

(2024) 04 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 10057 Of 2022

Dr. Smt. Naveed-Us-Sahar

APPELLANT

Vs

Dr. Babasaheb Ambedkar Marathwada University, Through Its
Registrar And Others

RESPONDENT

Date of Decision : 04-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 — Rule 36(2)(b)

Citation : (2024) 04 BOM CK 0019

Hon'ble Judges : Vibha Kankanwadi, J;S.G. Chapalgaonkar, J

Bench : Division Bench

Advocate : A.S. Deshpande, S.S. Thombre, P.S. Patil, P.S. Dighe

Final Decision : Dismissed

Judgement

1. The petitioner approaches this Court under Article 226 of the Constitution of India with the following prayer :-

"Respondent No.1 may kindly be directed to accord approval to the appointment of the petitioner as Principal of Maharashtra College of Education, Aurangabad, without any further delay by quashing and setting aside the impugned communication of R-1 dated 6.8.2022 at Exh"J" so also the communication of R-2 dated 7/8.9.2022 at Exh `M' also may kindly be quashed and set aside."

2. The petitioner contends that she is qualified as M.A., M.Ed. and Ph.D. She worked as Assistant Professor with respondent No.4 college since 1989. She became Professor in the year 2019. On 29.11.2021, the respondent No.4 published an advertisement for filling up the posts of Principal at Marathwada College of Education, Aurangabad, thereby inviting applications from the eligible candidates. The petitioner being qualified and eligible, responded to the advertisement and submitted her candidature. She was interviewed by duly constituted Selection Committee. After interview, she being the meritorious and

suitable candidate, president issued an appointment order dated 18.5.2022, pursuance to recommendation of Selection Committee. The proposal for grant of approval to the petitioner's appointment was submitted by the respondent No.4 to the University. On 26.7.2022, University pointed out certain deficiencies in the proposal. The deficiencies were removed within time. Thereafter, respondent University issued the impugned communication rejecting the proposal, giving reason that in absence of President/Chairman of the governing body, the Selection Committee was invalid.

3. According to the petitioner, The selection Committee was valid in terms of Government Resolution dated 10.5.2019 as well as the UGC Regulations. The Chairman of the governing body had nominated his representative and other members of the Committee were in tune with the UGC Regulations. Therefore, the impugned communication is not sustainable in law.

4. An affidavit-in-reply is filed on behalf of respondent No.4 Management contending that the Committee was duly constituted. The representative of the Chairman was nominated by him. Apart from that, representative of the Vice Chancellor and Director of Higher Education were present alongwith Experts in the subject. No fault can be found in the composition of the selection committee. However, the erroneous order has been passed on proposal based on misinterpretation of legal position.

5. We have considered the submissions advanced on behalf of respective parties. The core issue that arises for consideration before this Court is as follows :-

"Whether the composition of selection committee for selection of Principal at Respondent No. 4 College was valid in terms of the UGC Regulations and GR issued by state, for want of participation in person by the chairman of governing body at the meeting of committee"

6. The UGC Regulations notified on 18/07/2018 provides for composition of the Selection Committee for recommendation of names of suitable candidate for appointment to the post of College Principal, it has been adopted by state of Maharashtra Vide GR dated 10/05/2019 which reads thus :-

There shall be a Selection Committee for recommending names of the suitable candidates for appointment for the post of college Principal. The selection committee shall be as under :-

- i] Chairperson of the Governing Body to be the Chairperson.
- ii] Two members of the Governing Body of the college to be nominated by the Chairperson of whom one shall be an expert in academic administration.
- iii] Two nominees of the Vice Chancellor who shall be Higher Education Experts in the subject/field concerned out of which atleast one shall be a person not connected in any manner with the affiliating University. In case of Colleges notified/declared as minority educational institutions, one nominee of the

Chairperson of the College from out of a panel of five names, preferably from minority institutions, recommended by the Vice-Chancellor of the affiliated university of whom one should be a subject expert.

iv] Three Higher Education experts consisting of the Principal of a College, a Professor and an accomplished educationalist not below the rank of a Professor (or be nominated by the Governing Body of the College out of a panel of six experts approved by the relevant statutory body of the university concerned).

