

30 April 2009

ORDER

Subject: Regarding nominations of Prof. A. G. Somavanshi, Dr. P. B. Raghuvanshi and Prin. (Dr.) S. B. Hotey on the Board of Examinations.

- Reference:**
- 1) Letter dated 20 November 2006 from Dr. Santosh Thakare & 3 others.
 - 2) Letter dated 21 November 2006 from Shri V. J. Khonde
 - 3) Letter No. P-100/2006/184 dated 22 November 2006 from Vice-Chancellor Sant Gadge Baba Amravati University, Amravati.
 - 4) Letter No. SGBAU/1/121/A-478 dated 23 February 2007 from Vice-Chancellor Sant Gadge Baba Amravati University, Amravati.
 - 5) Letter No. SGBAU/121/A-364 dated 14th March 2007 from Registrar, Sant Gadge Baba Amravati University, Amravati.
 - 6) Show Cause Notice No. CS/AU/06/(6488)/1796 dated 28th March 2007 issued by the Secretary to the Chancellor to Dr. Kamal Singh, Vice-Chancellor, Sant Gadge Baba Amravati University.
 - 7) Show Cause Notice No. CS/AU/37/06/(6488)/1977 dated 28 May 2007 issued by the Secretary to the Chancellor to Dr. P. B. Raghuvanshi.
 - 8) Show Cause Notice No. CS/AU/37/06/(6488)/1978 dated 28th May 2007 issued by the Secretary to then Chancellor to Dr. S. B. Hotey.
 - 9) Letter dated 9 June 2007 from Dr. P. B. Raghuvanshi.
 - 10) Letter No. SGBAU/P-100/104 dated 19 June 2007 from Vice Chancellor, Sant Gadge Baba Amravati University.
 - 11) Letter No. SGBAU/135/18 dated 20 July 2007 from Registrar, SGB Amravati University, Amravati
 - 12) Letter dated 4 February 2008 from Dr. P. B. Raghuvanshi
 - 13) Letter No. SGBAU/1/121/A-293 dated 5 February 2008 from Registrar, Sant Gadge Baba Amravati

University, Amravati.

14) Letter No. P-100/09/53 from Vice-Chancellor, Sant Gadge Baba Amravati University, Amravati.

15) Letter dated nil of Dr. Santosh Thakare submitted to the Chancellor at the time of hearing on 24 April 2009 by Dr. V. R. Deshmukh

16) Written submission submitted by Dr. P. B. Raghuwanshi to the Chancellor at the time of hearing on 24 April 2009.

I had received two petitions dated 20 and 21 November 2006 under Section 9(4) of the Maharashtra Universities Act, 1994 (hereinafter referred as the "Act") from Dr. Santosh Thakare and 3 others and Shri V. J. Khonde respectively challenging the nominations of Prof. A. S. Suryavanshi, Prin.(Dr.) S. B. Hotey and Dr. P. B. Raghuwanshi made by the Vice-Chancellor on the Board of Examinations Sant Gadge Baba Amravati University (hereinafter referred as the "University"). They have raised the following doubts:-

i) If there was emergency and if the proposal was presented on 3 October 2005, why the decision was taken on 14 October 2005.

ii) Why Notification dated 14 October 2005 was dispatched around 26 October 2005.

iii) The Academic Section which is responsible for maintaining the record and publishing the Gazette stated in the note sheet that the serial number of pages were taken on 17 October 2005.

2. I called for a report from the Vice-Chancellor of the University in the matter. The Vice-Chancellor submitted report vide letter dated 23 February 2006. The facts of the case in brief as reported by the Vice-Chancellor are as follows :-

- i) Dr. V. S. Jamode then the Acting Vice-Chancellor vide Notification No. 193 dated 11 October 2005 has nominated Prof. A. G. Somavanshi, Head of Department of Education, Sant Gadge Baba Amravati University, on the Board of Examinations under Section 31(3) (d) of the Act.
- ii) Dr. V. S. Jamode, then the Acting Vice-Chancellor vide Notification No. 194 dated 14 October 2005 had nominated Prin.(Dr.) S. B. Hotey and Dr. P. B. Raghuwanshi on the Board

of Examinations under Section 31(3) (e) & (f) of the Act respectively on behalf of the Management Council by exercising emergency power under Section 14(7) of the Act. The Management Council in its meeting held on 10 February 2006 has approved their nominations.

