NO: CS/MU/37/08/C6765/711.

K. Sankaranarayanan
GOVERNOR OF MAHARASHTRA

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5 March 2010.

ORDER

I had received petitions dated 29/07/2008 and 21/08/2008 from Shri Balasaheb Salve, Lecturer in Philosophy, BNN College, Bhiwandi and Shri V. S. Shekade, Lecturer in Marathi, Kankavali College, Kankavali respectively, under Section 108 of the Maharashtra Universities Act 1994, challenging the election of Shri Subhash Athavale, Librarian, Smt. CHM College of Arts, Science and Commerce, Ulhasnagar, Dist. Thane, on the Senate of the University of Mumbai (hereinafter referred as the "University")from the teachers' constituency under Section 25 (2)(p) of the Maharashtra Universities Act, 1994(hereinafter referred as the "Act").

2. Shri Subhash Athavale, Librarian, Smt. CHM College, Ulhasnagar, Dist. Thane has been declared elected to the Senate of the University of Mumbai from the Teachers' Constituency under Section 25 (2) (p) of the Maharashtra Universities Act, 1994, on 27 July 2008. The said election to the Senate was held on 25th July 2008 by the University of Mumbai.

3. As per the provision in Section 25 (2) (p) of the Act, the teachers having teaching experience of not less than 5 years other than heads of University Departments or University Institutions or Principals or heads of recognized institutions are eligible for contesting the election to the Senate from teachers' constituency. As per section 2 (34) of the Act, the Librarians are considered as teachers. As such, the Librarians having teaching experience of not less than 5 years are also eligible for contesting the election to the Senate under Section (25) (2) (p) of the Act.

4. Sarvashri Balasaheb Salve and V. S. Shekade have challenged the election of Shri Subhash Athavale on the following grounds:

i) Shri Athavale is a Librarian and therefore though included as a Teacher in the definition of "teacher" under Section 2(34) of the Act he can not be a candidate for the election from the Teachers' Constituency as he does not have any "teaching experience".

ii) Shri Subhash Athavale's educational qualifications are B.A. and B. Lib. I.S. He does not have post-graduate qualification which is a mandatory qualification for selection and appointment of teachers. The College in which Shri Athavale works is Smt. CHM College of Arts, Science and Commerce where there is no subject which he is qualified to teach. His approval is also as Librarian and not as a Lecturer.

iii) At the time of the scrutiny of the nomination papers for the election they had raised the objection to the nomination paper of Shri Athavale, since he does not have any teaching experience at all and in any case not of 5 years teaching experience. However, their objections were rejected by the Registrar and the then Ag. Vice-Chancellor and the nomination paper of Shri Athavale was held valid by the then Acting Vice-Chancellor.

iv) In the matter of the Nagpur University, the then Chancellor had passed Order dated 14.12.2005 directing the University that the College Librarians having teaching experience of not less than five years be held eligible for contesting the election on the Senate under Section 25(2)(p) of the Act. Subsequently, on the petition from Shri Salve under Section 108 of the Act, the Chancellor passed an Order dated 23.07.2008 directing that the aforesaid Order dated 14.12.2005 passed by him is also applicable to the University of Mumbai and other traditional Universities. In spite of this order, the Vice-Chancellor and the Registrar of the University did not take any action to remove the name of Shri Athavale from the list of candidates and / or the ballot paper. On the contrary, Shri Athavale was allowed to contest the election and he was also declared as elected from the Arts Faculty to the Senate from the Teachers' Constituency on the Senate. When the counting got over on 27th July 2008, they along with other candidates had called on the Registrar not to declare the result of Shri Athavale as he was not eligible to be a candidate and that the above order of the Chancellor needs to be complied with. This

objection and the request was also not heeded by the University authorities.

5. I called for a report from the Vice-Chancellor of the University in the matter on 13th August 2008. Instead of sending a factual report, the Registrar of the University by his letter dated 21 October 2008 informed my office as under :-

a) The point raised by Shri Salve that Shri Athavale is not a teacher and not having Post Graduate Qualification is incorrect. Under Section 2 (34) of the M. U. Act, 1994, Shri Athavale is a teacher duly qualified and having the University approval to that effect.

b) It is true that some objections were raised during the scrutiny with regard to teaching experience of Shri Athavale along with some other objections. These objections were resolved as per the provisions under Statute 368(b) of University of Mumbai.

c) With reference to contents of paragraph (7) of Shri Shekade's letter, the Registrar informed that the provisions of Statutes S 371 (2) and S 372 have been followed with respect to invalid votes.

