

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 9829 OF 2022**

Bandu Shrinivas Talikhedkar  
Age- about 36 years, Occupation- Student  
Residing at C/o Shivaji Patil,  
Government Polytechnic quarters,  
Ganesh khind Road, Shivaji nagar,  
Pune 411007

... Petitioner.

V/s.

1. Akole Taluka Education Society  
Registered under the Societies Act,  
bearing its registration No. MAH/168/A'Nagar  
Through the Secretary,  
Tal- Akole, District- Ahmednagar 422601.
  2. The Commissioner  
Ministry of Social Justice and Empowerment,  
Church Road, Pune- 01  
State of Maharashtra.
  3. Director of Education  
Higher Education Department  
Pune Region, Pune 01.
  4. Vice Chancellor  
Savitribai Fule Pune University  
Ganeshkhind Pune 7
  5. Varsha Uday kakad  
Age 35 years, Occ: service.,  
R/at Uma Traders, Dhumal Wadi Road  
Post & Tal: Akole, Ahemdngar.
- ... Respondents

**WITH**

**WRIT PETITION NO. 9797 OF 2021**

Varsha Uday Kakad,  
Age 34 years, Occu. Service,  
R/o. Uma Traders, Dhumal Wadi Road,  
At Post & Tq. Akole, Dist. Ahmednagar. ... Petitioner.

V/s.

1. The State of Maharashtra  
Through it's Secretary  
Department of Higher Education,  
Mantralaya, Mumbai-32.
2. Vice Chancellor,  
Savitribai Phule Pune University,  
Ganeshkindh Pune-7,  
Through its Vice Chancellor.
3. The Commissioner,  
Commissioner for persons with Disabilities,  
Maharashtra State,  
3 Church Road,  
Pune 411 001.
4. The Director of Education,  
Higher Education Department,  
Pune Region, Pune.  
(Copy to be served on Government  
Pleader High Court of Judicature of  
Bombay Bench at Aurangabad)
5. Akole Taluka Education Society,  
Through its Secretary,  
At post Taluka Akole,  
Dist. Ahmednagar.
6. The Principal,  
Agasti Arts, Commerce and Dadasaheb  
Rupwate Science College, Akole.
7. Bandu Shriniwas Talikhedkar,  
Age 37 Years, Occu. Student,

R/o. At Post Talikhed, Tq. Nilanga,  
Dist. Latur, At Present R/o.  
C/o. Shivaji Patil, Government Polytechnic  
Quarters, Ganeshkhindh Road,  
Shivaji Nagar, Pune -411 007.

... Respondents

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Dr. Uday Warunjikar a/w. Mr. Sumit Kate i/b. Mr. Siddhesh Pilankar,  
Advocate for Petitioner in WP/9829/2022.

Mr. Rajendra Anbhule, Advocate for Respondent No. 4 in both the  
Petitions.

Mr. P.P. Kakade, Addl. G.P. a/w. Mr. R.S. Pawar, AGP for  
Respondent/State in WP/9829/2022.

Mr. Karan S. Thorat, B-Panel, for Respondent/State in WP/9797/2021.

Mr. Sugandh B. Deshmukh a/w. Mr. Irvin D'Souza a/w. Mr. Aryan M.  
Deshmukh, Mr. Aniket Kanawade, Mr. Bhushan G. Deshmukh, Mr.  
Vaibhav Thorve, Mrs. Karishma Shinde, Advocate for Respondent No. 1  
in WP/9829/2022.

Mr. Rajesh Tekale a/w. Mr. Prajyot Shinde, Advocate for Petitioner in  
WP/9797/2021 & for Respondent No. 5 in WP/9829/2022.

