

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

WRIT PETITION NO.2286 OF 2014

Shri Sunil S/o Paraji Tambe,
Age: 28 Years, Occupation service,
R/o 40, "Mamata" Shri Nagar,
Chittod Road, Dhule,
Tq. & Dist. Dhule.

- PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary, Education
and Social Welfare Department,
Mantralaya, Mumbai – 32.
2. The Director of Arts,
Maharashtra State,
Dr. Dadabhai Nauroji Marg
Near Sir J.J. Arts School,
Mumbai.
3. Shri Shivaji Vidya Prasarak Sanstha,
Dhule, through its Chairman,
Central Building, Phule Bhavan
Gut No.6 Dhule, Tq. & Dist. Dhule.
4. Shri A.B. Wagh,
Principal, SSVPS School of Arts,
Dhule, Tq. and Dist. Dhule.

- RESPONDENTS

Mr.V.D.Sapkal, Advocate for Petitioner;
Mr.S.K.Kadam, AGP for Respondent No.1/State;
Mr.Pradeep Deshmukh, Advocate b/for Mr.S.S.Kulte,Adv.
For Respondent No.4.

CORAM : S.S.SHINDE &
P.R.BORA,JJ.

DATE OF RESERVING JUDGMENT : 31st March,2015.

DATE OF PRONOUNCING JUDGMENT: 15th APRIL,2015

JUDGMENT (PER:- P.R.BORA,J.)

1) Heard. Rule. Rule made returnable forthwith by consent of learned Counsel for parties.

2) Appointment of Respondent No.4 on the post of Principal, School of Arts, Dhule, run by Respondent No.3 – institution, is questioned in the present petition and direction has been sought to set aside the said order. The petitioner has sought further directions against Respondents to implement order dated 28.9.2012 and 30.01.2013 passed by Director of Arts, Maharashtra State, Pune (Respondent No.2 in the present petition). The petitioner is also

seeking directions for his appointment on the post of Principal of the School of Arts, run by Respondent No.3/institution.

3) Respondent No.3 runs a school, which is duly approved by the Director of Arts, Maharashtra State. Entire control on this school is of Directorate of Arts, Maharashtra State, Mumbai. The appointments, promotions and reservations of the employees of the said School, which is a private Arts School, are governed by the provisions of Grants Code dated 7.12.1974. The petitioner entered into services of the Arts School run by Respondent No.3 institution on 3.12.2003 as an Assistant Lecturer in Drawing and Paints. After completing the probation period, the services of the petitioner were confirmed in the year 2006. Vide order passed on 13.10.2006 by Director of Arts, the petitioner was promoted as Lecturer w.e.f. 1st October, 2006 and since then, the petitioner is working on the post of lecturer. The petitioner belongs to Hindu Dhangar community, which is recognized as Nomadic Tribe, (N.T.). The petitioner has filed on record a caste certificate as well as Caste Validity Certificate.

4) In the present petition, it is the grievance raised by the petitioner that though he was senior most lecturer, respondent No.3, instead of promoting him to the post of Principal of the Arts School, run by them, illegally promoted Respondent No.4. From the pleading made in the petition, it is revealed that in the year 2012, since the post of principal was lying vacant, respondent No.3/institution initiated the process for appointment of the Principal. One Shri Naresh Desai was the senior-most lecturer in the Arts School, however, he had refused to accept the post of principal. The next senior-most person in the Arts School was the present petitioner. However, respondent No.3/institution, vide resolution passed in the meeting of the Executive Board of the said institution held on 3.8.2012, promoted respondent No.4 to the post of Principal.

5) Shri V.D.Sapkal, learned Counsel appearing for the petitioner, invited our attention to Rule 48 of the Grants Code, by which, the service conditions of the employees in the Arts School are governed. Learned Counsel, more particularly invited our

attention to Note appended to said Rule 48, which reads thus, -

"The senior-most member of the teaching staff in the top post in the hierarchy of posts, in the institution concerned, (whether it is catering to one or more courses (Diploma and/or Certificate) shall be designated as its Principal. The duties of the Principal shall be as shown in Appendix 9."

6) Referring to the aforesaid Note, Learned Counsel submitted that, the petitioner is the senior-most member of the teaching staff in the top post in the hierarchy of the posts in the school of Arts run by Respondent No.3 institution. However, by making wrong interpretation of the aforesaid Rule/Note, Respondent No.3 illegally appointed Respondent No.4 to the post of Principal. Learned Counsel further submitted that Respondent No.2 has refused to grant approval to the said appointment, vide its letter dated 28th September, 2012.

