



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3176 OF 2024**

Dr. Shankar S/o Bhagwan Ambhore,
Age: 57 years, Occu. Service,
R/o. Plot No.120, Pethe Nagar,
Bhawsingpura, Chhatrapati Sambhajanagar. ..Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department, Mumbai-32.
2. Dr. Babasaheb Ambedkar Marathwada
University, Chaatrapati Sambhajanagar,
Through its Registrar,
University Campus, Chhatrapati Sambhajanagar.
3. Dr. Prashant Shamrao Amrutkar,
Age: 53 years, Occu.: Service as Registrar,
Dr. Babasaheb Ambedkar Marathwada
University, Chaatrapati Sambhajanagar,
Office at office of Registrar, Dr. Babasaheb
Ambedkar Marathwada University, University
Campus, Chaatrapati Sambhajanagar.
4. Vice Chancellor,
Dr. Babasaheb Ambedkar Marathwada
University, Chaatrapati Sambhajanagar,
Office at office of Vice Chancellor, Dr. Babasaheb
Ambedkar Marathwada University, University
Campus, Chaatrapati Sambhajanagar. ..Respondents

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Mr. Sushant V. Dixit, Advocate for Petitioner.
Mr. P. D. Patil, AGP for Respondent No.1.
Mr. Sambhaji S. Tope, Advocate for Respondent Nos.2 to 4.

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**WITH
CIVIL APPLICATION NO.6357 OF 2024
IN
WRIT PETITION NO.3176 OF 2024**

1. Dr. Babasaheb Ambedkar Marathwada
University, Chaatrapati Sambhajanagar,

Through its Registrar,
University Campus, Chhatrapati Sambhajanagar.

2. Dr. Prashant Shamrao Amrutkar,
Age: 50 years, Occu.: Service as Registrar,
Dr. Babasaheb Ambedkar Marathwada University,
University Campus, Chaatrapati Sambhajanagar.
3. Vice Chancellor,
Ambedkar Marathwada University, University
Campus, Chaatrapati Sambhajanagar.

Versus

1. Dr. Shankar S/o Bhagwan Ambhore,
Age: 56 years, Occu. Service,
R/o. Plot No.120, Pethe Nagar,
Bhawsingpura, Chhatrapati Sambhajanagar.
2. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department, Mumbai-32. ..Respondents

....

Mr. Sambhaji S. Tope, Advocate for Applicants.
Mr. Sushant V. Dixit, Advocate for Respondent No.1.
Mr. P. D. Patil, AGP for Respondent No.2.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 31st JULY 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matter is taken up for final hearing at the stage of admission.
2. The petitioner impugns order dated 02.03.2024 issued by respondent no.3 on the basis of order passed by respondent no.4, thereby declaring petitioner to be disqualified to continue as member of Senate in pursuance of his election under Section 28(2) (r) of the Maharashtra Public Universities Act, 2016 (for short 'the Act, 2016').

3. The petitioner was working as Professor and Head of Department of Economics in Smt. Dankunwar Mahila Mahavidyalaya, Jalna. The petitioner came to be elected as Senate member of University from Teachers Constituency in terms of Section 28(2)(r) of the Act, 2016. The petitioner came across advertisement for filling up the post of Principal at Kohinoor Arts, Commerce, Science College, Khultabad. The petitioner responded to advertisement and came to be appointed vide order dated 27.04.2023 and joined his post w.e.f. 03.05.2023. His appointment to the post of Principal has been approved by the University. Since appointment of the petitioner is on tenure post of Principal, he was given lien as Professor with Smt. Dankunwar Mahila Mahavidyalaya, Jalna. The petitioner was served with show cause notice dated 21.02.2024 by In-charge Registrar of the University calling his explanation as to why action for cessation of membership of Senate shall not be initiated against him, since he ceased to represent Constituency of teachers under Section 28(2)(r) of the Act, 2016. The petitioner challenged the said notice by filing Writ Petition No.2201/2024. By the time writ petition was circulated, an office order declaring his cessation of his membership of senate was served upon him. However, the same was withdrawn on the same day i.e. on 26.02.2024. Later on, the petitioner withdrew the writ petition.

