
(2015) 04 BOM CK 0143
In the Bombay High Court
Case No : Writ Petition No. 9574 of 2014

Geeta	Vs	APPELLANT
Babasaheb Ambedkar and Others		RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Universities Act, 1994 — Section 2, 25, 25(2)(m), 27, 27 (1) (n)

Citation : (2015) 3 ABR 654 : (2015) 3 ALLMR 497 : (2015) 5 MhLj 248

Hon'ble Judges : M.S. Shah, C.J;N.W. Sambre, J

Bench : Division Bench

Advocate : M.P. Tripathi, Advocate holding for N.B. Khandare, for the Appellant;
S.G. Chapalgaonkar, Advocates for the Respondent

Final Decision : Allowed

Judgement

N.W. Sambre, J.—Rule. Rule made returnable forthwith and by consent, Rule is heard finally.

2. By way of instant petition under Article 226 of the Constitution of India, the petitioner has mainly prayed for the following reliefs :-

"(B) By issuing a writ of certiorari, or any other appropriate writ, order or direction in the like nature, the impugned communication dated 18.10.2014, issued by the respondent No. 3 Registrar, cancelling the membership of the petitioner as member of the Academic Council and Management Council of respondent No. 1 Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, may be quashed and set aside.

(C) It be held and declared that the petitioner, being teacher, having 16 years teaching experience, is member of the Academic Council and Management Council of the respondent No. 1 Dr. Babasaheb Ambedkar Marathwada University, Aurangabad."

3. By the impugned communication dated 18th October, 2014, issued by

respondent no. 3 University incorporated under section 3 the Maharashtra Universities Act, 1994 (hereinafter referred to as the "Act", for the sake of brevity), it was informed to the petitioner that her co-option on the academic council, in accordance with the provisions of section 29 (2) (h) of the Act and pursuant thereto election on the management council in view of provisions of section 27 (1) (n) of the said Act, stands cancelled as she was appointed as University Teacher (Associate Professor) in the Department of English and as such there is change in appointing authority.

4. The facts, as are relevant for the purpose of consideration of the issue raised in the present petition, are as under :-

The petitioner herein claims that she was holding appropriate qualification required for the post of Lecturer and was appointed by Marathwada Shikshan Prasarak Mandal as a Lecturer by an order dated 8th March, 1994. She further claims that the said appointment was continued from time to time and by an order dated 2nd April, 2009, issued by the said management, the petitioner was placed in the selection grade in Reader's category, with effect from 2nd August, 2008.

5. The petitioner was issued another communication by the said management on 8th April, 2009 intimating her that with effect from 2nd August, 2003, she was placed in the pay scale of Rs. 12,000-18,300, i.e. selection grade.

6. The petitioner having gained 16 years teaching experience was qualified to be co-opted under the provisions of section 29 (2) (h) of the Act, as a member of the academic council and was accordingly co-opted, as is apparent from the communication dated 6th September, 2011. The term of the said co-option as a member of the academic council is to be governed by the provisions of sections 43 and 44 of the Act.

7. Vide further communication dated 22nd November, 2011, the petitioner was informed by the respondent university that she was declared elected as a member of the Management Council under provisions of section 27 (1) (n), which term was also governed by the provisions of sections 42, 43 and 44 of the Act.

8. In response to the application made by the petitioner for selection and appointment to the post of Associate Professor, the respondent university, by an order dated 14th August, 2013, selected and appointed her on the post of Associate Professor in the subject of English.

9. However, the petitioner was surprised to receive impugned communication dated 18th October, 2014, whereby she was informed that her membership to the Academic Council and Management Council, stands cancelled in view of the change in the appointing authority as she has become an University Teacher and not a Teacher in ordinary course. As such, present petition.

10. Learned Counsel appearing on behalf of the petitioner, while questioning the legality and validity of the impugned communication would urge that the initial