v] An academician representing SC/ST/OBC/ Minority/Women/ Differently-abled categories, if any of the candidates representing these categories is the applicant, to be nominated by the Vice Chancellor, if any of the above members of the selection committee does not belong to that category;

vi] Two subject experts not connected with the college to be nominated by the Chairperson of the governing body of the college out of a panel of five names recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the university concerned. In case of colleges notified/declared as minority educational institutions, two subject experts not connected with the University nominated by the Chairperson of the College governing body out of the panel of five names, preferably from minority communities, recommended by the Vice Chancellor from the list of subject experts approved by relevant statutory body.

vii] The Director, Higher Education or his nominee not below the rank of Professor/Principal, in case of post is on grant-in-aid basis

(b) The quorum for the meeting shall be five members, of whom at least two shall be from out of three experts and Director, Higher Education or his/her nominee.

7. Mr. Ajay Deshpande, learned counsel for the petitioner submits that the respondent College is a minority institution. The necessary steps were taken for constitution of the Selection Committee for appointment of Principal in tune with the UGC Regulations. The Committee was consisting of representative nominated by the Chairman of the governing body, nominees of the Chairman, amongst members of the governing body. Two nominees of Vice Chancellor, who were experts in the relevant subject/field, (Higher Education Experts, An Academician, Subject Experts and nominee of Director of Higher Education). He would invite attention of this Court to clause (b) of the regulations, to contend that the quorum for meeting shall be 5 members with atleast 2 experts and nominee of Director of Higher Education. He would, therefore, submit that presence of the Chairman is not necessary once the quorum of 5 members is complete. According to Mr. Deshpande, the Chairman of the governing body would be one of the members of the Selection Committee and there is no prohibition for him to nominate his representative. In the present case, the Chairman of the governing body had nominated Mr. H.K. Kalara as his representative, who was present at in meeting while interviews were conducted by Selection Committee. The President

issued the appointment order based on the recommendation of the Selection Committee. Therefore, no illegality can be found in the Selection Process. The reasoning given by the University in the impugned communication does not find support in law. Mr. Deshpande relies on judgment of this Court in the matter of Secretary, John Wilson Education Society vs. /Sanjay Premanand Athawale, reported in 2017(2) Mh.L.J. 121 and Ganesh Mahadeorao Thawre vs. Central Hindu Military Education reported in 2017(6) Mh.L.J. 589.

8. Mr. P.S. Dighe, learned advocate for respondent No.4 adopts the submissions advanced by Mr. Deshpande and elaborates that because of certain difficulties, the Chairperson/President of the management could not attend the meeting of the selection committee, hence he had nominated Mr. Kalara. As such, there is no illegality in the constitution of the Selection Committee.

9. We have considered submissions advanced on behalf of respective parties. It is not in dispute that the UGC has issued directives prescribing the qualifications as well as the mode and manner of the appointment of teachers, academic scholars, principals of colleges etc. The regulations prescribe composition of a Selection Committee for recommendation of the names of suitable candidates for appointment to the post of Principal. It prescribes that the Selection Committee shall be as per the guidelines prescribed by the State Government in the official Gazette. It is not in dispute before us that the State of Maharashtra has issued GR in tune with the UGC regulations prescribing the constitution of Selection Committee for recommending the name of Principal. Accordingly Chairman of the governing body has to be the Chairperson of the Selection Committee. Apart from the Chairman, two members of the governing body as nominated by the Chairperson, nominees of Vice Chancellor, Higher Education Experts and Academicians representing SC/ST/OBC/Minority/Woman, if any of the candidate is member of such category, subject experts, nominee of Higher Education are prescribed. Sub-clause (b) of the Regulations prescribes quorum of the meeting which shall be 5 members, out of which, at least 2 shall be from the experts and Director of Higher Education or his nominee.