6. As the above report received from the Registrar was not self explanatory, my office vide letter dated 22/10/2008 had requested the Registrar to send the following information:-

A) Details of the actual teaching experience of Shri Athavale along with a copy of the certificate issued by the Principal in this regard and the nomination papers by Shri Athavale.

B) Copy of University letter giving approval as full time teacher to Shri Athavale. If it is true that Shri Athavale do not possess P. G. Degree, then how he has been allowed to teach the Students by the College and the University has approved him as a full time teacher?

C) Whether any Order was passed for resolving the objections raised during the scrutiny under Statute 368 (b)? If yes, copy of the same. If not, whether it is not necessary to issue such Order?

D) What is the work load of teaching assigned to Shri Athavale by the College? Whether the University has taken confirmation of the work load for the desired period as envisaged in Section 25 (2) (p) of Act to held him eligible to contest the election to the Senate from the "Teachers Constituency" from the Directorate of Higher Education before accepting the nomination papers of Shri Athavale?

E) Whether preference of candidate indicated in Number but in Marathi or Roman or in circle viz (1), (2) etc. would be a reason for treating the Ballot Papers as invalid as the intention of the elector is shown in figure.

7. However, the Registrar, University of Mumbai by his letter dated 3 November 2008, informed my office as under :-

1) In the enrollment form of Shri Athavale the Librarian from the teachers' constituency duly certified by the Principal of the Smt. CHM College, in which Shri Athavale has mentioned that he has 10 years of teaching experience (para 8.3 of the enrollment form).

2) As per approval letter No. Concol SA/2025/1999 dated 3 April 1999 Shri Athavale possess Post Graduate degree (M.Lib. Science).

3) As per Statute 368 (b) the Ag. Vice-Chancellor, had passed the orders on 4 July 2008 as regards to their objection at the time of scrutiny of the nomination forms.

4) As regards the work load of teaching assigned to Shri Athwale by the College, the Registrar informed that it is not applicable in case Shri Athwale.

5) The decision to make Ballot paper invalid is as per the provision of the Statute 372. There is no provision in the Statute to validate a Ballot paper based on intention of the elector.

8. As there was no clarity in the reply received from the Registrar vide his letters dated 21.10.2008 and 3.11.2008 my office vide letter dated 27 November 2008 called the following additional information from the Registrar :-

1. Details of actual teaching experience of Shri Subhash Athavale which were not received with the letter of the Registrar.

2. From the Enrollment Form filled by Shri Athavale and Certificate of Principal enclosed with the said Form, it appears that experience of Shri Athavale since his appointment is as Librarian and therefore whether his experience as Librarian is considered as teaching experience? If so, kindly give reasons for doing so.

3. The University vide its letter dated 3 April 1999 has given approval to appointment of Shri Athavale as Librarian. A copy of approval letter of his appointment as Teacher.

9. In the mean time Shri Balasaheb Salve through his Advocate sent a copy of the Writ Petition No. 369 of 2009 filed by him in the Bombay High Court in March 2009, challenging the election of Shri Subhash Athavale to the Senate of the University of Mumbai under Section 25 (2) (p) of the Maharashtra Universities Act, 1994 on the same grounds as mentioned in his Petition to me. The petitioner also impleaded the Chancellor as Respondent No.4.

10. In view of the above, the Vice-Chancellor was again requested by my office vide letter dated 24.9.2009 to look into the matter personally and arrange to send the report along with the requisite information asked for without any further delay so as to take a decision on the petition filed by Sarvashri Salve and Shekade.. However, I could not receive the report from the Vice-Chancellor /Registrar in the matter till 9/02/2010.

11. On 6/01/2009 the Bombay High Court disposed of the Writ Petition filed by Shri Salve and directed that the petition shall be decided by the Chancellor within a period of two months.