. Learned counsel further submitted that vide aforesaid letter dated 28th September, 2012, Respondent No.3 institution was also directed to appoint senior-most member of the teaching staff in

the top post in the hierarchy of the posts to the post of Principal and to submit revised proposal for its approval.

. Learned counsel submitted that since Respondent No.3 institution failed to comply with the directions given by Respondent No.2, vide its aforesaid letter dated 28th September, 2012, respondent No.2, vide its letter dated 30th January, 2013. informed Respondent No.3 institution that if the directions given in the letter dated 28th September, 2012 are not complied with, Respondent No.2 will be constrained to initiate an action for stopping the grants to the said institution.

. Learned Counsel further invited our attention to letter dated 16th April, 2013 sent by Respondent No.2 to Respondent No.3 in the form of show-cause notice for not complying with the order issued by respondent No.2 for appointment of senior-most member of the teaching staff in the top post of in the hierarchy to the post of principal of the Arts School run by the said institution. Learned Counsel further brought to our notice the subsequent letter dated 8th May, 2013 sent by respondent No.2 to Respondent No.3 whereby the further installment of

the grants was withheld by Respondent No.2. Learned Counsel further submitted that, with malafide intention to deprive the petitioner from the post of principal to the School of Arts, Respondent No.3 institution issued a false charge-sheet to him and initiated Departmental Enquiry against him.

. Learned Counsel submitted that Respondent No.4, who was by that time appointed to the post of Principal, was one of the members of the Enquiry Panel. Learned Counsel submitted that since Respondent No.4 was an Assistant Lecturer whereas the petitioner was lecturer, the very constitution of the Enquiry committee was illegal and was accordingly held illegal by Respondent No.2. Learned Counsel further submitted that after report of the Enquiry Committee was received to the petitioner, holding him guilty of the charges levelled against him, he filed an appeal by invoking the provisions of Rule 63.3.3. (g) of the Grants Code, to the Director of Arts. However, during the pendency of the appeal before Respondent No.2, Respondent No.3 issued dismissal notice to the petitioner. Learned Counsel submitted that notice so issued was clearly premature. Learned Counsel further submitted that after the said fact

was brought to the notice of Respondent No.3, the said notice of dismissal dated 1.12.2014 was withdrawn by Respondent No.3 and the petitioner was accordingly communicated vide communication dated 6.12.2014 under the signature of the President of Respondent No.3 institution. Learned Counsel submitted that since the notice of dismissal was illegally issued and served upon the petitioner, he was required to file a writ petition before this court bearing Writ Petition No.11207/2014. Learned Counsel submitted that in view of the fact that the said dismissal notice was withdrawn by Respondent No.3, the aforesaid writ petition was disposed of vide order passed on 6th January, 2015. While passing the order in the aforesaid writ petition, learned Single Judge of this court has categorically observed that the institution could not have issued the dismissal notice and could not have taken an action when the employee has preferred an appeal before the Director under Rule 63.3.3.(g) and (h). Learned Counsel pointed out that the learned Single Judge, while disposing of the aforesaid writ petition, had annulled the said dismissal notice.

7) In the facts situation, as above, learned Counsel submitted that the appointment made of Respondent No.4 against the Rules, needs to be quashed and set aside. Learned Counsel further submitted that since the petitioner is the senior-most member of the teaching staff in the top post in the hierarchy of posts, he needs to be promoted/appointed to the post of Principal of the School of Arts run by Respondent No.3 institution. He, therefore, prayed for allowing the prayers made in the writ petition.

8) Shri Pradeep Deshmukh, learned Counsel holding for Shri Kulte, learned Counsel appearing for Respondent No.4, vehemently opposed the submissions advanced on behalf of the petitioner. Learned Counsel, relying on the contents of affidavit in reply filed on behalf of Respondent No.4, submitted that the petitioner has unnecessarily harped on Note appended to Rule 48, which according to him, in fact, favours the stand taken by Respondent No.3 institution.

. Learned Counsel submitted that the discretion is given to the management to appoint the

person as principal, who is either working on higher post or the senior-most member of the teaching staff. Learned Counsel further submitted that since the Respondent No.4 herein was the senior-most member in the teaching staff, who had put in services of more than 24 years, was rightly promoted to the post of Principal and the resolution in that regard was passed by respondent No.3-institution. Learned Counsel submitted that even otherwise, the petitioner could not have been appointed to the post of Principal since a Departmental enquiry was initiated against him, involving serious charges of misconduct against him. Learned Counsel further submitted that the petitioner already stood dismissed from services and though the petitioner might have filed the appeal against the said decision, in view of the order of dismissal, no relief, as claimed in the present petition, can be granted in favour of the petitioner. Learned Counsel further submitted that Respondent No.3 institution has requested Respondent No.2 to dispose of the appeal filed by the petitioner expeditiously, bringing to their notice that, in fact, the same ought to have been decided within a period of two months from its filing. Learned