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**CORAM : RAVINDRA V. GHUGE AND**

**ASHWIN D. BHOBE, JJ.**

**RESERVED ON : 10<sup>th</sup> DECEMBER, 2025**

**PRONOUNCED ON : 24<sup>th</sup> DECEMBER, 2025.**

**JUDGMENT: (PER ASHWIN D. BHOBE, J)**

1. Heard Dr. Uday Warunjikar, learned Advocate for the  
Petitioner in WP No. 9892 of 2022, Mr. Rajesh Tekale, learned Advocate

for the Petitioner in Writ Petition No. 9797 of 2021 and Respondent No. 5 in WP No. 9892 of 2022, Mr. P.P. Kakade, learned Addl. G.P. for Respondent-State in WP No. 9892 of 2022, Mr. Karan S. Thorat, B-Panel Advocate Respondent-State in WP No. 9797 of 2021, Mr. Sugandh B. Deshmukh, learned Advocate for the Respondent No. 1 in WP No. 9892 of 2022 and Mr. Rajendra Anbhule, learned Advocate for Respondent No. 4 in both the Petitions.

2. Learned Advocates for the parties jointly submit that issues involved in both the Writ Petitions are similar, as such they request that both the Writ Petitions be disposed of by a common judgment.

3. Rule. Rule made returnable forthwith and heard both the Petitions, finally with the consent of the parties.

4. The contest between Bandu Shrinivas Talikhedkar (Bandu) the Petitioner in Writ Petition No. 9892 of 2022 and Varsha Uday Kakad (Varsha) Petitioner in Writ Petition No. 9797 of 2021, is for appointment to the post of Assistant Professor of Political Science at the College run by Akole Taluka Education Society, Respondent No. 1 in Writ Petition No. 9892 of 2022 and Respondent No. 5 in Writ Petition No. 9797 of 2021 (for short “Respondent-Management”).

5. Material facts of the present case are that Respondent-Management vide advertisement dated 8<sup>th</sup> March, 2019, advertised ten posts of Assistant Professor, in the subjects English, Political Science, Chemistry, Physics and Zoology. Clause 'C' of the said advertisement made a reference to one post being reserved with preference for Physically handicapped candidate. Subject matter of these petitions is the post in the subject Political Science (OBC).

6. Bandu, a person with Disability (PwD) applied for the post of Assistant Professor in the subject Political Science. Varsha an OBC Candidate applied for the post in the same discipline of Political Science.

7. Bandu as well as Varsha were called for interview by the Selection Committee constituted as per the requirements of the University Grants Commission. Pursuant to such interview, Select list that was drawn up had three candidates for the post of Assistant Professor in Political Science. Varsha was declared successful and selected for the post of Assistant Professor in Political Science. Selection Committee did not find Bandu suitable for appointment. Appointment Order was issued to Varsha on 22.07.2019.

8. Bandu approached the Respondent No. 2 (The Commissioner, Ministry of Social Justice and Empowerment), with a complaint dated 18.09.2019, questioning the appointment of Varsha, contending that the Respondent Management though having reserved a post of Assistant Professor in Political Science for a PwD candidate, had ignored the candidature of Bandu. Respondent No. 2 registered the said complaint under the provisions of the Rights of Persons with Disability Act, 2016 (RPwD Act). Varsha was not joined as a party to the said proceedings.

9. By order dated 30.01.2020, the Respondent No. 2 cancelled the recruitment process for the post of Assistant Professor, Political Science for which Bandu had applied, wherein Varsha was selected and appointed, consequently, directed the Respondent-Management to initiate fresh recruitment process in respect of the said post in Political Science by complying with the Government Resolution and Circulars issued by the State of Maharashtra on the said subject.

10. Pursuant to the order dated 30.01.2020 passed by Respondent No. 2, Respondent Management issued termination order dated 01.02.2020, terminating the service of Varsha. Respondent University relying on the said order dated 30.01.2020, rejected the

proposal for approval of the post of Assistant Professor, vide its order dated 02.03.2020.