4. The petitioner was served with fresh show cause notice dated 28.02.2024. The petitioner submitted detailed reply, thereby raising challenge to validity of notice. However, respondent no.3 served him impugned order dated 02.03.2024, which is preceded by order of respondent no.4. According to the petitioner action taken against him is *ultra vires*, and contrary to principles of natural justice. The respondents/University Authorities supports

impugned order contending that cessation of membership, as contemplated under Section 63 of the Act, 2016 is automatic. As soon as petitioner ceases to represent collegium of Teachers, he is deemed to have vacated his office of member of the Authority/Senate.

5. Mr. Dixit, learned Advocate appearing for the petitioner submits that the impugned order is in the nature of communication by respondent no.3 as regards to order dated 02.03.2024 passed by respondent no.4. However, neither respondent no.3 nor respondent no.4 are authorized under law to disqualify member of any Authority/Senate. Consequently, impugned order is *ultra vires*. The impugned order is passed without referring to contents of reply of petitioner to show cause notice. As such, it is in gross violation of principles of natural justice. The petitioner continues to be teacher, even after his appointment as Principal. Hence, cessation of membership as contemplated under Section 63 of the Act, 2016 shall not attract. He would invite attention of this Court to Section 140 of the Act, 2016 to contend that issue whether petitioner has ceased to be member of Senate ought to have been referred to Chancellor, who is final Authority to decide such question. Mr. Dixit would invite attention of this Court to the definition of 'Teacher' under Section 2(61) and definition of 'Principal' under Section 2(44) to contend that appointment of petitioner as Principal shall not displace him to be referred as Teacher. He would, therefore, submit that there was no cause of action to invoke provisions of Section 63 of the Act, 2016 and serve show cause notice and pass consequential order declaring cessation of membership on Senate of the petitioner.

6. Per contra, Mr. Tope, learned Advocate appearing for the respondents submits that the petitioner has been elected on Senate

under Section 28(2)(r) of the Act, 2016 i.e. Teachers Constituency other than Principals. He would further point out that Principals of the affiliated colleges are given representation at senate under Section 28(2)(o) of the Act, 2016. The petitioner transgressed himself from 'Teacher' to 'Principal' and ceased to represent his Constituency. Consequently, Section 63 of the Act, 2016 operates and petitioner ceases to be member of Senate automatically. Admittedly, petitioner has been appointed as Principal. His services are approved as such. His original employer has discontinued lien on the post of Professor. Consequently Registrar of University has communicated order passed by Vice Chancellor regarding declaration of vacancy consequent to cessation of membership of the petitioner. Therefore, he urges that there is no substance in petition and same is liable to be dismissed.

7. The submissions advanced poses three questions for consideration before this Court. First question is whether on appointment of the petitioner as Principal, he ceases to represent Teachers Constituency under Section 28(2)(r) of the Act, 2016. It is apposite to refer the relevant portion of Section 28 for better understanding of the controversy. Section 28 reads thus:

“28. Senate.-

(2) The Senate shall consist of the following members, namely:-

- (a)*
- (b)*
- (c)*
- (d)*
- (e)*
- (f)*
- (g)*
- (h)*
- (i)*
- (j)*
- (k)*
- (l)*
- (m).....*
- (n)*

(o) ten Principals of affiliated, conducted, autonomous colleges which are accredited by National Assessment and Accreditation Council (NAAC) or National Board of Accreditation, (NBA), as the case may be, **to be elected by the collegium of principals from amongst themselves;** of whom one each shall be a person belonging to Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis) or Nomadic Tribes, Other Backward Classes, and one shall be a woman;

(p)

(q)

(r) ten teachers other than principals and directors of recognised institutions **to be elected by the collegium of teachers from amongst themselves** of whom one each shall be a person belonging to Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis) or Nomadic Tribes, Other Backward Classes, and one shall be a woman;”