Counsel further submitted that the respondent No.3 institution has also raised a grievance that without granting any opportunity of hearing to Respondent No.3, Respondent No.2 has reached to certain conclusions and in such circumstances, communications made by respondent No.2 dated 13.2.2015 and 17.08.2013 are not binding on Respondent No.3 institution. Learned Counsel further submitted that after the respondent No.3 made a grievance that no opportunity of hearing has been given to it, Respondent No.3 has sent a letter to Respondent No.2, informing therein that the appeal filed by the petitioner is kept for hearing before it on 17th March, 2015. Learned Counsel submitted that the said letter, however, received to Respondent No.3 on 18th March, 2015. The said fact was immediately informed to Respondent No.2 and the further date has been sought by respondent No.3. Learned Counsel submitted that the fact remains that the petitioner has been dismissed though the appeal filed by him may be pending before Respondent No.2 and in such circumstances, no relief, as has been claimed by the petitioner, can be granted in his favour

9) Shri Rohidas Jagannath Zonbade, working as Deputy Director of Arts, has filed an affidavit in reply on behalf of Respondent Nos. 1 and 2. Respondent Nos. 1 and 2 have supported the case of the petitioner. These Respondents have categorically stated that Respondent No.3 has wrongly promoted the person from the cadre of Assistant Lecturer, i.e. Respondent No.4 in the present petition. It has also been contended that the Departmental Enquiry so constituted for conducting enquiry against the petitioner is illegal. In paragraph 4 of the reply, Respondent Nos. 1 and 2 have taken a specific stand that as per the Note appended to Rule 48 of the Grants in Code, the petitioner being lecturer, is entitled to be promoted to the post of Principal instead of Respondent No.4.

10) We have carefully considered the submissions made on behalf of the petitioner as well as the respondents. The first question to be answered is, whether Respondent No.4 could have been appointed as principal, superseding the claim of the present petitioner? Admittedly, Respondent No.4 is an Assistant Lecturer, whereas the petitioner is working

as lecturer. As noted herein above, the service conditions of the employees working in the Arts School are governed by the Grants in Code. We have also referred to the Note appended to the relevant Rule 48. As per the said Note, a senior-most member of the teaching staff in the top posts in the hierarchy of posts in the institution is concerned, (whether it is catering to one or more courses) (diploma and/or certificate) shall be designated as its principal. The hierarchy of the posts is as below, -

- (i) Professor;
- (ii) Lecturer;
- (iii) Assistant lecturer.

. From the material placed on record, it is clear that there was and is no person working as Professor in the college of Arts run by Respondent No.3. There were two lecturers, one Shri Naresh Sambhaji Desai and another was the present petitioner. Respondent No.4 was working as Assistant Lecturer. There is no dispute that though Shri Naresh Desai was the senior-most lecturer, he had refused the principalship. Thus, the present petitioner was the senior-most member of the teaching

staff in the top posts in the hierarchy of posts. It is thus evident that the petitioner only could have been appointed as principal of the concerned School.

11) Though it was argued by learned counsel appearing for Respondent No.3 that the Note appended to Rule 48 provides that either the person, who is working on higher post or the senior-most person of the teaching staff can be designated as principal, the said contention apparently appears to be incorrect. There is no such provision in the aforesaid Note, which provides for appointment of a person merely on the criterion of seniority in the entire teaching staff, but clearly provides that the person to be designated as principal, must be the senior most member of the teaching staff in the top post in the hierarchy. It is thus clear that if a person in the category of professor would have been available, no person in the category of lecturer could have been appointed and/or designated as principal. Similarly, when a person in the category of lecturer is available, no person working as Assistant Lecturer could have been appointed as principal irrespective of the fact that he has put in

more years of service than the person who is working as lecturer. What is required is, seniority in the top post and not the seniority in the period of service. In the light of clear position as aforesaid, the resolution passed by Respondent No.3 on 3.8.2012, thereby appointing Respondent No.4 as principal of the school of Arts run by the Respondent No.3 institution, is illegal and liable to be quashed and set aside. Consequently, appointment of Respondent No.4 on the post of principal also deserves to be quashed and set aside. Respondent No.2 has rightly refused to grant approval to the appointment of Respondent No.4 so made. As discussed herein above, since there were only two persons working as lecturers and the senior most lecturer, viz. Naresh Desai had refused to accept principalship, the only person entitled to be appointed to the said post was the present petitioner and he only could have been appointed on the said post.