- iii) Dr. Somavanshi was nominated on 2 September 2005. The proposal were initiated on 3 October 2005 for nomination under Section 31(3) (e) & (f) of the Act under the provision of Section 14(7) of the Act. Accordingly the Acting Vice-Chancellor nominated Principal (Dr.) S. B. Hotey and Dr. P. B. Raghuwanshi on behalf of the Management Council under Section 14(7) of the Act on 3 October 2005. But Notification Nos. 193/2005 and 194/2005 were published on 14 October 2005 in extra ordinary Gazette but actual nominations were made between 17 October to 20 October 2005. The action of the Acting Vice-Chancellor under Section 14(7) of the Act was unanimously approved by the Management Council in its meeting held on 10 February 2006.

3. Under Section 31(3)(d) of the Act, one head of University Department, not below the rank of Reader is to be nominated by the Vice-Chancellor on the Board of Examinations.

4. Under Section 31 (3) (e) of the Act, one Principal other than Dean, is to be nominated by the Management Council on the Board of Examinations.

5. Under Section 31(3)(f) of the Act, one teacher other than heads of University departments or Principals, is to be nominated by the Management Council, on the Board of Examinations.

6. Section 14(7) of the Act read as under:-

"If there are reasonable grounds for the Vice-Chancellor to believe that there is an emergency which requires immediate action to be taken, he shall take such action, as he thinks necessary and shall at the earliest opportunity, report in writing the grounds for his belief that there was an emergency, and the action taken by him, to such authority or body as would, in the ordinary course, have dealt with the matter, In the event of difference arising between the Vice-Chancellor or and the authority or body whether there was in fact an emergency, or on the action taken (where such action does not affect any person in the service of the University), or on both, the matter shall be referred to the Chancellor whose decision shall be final.

Provided that, where any such action taken by the Vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer, within thirty days from the date on which he receives notice of such action, an appeal to the Management Council".

7. After scrutiny of the facts on record submitted by the University and provisions in the Act, it appeared to me that,

i) as Prof. A. G. Somavanshi is a nominee of the Vice-Chancellor his nomination is proper.

ii) the emergency power of the Vice-Chancellor under Section 14(7) of the Act, cannot be said to include a power to nominate a member on the authority/body including Board of Examinations in the present case. Thus to read the power to nominate as an emergency power" is not proper.

8. Having regard to the facts and circumstances mentioned above, I was prima facie satisfied that nomination of Principal (Dr.) S. B. Hotey and Dr. P. B. Raghuwanshi on the Board of Examinations vide Notification No. 194/2005 dated 14 October 2005, are not in conformity with the provisions in the Section 14(7) of the Act.

9. I had, therefore in exercise of powers conferred upon me under Section 9(4) of the Act issued Show Cause Notices to Dr. Kamal Singh, Vice-Chancellor of the University, Principal (Dr.) S. B. Hotey and Dr. P. B. Raghuwanshi to explain within a period of fifteen days from the receipt of Notices, why Notification No. 194/2005 dated 14 October 2005 should not be set aside.

10. The Show Cause Notice sent to Principal (Dr.) Hotey was received back as he was not available at the address. The University later informed that as Prin. (Dr.) Hotey retired on 31 July 2006, he is ceased to be a member of the Board of Examinations with effect from 1 August 2006 under Section 43 of the Act.

11. Both the Vice-Chancellor and Dr. P. B. Raghuwanshi vide letter dated 19 June 2007 and 4 February 2008 submitted their replies to the Show Cause Notices.

The Vice Chancellor in her reply has stated that:

- i) The then Acting Vice Chancellor seems to have been advised by Controller of Examinations and also supported by the Registrar to make the said nominations.
- ii) The complete formation of the Board of Examinations could only be done by nominating 4 persons as per Section 31(3)(d),(e),(f) and (g) of the Act. However the then Acting Vice Chancellor made three nominations, instead of 4 as such this lacuna may be noted. Even though these nominations were initiated on 3 October 2005 and effected on 14 October 2005, actual nominations were made between 17 October to 20 October 2005. Thus, it is clear that the motives behind these nominations were not emergency.
- iii) It is also a fact that, the office of the Registrar obtained the serial numbers of the Notifications i.e. 193 and 194 and their page numbers in Part II Gazette i.e. 257 and 258 from the academic Section on 17.10.2005 and that too without informing the academic Section the subjects for those Notifications. In responding to the lengthy note written by the Deputy Registrar (Academic), the then Registrar wrote his note on 20.10.2005 which clearly proves that Notifications were published somewhere between 17.10.2005 and 20.10.2005.

The Vice Chancellor, while accepting the finding of the Chancellor that Prof. A.S. Somvanshi's nomination is proper, has stated that the Chancellor's decision in respect of nominations of Prin.(Dr.) Hotey and Dr. Raghuwanshi is final and supreme.