co-option of the petitioner to the Academic Council as is communicated to her vide letter dated 6th September, 2011 was in accordance with the provisions of section 29 (2) (h) of the Act. He would further urge that the said co-option was by virtue of her qualification and holding the post of Teacher in Devgiri College, which is affiliated to respondent university. He further urged that it is not in dispute that the petitioner holds 16 years of teaching experience and was not co-opted from the category of Principal of college, Heads of University Departments and Heads of recognized institutions. As such, according to him, her co-option as a member of the Academic Council was by virtue of her teaching experience and not qua her appointing authority. In addition to above, he would further urge that the election of the petitioner to the Management Council under section 27 (1) (n) was as a representative of Faculty of Arts and not by virtue of her employment in a private college. He would further urge that the petitioner, having been elected and co-opted in the year 2011 to the Management Council and Academic Council, her term as prescribed under section 42 of the Act will be of five years from 1st September, 2011. He would further urge that section 43, which provides for cessation of membership due to disqualification incurred for membership, has hardly any application to the case of the petitioner as the cessation of membership is attracted only if the candidate so elected, nominated, appointed or co-opted ceases to be such Officer of the University or a member of such authority or the moment he ceases to be belonging to such category. According to him, the petitioner continued to be a Teacher with requisite qualification and mere change in the employer by itself does not attract the cessation provided under section 43 of the Act. He would further urge that section 44 of the Act also has no application as the same provides for disqualification of membership and indisputably the petitioner is not disqualified under any of the clauses (a) to (f) of section 44 of the Act. According to him, the issue raised in the present petition is no more res integra and is covered by the judgment of Apex Court in the matter of Dr. Vasant Pawar vs. Pune University, reported in (1999) 3 Supreme Court Cases 528 and judgment of this Court in Writ Petition No. 7841 of 2014 (Dr. Ramkishan Mukundrao Chaudhary vs. Swami Ramanand Teerth Marathwda University), decided on 15th January, 2015.

11. While countering the above referred submissions, learned Counsel appearing on behalf of the respondents has relied upon the definition of term "Teacher" under sub-section (34) of section 2 of the Act and "University Teacher" under sub-section (41) of section 2. He would urge that the statute makes a categorical distinction between the "Teacher" and "University Teacher". Based on the above, he would urge that since the petitioner has gained status of the "University Teacher", having been appointed as Associate Professor in the Department of English of the respondent university, she has ceased to be a member of the Academic Council, so also Management Council as she has shifted from the category of "Teacher" to that of "University Teacher". He would further urge that the petitioner will not be in a position to continue with status of member of Academic Council and also Management Council being an University Teacher. In

support of his contentions, he has placed reliance on the judgment of this Court in the matter of Vaishali Sitaram Pradhan (Dr.) Vs. Dr. Babasaheb Ambedkar Marathwada University, Aurangabad and another .

12. In addition to above, learned Counsel appearing on behalf of respondents would further urge that the petitioner's teaching experience of 16 years was taken into account as being of a "Teacher" within the meaning of sub-section (34) of section 2 of the Act and as such, she was co-opted on the Academic Council and thereafter was elected on the Management Council. According to him, the moment petitioner ceases to be from the category of "Teacher" and shifts into that of "University Teacher", her status of being co-opted on Academic Council and pursuant thereto further election to the Management Council, automatically ceases.

13. Having considered rival contentions of the parties, this Court is required to answer the question as to whether the change in the status of the petitioner from the category of "Teacher" to that of "University Teacher" incurs disqualification as contemplated under section 44 or under any other provision, and whether petitioner ceases to be member of the Academic Council and also Management Council by virtue of provisions of section 43 of the Act before coming to an end her tenure of five years prescribed under section 42 of the Act, in view of change in her appointing authority.

14. For considering and deciding the above referred issue, in our opinion, relevant provisions of the statute which are required to be taken into account are sub-sections (34) and (41) of section 2 of the Act. Sub-section (34) defines "Teacher" as under :-

"teacher" means full-time approved professor, associate professor, assistant professor, reader, lecturer, librarian, [principal, deputy or assistant librarian and documentation officer in the university and college librarian,] Director or instructor of physical education in any university department, conducted, affiliated or autonomous college, autonomous institution or department or recognised institution in the university"

Sub-section (41) of section 2 of the Act defines "University Teacher" as under :-

""university teacher" means a teacher appointed by the university."

15. The petitioner was initially co-opted to the Academic Council under clause (h) of sub-section (2) of section 29 of the Act, which reads thus :-

"one teacher representing each faculty to be co-opted by the Academic Council from amongst the teachers having not less than sixteen years teaching experience, other than principals of colleges, Heads of university departments and Heads of recognised institutions."