11. Bandu is before this Court being aggrieved by the order dated 30.01.2020 passed by the Respondent No. 2 seeking the following reliefs :

*“A. That the present Petition may kindly be allowed;*

*B. That pending the final disposal of this Petition, the recruitment by the Respondent No.1 for a disabled person, in the light of the advertisement published on 08.03.2019, may kindly be declared as invalid;*

*C. That this Hon'ble Court may kindly call for the entire records of the recruitment process and selection of the abled person in place of a disabled person;*

*D. That in the light of merits, the Respondent No. 1 and the Respondent No. 4 may kindly be directed to take the Petitioner in the post reserved for the handicapped/disabled person;*

*E. The cost of this Petition be awarded in favour of the Petitioner;*

*F. The Petitioner may please be allowed to add, amend or alter the Petition, if and when required;*

*G. Any other just and equitable order please be passed in favour of the Petitioner.*

*aa) Be please to quash and set aside the order dated 30th January 2020 passed by the respondent No.2 herein and after satisfying the same and after going through the legality, validity and propriety of the same.*

*bb) Be please to stay the operation of order dated 30th January 2020 passed by the respondent No.2.*

cc) *Ad-interim relief in terms of prayer clause bb.”*

12. Varsha is before this Court being aggrieved by the order dated 30.01.2020 passed by the Respondent No. 2 and the consequent order of termination dated 01.02.2020 as also the rejection of the proposal by the University dated 02.03.2020. Varsha has sought for the following reliefs :

A. *Call for record and proceeding of the case;*

B. *The Hon'ble High Court may be pleased to Issue appropriate writ order or direction in like nature thereby quashed and set aside the impugned order dated 30/01/2020 bearing outward no. Aakaaa/Tanika/Dnaya parka75/2019/Talikhedkar/ 2019-20/267 passed by respondent no. 3 and further communication about termination of service by the respondent no. 5 dated 01/02/2020 bearing outward no. institute/karyaka/133/2019-20 and the rejection of proposal by the University dated 02/03/2020 and for that purpose issue necessary writ, order or direction;*

C. *The Hon'ble High Court may be pleased to issue appropriate writ order or direction in like nature thereby direct the respondent authority to give the proper opportunity of hearing to the petitioner and for that purpose issue necessary writ, order or direction;*

D. *The Hon'ble High Court may be pleased to issue appropriate writ order or direction in like nature thereby direct the authority to initiate the Inquiry of respondent no. 5 institute in respect of the entire selection process of the advertisement dated 10/03/2019 and further the list of all the disable candidates present for other subject and for that purpose issue necessary writ, order or direction;*

E. *Pending hearing and final disposal of this Writ petition, the Hon'ble High Court may be pleased to stay the effect, operation and Implementation of the Impugned order*

*dated 30/01/2020 bearing outward no. Aakaaa/Tanika/Dnaya parka75/2019/Talikhedkar/ 2019-20/267 passed by respondent no. 3 and for that purpose issue necessary order;*

*F. Pending hearing and final disposal of this Writ petition, the Hon'ble High Court may be pleased to prohibit the respondent No. 5 institute for publishing further new advertisement for the post of Asst. Professor for Political Science and for that purpose issue necessary order;*

*G. Ad-interim relief In terms of prayer clauses "E" and "F";*

*H. Any other just, equitable relief may kindly be granted in favor of the petitioner.*

13. Respondent Management initially filed affidavit in reply dated 14.03.2020 in Writ Petition No. 9829 of 2022 contending that the Respondent-Management in compliance with the order dated 30.01.2020, had forwarded a fresh proposal for recruitment in respect of the Political Science subject for disabled persons. Respondent Management subsequently filed additional affidavit dated 08.07.2021 contending that Bandu was not selected by the Selection Committee as such, Bandu cannot be appointed from the category of benchmark disabilities. That the Respondent-Management had abided by the selection report of the Selection Committee.

14. The Respondent No. 3 (Joint Director of Higher Education Pune) in his reply dated 01.12.2020 filed in Writ Petition No. 9829 of

2022, contends that the appointing authority for the Affiliated College being the Management, in terms of Statute No. 411 of the Respondent University, it is the Respondent University who is the competent authority to check the Roster as per the Reservation policy. Respondent No. 3 contends that it was upon the Roster being verified by the Respondent University that the advertisement dated 08.03.2019 came to be issued.

15. Varsha has filed affidavit in reply dated 02.04.2023 opposing the Petition on the ground that the advertisement dated 08.03.2019 did not specify or identify that the Political Science post was reserved for persons with disabilities; that the order dated 30.01.2020 is without jurisdiction and the same was passed without affording any opportunity to Varsha; and that Bandu was found unfit for the post on account of his unsatisfactory performance during the selection process.