12. I, therefore, gave an opportunity of being heard to the petitioners namely Shri Balasaheb R. Salve, Shri V. S. Shekade and Shri Subhash Athavale, whose election has been challenged, on 10th February 2010 at

1030 hrs. at Raj Bhavan, Mumbai. I had also called Dr. (Mrs) Chandra Krishnamurthy, Acting Vice-Chancellor and Prin. K. Venkataramani, Registrar of the University for the hearing. On her request I granted leave of absence to the Acting Vice-Chancellor as she was to go to Kolkatta on personal grounds. However, the Acting Vice-Chancellor has submitted her written say in the matter through her representative Dr. V. N. Magare, Director, BCUD of the University, who also attended the hearing.

13. During the hearing Shri Salve and Shri Shekade reiterated what they stated earlier in their petitions. Shri Salve said that when the scrutiny of the nomination papers for the said election was taken up by the Registrar and the University officials on 4.7.2008 and when shri Athavale's nomination paper was taken up for verification they raised the objections to the candidature of Shri Athavale. However, their objections were rejected by the Registrar orally and on their insistence that the Vice-Chancellor is the final authority to decide on their objections as per the Statutes, the papers were placed before the then Acting Vice-Chancellor Dr. A.D.Sawant who also rejected their objections and accepted the nomination form of Shri Athavale as valid and instructed the election branch of the University to accept the nomination from of Shri Athavale. However, no speaking order was issued by the then Acting Vice-Chancellor Dr.Sawant in this regard. These acts of the Registrar and the then Acting Vice-Chancellor are in violation of the provisions of Section 25(2)(p) of the Act and the respective Statutes, for which the responsibilities should be fixed against the concerned.

14. Shri Salve also pointed out that the Chancellor's Orders dated 23.7.2008 were brought to the notice of the Registrar and the then Acting Vice-Chancellor. In spite of this, the Registrar and the then Acting Vice-Chancellor did not take any cognizance and action to remove the name of

Shri Athavale from the list of candidates /ballot paper and allowed Shri Athavale to contest the election held on 25.7.2008 and also subsequently declared him as elected on 27.7.2008. The said act of the Registrar and the then Acting Vice-Chancellor is in defiance of the Chancellor's orders and amounts to insubordination. Therefore, Shri Salve requested that the above points need to be viewed seriously.

15. During the hearing Shri Salve also presented a copy of the letter dated 30/12/2008 received by them from the Principal, CHM College of Arts, Science and Commerce under the right to information act, wherein the Principal has stated that Shri Subhash Athavale takes only orientation lectures for freshers on library usage and that librarian as per Statues are not provided with any lectures. Thus it is clear that Shri Athavale is not having the teaching experience as provided under Section 25(2)(p) of the Act. Shri Salve also stated that the approval granted by the University to the appointment of Shri Athavale vide its letter dated 03/04/1999 is as librarian and not as a lecturer (teacher). Therefore Shri Athavale is not eligible to contest the election on the Senate. Shri Salve further said that the delay on the part of the University in submitting report on their petition and the requisite information to Chancellor's office has compelled them to file the Writ Petition in the Bombay High Court.

16. During the hearing Shri Athavale submitted his written say and tried to prove his bonafide and the eligibility for contesting the election to the Senate under Section 25 (2)(p) of the Act stating that he has teaching experience as he is taking orientation lectures in CHM College since his appointment as librarian from 1998 and hence he has teaching experience of not less than 5 years as envisaged in Section 25(2)(p) of the Act. He further said that all kinds of students in any faculty in CHM college come to him and he provides them necessary data and find for them appropriate

book of knowledge on the subject. He also pointed out that the University of Mumbai in the affidavit filed by it in reply to the Writ Petition No. 369 of 2009 filed by Shri Salve in the Bombay High Court stating that thus "there are precedents of college Librarians contesting the Senate elections and also having been elected under Section 25(2)(p) of the Act".