8. Section 63 of the Act, 2016 would also be relevant and necessary to be quoted here for ready reference, which reads thus:

“63. Cessation of membership.- Notwithstanding anything contained in this Act or the Statutes made thereunder, where a person, elected, nominated, appointed or co-opted, as the case may be, as an officer of university or a member of any of the authority or bodies of the university by virtue of his being eligible to be so elected, nominated, appointed or co-opted as such an officer or a member under any of the categories of officers or members specified by or under the relevant provisions of this Act in relation to such office, authority or body, **he shall cease to be such an officer of the university or a member of such an authority or a body as soon as he ceases to belong to such category and shall be deemed to have vacated his office as such officer or member.**”

9. Conjoint reading of aforesaid provisions clearly shows that for the purpose of election under Section 28(2)(r) of the Act, 2016 the Teachers other than Principals and Directors of recognised institutions are eligible to be elected. At the time of petitioner’s election, he was Teacher other than Principal. However, admittedly after his election by collegium of Teachers on Senate, he

accepted assignment as Principal, his services are approved and he is presently continued to be Principal. Therefore, by statutory implication in terms of Section 63 whether petitioner ceases as member of Senate would be question to be answered.

10. Plain reading of Section 63 depicts that where a person is elected as member of authority or body of University by virtue of his being eligible to be so elected as such a member under any of the categories of the officers, he shall cease to be such an officer of the University or member of such authority, as soon as he ceases to belong such category and shall be deemed to have vacated his office as such member. It cannot be disputed that the Constituency of Teacher is specifically crafted to represent Teachers other than Principals, whereas an independent category is crafted for representation by the Principals. Therefore, as soon as the petitioner has accepted the post of Principal, he ceased to represent constituency/collegium of Teachers to which he represents owing to his election under Section 28(2)(r) of the Act, 2016.

11. At this stage, Mr. Dixit, learned Advocate appearing for the petitioner places his reliance on judgment of this Court in case of ***Dr. Geeta w/o. Mallikarjun Patil Vs. Dr. Babasaheb Ambedkar Marathwada University, Aurangabad***¹. In that case it is held that appointment of the petitioner was not because she was Teacher in a particular institution, hence her appointment as teacher in university department would not vitiate her co-option. This Court held that petitioner continues to be Teacher and mere change in Appointing Authority would not invite disqualification. Therefore, in present case petitioner cannot make any capital of law espoused by this Court in the said judgment. In

¹ 2015 (5) Mh.L.J. 248.

case of *Dr. Ramkishan Mukundrao Chaudhary Vs. Swami Ramanand Teerth Marathwada University, Vishnupuri, Nanded*² the petitioner on his appointment as Head of Department in another institution, continued to represent category of “Head of Department” from which he was elected. As such, the change of institution was not considered as impediment in continuation of his membership on University Authority. In case of *Dr. Vasantrao Pawar Vs. Pune University*³, the Supreme Court of India considered the issue of cessation of membership on cessation to represent particular management. However, in that case the petitioner was elected as representative of management of recognized institution on the Senate of Pune University. Later on, he was nominated as representative of two other recognized institutions. Therefore, appellant was replaced by another person as nominated representative of original management, but petitioner continued to be the representative of management of two other institutions, representing management Constituency against which he was elected. In that scenario, the Supreme Court observed that merely because he ceased to be representative of the management, which he was representing at the time of election to the Senate, but on his appointment as representative of management of another affiliated college or recognized institution, he would be entitled to continue as such for the term of five years fixed under the statute, so long as he continues to belong to the Constituency from which he was elected as member of Senate.

12. It is, therefore, clear from all the cases relied upon by the petitioner, that Constituency to which those members were representing remained same, although institutions were changed. However, in present case, the petitioner migrated from

² 2015 (5) Mh.L.J. 510.

³ (1999) 3 SCC 528.

Constituency of Teachers u/s 28(2)(r) to the Constituency of Principals, consequently, ceased to be representative of Teachers collegium for which he has been elected. In that view of the matter, by statutory implication of Section 63 of the Act, 2016, the petitioner ceased to be a member of Senate.