12. In his reply, Dr. Raghuwanshi has stated that,:-

- i) In view of the High Court order in W.P. No. 4560 of 2005 filed by Shri Santosh Thakare, there was urgent necessity of constituting the Board of Examinations before the constitution of the Management Council. Eventhough period was extended by the Hon'ble High Court for taking decision, the Management Council could not be constituted and therefore, the Vice Chancellor nominated him and Prin. (Dr.) Hotey on the Board of Examinations by exercising the provisions in the Section 14(7) of the Act.
- ii) As required under Section 14(7) of the Act, the action to nominate him and Prin. (Dr.) Hotey on the Board of Examinations was ratified and approved by the Management Council at its first meeting unanimously.

Thus his nomination on the Board of Examinations is in fact nomination by the duly constituted Management Council.

- iii) As there was no difference between the Vice Chancellor and the Management Council since the action of nomination by the Vice Chancellor has been unanimously ratified and approved by the Management Council, the said petitions are not even maintainable in law.
- iv) The petitions have been filed 13 months after the action of the Vice Chancellor and 8 months after the approval of the Management Council and this delay is self-speaking. Further as the petitioners are not members of the Management Council, they have no locus standi to make grievances about the said nominations.
- v) Interpretation of any provision of the Act by the Chancellor within the scope of the Section 108 of the Act cannot be with retrospective effect. As such, the said interpretation cannot be applied to the action taken in October 2005 to nominate him and Prin. (Dr.) Hotey under section 14(7) of the Act, as the said interpretation was not available at that time and the matter was not referred by anybody for decision under Section 108 of the Act prior to 2005.

Further he has prayed that for the reasons stated above his nomination on the Board of Examinations being ratified and approved by the Management Council itself in its meeting dated 10 February 2006, the same be maintained and both the petitions be dismissed.

13. I gave an opportunity of being heard to Dr. Raghuvanshi. I had not called Principal(Dr.) Hotey as he is ceased to be a member of the Board of Examination since 1 August 2006. I had also called the Vice-Chancellor and Registrar of the University and also the petitioners for the hearing. Accordingly, Dr. (Ms.) Kamal Singh, Vice-Chancellor. Dr. Deshpande, Registrar, Dr. P. B. Raghuvanshi, Dr. V. R. Deshmukh , Dr. R. A. Umekar, Shri V. J. Khonde and Dr. D. P. Kale appeared before me on 24th April 2009 to put forth their arguments personally. However, Dr Santosh Thakare sent his written submission with Dr. V. R. Deshmukh expressing his inability to attend the hearing due to his pre-scheduled hearing before the Central Information Commissioner, New Delhi.

14. During the hearing Dr. Deshmukh reiterated what they stated earlier in writing. He further said that the said nominations are illegal. Dr. Somavanshi is a member of Board of Examinations in dual capacity, one as a Dean of the Faculty and second being a nominated member

under Section 31(3)(d) of the Act. He also said that the nominations need to be set aside as in case of Prof. Chittaranjan whose co-option had been set aside by the Chancellor. He then submitted written submission of Dr. Santosh Thakare to the Chancellor.

15. During the hearing Dr. Umekar said that as it was already mentioned in the Show Cause Notice given to Prof. Chittaranjan that the Vice-Chancellor has no right to nominate any person on the Board of Examinations under Section 14(7) of the act, the action need to be taken in respect of the said nominations.

16. During the hearing Dr. Kale said that the nominations of Dr. Somavanshi is illegal and also not ethical as name of the new Vice-Chancellor was already declared.

17. During the hearing Dr. Raghuwanshi made oral as well as written submissions. Dr. Raghuwanshi reiterated what he stated earlier in writing. He also submitted that,-

i) Dr. Santosh Thakare was punished by the University for indulging in unfair practices in the conduct of examinations and his membership on various authorities of the University stood ceased as consequences thereof. Dr. Thakare, filed a Writ Petition No. 4560 of 2005 before the Hon'ble High Court, Bench at Nagpur and the Hon'ble High Court remanded the matter to the Board of Examinations of the University for reconsideration with a direction to take fresh decision within four weeks from the date of receipt of the said order.

ii) At that time the Board of Examinations was not constituted after expiry of the term of previous Board. Similarly, the Management Council of the University was also yet to be constituted after expiry of the term of previous Management Council. As it was absolutely necessary to take emergent steps for constituting the Board of Examinations, in view of the Hon'ble High Court's Order in the matter of Dr. Santosh Thakare, the then Acting Vice-Chancellor resorted to the provisions of Section 14(7) of the Maharashtra Universities Act, 1994 and nominated him on the Board of Examinations along with Principal (Dr.) S. B. Hotey.

