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W.P.Nos.9002 and 24499 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition Nos.9002 and 24499 of 2023
and W.M.P.Nos.9120, 9121, 23921 & 13982 of 2023

W.P.No.9002 of 2023

1. Dr.Soundarapandian
2. Dr.S.V.Rajarathinam

... Petitioners

Vs.

1. Principal Secretary
Health and Family Welfare Department,
Fort St.George Town, Chennai – 600 009.
2. The Tamil Nadu Dr.M.G.R.Medical University,
Represented by its Vice-Chancellor,
No.69, Anna Salai,
Guindy, Chennai – 600 032.
3. The Registrar,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai, Guindy,
Chennai – 600 032.
4. Directorate of Indian Medicine and Homeopathy,
Arignar Anna Govt. Hospital of Indian Medicine Campus,
Arumbakkam, Chennai – 600 106.
5. Dr.S.Ashok Kumar, M.D. (Naturopathy)
6. Dr.Y.Rosy Ayda, M.D. (Naturopathy)
- . Dr.Gayathri, M.D.(Yoga)
8. Dr.Selvakumar, M.D.Naturopathy

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India,, for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent leading to the impugned order dated 29.12.2022, bearing Proc No.ACII (3)/15160/2022 and quash the same for non selection of the petitioners and consequently to direct the 2nd respondent to reconstitute the Board of Studies relating to the Department of Naturopathy and Yogic Science within the time stipulated by this Court.

For Petitioner : Mr.S.Sivashanmugam
For Respondents : Mr.M.Bindran
Additional Government Pleader
[R1, R2 and R4]
: Mr.M.Radhakrishnan
[R5 to R8]
: Mr.A.Mohamed Gouse [R3]

W.P.No.24499 of 2023

Dr.S.Ashok Kuamr, M.D. (Naturopathy) ... Petitioner

Vs.

1. The Tamil Nadu Dr.M.G.R.Medical University,
Represented by its Vice-Chancellor,
No.69, Anna Salai,
Guindy, Chennai – 600 032.
2. The Vice Chancellor,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy, Chennai – 600 032.
3. The Registrar,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai, Guindy, Chennai – 600 032.



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4. Dr.N.Manavalan

Principal,

Government Yoga and Naturopathy Medical College,
Chennai – 600 106.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Declaration, declaring that the nomination of respondent No.4 as the Chairman of the Board of Studies for Naturopathy and Yogic Sciences of respondent No.1 – University made by respondent No.2 is null and void.

For Petitioner : Mr.Radhakrishnan

For Respondents : Mr.A.Mohamed Gouse [R1 to
R3]

R4 – No appearance

COMMON ORDER

These two writ petitions are with similar prayers and as such it are taken up together for disposal by this common order.

2. On 16.03.2023, W.P.No.9002 of 2023 was filed by Dr.Soundarapandian and Dr.S.V.Rajarathinam, whereby they challenged an order dated 29.12.2022. By the said order, the respondent University



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viz., Tamil Nadu Dr. M.G.R. Medical University had constituted the Board of Studies for the Department of Naturopathy and Yogic Sciences.

3. When the writ petition was entertained, an interim order was passed on 23.03.2023 granting an interim order that the Board of Studies shall not proceed to conduct any meeting.

4. When the writ petition was pending, the Chairman of the Board of Studies aggrieved by the said order dated 29.12.2022 by the name Dr S.Ashok Kumar had filed a subsequent writ petition in W.P.No.24499 of 2023 complaining that the fourth respondent in the said writ petition viz., Dr.N.Manavalan has been nominated as the Chairman of the Board of Studies for the Naturopathy and Yogic Sciences even when the period of three years is in force and therefore, he prays to declare that the nomination of the said person as null and void. Thus, both the writ petitions relating to the same issue are taken up together and are heard and disposed of by this common order.

5. Heard Mr. M.Radhakrishnan, learned counsel appearing for the petitioner in W.P.No.24499 of 2023, Mr. S.Sivashanmugam, learned



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counsel appearing for the petitioner in W.P.No.9002 of 2023 and Mr.

A.Mohamed Gouse, learned counsel appearing for the respondent University in both the matters.

6. The brief facts as may be culled out from the pleadings from the respective parties are that there exists a Department of Naturopathy and Yogic Sciences in the respondent University. Originally, up to the year 2000, there was only a Diploma Course in the said Department. The undergraduate course was started in the year 2000-2001. Thereafter, the postgraduate course was started from the academic year 2014-2015.