13. Mr. Dixit raises second contention that respondent no.3, who has issued impugned communication dated 02.03.2024 has no authority under law to declare cessation of membership or for that purpose even respondent no.4 is not empowered to declare vacancy. He submits that Section 140 of the Act, 2016 empowers Chancellor to decide such question on proposal of Vice Chancellor. However, in present case, no such proposal was made, therefore, impugned communication is *ultra vires*. To appreciate aforesaid contentions, it is apposite to refer to Section 140 of the Act, 2016, which reads thus:

“140. Questions regarding interpretation and disputes regarding constitution of university authority or body, etc.- If any question arises regarding the interpretation of any provision of this Act, or of any Statutes, Ordinance or Regulation or Rule, or whether a person has been duly elected or appointed or nominated or co-opted as a member or is entitled to be a member of any authority or body of the university, the matter may, be referred, on petition by any person or body directly affected or suo motu by the Vice-Chancellor to the Chancellor, who shall after taking such advice as he thinks necessary, decide the question, and his decision shall be final:

Provided that, such reference shall be made by the Vice-Chancellor upon a requisition signed by not less than one fourth members of the senate.”

14. Plain reading of aforesaid provision shows that if any question arises regarding interpretation of any provision of the Act or whether a person has been duly elected, appointed or nominated as a member or is entitled to be a member of any University or

body of the University, the matter may, be referred, on petition by any person or body directly affected or *suo motu* by Vice Chancellor to the Chancellor, who shall after taking such advice as he thinks necessary, decide the question. The proviso prescribes that such reference shall be made upon requisition of atleast one fourth members of Senate. It is, therefore, evident that this provision would apply where any dispute is made regarding election, appointment, nomination, co-option of the members of the authority of University. However, as rightly pointed out by Mr. Tope, learned Advocate appearing for the University, the petitioner has ceased to be member by operation of law in terms of Section 63 of the Act, 2016, which do not require formal enquiry, so Section 140 would not attract in the facts of this case. Consequently, contentions of Mr. Dixit on this point is also fallacious.

15. The third contention raised on behalf of the petitioner is that there is gross violation of principles of natural justice. The impugned order sans consideration of reply filed by the petitioner and consequential reasons. It is to be noted here that Section 63 of the Act, 2016 has special feature and it uses terminology of deemed cessation of membership. It does not require any formal enquiry or show cause notice to be given. There is absolutely no dispute as regards to the factual matrix of the matter. Three foundational facts are admitted. First, the petitioner was elected under Section 28(2)(r) of the Act, 2016 i.e. from Teachers Constituency to represent on Senate. During his term, he has been appointed as Principal and ceased to be Teacher and continued as such till this date and petitioner is no more representing Teacher Constituency. In this background, the petitioner was served upon show cause notice. Although petitioner sought to make out case of malafides, there is no scope to accept such contentions in light of admitted fact and statutory provisions governing issue. The cessation of

membership is automatic, once member of authority ceases to represent the Constituency from which he has been elected.

16. The last limb of submissions advanced by Mr. Dixit is that the definition of Teacher includes Principal. Therefore, the appointment of the petitioner on the post of Principal would not cease him being representative of Teacher. Such contentions do not hold water in light of scheme of the Act, 2016, which provides representation to various categories/sections of stakeholders of the University like employees, teachers, directors, educationalist etc. to be a part of Senate, which is the Apex Body to manage financial estimates and budgetary appropriations of the University. Further opening wording of Section 28(2)(r) of the Act, 2016 excludes Principal from the category of Teachers, who are supposed to be represented in the Senate. The collegium of Principals is given independent representation under Section 28(2)(o) of the Act, 2016. The petitioner ceased to be representative of Teachers and migrated to collegium of Principals. Consequently, there is no merit in the Writ Petition. Writ Petition stands dismissed.

17. In view of dismissal of Writ Petition, the present Civil Application stands disposed of.

18. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE