

(2002) 01 BOM CK 0073

In the Bombay High Court

Case No : Writ Petition No. 1688 of 2001

Ashok Vithobaji Gomashe

APPELLANT

Vs

Honourable Chancellor, Nagpur University and Others

RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Maharashtra Universities Act, 1994 — Section 37(2), 43

Citation : AIR 2002 Bom 326 : (2002) 4 BomCR 241 : (2002) 2 MhLj 780

Hon'ble Judges : R.S. Mohite, J

Bench : Single Bench

Advocate : A.M. Gordey and S.A. Gordey, for the Appellant; Sharda Wandile, A.G.P., B.G. Kulkarni and Z.A. Haq, for the Respondent

Judgement

R.S. Mohite, J.—This Writ Petition impugns an order dated 15-5-2001, passed by the Chancellor, Nagpur University in exercise of powers conferred on him u/s 108 of the Maharashtra University Act, 1994, and by which he has declared the election of the petitioner as Dean of Faculty of Science as invalid, and further directed that the vacancy caused by the invalidation of the petitioner's election as Dean of Faculty of Science should be filled by holding a fresh election.

2. The relevant facts, which gave rise to the filing of the present petition can be summarised as follows :--

(a) On 9-9-1983, the petitioner was appointed as a lecturer in Microbiology in Shri Shivaji Science College, Nagpur,

(b) By 15-10-1999, the petitioner had become the senior-most lecturer in the College. An election to the Board of Studies was soon to be held and for that purpose, the Principal of the College was required to designate the "Head of Department" to be a part of the electoral College, for the purposes of election of 6 Heads of Departments u/s 37(2)(b) of the Maharashtra University Act, 1994. It is not disputed that in or about October, 1999, the Principal of Shri Shivaji Science College, Nagpur, designated the petitioner as the "Head of Department",

for the purposes of election of 6 Heads of Departments, contemplated u/s 37(2) (b). There is no dispute that the said designation was made by the Principal of the College as per Direction No. 8, issued by the Vice Chancellor of Nagpur University, which direction has statutory force u/s 14(viii) of Maharashtra University Act.

(c) On 26-11-1999, the election of 6 Heads of Departments in College, was held u/s 37(2)(b), and the petitioner was elected as one of such 6 Heads of Departments, on the Board of Studies in the subject of Microbiology.

(d) On 15-2-2000, the petitioner was further elected as the Chairman of the Board of Studies, for the subject of Microbiology u/s 37, Sub-section (4) of the Maharashtra University Act, 1994, and on being so elected by operation of Section 33(5)(b) of the said Act, he also became an ex-officio member of the Faculty of Science.

(e) On 2-8-2000, the petitioner was awarded a Teacher Fellowship under the Teacher Fellowship Scheme promulgated by the University Grants Commission. Under this scheme, he was required to conduct research and complete his Ph. D. within a duration of one and a half years. The research under the scheme was required to be conducted by the petitioner at the Nagpur University, since, his college did not have the necessary infrastructure for conducting the required research.

(f) On 13-9-2000, the Principal of Shri Shivaji Science College, Nagpur, addressed a letter to the petitioner, informing him that he had been selected for the award of Teacher Fellowship for Ph. D. and permitting him to join Ph.D. Class in Microbiology Department in the Nagpur University at Nagpur for one and a half years w.e.f. 13-9-2000. The letter stated that the petitioner should hand-over all his charge to Dr. C. J. Chandekar, lecturer in Microbiology in the College, and to inform him accordingly. The letter lastly stated that immediately after the tenure of one and a half years was over, the petitioner should report and join his duty.

(g) On 13-9-2000, the petitioner immediately sent a reply to the Principal of his College and stated that he had handed-over the complete charge of Microbiology Department of the College to Dr. C. J. Chandekar on 13-9-2000 at 11.00 a.m.

(h) On the same day, i.e. on 13-9-2000, the petitioner addressed a further letter to the Registrar, Nagpur University, Nagpur inter-alia stating that he had been relieved by the Principal of Shivaji College on 13-9-2000 and further placing on record that he had joined the Microbiology Department, Nagpur University on 13-9-2000.

(i) On 25-2-2001, the election to the office of Dean of Faculty of Science in Nagpur University, was held and the result of this election was declared on 27-2-2001. The petitioner contested this election and was elected as the Dean" of the Faculty of Science. Respondent No. 3, who was another contesting candidate was defeated in the said election.

(j) On 3-3-2001, respondent No. 3 filed a petition u/s 108 of the Maharashtra University Act, before respondent No. 1, Chancellor of Nagpur University, inter-alia challenging the validity of the election of the petitioner as Dean of Faculty of Science.

(k) After hearing both sides by the impugned order dated 15-5-2001, the Chancellor in exercise of powers u/s 108 of the Act, declared the election of the petitioner as Dean of Faculty of Science as invalid and directed the holding of a fresh election as aforesaid.

(l) On 31-5-2001, the present Writ Petition came to be filed by the petitioner, challenging the impugned order of the Chancellor, dated 15-5-2001.

(m) On 6-6-2001, the petition was admitted and interim relief was granted in terms of prayer Clause (b) (i) and (ii), and a stay was granted to the effect and operation of the impugned order as well as to the election to the Office of Dean of Faculty of Science, which was scheduled to be held on 7-6-2001.

3. Before I deal with rival contentions, it is the admitted fact that even as on today, the petitioner is not teaching in his College and continues to peruse the Teacher Fellowship, under the Teacher Fellowship Scheme of the University Grants Commission.

4. The arguments made on behalf of the petitioner can be summarised as follows :--

(a) That even after he joined the Teacher Fellowship Scheme of University Grants Commission, he continued to remain the teacher in the College, as under the terms and conditions of the scheme, the college was required to give the petitioner academic leave and was duty bound to protect his emoluments as a teacher, grant him necessary increments as and when due, protect his seniority and grant him other benefits enjoyed as a teacher. Apart from the Scheme, he relied upon the judgment of the Division Bench of this Court delivered in the case of Gangadhar v. Chancellor, Marathwada University, delivered on 14-6-1983 and reported in 1983 Mh.L.R. (Bom) 427 wherein after considering the definition of "Teacher" as contained in Section 2(30) of the Marathwada University Act, this Court held that a teacher who joins a Teacher Fellowship Program, sponsored by the UGC does not cease to be a teacher within the meaning of Section 2(30) of the Marathwada University Act, 1974, merely because he is not imparting instructions or guiding research within the meaning of the definition of teacher.

(b) That he also continued to be a "Head of Department" within the meaning of Direction No. 8, issued by the Nagpur University for the purposes of election of 6 Heads of Departments, as contemplated u/s 37(2)(b) of the Maharashtra University Act, particularly as his designation as Head of Department, earlier made by the members had not been revoked and consequently, his membership of Board of Studies, Chairmanship of the Board of Studies and election to the Dean of Faculty of Science could not be held to be invalid. It was consequently

urged that the finding of the Chancellor to the effect that he had ceased to be the Head of Department and, therefore, had also ceased to hold all posts occupied by him subsequently and as a consequence was incorrect.

(c) That in any case even assuming that he was not imparting any instructions, training and/or research in his college, nevertheless, it could only be said that he was under suspension as "Head of Department", but it could not be said that he had ceased to be the "Head of Department" within the meaning of the aforesaid direction No. 8.

5. On behalf of the respondents, the submissions made by way of reply can be summarised as follows :--

(a) That there was no definition of the term "Head of Department", except that contained in direction No. 8 which had statutory force. Under the said definition, a person who was not principally responsible for instruction, training and/or research in a subject, could no longer remain the Head of Department of the College.

(b) That u/s 43 of the Maharashtra University Act, it was the intention of the legislature that once any person who ceases to be an officer of the University or a member of any authority or body, is deemed to have vacated the office to which he had been eligible by virtue of his being elected, nominated, appointed or co-opted from the category to which he ceased to belong, It was contended that the interpretation to be put on the word "Head of Department" under direction No. 8 should be harmonious with the intent of the legislature while including Section 43 in the Maharashtra University Act, 1994.

6. As regards the first point raised by the petitioner, that he continued to be a teacher, there does not seem to be any dispute. It has been noticed that the definition of the word teacher as contained in Section 2(34) of the Maharashtra University Act, 1994 is different from the definition of the word teacher u/s 2(30) of the Marathwada University Act, as interpreted by this Court in the case of Gangadhar v. Chancellor (supra). In the present case, the impugned order does not hold that the petitioner has ceased to be a teacher. The respondents also have not seriously contended that the petitioner ceased to be a teacher under the Maharashtra University Act, I have perused the definition of the word teacher u/s 2(30) of the Marathwada University Act and the definition of the term teacher in the Maharashtra University Act, 1994 and notwithstanding the change in the wording, it does appear that the reasoning and ratio given by the Division Bench of this Court in the case of Gangadhar v. Chancellor, Marathwada University (supra) would continued to be valid even in the present case.