12) Now, so far as second objection raised on behalf of Respondent No.3 that since the petitioner has been dismissed from the service, no issue arises

of his appointment to the post of principal, is concerned, we find that the said contention also deserves to be rejected for plural reasons. There is no dispute that Respondent No.4 came to be appointed as principal of the School of Arts run by Respondent No.3, vide resolution dated 3.8.2012 passed in the meeting of Executive Board of Respondent No.3. A copy of the said resolution is placed on record at Exhibit-G of the petition. Perusal of said resolution reveals that Respondent No.4 came to be selected and appointed as principal for the only reason that he is the senior most employee in the teaching staff and has put in 28 years of service with Respondent No.3. In the resolution dated 3.8.2012, there is nothing to indicate that the present petitioner was also considered for the post of principal, but was not selected, whatsoever may be the reason therefor. Even in the proposal which was forwarded on 20.08.2012 to Respondent No.2 seeking approval to the appointment of Respondent No.4, the only contention seems to be that Respondent No.4 is the senior most member of the teaching staff and is also having ample experience. In the said proposal also it is nowhere stated as to why the present

petitioner was not considered for appointment of the principal. Respondents may now be coming with the case that Departmental Enquiry was initiated against the petitioner and consequently, he has been dismissed from service, from the material on record, it is quite evident that till 3.8.2012, neither departmental enquiry was initiated against the petitioner nor even a show cause notice was issued or served upon the petitioner. The document on record reveals that the petitioner came to be served with charge sheet in the concerned departmental enquiry on 23rd January, 2014. It is thus quite evident the ground which has now been cited against the petitioner that there was departmental enquiry against the petitioner and ultimately he has been dismissed from services as a result of the said enquiry, was not at all in existence at the time of making appointment of Respondent No.4, vide resolution passed on 3.8.2012.

13) In the fact situation as above, at the relevant time, i.e. on 3.8.2012, the only person, who was eligible to be appointed on the post of principal was the present petitioner and he only could have been appointed to the said post. We reiterate that

appointment of Respondent No.4 was illegal and against the Rules of Grants in Code.

. It was further argued by Shri Deshmukh, learned Counsel appearing on behalf of Respondent No.4 that since the petitioner now stands dismissed, no relief can be granted in his favour, even if it is held that the petitioner is the only person who could be appointed to the post of principal. However, this argument also needs to be rejected. It has come on record that the petitioner has filed the appeal against the report of departmental inquiry held against him by invoking Rule 63.3.3(g) before Respondent No.2. It has also come on record that Respondent No.2 has declared the constitution of the panel of enquiry committee, which has conducted the enquiry against the petitioner, to be illegal. Respondent No.2 has also communicated Respondent No.3 that since the constitution of enquiry committee itself was illegal, the findings recorded by the said enquiry committee, automatically stand annulled. However, there is substance in the contention raised on behalf of Respondent No.3 that Respondent No.2 has not heard Respondent No.3 before recording the decision that the constitution of the enquiry

committee was illegal. It appears to us that Respondent No.2 must have given an opportunity of hearing to Respondent No.3 before reaching to any decision in regard to the departmental enquiry conducted against the p. It has also come on record that after Respondent No.3 raised the objection that Respondent No.2 has passed an order, without giving an opportunity of hearing to them, Respondent No.2 has decided to hear Respondent No.3 and has accordingly issued a communication for remaining present on 17.3.2015. As contended by Respondent No.3, the said notice was received to Respondent No.3 on 18.3.2015, i.e. one day after the date which was given for hearing. We do not wish to entertain the aforesaid controversy. Suffice it to say that the appeal filed by the petitioner is pending before Respondent No.2 and it has to pass order on the said appeal after hearing the petitioner as well as Respondent No.3.

. Significantly, it has also come on record that Respondent No.3 has withdrawn the notice of dismissal issued to the p. Thus, as on today, the petitioner cannot be said to have been dismissed from services and he still continues to be in the

employment of Respondent No.3 institution. In the circumstances, there may not be any hurdle in appointing the petitioner to the post of principal of the School run by Respondent No.3 institution. It is needless to state that Respondent No.3/management has every right to conduct an enquiry and take further appropriate decision, if it finds the petitioner guilty of the charges levelled against him. Similarly, the petitioner will also be at liberty to take out appropriate proceedings, if any adverse action is taken against him and if he feels that the action so taken is wrong and illegal. In the result, following order, -

- (i) The appointment of Respondent No.4 as principal of the School of Arts run by Respondent No.3-institution is set aside;
- (ii) Respondent No.3 is directed to appoint the petitioner as principal of the school of Arts run by them.

14) The petition stands disposed of in the aforesaid terms with no order as to costs.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE