

(2007) 01 BOM CK 0099
In the Bombay High Court
Case No : W. P. No. 7084 of 2006

Vaishali Sitaram Pradhan (Dr.)

APPELLANT

Vs

Dr. Babasaheb Ambedkar Marathwada University, Aurangabad
and another

RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Universities Act, 1994 — Section 25, 25(2), 25(2)(p), 25(2)(u), 25(2)(y)

Citation : (2007) 01 BOM CK 0099

Hon'ble Judges : P.V. Hardas, J;P.R. Borkar, J

Bench : Division Bench

Advocate : A.S. Deshpande, for the Appellant; N. B. Khandare, G. P., For respondents No. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Borkar, J.—By this petition under Article 226 of the Constitution of India, the petitioner challenges the order dated 4-10-2006, whereby the respondent Nos. 1 and 2 held view that the petitioner being Head of the Department of English, could not continue to be member of the authority i.e. Senate, u/s 43 of the Maharashtra Universities Act, 1994 (hereinafter referred to as, "the University Act") and as such she has ceased to be member of the Senate.

2. Briefly stated, petitioner Dr. Vaishali Pradhan was working as an University Lecturer at Aurangabad. In December, 2005, she was elected as member of the Senate from Post Graduate Teachers Constituency, as provided u/s 25(2)(y) of the University Act. As per rotation, the petitioner came to be appointed as the Head of the Department of English for a period of two years. Soon thereafter, the respondent No. 1 asked the petitioner to elect any one of the two posts to be retained by tendering resignation of other. The petitioner did not budge and ultimately communication dated 4-10-2006 was issued, whereby the petitioner was informed that since she could not hold two posts simultaneously she has

ceased to be member of Senate u/s 43 of the University Act with effect from 28-6-2006.

3. Heard Shri A. S. Deshpande, learned counsel appearing on behalf of the petitioner and Shri N. B. Khandare, learned Government Pleader appearing on behalf of the respondent Nos. 1 and 2.

4. It is argued on behalf of the petitioner that even after the appointment as Head of the Department, the petitioner continues to be a Post Graduate Teacher and as such, she is entitled to retain both the posts of the Head of the Department and the member of the Senate. Section 25 of the University Act is regarding the constitution of Senate and said section is part of Chapter IV, which deals with authorities of the University. Section 25 lays down that the Senate shall be principal authority for the financial estimates and budgetary appropriations and for providing social feed back to the University of current and future academic programmes. Sub-section (2) of section 25 lays down constitution of Senate and clauses (a) to (i) deal with ex-post facto membership. Other members are either elected or nominated. Section 25(2)(y) lays down that, "five Post Graduate Teachers having not less than five years teaching experience at the post graduate level elected by the Post Graduate teachers from amongst themselves....." No doubt, the petitioner is elected from the post graduate teachers constituency. Section 43 is as follows : .

"43. Cessation of membership. - 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 as officer of a member under any of the categories of offices 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."

5. It is argued before us on behalf of the respondents that the category of post graduate teachers is different from category of Heads of the Departments. Our attention was drawn to section 25(2)(u) of the University Act, which lays down that 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 shall be members of Senate. So, it is argued that though for other purposes, heads of the departments may be post graduate teachers, inasmuch as they are expected to teach post graduate classes, still having accepted appointment as head of the department, the petitioner ceases to be member of the category of post graduate teachers constituency. The petitioner goes into another category of heads of the departments of the university, which is a separate category recognized by section 25(2)(u) of the University Act.

6. If we consider the provision of sections 25 and 26 of the University Act, it is clear that Senate is one of the principal authority which deals with financial estimates, budgetary appropriations, providing social feed back on current and future academic programmes. As per section 26 of the University Act, Senate suggests new academic programmes, measures for improvement and development of the university, institution of new degrees, diplomas. Therefore, considering the functions and duties of Senate, persons from various segments connected with the university are given representation. For that purpose, we may also refer to clause (1) of section 25(2) of the University Act, which is regarding eighteen principals. Clause (m) deals with representatives of the management. Clause (p) deals with twenty teachers. Clause (v) deals of Deans of the faculties. Thus, Deans, Principals can be categorized as teachers, but that would not allow Principals or Deans or Faculties from being elected from constituency of teachers u/s 25(2)(p) of the University Act. So, in our considered opinion, for the purpose of constitution of Senate, the category of Heads of University departments and category of post graduate teachers are different.

7. Here, we may usefully refer to the case of Ramesh Chandra Jiwanraon Munghete vs. Nagpur University, Nagpur, 1992(2) Mah LR 574. In that case, Principal of one College had resigned and joined as Principal of another College. As a result, membership of Senate changed from one category to another. It is held that change of category automatically brings to an end the membership of the Executive Council. It is also held that the petitioner in that case had to contest election afresh to become member of the Council. So even though the petitioner remained Principal, since he has changed from College Aheri to Mahila Mahavidyalaya, Gadchiroli, there was change of category which he was representing.

8. Considering section 43 of the University Act, it appears that a person who is elected, nominated, appointed or co-opted as a member of any authority by virtue of this being eligible to be so elected, nominated, appointed or co-opted as such member in relation to such office or authority, she ceases to be such member of such authority as soon as she ceases to belong to such category. So the word "category" used is in relation to being eligible to be so elected, nominated, appointed or co-opted as member of the authority. So, here category is related to different constituencies mentioned in various clauses of section 25(2) of the University Act, which ultimately constitutes the Senate. So here the word "category" has to be given meaning as class or division of people having particular shared characteristic with relation to different segments from which members of the Senate are drawn. In clause (1), representatives of Principals are covered. In clause (p) representatives of college teachers are covered. By clause (r) members of registered graduate of the university are covered. In face, members of other categories would be graduates and still there is a college of registered graduates to elect their representatives. Therefore when clause (u) make a separate category of heads of the university departments and clause (v) speaks about Deans of the Faculties, they are considered to be different

categories from category of post graduate teachers covered by clause (y). It is not expected that same person should be on Senate as representative of different categories. Viewed from this angle, we are of the opinion that the interpretation of section 43 of the University Act propounded by the respondents is legal and correct.

9. When the petitioner came to be appointed as head of the department, she automatically switched over from the category covered by clause (y) to category (u) of sub-section (2) of section 25 of the University Act. The impugned order is passed on footing that the petitioner ceases to represent category covered by section 25(2)(y) of the University Act. We are of the view that a person cannot claim to be representative of more than one category in the scheme of constitution of the Senate u/s 25 of the University Act. In this view of the matter, writ petition is devoid of merits and same deserves to be dismissed.

10. In the result, writ petition is dismissed. Rule stands discharged. No. costs.