7. As per the statutes of the University, there shall be Boards of Studies for each Department. Chapter XVI of the statutes of the respondent University deals with Boards of Studies. Rules 1 to 4 are extracted hereunder:

“1. Extract of the Act – 32 -The Boards of Studies – (1) There shall be Boards of Studies attached to each department of study or research.

(2) The Constitution and powers of the Boards of studies shall be such as may be prescribed by the statutes.



2. Statute – Constitution of Boards.- (a) Each Board shall ordinarily consist of not less than five and not more than fifteen members who are experts teachers in the relevant field.

(b) There shall be a 'Chairman' nominated by the Vice-Chancellor, from among the members of the Board.

(c) The members of the Board shall be appointed by the Governing Council on the recommendations of the Vice-Chancellor.

3. Statute – Term of Office – Members of the Board of Studies shall normally hold office for a period of three years or such period as may be fixed at the time of the appointment.

Provided that the Vice-Chancellor may declare any member of a Board to have vacated his membership if he leaves India or for other valid reasons:

Provided further that it shall be competent for the Governing Council to appoint as a member of a Board of any person in his official capacity.

4. Statute Chairman – The Chairman shall be nominated by Vice-Chancellor from among the members of the Board.

In the event of a vacancy in the office of the Chairman the Vice-Chancellor shall appoint a member of



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the Board to act as Chairman until a permanent arrangement is made.”

8. The other Rules of the statutes explain the functions and powers of the Board of Studies. It seems that the primary function of the Board of Studies is to recommend to the Governing Council persons suitable for appointment as Examiners, recommend the textbooks, and make recommendations regarding the Courses of study and examinations in the subject with which it deals. Thus, it can be seen that the primary functions of the Board of Studies are formulation/revision of syllabus, textbooks, examiners etc.,

9. It can be seen from the statutes that the Chairman and members render academic service and is not a post, that carries further remuneration and is for a tenure and it is an honorary exercise.

10. It seems that when the writ petition was pending, grievances were made to the Vice Chancellor by the experienced faculties, who were not included in the Board of Studies.



11. As per the counter affidavit filed by the University, the University took up the exercise of reconstitution of the Board of Studies even before the expiry period of the erstwhile Board and the following are the reasons as per the counter affidavit. It is essential to extract paragraphs 5 to 7 of the counter affidavit:

“5.Statute – Functions:-

It shall be the duty of each Board of Studies to consider and report on any matter referred to it in accordance with the law of this University by the Vice-Chancellor, of the Governing Council (or) by the Standing Academic Board (or) the faculty or the Dean of the faculty (or) the Dean of the faculty concerned with the subject with which it deals.

6. I State that in the above Writ Petition on 23.03.2023 this Hon'ble Court has passed the interim order as follows:-

“According to the petitioners, the five persons namely Dr.S.Ashok Kumar, Dr.Y.Rosy Ayda, Dr.Gayathri, Dr.Selvakumar and Dr.N.Vijaya Raghavan, who had been appointed as Chairman/Members to the Board of Studies of the Tamil Nadu Dr.M.G.R. Medical University, Chennai, by the 2nd respondent vide impugned order dated 29.12.2022, are not qualified persons for the said post and therefore, they seek for grant of stay of the



impugned order dated 29.12.2022.

2. On going through the typed set of papers, this Court also does not find any material to show that, on what basis, the above said five persons were selected as Chairman/Members to the Board of Studies of the 2nd respondent University. Therefore, this Court hereby directs the Learned Government Advocate appearing for the respondents to get instructions on this matter.

3. Until then, the respondent University/Board of Studies of the University shall not proceed to conduct any meeting in this regard.”

Based on the above interim order, the appointment of Chairman/Members in the Board of Studies in Naturopathy and Yogic Sciences and the President / Members in the Faculty of Naturopathy and Yogic Sciences were kept in abeyance and not published in the website of this University.

Since inception the Boards were constituted with the existing faculty at that time. The statute for Yoga & Naturopathy was framed in the year 2002. Even at that time the qualifications were mostly Under Graduate in nature and the Board of Studies members were also Under Graduate only. The Post Graduate course was started in Tamil Nadu only in 2014-2015 and our own Post Graduate students passing out from the year 2018 onwards. Even then the Board of Studies has been constituted till 2022



with senior Faculty Members. When the new Board of Studies was constituted in the year 2022 it was felt all members of Board of Studies may be Post Graduate, even though the teaching experience was between 2 to 6 years and the Board was constituted. However objections were raised by very Senior Faculty Members who were also teachers of the newly inducted Board Members. Therefore, it was decided to reconstitute the Board by balancing with very teaching experience member and the Post Graduate qualification members.

