

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

WRIT PETITION NO. 2255 OF 2001

Sandesh S/o Laxman Kulkarni,
Age : 39 Years, Occu. : Lecturer,
R/o Plot No. 9, New Postal
Colony, Jalgaon 425 001.

.. Petitioner

Versus

1. State of Maharashtra,
through Secretary, Higher Education
Department, Mantralaya,
Mumbai - 32.
2. Director, Higher Education,
Maharashtra State, Pune.
3. Joint Director, Higher Education,
Jalgaon, Dist. Jalgaon.
4. Mulji Jetha College, Jalgaon,
Dist. Jalgaon.
5. Khandesh College Education Society,
Through its Secretary, Mulji Jetha
College, Jalgaon, Dist. Jalgaon.
6. North Maharashtra University,
UMAVI Nagar, Jalgaon 425001,
Through its Registrar.

.. Respondents

Shri P. R. Patil, Advocate for the Petitioner.
Smt. Y. M. Kshirsagar, A.G.P. for Respondent Nos. 1 to 3.
Shri V. T. Choudhari, Advocate for the Respondent No. 4.
Shri A. B. Girase, Advocate for the Respondent No. 6.

**CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.**

DATE : 10TH APRIL, 2015.

ORAL JUDGMENT (*Per S. V. Gangapurwala, J.*) :-

. Mr. Patil, the learned counsel for the petitioner submits that, the petitioner is appointed as lecturer in statistic with the respondent No. 4 college vide appointment order dated 16.08.1990. On 30th April 1994 the services of the petitioner were terminated. The petitioner challenged the said order before the College Tribunal. The College Tribunal partly allowed the appeal. The petitioner was reinstated, however, the salary of the petitioner is not fixed as per VIth Pay Commission. According to the learned counsel in view of Government Resolution dated 27.09.1995 the petitioner is exempted from passing NET/SET examination. The petitioner has completed his M. Phil also. The learned counsel submits that, the petitioner was also given approval by the respondent No. 3 as a lecturer from year to year. However, necessary increments as admissible are not given to the petitioner. The learned counsel submits that, the respondents be directed to fix the pay scale along with increments with effect from 16.08.1990. The learned counsel submits that, though initially the petitioner was appointed as against the reserved seat meant for S. C. candidate, however, for ten years advertisement was given and no candidate from reserved category was available. In such an event, a seat meant for reserved category candidate is deemed to have lapsed. The

learned counsel relies on the Government Resolution dated 05.12.1994. According to the learned counsel, as per the said resolution, if, for six years the candidate from the said reserved category or any other inter changeable reserved category is not available, on seventh year the said post would be available for a candidate from open category. The learned counsel also relies on the judgment of the Apex Court in a case of **Deepa Gourang Murdeshwar Katre Vs. Principal, V.A.V. College of Arts and others** reported in **AIR 2007 SC (Supp.) 22**.

2. Mr. Choudhari, the learned counsel for the respondent/college submits that, the parties would be governed by the order of the College Tribunal dated May 20, 1997, wherein the College Tribunal while setting aside termination order, had directed the parties to take action in accordance with law, the government resolution dated 05.12.1994 and had also directed the respondents therein to examine the case in the light of the said government resolution and if the Government gives permission to dereserve the seat by following prescribed procedure.

3. We have considered the submissions canvassed by the learned counsel for respective parties. The fact that, the petitioner was appointed after following due procedure of law, pursuant to the advertisement given on 12.06.1990 is not disputed. The petitioner was selected by duly nominated

selection committee and was appointed. It is also not disputed that, since the year 1988 the respondent/college was issuing advertisement/publication for filling in the post from the reserved category candidate of S.C. category. But up to the year 1996 no reserved category candidate was available. Even as per the Government Resolution dated 05.12.1994 in the 7th year the seat would be meant for an open category candidate.

4. It is not disputed that the petitioner is working with the respondent No. 4 institution from the year 1990. For more than 25 years the petitioner is working with the respondent No. 4. Even approval has been granted by the university on yearly basis. Though the appointment of the petitioner is made after following due selection process, the benefits of 6th Pay Commission are not been given to the petitioner, on the ground that the appointment of the petitioner is against a reserved seat. The Government Resolution referred supra dated 05th December, 1994 is self explanatory. It states that, for five years the reserved seat shall be kept vacant, if the candidate from reserved category is not appointed. However, in the sixth year the reservation can be inter changed and even thereafter if the candidate is not available, in the 7th year the said seat would be available for the open category candidate. Right from 1988 till 1996 the respondent/college has given advertisement for filling in seat from reserved category candidate. However, no reserved category candidate was available. For the 1st time in the year

1997 a candidate from reserved category was available, but the appointment was not given probably on the premise that prohibitory orders were in operation.

5. Even the tribunal in the order dated 20.05.1997 setting aside the termination of the petitioner has observed and directed the respondents to take action in accordance with Government Resolution dated 05.12.1994. If the said Government Resolution is perused, then in the year 1994 the seat would become available for open category candidate as no reserved category candidate was available. As such, atleast since 01.01.1995, the services of the petitioner can be treated as regular in view of the said Government Resolution dated 05th December, 1994. Even the Apex Court in a case of **Deepa Gourang Murdeshwar Katre Vs. Principal. V.A.V. College of Arts and others** referred supra has observed thus :

"27. It is not in dispute that the appellant has been in service of the respondent-college for the last 12 years. No candidate from the reserved category was available for six years. The appellant continued on the temporary basis year to year and hence it is a fit case where the appellant should be regularized on this post after de-reserving the same and if the appellant is now thrown out, the appellant would be age barred for any other service."

6. The position here is much in favour of the petitioner, than that of appellant before the Apex Court. Here the petitioner has put in 25 years of service.

7. Considering the above, the petitioner's service shall be treated as regular and permanent from 01.01.1995 onwards. If at all there is backlog, the respondent/management shall fill in the vacant seat from reserved category candidate.

8. In the light of the above, we pass the following order.

9. The petitioner shall be treated as regular and permanent employee from 01.01.1995 and shall be given the benefits of pay scale and the increments as applicable to the permanent employee. The writ petition is allowed in above terms. Rule made absolute accordingly. No costs.

Sd/-

[A. I. S. CHEEMA, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/April 15