16. Respondent University has filed affidavit in reply dated 18.07.2024. Respondent University contends that the Respondent Management has submitted reservation roster to the Respondent University for filling the post of Assistant Professors. After verification of the roster by the Reservation Cell of the Respondent University, the

said roster was approved by the Backward Class Cell, Nashik Division, Nashik. Upon receipt of No Objection Certificate for filling the said posts by the State Government, the Respondent-Management issued the advertisement and requested the Respondent University to nominate the subject Expert and Vice Chancellor nominees on the select committee. Respondent University contends that Selection Committee did not find Bandu suitable for the post. It is contended that if the vacancies for the persons with disabilities as mentioned in the advertisement dated 08.03.2019 is not filled, the same will be carried forward in the succeeding recruitment year as per section 34 (2) of the RPwD Act.

17. Dr. Warunjikar, learned Advocate for Petitioner Bandu submits that Bandu is a person with 64% physical disability, satisfying the requisite qualifications for the post of Assistant Professor in Political Science. He submits that though the advertisement dated 08.03.2019 mentioned that preference will be given to PwD candidate, no such preference was given to the candidate with disability, resulting in Respondent-Management acting illegally and contrary to law. He submits that appointment of Varsha on the said post reserved for PwD Candidate amounts to discrimination of PwD candidate, consequently violation of Article 14, 16 and 21 of the Constitution of India as also

breach of the statutory provisions of the RPwD Act. He submits that the order dated 30.01.2020 passed by the Respondent Commissioner, though correctly holds Bandu as eligible for appointment being a PwD candidate, however, the said order has committed an error in setting aside the selection process and directing the fresh process.

18. Mr. Tekale, learned Advocate for the Petitioner Varsha by referring to the advertisement dated 08.03.2019 submits that Clause No. C specifically states that “one post is reserved for Physically Handicapped Candidate. (pref)”. He submits that the said advertisement does not mention for which subject the PwD candidate would be given preference. To clarify he submits that there is no specification of preference. He submits that in the absence of identification of the post, the interpretation that can be given in the context of “preference” is that when equal marks are obtained by the candidates preference will be given to the PwD candidate and/or if in the select list the suitable candidates are found at Serial No. 1 and 2 in that case, preference will be given to disabled candidate even though such candidate is at Serial No. 2. He submits that, in the absence of identification of post, it cannot lead to the reservation of a PwD candidate. He submits that in the absence of identification of post as provided under section 33 of the

Rights of Persons with Disability Act, 2016, no reservation can be created under section 34 of the Rights of Persons with Disability Act, 2016. He submits that Varsha had secured highest marks in the selection process, Varsha had MA degree and qualified SET Exam, she was pursuing Ph. D. Course. He submits that Varsha had scored 55 marks whereas Bandu had secured 46 marks, thus the Select Committee found Varsha suitable, for appointment to the said post. He submits that the proceedings commenced by Respondent No. 2 were without jurisdiction and at any rate the order dated 30.01.2020 which resulted in termination of Varsha was passed behind the back of Varsha, as such nonest.

19. Mr. Sugandh Deshmukh, learned Advocate for the Respondent-Management submits that selection of Varsha was done pursuant to a transparent selection process. He submits that Bandu had participated in the said selection process without any demur. That Bandu neither challenged the advertisement dated 08.03.2019 nor challenged the Selection Committee Report or the constitution of the said Committee. He submits that Bandu was not in the Select List and hence, Bandu was not considered for the horizontal reservation. He however, submits that the Respondent-Management is ready to abide by the orders passed in the present Petitions.