16. By virtue of said co-option, the petitioner was subsequently elected to the Management Council under the provisions of section 27 (1) (n), which reads

thus :-

"three persons elected by the Academic Council from amongst its members as prescribed by Statute"

17. If we examine the co-option of the petitioner on the Academic Council under section 29 of the Act, it is required to be noted that the Academic Council who is responsible for laying down the Academic policies in regard to maintenance and improvement of standards of teaching, research, [extension], collaboration programmes in academic matters and evaluation of work-load of the teachers in an university, same was as a Teacher representing the faculty and said co-option to the Academic Council was from amongst the Teachers having not less than 16 years of teaching experience. Clause (h) of sub-section (2) of section 29 puts a rider that a co-opted teacher representing the faculty, who should be other than the category of principals of colleges, Heads of University Departments and Heads of recognized institutions. If we take into account the entire section 29 of the Act and evaluate the contents thereof in the light of definition of "Teacher" and "University Teacher" quoted supra, it is required to be noted that the word "University Teacher" is not referred to in any of the sub-sections (1) or (2) of section 29 of the Act so as to form a separate class of Teachers to be nominated on the Academic Council. It is also required to be noted that wherever it was the intention of the Legislature to give appropriate representation to University Teacher, the same was specifically provided by referring to such post viz. Professor, as is apparent from the language employed in clauses (g) and (j) of sub-section (2) of section 29.

18. Said clauses read thus :-

"29 (2) (g) one professor from amongst the professors in the university departments or institutions, nominated by the Vice-Chancellor"

"29 (2) (j) one head or director of an academic services unit of the university, nominated by the Vice-Chancellor"

Similar appears to be the case in relation to constitution of Management Council. The Management Council which is the principal executive authority to formulate statutes and forward the same to the Senate for approval consists of various authorities under the Act and outside the purview thereof. The petitioner herein was elected on the Management Council under section 27 (1) (n) as is reproduced herein above as a member of the Academic Council. The over all analysis of the said section reflects that as and when required, the statute has referred to the teacher from the university department, viz. clauses (h), (I), proviso to (k) and (m) of sub-section (1) of section 27 of the Act by virtue of their independent designation and not by the term "university teacher" while qualifying for co-option or election under above referred section.

19. There is one more authority provided under section 25 of the Act, i.e. Senate, which is the principal authority for all financial estimates and budgetary

appropriations. For constitution of the said authority, the statute provides for election of the persons from various categories, such as the principals, representatives of managements of affiliated colleges or recognized institutions, teachers having sufficient teaching experience as provided under the said section, members from registered graduates of the university, persons amongst the Heads of recognized institutions, etc. The over-all analysis of the above referred provisions prompts this Court to infer that wherever it was necessary in all these sections, i.e. 25, 27 and 29, the Legislature has used the word "Teacher" and when it comes to referring to a specific designation under a particular category a specific reference is made thereto, such as "University Teacher", "Professor", "Reader", etc. However, it is required to be noted that only distinction in any of these sections qua words "University Teacher" or "Teacher" is with an intention to attach exception. The exception under the above referred sections is attached to a post, and to the category of "University Teacher" or "Teacher", as is apparent from clauses (u) and (w) of sub-section (1) of section 25 of the Act, which read thus :-

"25 (1) (u) three persons from amongst heads of the university departments or of the university institutions not below the rank of reader, nominated by the Vice-Chancellor"

"25 (1) (w) two persons, nominated by the Vice-Chancellor one of whom shall be an employee of the university and the other shall be from amongst the employees of the affiliated colleges or recognised institutions other than university teachers, teachers, registrars, deputy registrars, assistant registrars"

In view of above, the inference that could be drawn from the plain reading of section is, the section itself provides for exception to post or category. However, same is confined to provision of section 25 of the Act. In case in hand, which is governed by provisions of sections 27 and 29, the qualification that is prescribed is 16 years teaching experience irrespective of the category/post, viz. Principal, Professor, Associate Professor, etc.

20. In view thereof, once it is noted that the section itself does not make any differentiation in between the category of "University Teacher" and "Teacher", but for as and when required in express terms for drawing exception, it has to be inferred that mere change in the appointing authority or change in the category of the petitioner from "Teacher" to "University Teacher", the provisions of sections 43 and 44 of the Act are not attracted. It will be appropriate to reproduce sections 43 and 44 of the said Act :-

"43. Notwithstanding anything contained in this Act or the Statutes made thereunder, where a person, elected, nominated, appointed or co-opted as an officer of university or a member of any of the authorities 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.