17. Dr. V. N. Magare, Director BCUD who was representing the Acting Vice-Chancellor said that Statute 439 specified the duties of the teacher. Statute 439(B) says that "A teacher shall engage classes regularly and impart such lessons and instruction, do such internal assessment/examination evaluation as the Head of the Department/ Principal shall allot him from time to time and shall not ordinarily remain absent from work without prior permission or grant of leave". Statute 439 (A) specifies the workload of the teachers in the colleges. The overall workload of a full time college teacher shall be 40 clock hours per week. Out of these 40 clock hours the teacher is expected to put in work of 20 clock hours per week on the college premises including such instructional work as field work and / or extra-mural observations which can not be done on the college premises as prescribed by the University. Of the 20 clock work hours shall consist of 17 lectures each by 45 minutes duration and 3 tutorials each of 45 minutes duration per week to be equivalent of 15 clock hours per week.

18. Prin. Venkataramani, Registrar said that these Statute are not in force any more as they were framed under the old Act i.e Bombay University Act, 1974. As per Section 115 (1) of the Maharashtra Universities Act 1994, after the commencement of the said Act the earlier University Acts including the Bombay University Act 1974 stood repealed. However, as per provision of Section 115(xii) of the said 1994 Act the Statues and Ordinances in respect of any existing University, shall in so

far as they are not inconsistent with the provisions of the said Act, continue to be in force and deemed to have made under the said Act in respect of corresponding University by the Senate or Management Council, as the case may be of that University, until they are superseded or modified by the Statutes under the said Act. In view of this provision, the contention of the Registrar that these Statutes are no more in force is not proper and correct.

19. Dr. (Mrs.) Chandra Krishnamurthy, acting Vice-Chancellor in her letter dated 9 February 2010 has stated that the then Vice-Chancellor Prof. M.D.Bengalee by circular dated 17.1.1987 accorded academic status to the College Librarians under the powers conferred upon her under Section 11 (6)(b) of the Bombay University Act, 1974. However, the academic status and eligibility criteria to contest elections are two different issues. According academic status is with a particular purpose as is envisaged by UGC and MU Act 1994 and it is for the purpose of appointment/promotion and other benefits. Eligibility criteria as envisaged under Section 25(2)(p) of the Act clearly mentions the necessary minimum teaching experience is required for contesting the election to the Senate from the category of teachers and does not provide for any other inclusive explanation for teaching experience.

20. The Vice-Chancellor has further stated that the Orders of the then Acting Vice-Chancellor Dr. A.D.Sawant passed by him on 4th July 2008 upholding the candidature of Shri Subhash Athavale appears to be not in conformity with the two orders of the then Chancellors dated 14.12.2005 and 23.7.2008 respectively. It appears that the University has not taken into consideration these two orders of the Chancellor while rejecting the objections raised by Shri Salve and Shri Shekhade to the candidature of Shri Athwale.

21. I have carefully considered the submissions made by the Acting Vice-Chancellor, Registrar, Director BCUD, Shri Salve, Shri Shekade and Shri Subhash Athavale and the facts on record. Section 2(34) of the Maharashtra Universities Act, 1994, reads as under :-

> 'Teacher' means, full time approved Professor, Associate Professor, Reader, Lecturer, Librarian, Director or Instructor of Physical Education in any University Department, conducted affiliated or autonomous College, autonomous Institution or Department or recognized Institution in the University.

Though the Librarians are included in the definition of the teacher, his/her right to contest the election is dependent upon fulfillment of the eligibility criteria prescribed under Section 25(2)(p) of the Act, which requires minimum 5 years teaching experience. If they do not satisfy the requirement of minimum 5 years teaching experience, the librarian can not claim right to contest the elections to the Senate of the University under Section 25(2)(p) of the Act. Section 25 (2)(p) of the Act, for the election of 20 teachers on Senate, clearly says that only those teachers having experience of not less than 5 years are eligible to contest the elections. Considering this it can be said that librarians not having actual teaching experience will not be eligible for contesting the election to the Senate from the category of "teachers" under Section 25(2)(p) of the Act.