7. The main question, however, is that even if the petitioner is a teacher, whether he can be said to remain "Head of Department", as defined under direction No. 8 issued by the Nagpur University. The relevant part of the aforesaid direction No. 8, which falls for consideration needs to be reproduced and is as under :--

"NAGPUR UNIVERSITY DIRECTION NO. 8 Under Section 37(2)(b)

Election of six Heads of Departments in Affiliated Colleges on Board of Studies.
For purpose of this Direction :

1. (i) "Head of Department" means a teacher, other than Principal, principally responsible for teacher, instructions, training and/or research in a subject, designated by the Principal as such.

(ii) "Department" means a Department of the affiliated college with reference to each subject or group of subjects, as the case may be, comprised in a Board of Studies assigned to a faculty.

(iii) "Affiliated College" means a College which is affiliated to the Nagpur University under Maharashtra Universities Act, 1994 and whose candidates (i.e. students) have appeared for the final examination of the first degree in the faculty.

2. The Principal shall designate the senior-most approved teacher in affiliated college as the Head of Department. Provided, that no person shall be designated as the Head of Department of more than one subject."

8. From a conjoint reading of Clause (i) and (ii) of the said direction, it can be said that the requirements for a person to become a "Head of Department" are as under:--

(a) He must be a teacher;

(b) He must not be a Principal;

(c) He should be principally responsible for instructions, training and/or research in a subject;

(d) He should be designated by the Principal, which designation should be made by the Principal in favour of a teacher, who is senior-most approved teacher in the college.

9. In the present case, the petitioner had all qualifications when he was initially designated as "Head of Department" under direction No. 8. However, on 13-9-2000, when he handed over all charge to Dr. C. J. Chandekar when he left the college and joined the Nagpur University for conducting his research under the Teacher Fellowship Scheme of the UGC, he could not possibly have remained responsible for instruction, training and/or research in his college. Thus, one of the requirements of the term "Head of Department", could no longer be fulfilled. In my opinion on reading of direction No. 8, there can be no doubt that the petitioner, who was no longer imparting instruction, training and/or research in the college could by any stretch of imagination be said to be the "Head of Department" of his college.

10. Once this position is accepted, then by operation of Section 43, he would cease to hold all the further posts occupied by him i.e. the post of Member of

Board of Studies, Chairman of Board of Studies, Member of Faculty of Science. Consequently, if he had ceased to be a member of Faculty of Science, he could not have been eligible to contest the election to the post of Dean of Faculty of Science. The intent of the legislature in introducing of Section 43 is very clear. Once the foundation, which is the basis for being elected, appointed, nominated or co-opted for the next post goes then the entire edifice built thereon must collapse like a pack of cards. The operation of Section 43 in this regard is multiple and simultaneous.

11. The contention of the petitioner, that in any case his designation of "Head of Department" cannot be said to cease and at the most can be said to be under suspension, while he is away from the college under the Teacher Fellowship Scheme does not have any merit. Once the essential requirement for being "Head of Department" i.e. being principally responsible for instructions, training and/or research in the subject, no longer exists, then the person concerned cannot be said to remain as "Head of Department" and ceases to hold such designation. In the present case, the petitioner admittedly gave up his charge on 13-9-2000 in the college and proceeded to join the University for conducting research on the very same day. On his giving up charge as such he ceased to be "Head of Department" because he ceased to be responsible for instruction, training and/or research in the college. When the petitioner's designation as the "Head of Department" in the present case was ended by the Principal's letter dated 13-9-2000, the petitioner was called upon by the Principal to hand-over his charge to Dr. C. J. Chandekar, lecturer in Microbiology in the college and when this requirement was met by the petitioner on the same day as recorded by his own letter dated 13-9-2000, addressed to the Principal. It is not in dispute that as on the date of election to the post of Dean of Faculty of science which was held on 25-2-01, the petitioner had not resumed his duties. He was therefore not the "Head of Department" of the college on 25-2-01 and therefore, by operation of Section 43 as aforesaid he ceased to hold other offices/posts to which he was appointed as a consequence and was thus not eligible to contest the election to the office of Dean of Faculty of Science in the Nagpur University.

12. In the light of the above, the order passed by the Chancellor has proceeded on a correct legal basis and the finding of respondent No. 1 that the petitioner had ceased to be head of the department on 13-9-2000, as he had handed-over the complete charge to another person and consequently, had ceased to be a Member of the Board of Studies in Microbiology and was not eligible for contesting the election of Dean of Faculty of Science held on 25-2-2001, is correct.

13. In the result, the Rule issued in this petition stands discharged and the interim relief would stand vacated. There shall be no order as to costs.