44. A person shall be disqualified for being a member of any of the authorities of university, if he -

- (a) is of unsound mind and stands so declared by a competent court;
- (b) is an undischarged insolvent;
- (c) has been convicted of any offence involving moral turpitude;
- (d) is conducting or engaging himself in private tuitions or private coaching classes;
- (e) has been punished for indulging in or promoting unfair practices in the conduct of any examination in any form anywhere;
- [(f) discloses or causes to disclose to the public, in any manner whatsoever, any confidential matter, in relation to examination, the knowledge of which he has come to be in possession, due to his official position.]"

At least plain reading of statute in none of the provisions expressly provides for such disqualification as is claimed in the impugned order, in the matter of petitioner. Appropriate support can be drawn qua above referred observations from the judgment of the Apex Court, in the matter of Dr. Vasant Rao Pawar (cited supra). The relevant observations in paragraph 6 of the said judgment are worth relying, which read thus :-

"6. The said provision postulates that five persons have to be elected from amongst the representatives of the managements of affiliated colleges or recognised institutions. The said representatives constitute the electoral college for electing those five members. The representatives of the managements of affiliated colleges or recognised institutions would, therefore, constitute the category of members from which five members of the Senate are elected and a person who is a representative of the management of an affiliated college or recognised institution and is eligible to be elected as a member of the Senate by virtue of his being such a representative would continue to belong to the category of members from amongst which the members of the Senate are elected so long as he continues to be the representative of the management of an affiliated college or a recognised institution and he would not cease to belong to that category of members merely because he is no longer the representative of the management of the affiliated college or recognised institution which he was representing at the time when he was elected to the Senate but is now the representative of the management of another affiliated college or recognised institution. After being elected as a member of the Senate, the elected member is entitled to continue as such member for his entire term of five years as fixed

under Section 42 of the Act so long as he continues to belong to the category from which he was elected as a member of the Senate. The language used in Section 43 does not support a restricted interpretation of the expression "category" to mean only the representatives of the managements of affiliated colleges or recognised institutions who have been elected as officers of the University or members of any of the authorities or bodies of the University. Section 43 talks of a person being elected by virtue of his being eligible to be so elected 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. This indicates that "category" under Section 43 means the group of members from amongst whom a person is elected as a member of any of the authorities or bodies of the University by virtue of his being eligible to be so elected. As regards a person elected as a member of the Senate by the representatives of the management of affiliated colleges or recognised institutions under Section 25(2)(m) of the Act, the category for the purpose of Section 43 is the group of representatives of the management of affiliated colleges or recognised institutions from amongst five persons who are elected as members of the Senate.

If we apply the above referred law to the facts of the present case, it is required to be inferred that the co-option of the present petitioner was not by virtue of being a "Teacher" or "University Teacher", but by virtue of she being in the category of candidate holding 16 years teaching experience and working as a Lecturer/Associate Professor. The "Teacher" or "University Teacher" as is defined under section 2 of the Act shall hardly have any bearing over the co-option of the petitioner on the Academic Council and consequently to the Management Council under the relevant sections.

21. In other words, it is required to be inferred that the petitioner, after becoming an University Teacher, does not incur any disqualification as contemplated under section 44 nor ceases to be a member of the Academic Council and the Management Council by virtue of section 43 as her qualification of holding 16 years of teaching experience continues to hold and she was never elected from the constituency of Teachers, within the meaning of sub-section (34) of section 2 of the Act. As such, the petitioner's co-option will not cease by virtue of provisions of section 43 of the Act.

22. So far as reliance placed by the learned Counsel appearing on behalf of the respondents on the judgment in the matter of Vaishali Sitaram Pradhan (cited *supra*) is concerned, it is required to be noted that the said case governs the membership of same person on the Senate as a representative of different categories. In the facts of the said case, it was noted by this Court that the petitioner therein was Head of the Department of English and by virtue thereof had claimed nomination to the Senate. The petitioner also claimed that she was elected as member of Senate from the Post Graduate Teachers' Constituency. This Court held that the same person, i.e. the petitioner therein, by virtue of she

being holding post of the Head of the Department of English and elected to the Senate from Post Graduate Teachers' Constituency, cannot be continued at the same time in the light of provisions of section 43, in relation to cessation will operate.

23. In the facts of the present case and having regard to the law discussed herein above, it is required to be noted that section 43 of the Act, which deals with cessation of membership, wherein the change in the appointing authority of petitioner is not provided to be a cause for cessation. The petitioner herein does not cease to be belonging to the category of Teacher holding 16 years teaching experience.

24. In the light of foregoing reasons, the present petition succeeds.

25. The writ petition as such is allowed and Rule is made absolute in terms of prayer clauses (B) and (C) with no order as to costs.