iii) Section 14(7) of the Act requires the reporting of the immediate action taken by the Vice-Chancellor to the concerned Authority or Body and in the event of an difference arising between the Vice-Chancellor and the concerned Authority the

matter has to be referred to the Chancellor for final decision. In fact, the present Vice-Chancellor had reported the matter of his nomination and Prin. (Dr.) S. B. Hotey to the Management Council in its very first meeting after the Management Council was constituted duly and the said action was approved unanimously by the Management Council in its meeting dated 10/02/2006.

iv) He was not instrumental in the making of his nomination and therefore, he had no reason or occasion as to why the decision was taken on 14/10/2005 and the notification was dispatched on 26/10/2005.

v) The Board of Examinations was declared constituted vide notification dated 7/12/2005 and its first emergent meeting was called on 8/12/2005. The matters of Dr. Santosh Thkare as well as co-option of an "Evaluation Expert" on the Board of Examinations were the only two items on the agenda of the said meeting. To the surprise of everyone concerned, the present Vice-Chancellor at the eleventh hour abruptly postponed the said meeting without assigning any reason. It was revealed subsequently that the Vice-Chancellor cancelled the said meeting for the sole reason that she wanted to co-opt Prof. Chittaranjan on the Board of Examinations. The said co-option of Prof. Chittaranjan has been subsequently declared as invalid by the Chancellor by an Order No. CS/AU/37/05/(6300)/2005 dated 30/06/2007.

vi) The nominations of him and Prin. (Dr.) S.B. Hotey were necessary in the given situation as inaction on the part of the then Acting Vice-Chancellor, would have resulted in contempt of the direction issued by the Hon'ble High Court. Thus there was an emergency requiring immediate action to be taken under Section 14(7) of the Act. As such, no illegality or impropriety has been committed by said action.

vii) The powers conferred on the Vice-Chancellor by Section 14(7) of the Act are restricted only by the proviso to the said sub section (7) and otherwise there is no express or implied restrictions on those powers. In the ordinary course the Management Council has to nominate a teacher on the Board of Examinations under Section 31 (3)(f) of the Act. The Board of Examinations was to be constituted before the constitution of the new Management Council, in order to comply with the directions

of the Hon'ble High Court. The period of four weeks given by the Hon'ble High Court was further extended by six weeks and the extended period was to expire on 8/12/2005. He had filed page No. Z/4179 of Book No.1 circulated with the agenda of the meeting dated 8/12/2005 of the Board of Examinations with his reply to the Show Cause Notice. The said page contains the order of extension of period passed by the Hon'ble High Court. As the Management Council could not be constituted within this extended period also, the then Acting Vice-Chancellor had no option but to exercise the powers under Section 14(7) of the Act and his action was subsequently ratified and approved by the Management Council in its very first meeting unanimously. Thus his nomination on the Board of Examination is in fact, nomination made by the duly constituted Management Council.

It has been held by the Hon'ble Bombay High Court in the matter reported in 1986 MHLJ, 350 "Vice-Chancellor is competent to deal with any matter for which there is an omission or absence or regulation or ordinances".

viii) Moreover, any action taken by the Vice-Chancellor under Section 14(7) of the Act can be referred to the Chancellor only in the event of difference arising between the Vice-Chancellor and the concerned Authority. In the present case there was absolutely no difference as the action of the Vice-Chancellor has been unanimously approved and ratified by the Management Council. Therefore, the present petitions are not even maintained in law.

ix) These petitions were made in November 2006 i.e. 13 months after the impugned action was taken by the Vice-Chancellor and more than 8 months after approval of the said decision by the Management Council. This delay is self speaking. The complainants/petitioners are not member of the Management Council and have no locus standi to make any grievance about the said nominations.

x) In para No.7 (ii) of the Show Cause Notice dated 28/05/2007, the Chancellor has expressed the opinion to the effect that powers conferred upon the Vice-Chancellor by Section 14(7) of the Act do not include power to nominate persons on behalf of any Authority. This opinion is in fact and interpretation of the provisions of Section 14(7) of the Act, because the said section does not expressly prohibit such nominations. Interpretations of any provisions of the Act on the part of the Chancellor fall within the scope of Section 108 of the Act, which has no retrospective

effect. No such interpretation of the provisions of Section 14(7) of the Act was made by the Chancellor before our nominations were made to the Board of Examinations in October 2005 and the present interpretation cannot be applied retrospectively to the said action as the matter was not referred by anybody for decisions under Section 108 of the Act prior to October 2005.