20. Mr. Anbhule, learned Advocate for Respondent University submits that Respondent-Management which is an aided College, submitted the reservation roster for the purpose of filling the post of Assistant Professor. He submits that as per Statute No. 411 (2) of the Teacher's Statute the appointing authority for affiliated college is the Management. He submits that the entire selection process for appointment of Assistant Professor was transparent. He submits that by letter dated 09.10.2019 the Respondent-Management informed the Respondent No. 2 that Bandu got less marks and interview of Bandu was not satisfactory, hence, Respondent-Management can consider Bandu in the next year if the State Government accords the permission. He relies on Section 34(2) of the Rights of Persons with Disability Act, 2016 to submit carry forward in the succeeding recruitment year if no suitable person is found by emphasizing on the term "suitable" and differentiates the same with the term "eligible". Lastly he submits that if a suitable person with Disability is not available, such vacancy shall be carried forward.

21. The genesis of the dispute is the advertisement dated 08.03.2019 issued by the Respondent-Management whereby 10 posts of

Assistant Professor were advertised and one post was reserved for the physically handicapped person. The advertisement is reproduced herein below:

## **Akole Taluka Education Society, Akole**

Tal. Akole, Dist. Ahmednagar-422601

Ph.02424-221419, Mob.9423045468

(Reg. No. MAH/168/Ahmednagar, Dated 22/03/1972 &s  
Reg. No. F.-144/Ahmednagar, Dated 08/05/1973)

## **WANTED**

Applications are invited for the post of assistant professor in various subjects for our Grantable Senior College, Agasti Arts, Commerce & Dadasaheb Rupwate science college, Akole.

| Sr. No. | Subject           | No. of Post | Reservation                 |
|---------|-------------------|-------------|-----------------------------|
| 01      | English           | 01          | OBC                         |
| 02      | Political Science | 01          | OBC                         |
| 03      | Chemistry         | 04          | ST-1, NT-B-1, OBC-1, SEBC-1 |
| 04      | Physics           | 03          | SC-1, ST-1, VJ-A-1          |
| 05      | Zoology           | 01          | OBC                         |

- A. Qualification and Pay Scales are as per Savitribai Phule Pune University, UGC & State Government of Maharashtra rules and regulations.
- B. The candidates belonging to reserved categories should send a copy of their application along with acknowledgement of application given in the college, without enclosing testimonials to the Deputy Registrar, Reservation cell S.P.P.University, Pune 411007.
- C. **One post is reserved for Physically Handicap candidate. (pref.)**
- D. The Post will be filled in subject to the availability of actual work load for each subject.

- E. Eligible candidates should apply on plain paper with certified Xerox copies along with necessary documents and attach DD of Rs.200 in favor of "The Secretary, Akole Taluka Education Society' Payable at Akole (Dist. Ahmednagar) and should reach on the above address within 15 days from the date of publishing this advertisement.
- F. No TA-DA will be paid for attending the interview.
- G. Appointments made on the basis of these advertisement will be subject to final Judgment of Hon. High Court, writ petition No. 12051/2015 & 175 /2018 and others.
- H. Incomplete application will not be consider.
- I. Post Reserve for VJ-A, NT-B, NT-C, NT-D category are interchangeable.
- J. For application and other details visit [www.agasticcollege.com](http://www.agasticcollege.com)
- K. Candidates who are in service send their application through proper channel.

**Yashwant Abhale**  
Secretary

**J.D.Ambre Patil**  
President

22. Placing reliance on the said advertisement, Bandu, a person with disability claims to be entitled to the benefit of horizontal PwD reservation, he being the only candidate in the subject of Political Science at the level of Assistant Professor. Ground on which the Bandu maintains the Petition is denial of the said post, reserved for PwD candidate. Whereas, Varsha, OBC candidate claims that the advertisement dated 08.03.2019 did not specify that the Political Science

post is reserved for PwD candidate. According to Varsha, said post is not reserved for PwD candidate, in the absence of identification of the post.

23. As per the advertisement, 4 Nos. were reserved for OBC candidates, 2 Nos. posts were reserved for ST candidates, 1 No. post was reserved for NT (B), 1 No. post was reserved for VJ (A) & 1 No. post was reserved for SEBC. Said reservation was specified as per the roster available with the University. Though the advertisement dated 08.03.2019 did not specify the post belonging to Political Science subject was reserved for physically handicap candidate, fact remains that out of the 10 posts one post was reserved for PwD candidate.