22. As per Section 2 (34) of the Act, the College Librarians are included in the definition of Teacher. Section 25 (2) of the Act provides for "20 teachers" having teaching experience of not less than 5 years shall be elected to the Senate. The said Section excludes the teachers who are Heads of University Departments or University Institutions or Principals or Heads of Institutions from contesting the Senate election under the category of teachers under Section 2 (34) of the Act. However, College Librarians who are otherwise teachers under Section 2 (34) of the Act and

are not excluded under Section 25 (2)(p) of the Act and fulfill the qualifying condition of having teaching experience of not less than 5 years are entitled to contest the election to the Senate under Section 25 (2)(p) of the Act. In view of this, with reference to the petitions filed by Dr. S.M. Nikose of RTM Nagpur University, the previous Chancellor passed an order on 14th December 2005,directing that the College Librarians having teaching experience of not less than five years be held eligible for contesting election to the Senate under Section 25 (2)(p) of the Act and subsequently on receipt of the petition dated 15th July 2008 from Shri B.R. Salve of University of Mumbai, the then Chancellor passed an order on 23 July 2008 directing that the directives in the Chancellor's order dated 14 December 2005 are also applicable to the University of Mumbai and other traditional universities established under the provisions of the MU Act,1994. These orders have been received by the University on 23rd July 2008 itself and also brought to the notice of the Registrar and the Acting Vice-Chancellor by the petitioners.

23. From the submission of the Vice-Chancellor, it is clear that according academic status and eligibility criteria to contest elections are two different issues. According to academic status it is with a particular purpose as is envisaged by UGC and MU Act 1994 and it is for the purpose of appointment/promotion and other benefits. Eligibility criteria as envisaged under Section 25(2)(p) of the Act clearly mentions the teaching experience required and does not provide for any other inclusive explanation for teaching experience. It is also observed from the submissions of Shri Athavale as also the letter dated 30.12.2008 issued by the Principal, CHM College that Shri Athavale takes only orientation lectures for fresher on library usage and that Shri Subhash Athavale does not take any lecturer in the college as librarian. Thus conducting the orientation lectures for refreshers can not be considered to be full time

teaching experience in terms of the work load of teachers as specified in the relevant Statute No. 439 (A) of the University. Therefore, Shri Athavale has no actual teaching experience and can not be held eligible to contest the election of the University Senate from the category of teachers under Section 25(2)(p) of the Act.

24. Taking into account all the facts mentioned above and the records on the file, I am satisfied that Shri Subhash Athavale, Librarian has no teaching experience as envisaged under Section 25(2)(p) of the Act and as such he does not qualify to be eligible to contest the election to the Senate of the University from the category of "teachers" under Section 25(2)(p) of the Act.

25. I have also observed that:-

1) Dr. A. D. Sawant, the then Acting Vice-Chancellor of the University rejected the objections raised by the petitioners that since Shri Athavale does not posses the teaching experience, he is not eligible to contest the election to the Senate from the category of teachers, without verifying the facts as to whether Shri Athavale is eligible to contest the election to the Senate or not. The Vice-Chancellor has also clarified that the Order of the then Acting Vice-Chancellor, Dr. A.D. Sawant, upholding the candidature of Shri Athavale appears to be not in conformity with the Chancellor's Orders and that the University has not taken into consideration the Orders of the Chancellor while rejecting the objections raised by the Petitioners. Thus. Dr. Sawant, then acting Vice-Chancellor being competent authority as per Statute No. 368 (B) to take decision on the disputes/objections raised on the nomination of a candidate for the election has failed in his duties. He also did not pass any

speaking order in this regard. This act of Dr. A.D.Sawant, then Acting Vice-Chancellor amounts to violation of the provisions of the Act and the Statutes. Moreover, it is evident from record that the Order passed by the Chancellor on 23.07.2008 has been received by the Vice-Chancellor on 23rd July 2008 itself and subsequently the Vice-Chancellor sent it to the Pro-Vice-Chancellor and the Registrar for appropriate action. The election took place on 25th and the counting of votes of the said election was taken place on 27th July 2008. Thus, the Registrar and the Pro-Vice-Chancellor, who was then acting as Vice-Chancellor, were fully aware of the Chancellor's Order dated 23.07.2008 and they could have taken the corrective measures in respect of the declaration of the result of Shri Subhash Athavale especially when the objections regarding the eligibility of Shri Athavale to contest the election were raised by the Petitioners and when they met the Registrar and the Acting Vice-Chancellor after the counting got over on 27th July 2008 and urged them not to declare Shri Athavale as elected since he is not eligible in view of the Chancellor's Order dated 23.07.2008. Thus, fully knowing about the Chancellor's Order, they choose to declare Shri Athavale as elected instead of verifying the facts and the eligibility of Shri Athavale for contesting election to the Senate in terms of the Chancellor's Order. They also knowingly overruled the Chancellor's Order dated 23.07.2008. Therefore, these acts of the Registrar and the Acting Vice-Chancellor show the lack of application of mind in holding Shri Athavale as eligible for contesting the election to the Senate from the category of teachers. I, therefore, hereby place on record my displeasure with the actions of the then Acting Vice-Chancellor, Dr. A. D. Sawant in this case.