It is settled law that a substantive is presumed to be prospective. It has been held by the Hon'ble Supreme Court in a judgment in A.I.R. 2008 Supreme Court 2276 that A Statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. It is one of the facets of rule of law."(para9)

'..... a substantive provision can not be retrospective in nature unless the provision itself indicates the same.' (para 24).

a) AIR 1996, SC, 1560

b) AIR 2007, SC, 1984

c) AIR 2005, SC, 2821

d) AIR 2004, SC, 5100

For the reasons stated above, he has prayed that his nomination on the Board of Examinations being ratified and approved by the Management Council itself in its meeting dated 10/2//2006, the same may kindly be maintained and the petitions be dismissed with compensatory costs.

18. During the hearing Dr. J. S. Deshpande, Registrar said that Hon'ble High Court had given directions in case of Dr. Thakare and therefore, constitution of Board of Examinations was necessary but it would not have been complete without the co-option of "Evaluation Expert" under Section 32(4) of the Act. The Vice-Chancellor earlier had requested in another similar case to treat the nomination of "Evaluation Expert" under Section 14(7) instead of Section 32(4) of the Act. However, the Chancellor has then not accepted it.

19. During the hearing, Dr. Kamal Singh, Vice Chancellor said that whatever she had to say in the matter had already stated in reply submitted by her. After joining as Vice-Chancellor on 20th October 2005, things were not brought to her notice by the officers till 6 December 2005. As the matter was to be heard by the Supreme Court on 8 December 2005, the meeting of the Board of Examinations was

hurriedly organised. Even though co-option was Item No.1 in the Agenda of the said meeting, it was not done. As there was mishap in the examination of engineering, students come to her and she had no other option to co-opt an Expert on the Board of Examinations under Section 34(2) of the Act, She had requested the Chancellor to treat the said co-option under Section 14(7) of the Act and it was not accepted.

20. I have carefully considered the written as well as oral submissions of the petitioners, Dr. P. B. Raghuwanshi and Dr.(Ms.) Kamal Singh, Vice –Chancellor and Dr. J. S. Deshpande, Registrar of the University in the light of the facts on record and provisions in the Act, I have found that,-

i) as Prof. A. G. Somavanshi is a nominee of the Vice-Chancellor his nomination on the Board of Examinations under Section 31(3)(d) of the Act, is proper.

ii) the emergency power of the Vice-Chancellor under Section 14(7) of the Act, cannot be said to include a power to nominate or co-opt a member on the Board of Examinations. Thus to read the powers to nominate as an "emergency power" is not proper. Therefore, there is no merit in the contentions of Dr. Raghuwanshi that no illegality or impropriety was committed by the action of nominating him and Prin (Dr.) Hotey on the Board of Examinations. The nominations of Dr. Raghuwanshi and Prin. (Dr.) Hotey were therefore not valid under Section 14(7) of the Act.

iii) Section 9(4) empowers the Chancellor to suspend or modify any resolution, order or proceeding of any authority, body, committee or officer which in his opinion is not in conformity to the Act, Statutes, Ordinances or Regulation is not in the interest of the University. Since the Vice-Chancellor is an authority under the Act, an order passed by him under Section 14(7) is a order within the meaning of Section 9(4) and is therefore amenable to examination for its legality, validity etc. by the Chancellor under Section 9(4) of the Act. So far as Section 108 of the Act is concerned, it operates in different field and for exercise of power there-under, there must be a reference by the Vice-Chancellor either *Suo motu* or on Petition by any person directly affected. As such in the present case, the appropriate provision to examine the legality, validity etc. of the nominations is Section 9(4) of the Act and not Section 108 of the Act.

21 I, S. C. Jamir, Chancellor of the Sant Gadge Baba Amravati University, therefore in exercise of powers conferred upon me under Section 9(4) of the Maharashtra Universities Act, 1994:-

- i) declare the nomination of Prin. (Dr.) S. B. Hotey on the Board of Examinations under Section 31(3) (e) of the Act as invalid.
- ii) declare the nomination of Dr. P. B. Raghuwanshi on the Board of Examinations under Section 31(3)(f) of the Act as invalid.
- iii) set aside the Sant Gadge Baba Amravati University's Notification No. 194/2005 dated 14 October 2005.


(S.C. Jamir)
Chancellor,

Sant Gadge Baba Amravati University