10. If we look to the Composition of Selection Committee, the Chairperson of the governing body has to be the Chairperson. There is no stipulation that the Chairperson can nominate his representative. The presence of the Chairperson appears to be indispensable and there is a rationale behind the same. There can not be Selection Committee in absence of a Chairperson, who is suppose to be of the Chairman of governing body. While interpreting provisions of regulations, reference can be given observations of Supreme Court of India in the case of Hiralal Ratan Lal vs. The Sales Tax Officer, Section III, Kanpur reported in AIR 1973 SC 1034, wherein, in para. 22, the Apex Court has observed thus :-

"In construing a statutory provision, the first and foremost rule of construction is the literary construction. All that the Court has to see at the very outset is what does that provision say. If the provision is un-ambiguous and if from that provision the legislative intent is clear, the Court need not call into aid the other

rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear.”

The literal construction of UGC Regulations is plain and unambiguous. Therefore, the interpretation sought to be advanced on behalf of the petitioner that once the quorum of 5 members is available, presence of Chairperson is not required cannot be accepted. When composition of the Selection Committee is specifically prescribed under the UGC regulations, presence of Chairperson, who is also Chairman of the governing body is mandated, then it would be difficult to accept petitioner’s contention that Chairperson’s nominee can replace him. Pertinently, there is no provision enabling Chairman to delegate his power to preside over Selection Committee constituted under UGC regulations.

11. It is trite that, if law provides a thing to be done in a particular manner, that has to be done in that manner alone or not at all.

The Honourable Apex Court in the matter of Chandra Kishore Jha v. Mahavir Prasad & Ors. (1999) 8 SCC 266 , held as under:-

“17.....It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: Nazir Ahmad v. King Emperor [(1935- 36)

63 IA 372 : AIR 1936 PC 253 (II)] , Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322 : 1954 SCR 1013 pt98] , State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 SCWR 57] .) An election petition under the rules could only have been presented in the open court up to 16-5- 1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done.....”

The similar analogy is endorsed by the Apex Court in Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh & Ors. (2015)13 SCC 722 wherein this Court held as under:

“14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure.....”

12. So far as the judgment of this court relied upon by Mr. Deshpande, learned advocate appearing for the petitioner in case of Secretary, John Wilson Education Society (Supra), we find that it deals with the provisions of M.E.P.S. Rules, particularly Rule 36(2)(b) which requires that, in case of enquiry into misconduct of Head/President of institution to be member of enquiry committee, this court after considering the law laid down in case Ganesh Mahadeorao Thawre vs. Central Hindu Military Education reported in 2017(6) Mh.L.J. 589 and National Education Society Vs. Mahendra reported in 2007(3) Mh.L.J. 202, concluded that, there is no prohibition under M.E.P.S. Rules to delegate authority by President

and nominate representative of the management. We find that the aforesaid proposition of law has no application while interpreting the U.G.C. regulation that prescribes composition of selection committee for the appointment of Principal at affiliated colleges. Evidently, Rule 36(2) (b) of M.E.P.S. Rules prescribes that the President of institution to be member of enquiry committee alongwith the others. However, U.G.C. regulation prescribes that, Chairman of governing body to be Chairperson of the selection committee. As such under U.G.C. Regulations, the Chairman of governing body is persona designata who shall be the Chairperson of the selection committee and suppose to carry selection proceeding alongwith the members as prescribed under the UGC Regulations, whereas, under M.E.P.S. Rules. President is supposed to be one of the members of enquiry committee. He is not given the independent status of Chairman as prescribed under UGC Regulation. Therefore, interpretation of Rule 36(2)(b) adopted by this court cannot be mutatis-mutandis applied while interpreting UGC Regulation prescribing composition of Selection Committee for the post of Principal.

13. In light of observations here-in-above, the contention of the petitioner that once the quorum of five members is available at the meeting of Selection Committee, presence of Chairperson in person is not required, cannot be accepted. If the guidelines prescribes that Selection Committee should consist of a Chairperson, in absence of Chairperson, the meeting of the selection committee cannot be termed as valid. The University, in the impugned communication has given reason that the constitution of the Selection Committee was not in tune with the UGC Regulations and, therefore, declined to accord approval to the selection of the petitioner. We do not find any discrepancy in the reason recorded by the University in the impugned order. Resultantly, there is no merit in the writ petition. Same stands dismissed. Civil application No. 965 of 2023 also stands disposed of.