2) Prin. Dinesh Panjwani, Smt. CHM College while forwarding the nomination form dated 2/07/2008 of Shri Athavale has certified the declaration made by Shri Athavale that he has total teaching experience of 10 years as a teacher. Whereas in his subsequent letter dated 30/12/2008 Prin. Panjwani has mentioned that Shri Athavale takes only orientation lectures for freshers on library usage and librarians as per the Statutes are not provided with any lectures. From this it is clear that Prin. Panjwani has concealed the information and misled the University by certifying the nomination form of Shri Athavale saying that he has the required teaching experience. In fact, it was the duty of the Principal of the College to verify the facts and satisfy himself first about the eligibility and teaching experience of Shri Athavale before sending the nomination form of Shri Athavale to the University. As Prin. Panjwani has failed in his duties and misled the University, it is necessary that the disciplinary action is taken against Prin. Panjwani by the concerned authority. I, therefore, direct the Acting Vice-Chancellor, to issue suitable instructions to the concerned to take disciplinary action against Prin. Panjwani on the above count.

3) During the hearing, I asked Shri Venkataramani, Registrar, who accepted the nomination forms for the said election to the Senate. The Registrar replied that as a returning officer he has accepted the nomination forms and as a returning officer he has every right to accept or reject the nomination forms if the candidate does not fulfill the eligibility conditions. The Registrar, being the returning officer, it was his duty to verify the facts that Shri Athavale is having requisite teaching experience as envisaged under Section 25(2)(p) of the Act and should have satisfied himself first that Shri Athavale is eligible for contesting election to the Senate from the

category of teachers under Section 25(2)(p) of the Act. The Registrar appears to have relied upon the details mentioned by Shri Athavale in his nomination form and on the certification given by the Principal of the College to that effect. Therefore, Prin Venkataramani, Registrar being the returning officer for conducting the said elections to the Senate has failed in his duties by accepting the nomination form of Shri Athavale at the scrutiny level, when he was not eligible. As observed above, the Registrar has willfully disobeyed the Chancellor's Orders dated 14/12/2005 and 23/07/2008. The delay on the part of the University in sending report along with the requisite information to the Chancellor's Office, has led to the litigation and the Bombay High Court had to direct the Chancellor to decide the petitions in question within a stipulated time limit. Further, ineligible person continued to enjoy the membership of the Senate from 27.7.2008 till date for pending decision on the petitions filed before me by Sarvashri Salve and Shekade for want of a report and the requisite information/documents from the University for a long time. This amounts to negligence in his duties and insubordination on the part of the Registrar, who as provided under the Act, is the Chief Administrative Officer of the University. This is a matter of grave concern. I, therefore, place on record my displeasure with the acts of omission and commission of the Registrar in this case and for willfully disobeying the Chancellor's Orders dated 14/02/2005 and 23/07/2008 and thus hereby direct the Vice-Chancellor being the appointing and disciplinary authority in respect of Registrar, to initiate proceedings against Prin. K. Venkataramani, Registrar of the University for punitive action against him in accordance with the provisions of the Act, Statutes, Ordinances, Rules and Regulations of the University and the

provisions of the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of Non-Teaching Staff Rules 1984) for his lapses on the above counts.

26. I, K. Sankaranarayan, Chancellor, University of Mumbai, therefore, in exercise of the powers conferred upon me under Section 108 of the Maharashtra Universities Act, 1994, declare that the election of Shri Subhash Athavale, Librarian, CHM College, Ulhasnagar from the category of teachers to the Senate of the University under Section 25(2)(p) of the Act is null and void.

5/3/10

(K. Sankaranarayanan)
Chancellor,
University of Mumbai.