24. Selection Committee comprised of members / expert members and nominees of the Respondent Management, nominees of the Vice Chancellor and State Government. In the selection process, Varsha was awarded 55 marks whereas Bandu was awarded 46 marks. Bandu did not find place in the select list. Two other candidates placed on the wait list have scored higher marks than Bandu.

25. As per section 34 (1) of the RPwD Act, every appropriate Government shall appoint in Government establishment not less than 4% of the total number of vacancies in the cadre with the person with

disabilities. Sub-section 2 of Section 34 of the said Act provides that where in any recruitment year, any vacancy cannot be filled up due to non-availability of the suitable person with the benchmark disabilities or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also a suitable person with benchmark disability is not available, it may first be filled up by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability.

The word used in the aforesaid provision is “suitable person”. Suitability is about being the best fit.

26. Respondent Management in its affidavit dated 08.07.2021 in Writ Petition No. 9829 of 2022, in paragraph 9 and 10 have stated as follows :

*“9. I say that the Petitioner was not selected by the Selection Committee of the University and unless the Petitioner is selected by the Selection Committee of the University that the candidate cannot be appointed from the category of benchmark disabilities.*

*10. I say that the Respondent No. 1 has abided by the Selection Report which is given by the Selection Committee and if the selection committee would have selected the*

*Petitioner then the Respondent No. I would not have any objections to the said selection of the Petitioner also.”*

27. Respondent University in para 7 and 8 of their affidavit in reply in Writ Petition No. 9829 of 2022 dated 18.07.2024 have made the following statement :-

*“7. I say that as per Statute 411 (2) of the Teachers' Statutes, the appointing authority for affiliated colleges and recognised institution shall be the Management of the affiliated college or recognised institution. Therefore, the Management of the college is the appointing authority for teachers in that college. In the present case, the selection committee for appointment to the post of Assistant Professor in the subject, political science which was reserved for OBC Category, interviewed the candidates and recommended the name of the suitable candidate. As per Section 34 (2) of the Rights of Persons with the Disabilities Act, 2016, if in any recruitment year, any vacancy cannot be filled up due to non-availability of a suitable person with disability, such vacancy is to be carried forward in the next recruitment year. Therefore, as the selection committee did not find the Petitioner suitable for appointment to the post of Assistant Professor, the vacancy for the persons with the disabilities as mentioned in the advertisement published by the Respondent No. 1 Management, will be carried forward in the succeeding recruitment year as per Section 34(2) of the Rights of Persons with Disabilities Act, 2016.*

*8. It is submitted that reservation of four percent for the persons with disabilities of the total number of vacancies in the cadre strength, is a horizontal reservation. Therefore, in the advertisement of ten posts of Assistant Professor in various subjects in Agasti Arts Commerce and Dadasaheb Rupwate Science College run by the Respondent No. I Society, one post out of these ten posts of Assistant Professor for reserved for persons with disabilities. It may be relevant to mention that as provided Section 34 (2) of the Act, if a suitable person with the disability is not available, such vacancy shall be carried*

*forward. Thus, in view of the said provision of the Act, the selection committee may not recommend the person with disability if he is not suitable to the appointed to the post.”*

28. Varsha contends that the advertisement dated 08.03.2019 does not identify or reserve the post of Assistant Professor in the subject Political Science for the person with disability.

29. Clause-C in the advertisement dated 08.03.2019 makes a reference to one post being reserved for physically handicap candidate. In the bracket “preference” word is used. The Hon’ble Supreme Court in the case of *Secretary, A.P. Public Service Commission v/s. Y.V.V.R. Srinivasulu*<sup>1</sup> in paragraph nos. 10 and 11 in the context of the word “preference” used in advertisement/selection of candidate has observed as follows :

*“10. ... The word “preference” in our view is capable of different shades of meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not in an isolated or detached manner, ascribing a meaning of universal import, for all contingencies capable of an invariable application. The procedure for selection in the case involves a qualifying test, a written examination and an oral test or interview and the final list of selection has to be on the basis of the marks obtained in them. The suitability and all-round merit, if had to be adjudged in that manner only, what justification could there be for overriding all these merely because, a particular candidate is in possession of an additional qualification on the basis of which, a preference has also been envisaged. The Rules do not provide for separate classification of those candidates or apply different norms of*

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<sup>1</sup> 2003(5) SCC 341.

