

(2015) 01 BOM CK 0327

In the Bombay High Court

Case No : Writ Petition No. 7841 of 2014

Ramkishan Mukundrao Chaudhary

APPELLANT

Vs

Swami Ramanand Teerth Marathwada University, Vishnupuri,
Nanded

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Universities Act, 1994 — Section 25(2)(m), 37(2)(b), 42, 43

Citation : (2015) 5 MhLj 510

Hon'ble Judges : R.M. Borde and P.R. Bora, JJ.

Bench : Division Bench

Advocate : N.B. Khandare, h/f Manish P. Tripathi, for the Appellant; V.P. Latange, for the Respondent

Final Decision : Allowed

Judgement

P.R. Bora, J.—Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. Communication dated 13-8-2014 whereby the membership of the Petitioner on the Board of Studies of the Respondent University came to be terminated, is questioned by the Petitioner in the present Petition.

3. In the year 2012, the Petitioner was elected as a Member of the Board of Studies for the subject of Economics under the faculty of Social Science under the provisions of section 37(2)(b) of the Maharashtra Universities Act, 1994 (hereinafter referred to as Act of 1994) for the period of five years. Subsequently, the Petitioner also got elected as a Chairman of the Board of Studies. At the relevant time, the Petitioner was serving as Head of the Department in Smt. Sushiladevi Deshmukh Mahila Mahavidyalaya, Latur. On 24-2-2014, the Petitioner was relieved from the post of Head of the Department, Economics from the said college, and on the same day, Petitioner joined as Principal and Head of the Department of the Economics in Saraswati Sangeet

Mahavidyalaya, Latur whereupon he was prevented from carrying out his duties as the Chairman of the Board of Studies and though vide communications dated 7-3-2014, 10-3-2014, 21-3-2014 he requested the University Administration to call the meeting of Members of the Board of Studies for the subject of Economics, no such meetings were called and requests so made by the Petitioner were turned down. Ultimately, vide the impugned communication dated 13-8-2014, the Registrar of the Respondent University communicated the Petitioner that, his membership on the Board of Studies has come to a termination, since he had ceased to be the Head of the Department of Economics in Smt. Sushiladevi Deshmukh Mahila Mahavidyalaya, Latur from where he was elected as a Member of the Board of Studies being the Head of the Department of the Economics in the said college. Aggrieved by, the Petitioner has approached this Court by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India.

4. The learned counsel for the Petitioner, taking us through the provisions of the Act of 1994 and more particularly section 37(2)(b) and section 43 of the Act submitted that, the impugned communication is patently illegal and unsustainable. The learned counsel submitted that, the Petitioner was elected as a Member on the Board of Studies under section 37(2)(b) of the Universities Act from the category of Head of the Department and since he remained in the said category, though he has joined as Principal in Saraswati Sangeet Mahavidyalaya, Latur, he continues to belong to the category from which he was elected on the Board of Studies. The learned counsel relied upon the Judgment of the Hon''ble Apex Court in the case of Vasant Rao Pawar (Dr.) v. Pune University, (1999) 3 SCC 528 to substantiate his said contention. Per contra, the learned counsel appearing for the Respondent supported the impugned communication and submitted that, the moment petitioner ceased to be the Head of the Department of Economics in Smt. Sushiladevi Deshmukh Manila Mahavidyalaya, Latur he ceased to belong to the category from which he was elected on the Board of Studies and he should be, therefore, deemed to have vacated his office under section 43 of the Act of 1994.

5. On careful consideration of the submissions advanced on behalf of the learned counsel for the parties, and after having gone through the relevant provisions of the Act of 1994, it is apparently revealed that, the impugned communication is unsustainable and is liable to set aside. The similar controversy, as has arisen in the present matter, was dealt with by the Hon''ble Apex Court in the case of Dr. Vasant Rao Pawar (cited supra) relied upon by the learned counsel for the Petitioner. The question which was for consideration of the Hon''ble Apex Court in the aforesaid appeal was "whether the appellant who was elected as a Member of the Senate of Pune University as a representative of the Management of affiliated colleges or recognised institutions under section 25(2)(m) of the Act of 1994 has ceased to be a member of the Senate by virtue of his having been replaced as its representative by the management of the institution represented by him on the date of the election". The appellant before the Hon''ble Apex Court was

nominated as its representative by the Nasik District Maratha Vidya Prasarak Samaj. Subsequently, he was elected as a member of the Senate by the electoral college consisting of the representatives of the managements of affiliated colleges and recognised institutions under section 25(2)(m) of the Act of 1994. Subsequently, the said appellant was also nominated as their representative by the managements of two other institutions whereas the Maratha Vidya Prasarak Samaj adopted a resolution whereby instead of the appellant, one another person was nominated as the representative of the management of the Maratha Vidya Prasarak Samaj and a commutation to that effect was forwarded to the Registrar of the Pune University. On receiving such communication, the Registrar of the said University informed the appellant that since he had ceased to be the representative of the Maratha Vidya Prasarak Samaj, his membership of all the bodies of the University including the Senate, has come to a termination. Being aggrieved by the said termination of his membership of the Senate, the appellant filed a writ petition in the Bombay High Court which was dismissed and the said decision was impugned by the appellant before the Hon''ble Supreme Court. The Hon''ble Supreme Court allowed the appeal and quashed the impugned communication cum order dated 23-7-1997 passed by the Registrar of the Pune University whereby he has terminated the membership of the appellant on the Senate. While allowing the appeal so filed by the appellant, the Hon''ble Supreme Court has interpreted section 43 of the Act of 1994 and more particularly the word "category" under the said section.

6. In the said matter, it was contended on behalf the University that in the context of section 25(2)(m) of the Act of 1994, the expression "category" in section 43 has to be construed as meaning the elected representatives of the management of affiliated colleges or recognised institutions and as soon as the appellant ceased to be the representative of the first institution in which capacity he was elected as member of the Senate, he ceased to belong to the category of elected representatives of the managements of the affiliated colleges and he should be deemed to have vacated his office of the Senate under section 43 of the Act. The Hon''ble Apex Court rejected the said contention by holding that, prior to the resolution of the Executive Committee of the first institution by which appellant was replaced by another person as representative, the appellant had already been nominated as their representative by two other recognised institutions and continued as the representative of the management of a recognised institution even after he had ceased to be the representative of the management of the first institution. The Hon''ble Apex Court further held that, in the said circumstances, it cannot be accepted that after passing of the resolution by the first institution nominating some other persons to be its representatives, the appellant had ceased to belong to the member from amongst whom five members of the Senate were elected under section 25(2)(m) of the Act of 1994 and by virtue of section 43 of the Act, he has ceased to be a member of the Senate of the University.

7. We find that, the facts involved in the present petition are too identical with

the facts in the appeal before the Hon"ble Apex Court (cited supra). In the instant case also though the Petitioner got relieved from the post of the Head of the Department (Economics) from Smt. Sushiladevi Deshmukh Mahila Mahavidyalaya, Latur on 24-2-2014, on the same day he joined as the Principal and the Head of the Department of Economics in Sarswati Sangeet Mahavidyalaya, Latur. As held by the Hon"ble Apex Court in the Judgment cited supra while construing the expression "category" in section 43, we have to keep in view the provisions contained in section 37(2)(b) of the Act, which reads as under :

"Section 37(2)(b):-- six Head of Departments in colleges, having not less than ten years teaching experience, elected by the Heads of departments from amongst themselves."

The said provision postulates that the Board of studies shall consist of the Head of the University Department or institution in the relevant subject and six Head of Departments in the colleges having not less than ten years teaching experience elected by the Heads of Departments from amongst themselves. After being elected as a member on the Board of Studies, 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 he continues to belong to the category from which he was elected as a member of the Board of Studies. The fact that, the petitioner had ceased to be the Head of the Department, Economics of Smt. Sushiladevi Mahila Mahavidyalaya, Latur the college wherein he was working as Head of the Department, Economics, at the time when he was elected as a member on the Board of Studies does not mean that he had ceased to belong to the category from which he was elected as a member of the board of studies because prior to his ceasing to be the Head of the Department, Economics in Smt. Sushiladevi Mahila Mahavidyalaya, Latur, the Petitioner was appointed and assumed charge as the Principal and the Head of the Department, Economics in Sarswati Sangeet Mahavidyalaya, Latur. It is thus evident that, even after relieved from the post of Head of the Department, Economics in Smt. Sushiladevi Mahila Mahavidyalaya, Latur, the Petitioner continued to be in the category of the Head of the Department, Economics since on the same day he joined and assumed charge as the Principal and the Head of the Department of Economics in Sarswati Sangeet Mahavidyalaya, Latur.

8. As held by the Hon"ble Apex Court in the matter of Dr. Vasant Rao Pawar (supra) the word "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. Under section 37(2)(b) of the Act of 1994, the Category for the purpose of section 43 is the Head of the Department (Economics), having teaching experience of not less than ten years from the colleges affiliated to the University concerned. The language used in section 43 does not support a restricted interpretation of the expression "category" to mean that a person elected on the Board of Studies of

the University under section 37(2)(b) of the Act will remain in the category of Head of the Department only till he remains the Head of the Department in the affiliated college from which he was so elected. On the contrary, after being elected as the member on the Board of Studies from the category of Head of the Department, the said 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 be in the category of the Head of Department from which he was elected may be in an another affiliated college.

9. For the reasons stated above, we set aside the communication cum order dated 13-8-2014 impugned in the present petition. Consequently, the petitioner shall continue to hold the post of the member on the Board of Studies (Economics) in the Respondent University and to act as the Chairman of the Board of Studies (Economics). Writ Petition is allowed in above terms. Rule is made absolute accordingly.