7. I state that the 2nd respondent has decided to decline the Board of Studies constituted under proceedings dated 29.12.2022 bearing Proc.No.ACII(3)/15160/2022. An agenda was placed before the Governing Council in its 296th meeting held on 05.07.2023 and it is resolved to decline/dissolve the Board of Studies constituted on 29.12.2022. Further in the 296th Governing Council Meeting held on 05.07.2023 it was resolved to accept the new nomination of members of the Board of Studies/Faculties and also to reconstitute the Board/Faculty of Naturopathy and Yogic Sciences.”

12. Accordingly, it now transpires that not only the fourth respondent replaces as the Chairman, the entire Board of Studies is reconstituted.



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13. Mr. M. Radhakrishnan, learned counsel appearing for the outgoing Chairman, who was superseded even during the three years period would contend that, firstly, to reconstitute the Board there should be a formal dissolution of the existing Board. The constitution of the Board of Studies being a statutory function should be carried out strictly as per the statute. The statute prescribes a fixed tenure of three years for the Board. As such, when the respondent University has constituted the Board in the year 2022, the three-year period will end only in the year 2025. There is no express provision in the statute to supersede the Board or to reconstitute the Board even during the period of three years. According to him, the proviso to Clause 3 of the Statute can be read only to declare that any member of a Board has vacated office for valid reasons or he is unable to discharge his duties, in that case, the Vice Chancellor can reconstitute the Board, otherwise, in the absence of any express power, the exercise of wholesale supersession of the Board is without jurisdiction.

14. He would further submit that the statute prescribes that the Board of Studies shall be constituted by the experts. Almost all the



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Boards of Studies in various Department of the respondent University are all from among the candidates, who have Post Graduate Courses in the relevant field. Therefore, by the practice of the respondent University and the guidelines so far followed, it can be seen that the persons, who did not possess the Post Graduate qualification can never be treated as experts. Therefore, the new reconstitution of the Board is from among the members who are not at all post-graduates and therefore, the impugned exercise is illegal. He would submit that it is not the mere right of the writ petitioner to be affected, but it ultimately affects the right of the students, because such Diploma holders who are in the Board of Studies are going to fix the syllabus for postgraduate students. Such action is incomprehensible. If the statute has to be read as a whole and by taking into consideration the functions of the Board of Studies, then the action of the University in considering the Diploma holders also as experts should be held illegal.

15. The further reason mentioned in the counter affidavit that the reason is to balance the grievance of the experienced teachers cannot be a valid reason as per the statute to reconstitute the Board. Therefore, according to him when there is a properly constituted Board, without



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even notice to the incumbents, the exercise of reconstitution of the Board of Studies is illegal and therefore, the same requires interference by this Court.

16. *Per contra*, Mr.S.Sivashanmugam, learned counsel appearing for the petitioners in W.P.No.9002 of 2023 would contend that so called Post Graduate holders, who are now agitating the case before this Court were taught by the Diploma holders during their education. Therefore, the contention of the learned counsel that only the postgraduate holders alone can be experts cannot be applied to the instant context, where the diploma holders are post-graduate diploma holders. By long years of teaching service, they are also experts in their field. In any event, framing of syllabi and recommendations as to the examiners, and textbooks, are the functions, for which they can be considered as experts. Further, he would submit that as far as his writ petition is concerned, now the Board itself reconstituted and his grievances were redressed, hence, his writ petition in W.P.No.9002 of 2023 has become infructuous.



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17. Mr. A. Mohamed Gouse, learned counsel appearing on behalf of the University referring to the counter, would submit that Clause (3) of the statute, provides that the Vice Chancellor may declare any member of a Board to have vacated his membership for valid reasons. If that can be for one single member, it can be exercised for all the members. Therefore, if that Clause is read in the proper perspective would confer the power for the Vice Chancellor to supersede the power of the Board.

18. In this case, there was a genuine grievance, that the Teachers expressed. The Appropriate Authority has considered the same. Thus, it was not on any irrelevant material. When the authority exercising statutory power has chosen to exercise the jurisdiction to supersede the Board, the same does not violate any legal rights of the writ petitioners and this Court need not interfere.