*selection for them. The “preference” envisaged in the Rules, in our view, under the scheme of things and contextually also cannot mean, an absolute en bloc preference akin to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give weightage to the additional qualification cannot be enforced as a rule of reservation or rule of complete precedence. Such a construction would not only undermine the scheme of selection envisaged through the Public Service Commission on the basis of merit performance but also would work great hardship and injustice to those who possess the required minimum educational qualification with which they are entitled to compete with those possessing additional qualification too, and demonstrate their superiority meritwise and their suitability for the post. It is not to be viewed as a preferential right conferred even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all candidates who are eligible are taken for consideration and when any one or more of them are found equally positioned, by using the additional qualification as a tilting factor, in their favour vis-à-vis others in the matter of actual selection.*

11. *Whenever, a selection is to be made on the basis of merit performance involving competition, and possession of any additional qualification or factor is also envisaged to accord preference, it cannot be for the purpose of putting them as a whole lot ahead of others, dehors their intrinsic worth or proven inter se merit and suitability, duly assessed by the competent authority. Preference, in the context of all such competitive scheme of selection would only mean that other things being qualitatively and quantitatively equal, those with the additional qualification have to be preferred. There is no question of eliminating all others preventing thereby even an effective and comparative consideration on merits, by according en bloc precedence in favour of those in possession of additional qualification irrespective of the respective merits and demerits of all candidates to be considered.”*

30. In the instant case, the Selection Committee found Bandu to be unfit. There is no challenge by Bandu, to the merits of the report of the Selection Committee. The Hon’ble Supreme Court in the case of

Secretary, (Health) Dept. of Health & F.W. & Anr. v/s. Dr. Anita Puri & Ors.<sup>2</sup> in paragraph No. 9 has observed as follows:

*“9. ...When the Public Service Commission is required to select some candidates out of a number of applicants for certain posts, the sole authority and discretion is vested with the Commission. The Commission is required to evolve the relative fitness and merit of the candidate and then select candidates in accordance with such evaluation. If, for that purpose the Commission prescribes marks for different facets and then evaluates the merit, the process of evaluation cannot be considered to be arbitrary unless marks allotted for a particular facet is on the face of it excessive. Weight age to be given to different facets of a candidate as well as to the viva voce test vary from service to service depending upon the requirement of the service itself. In course of the arguments before us the learned counsel for Respondent 1 had submitted that the awarding of 20 marks for viva voce and 20 marks for general knowledge out of 100 marks must be held to be on the face of it arbitrary giving a handle to the Public Service Commission to manipulate the selection and, therefore, the High Court had rightly come to the conclusion that it was arbitrary. We are unable to accept this contention. This Court in the case of Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722 : 1981 SCC (L&S) 258] , while considering the case of selection, wherein 33% marks was the minimum requirement by a candidate in viva voce for being selected, held that it does not incur any constitutional infirmity. As has been stated earlier the expert body has to evolve some procedure for assessing the merit and suitability of the applicants and the same necessarily has to be made only by allotting marks on different facets and then awarding marks in respect of each facet of a candidate and finally evaluating his merit. It is too well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. ...”*

*(emphasis supplied)*

31. Varsha was found to be fit and having scored more marks

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<sup>2</sup> 1996 (6) SCC 282.

than Bandu. Bandu has not questioned the said position. Varsha's appointment has been set aside by the Respondent-Management and Respondent University, on the basis of the order dated 30.01.2020 passed by the Respondent No. 2, in exercise of powers under section 80 and 82 of the RPwD Act.

