution dated 27.06.2017, provisions of the section 2(35) of the Act and provisions of section 34 of the Act.*
- g) *The Vice-Chancellor did not take action under section 12(6) of the M.P.U. Act, 2016, even though the resolution of the Academic Council dated 04.03.2022 was in violation of statutory provisions.*
- h) *The Vice-Chancellor had himself issued direction Nos.27/2022 and 28/2022 on 20.07.2022 after issuance of advertisement dated 13.06.2022.*
- i) *Hence, when the interviews were conducted on 08.12.2022 the provisions of direction Nos.27 of 2018 and direction No.28/2022 were in force. Having issued the directions it was obligatory for the Vice-Chancellor to cancel the process and issue a fresh advertisement.*
- j) *The alleged resolution of Academic Council dated 04.03.2022 had automatically become infirm on issuance of direction Nos.27 of 2022 and 28 of 2022.*

k) *The cumulative effect of each of the above mentioned illegalities is that the selection and appointment of the petitioner as the Dean of the Faculty of Inter Disciplinary Studies was void and bad in law.*

The Hon'ble Chancellor in exercise of his statutory powers under section 105(5) of the M.P.U. Act, 2016 has passed well reasoned order dated 16.06.2023. The scope of judicial review in academic matters is totally limited to the extent of decision taking process. The decision per se is not open for the judicial review. The Hon'ble Chancellor had granted opportunity to the parties for filing reply as also the opportunity of personal hearing. Hence, the order has been passed in compliance of the provisions of section 105(5) of the Act as well as the principles of natural justice. Hence, no case is made out for exercising extra ordinary writ jurisdiction under Article 226 of the Constitution of India. The petition is devoid of any merit and is liable to be dismissed.

12. In light of above referred submissions made by the learned counsel for the respondent No.4, he prays for dismissal of present petition.

13. Mr. Chandurkar, learned counsel for the respondent Nos.2 and 3 supports the order of the Hon'ble Chancellor.

14. In light of rival submissions made by the respective counsel of the parties, I have perused the record and impugned order.

15. The Hon'ble Supreme Court of India in the case of

Gopal Krushna Rath v. M.A.A. Baig (Dead) by LRs. and others

reported in ***(1999) 1 SCC 544*** has observed thus:

6. When the selection process has actually commenced and the last date for inviting applications is over, any subsequent change in the requirements regarding qualifications by the University Grants Commission will not affect the process of selection which has already commenced. Otherwise it would involve issuing a fresh advertisement with the new qualifications. In the case of P. Mahendran v. State of Karnataka this Court has observed: (SCC p.416, para 5)

16. In the present matter, admittedly the advertisement was issued on 13.06.2022 and before that the resolution was passed on 04.03.2022 by the Academic Council resolving that a person belonging to any faculty be considered eligible for the post of Dean for the faculty of Inter-Disciplinary Studies and in pursuance to the said resolution and considering the eligibility criteria mentioned in the advertisement the selection of the petitioner was made. The Hon'ble Chancellor has not dealt with the question how the appointment of the petitioner is illegal in light of the above referred facts, before allowing the petition filed by the respondent No.4.

17. Though it was argued before the Hon'ble Chancellor that the direction Nos.27 and 28 of 22 were issued by the Vice-Chancellor on 20.07.2022 that is after the advertisement and

before the selection of the petitioner, the Vice-Chancellor ought not to have proceeded with the selection process and selected the petitioner, it is apparent from the impugned order that the said submission has not been considered by the Vice-Chancellor. Furthermore the legal submissions made by the respondent No.4 and stated in para 12 of the reply, have not been considered by the Hon'ble Chancellor.

18. Furthermore the Hon'ble Chancellor has not touched the issue of validity of resolution dated 04.03.2022 in pursuance to which the selection of the petitioner was made.

19. The Hon'ble Chancellor has cancelled the advertisement and also the appointment without disturbing the said resolution meaning thereby the said resolution is still in force.

20. In the circumstances, I am of the opinion that this matter needs to be remanded back to the learned Chancellor to decide the petition afresh after hearing both the parties. Accordingly, I pass the following order:

[i] Writ petition is partly allowed.

[ii] The order dated 16.06.2023 passed by the Hon'ble Chancellor is hereby quashed and set aside.

- [iii] The matter is remanded back to the Hon'ble Chancellor to decide the same afresh after hearing both the parties. It is made clear that all the points are kept open.
- [iv] The Hon'ble Chancellor is requested to decide the petition afresh within a period of two months from the date of this order.
- [v] The learned counsel for the respondent Nos.2 and 3 undertakes to communicate this order to the Hon'ble Chancellor through the Vice Chancellor.

(ANIL S. KILOR, J.)