19. I have considered the rival submissions made on either side and have perused the materials placed before this Court.



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20. Firstly, it should be seen that the grievance is in respect of the Chairmanship and membership of the Board of Studies. The same is not a remunerative post or a part of the service or condition of service on the part of faculty or lecturers. It is an honorary post. The members as well as the chairman render academic service to the University by helping the University to frame the syllabi as well as in the identification of the examiners, prescription of textbooks etc. Though there may be some allowances including travel allowance that may be granted, no other monetary benefits are involved. Therefore, the appointment or removal from the said membership does not vitiate any right of the concerned individual. Hence, I reject the arguments of Mr. M. Radhakrishnan, learned counsel that the impugned proceedings are violative of principles of natural justice. In this regard, useful reference can be made to the Judgment of the Hon'ble Supreme Court in the case of ***Maniben Maganbhai Bhariya v. District Development Officer*** reported in (2022) SCC OnLine SC 507. It is relevant to extract paragraph 40 and 49 of the said judgment, which reads as follows:

“40. “.....they are not holders of civil posts due to which they are deprived of a regular salary and other benefits that are available to employees of the State.



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Instead of a salary, they get only a so called paltry 'honorarium' (much lower than the minimum wages) on the specious ground that they are part-time voluntary workers....”

49. “So far as the judgment in Ameerbi (supra) on which the Division Bench of the High Court has placed reliance is concerned, it was a case where the question raised for consideration was as to whether those who are appointed as Anganwadi workers/helpers are holders of civil posts and are entitled to seek protection of Article 311 of the Constitution. In that context, it was held by this Court that they are not holders of civil posts and protection of Article 311 of the Constitution is not available and that was the reason for which the application which was filed at the behest of Anganwadi workers/helpers under Section 15 of the Administrative Tribunal Act, 1985 was held to be not maintainable.”

21. I would also hasten to add that at the first instance filing of the writ petition in W.P.No.9002 of 2023 itself was uncalled for.

22. The next question to be considered is whether the action of the respondent University in reconstituting the Board is in order.



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23. When according to the respondents, the experienced teachers had made a grievance that they were all left out and if the Vice Chancellor felt compelled to redress their grievance, the same cannot be termed to be perverse or irrelevant in the considered view of this Court. The only contention, which is raised is that there is no express power, which is mentioned in the statute.

24. Even though there is no express power vested with the Vice Chancellor to supersede the Board, the proviso to Clause 3 of the statute states that for valid reasons, the Vice Chancellor may declare any member of the Board to have vacated the membership. If it is read in the context, it cannot be said that the impugned exercise is without exercising the jurisdiction.

25. Secondly, the Vice Chancellor being the Appointing Authority, shall have the power to supersede the Board of Studies also. The only concern is, whether the power is exercised for a proper reason or whether it suffers from arbitrariness.



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26. I am of the view that the reasons mentioned, balancing between the diploma holders and the P.G. Holders among the faculties, cannot be termed as arbitrary. The reconstituted Board is placed before this Court. There are three faculties from P.G. Holders also. Therefore, it cannot be stated that the impugned exercise is arbitrary.

27. Next comes the contention that the diploma holders cannot be experts. I am afraid that I cannot agree with the said argument of the learned counsel for the petitioner. The term 'expert' is not defined in the statute. A teacher who may be a diploma holder, by his long years of service, maybe an expert in framing curriculum, even for postgraduate students. In many instances, persons outside the academia are also termed experts to form part of the Board of Studies. For example, it is the subject is the Naturopathy and Yogic Sciences, a monk practicing Naturopathy and Yogic Sciences can also be a part of the Board of Studies.

28. It is seen nowadays that even persons from the related industry are part of the Board of Studies. The primary function of the Board of Studies is to update the syllabi and ensure that the learning



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output remains relevant to the present-day context and developments in the field. Therefore, it is for the University to decide, which person would be an expert to be on the Board and this Court cannot substitute itself in that exercise.

29. In short, these are matters academic in nature and should not be in the annals of this Court at all, as no rights of the parties would be violated and the entire aim is to provide the best syllabi and educational environment to the students.

30. For all the above reasons:

1. W.P.No.9002 of 2023 is dismissed as having become infructuous.
2. W.P.No.24499 of 2023 shall stand dismissed as without any merits.
3. No costs. Connected miscellaneous petitions are closed.

17.04.2024

Index: Yes
Speaking Order: Yes
Neutral Citation: No
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1. Principal Secretary
Health and Family Welfare Department,
Fort St.George Town, Chennai – 600 009.
2. The Tamil Nadu Dr.M.G.R.Medical University,
Represented by its Vice-Chancellor,
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D.BHARATHA CHAKRAVARTHY, J.

mp

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