32. Section 80, 81 and 82 of the RpwD Act, 2016, read as follows:-

***“80. Functions of State Commissioner.—The State Commissioner shall—***

*(a) identify, suo motu or otherwise, provision of any law or policy, programme and procedures, which are in consistent with this Act, and recommend necessary corrective steps;*

*(b) inquire, suo motu or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;*

*(c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;*

*(d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;*

*(e) undertake and promote research in the field of the rights of persons with disabilities;*

*(f) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;*

*(g) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;*

*(h) monitor utilisation of funds disbursed by the State Government for the benefits of persons with disabilities; and*

*(i) perform such other functions as the State Government may assign.*

***81. Action by appropriate authorities on recommendation of***

**State Commissioner.**— *Whenever the State Commissioner makes a recommendation to an authority in pursuance of clause (b) of section 80, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of the recommendation:*

*Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the State Commissioner for Persons with Disabilities within the period of three months, and shall also inform the aggrieved person.*

**82. Powers of State Commissioner.**— *(1) The State Commissioner shall, for the purpose of discharging their functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—*

- (a) summoning and enforcing the attendance of witnesses;*
- (b) requiring the discovery and production of any documents;*
- (c) requisitioning any public record or copy thereof from any court or office;*
- (d) receiving evidence on affidavits; and*
- (e) issuing commissions for the examination of witnesses or documents.*

*(2) Every proceeding before the State Commissioner shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the State Commissioners shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."*

33. In *All India Indian Overseas Bank SC and ST Employees' Welfare Association v/s. Union of India & Ors.*<sup>3</sup> the Hon'ble Supreme Court has held that all the procedural powers of a Civil Court are given to the National Commission for Scheduled Castes and Scheduled Tribes for the purpose of investigating and inquiring into the matters listed and

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<sup>3</sup> (1996) 6 SCC 606.

that too for a limited purpose. The powers of a Civil Court of granting injunctions, temporary or permanent, do not infer in the Commission nor can such power be inferred or derived from the reading of Clause 8 of Article 338 of the Constitution.

34. Similarly, in *Collector, Bilaspur v/s. Ajit P.K. Jogi and Others*<sup>4</sup> the Hon'ble Supreme Court has held that the scope of the duties of the Commission did not involve inquiry or adjudication in regard to rights of parties or the caste status of the parties. The Hon'ble Supreme Court noted that same is the position even under Article 338-A which was subsequently inserted providing for a separate Commission for Scheduled Tribes in identical duties. The Hon'ble Supreme Court also noted that if any complaint is received about deprivation of rights and safeguards of the members of the Scheduled Castes or the Scheduled Tribes, the same will have to be referred to the State Government or the authority concerned to take necessary action. The Commission can certainly follow up the matter with the State Government or such authority dealing with the matter to ensure that the complaint is inquired into and appropriate decision is taken. If the State Government or the authorities do not take action, the Commission could either itself or

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4 (2011) 10 SCC 357.

through affected persons, initiate legal action to ensure that there is proper compliance. But the Commission cannot undertake the exercise itself as was done in the case before the Hon'ble Supreme Court.

35. Order dated 30.01.2020 passed by the Respondent No. 2 is beyond its jurisdiction as the Commissioner for Persons with Disability, need not have actively entered the matter of selection process and issued mandatory directions.

36. In addition, the said order dated 30.01.2020 has been passed in proceedings to which Varsha was not a party. Order dated 30.01.2020 which has serious consequences qua Varsha was passed behind the back of Varsha, thus violating principles of natural justice. The order dated 30.01.2020 therefore, cannot be sustained on both the counts.

37. In view of the above, **Writ Petition No. 9829 filed by Bandu Shrinivas Talikhedkar is dismissed. Writ Petition No. 9797 filed by Varsha Uday Kakad is partly allowed in terms of prayer clause (B) by setting aside the order dated 30.01.2020 passed by the Respondent No. 2, consequently the order dated 01.02.2020 issued by the Respondent-Management and the order dated 02.03.2020 issued by the Respondent University are also set aside. Respondent No. 4 is**

directed to grant approval to Varsha and restore her appointment to the post of Assistant Professor in terms of the appointment order dated 22.07.2019. Respondent No. 4 shall complete the said exercise within 30 days from today.

38.           **Rule made absolute** in the above terms.

39.           There shall be no orders as to cost.

**(ASHWIN D. BHOBE, J.)**

**(RAVINDRA V. GHUGE, J.)**