

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1869 OF 2003

MOHINI GANGADHAR SATHE
VERSUS
UNIVERSITY OF PUNE AND OTHERS

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Advocate for petitioner : Mr. S. R. Barlinge
Advocate for respondent Nos. 1 & 2 : Mr. A. R. Kale h/f Mr. A. R. Joshi
Advocate for respondent No. 3 : Mr. H. D. Deshmukh
Advocate for respondent No. 4 : Mr. Alok Sharma

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**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATED : 16th FEBRUARY, 2015

PER COURT :-

1. The facts leading to this petition, in short, can be stated as under:-

2. The petitioner belongs to a Scheduled Caste. She secured 394 marks out of 800 in her M.A. Examination with entire English as a subject, in May, 1997. The respondent No. 1 University offered her benefit of Ordinance No. 136 and granted 6 grace marks with the result, she was declared as passed in Second Class. The respondent No. 3 advertised a post for Lecturer in English. The required qualification for appointment was Master's Degree in relevant subject with higher Second Class and good academic

record. A relaxation of 5% to be provided from 55% to 50% marks at Master's level for a candidate belonging to S.C. or S.T. category. The petitioner appeared for interview and was selected. Her case was then sent to the University for approval. The University refused to approve her appointment on the ground that she did not secure 50% marks at Master's Degree examination. In other words, they thought that the petitioner had failed to secure 50% marks and her grace marks should not be counted in this regard.

3. There is one more reason why they thought that the petitioner did not deserve approval. It is their case that even for a candidate belonging to S.C. category, eligibility for appearing for National Eligibility Test (NET) was minimum 50%. While counting 50% marks for such eligibility, grace marks under Ordinance No. 136 would not be counted.

4. Having regard to this logic, the University refused approval. Because of this decision taken by the University, the petitioner came to this Court by filing Writ Petition No. 5144 of 2002, which was disposed of on 24.02.2003. This Court directed the University to reconsider the case. Despite of said order, the University still refused to grant approval.

5. The question is, whether the reason mentioned by the University in paragraph No. 6 for refusal to give approval is logical and correct? The answer is in negative. The eligibility criteria clearly mentions that a person belonging to S.C. or S.T. should score at least 50% marks. Now the petitioner apparently secured 50% marks because of 6 additional marks given to her as grace. The question is, whether one should go behind and peek into the mark sheet of the candidate and blame her/him that she/he did not actually secure 50% marks? The answer should be in negative. The University made it clear in the marks memo that 6 additional marks as grace are given to the petitioner, and therefore, with those marks, she would stand passed in second class. In other words, with these grace marks she would secure 50% marks. Degree certificate issued to the petitioner clearly mentioned that she passed in second division. Second division is minimum 50% marks.

6. In view of this, the petitioner indeed passed test of eligibility criteria. The University's reasoning based on eligibility criteria for NET/SET examination is completely misplaced. When the petitioner would try to appear for NET or SET examination, she might not succeed in getting permission because she is certainly not eligible in view of the Rules. Nonetheless, applying the logic behind this Rule for some other purpose is not permissible. The Rules for getting

appointment as Lecturer and approval for it should be read independently. These Rules cannot be mixed with other Rules. The University's reason mentioned in paragraph No. 6 of the reply, thus, is incorrect. The petition should therefore, succeed.

7. In view of the above, writ petition is allowed in terms of Prayer Clause "B". Rule is made absolute in the above terms.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)

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