

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

WRIT PETITION NO.5795 OF 2015

Bharat Shikshan Sanstha, Omerga,
Taluka Omerga, District Osmanabad,
through its President
Shivajairao s/o Shridharrao More,
age 54 years, occu. Agri.,
r/o c/o office of Bharat Shikshan Sanstha,
Omerga, Taluka Omerga,
Dist. Osmanabad.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of Higher & Technical Education,
Mantralaya, Mumbai-32.
2. Dr.Babasaheb Ambedkar Marathwada University,
Aurangabad,
through its Registrar.
3. The Director,
College & University
Development Board,
Dr.Babasaheb Ambedkar
Marathwada University,
Aurangabad.
4. The Joint Director of Higher Education,
Aurangabad Division, Aurangabad.

...RESPONDENTS

...
Mr. S.S. Jadhavar, Advocate for petitioners.
Mr.A.V. Deshmukh, AGP for respondents 1 and 4.
Mr.S.G. Chapalgaonkar, Advocate for Respondents 2 and 3.
...

**CORAM: S.S. SHINDE &
A.M. BADAR, JJ.**

**RESERVED ON : 03/09/2015
PRONOUNCED ON: 08/09/2015**

JUDGMENT : [PER : S.S. SHINDE, J.]

. Rule. Rule made returnable forthwith. By consent heard finally.

2. This writ petition has been filed challenging the communication/order dated 16/04/2015 issued by respondent No.3 with further prayer to quash and set aside the said communication/order, with further direction to the respondents to allow the petitioner-institution to fill up the post of Principal from open category candidate in both the Colleges run by the petitioner-institution.

3. It is the case of the petitioner that, the petitioner society is registered under the Maharashtra Public Trusts Act, 1950 and Societies Registration Act. The petitioner trust is working in the field of Education and runs two colleges; one at Omerga namely Shri Chhatrapati Shivaji College, Omerga and

another at Makani namely Bharat Shikshan Sanstha's college, Makani, taluka Lohara, dist. Osmanabad. wherein the posts of Principals are vacant.

4. It is further case of the petitioner petitioner institution sought permission to fill up the post of Principal. The respondent No.3 by the communication / order dated 16.4.2015 refused to grant permission as sought in the application dt.2.2.2015 and asked the petitioner to reserve one post for S.T. Category. Hence, this petition.

5. The learned Counsel for the petitioner has placed reliance on the judgment dated 25.03.2014 delivered by this Court in the case of **Marathwada Sarvoday Shikshan Prasarak Mandal vs. State of Maharashtra & ors. in Writ Petition No.7333 of 2013**, as also the judgments referred therein and submitted that this petition deserves to be allowed. The learned Counsel for the petitioner submitted that, similar issue was involved in the case of **Vidya Prasarak Mandal vs. University of Mumbai**¹ and in the said judgment, it is held that, there cannot be reservation to the post of Principal. He further submitted that, in the case of **Indra**

¹ 2008 (5) Mh.L.J. 47

Sawhney vs. Union of India² the Apex Court has also held that, the certain services and positions on account of nature of duties attached to them or the level (in hierarchy) at which they obtain merit as explained above, in such situation, it may not be advisable to provide for the reservation. The learned Counsel for petitioner further invited our attention to the judgment in Writ Petition Nos. 5118 of 2009 and 7191 of 2012 wherein similar issue was involved. The Division Bench of the Bombay High Court has held therein that, the post of Principal is single cadre post and reservation policy cannot be applied for filling up the post of Principal though the institution runs various colleges which are governed by same University. Learned Counsel for the petitioner further submitted that, the communication issued by respondent No.3 is contrary to the law laid down by the Apex Court and the Bombay High Court.

6. Learned Counsel appearing for the petitioner invited our attention to the pleadings in the petition, annexures thereto and submitted that, respondent No.3 herein, has no authority to direct the petitioner to reserve one post of Principal for the candidates from reserved category. It is submitted that, colleges run by the petitioner-society are separate and independent colleges. Each college has separate entity and post of Principal has

² AIR 1993 SC 477

to be considered as a single post. Learned Counsel appearing for the petitioner submitted that, the issue raised in this petition is no longer *res integra* and is covered by the authoritative pronouncements of the Supreme Court and the Bombay High Court, which are referred to in the foregoing paragraphs. Therefore, learned Counsel appearing for the petitioner submitted that, the petition deserve to be allowed.

7. Respondent Nos. 2 and 3 has vehemently opposed the prayer of the petitioner and submitted that the petition deserves to be dismissed.

8. We have given anxious consideration to the submissions of the learned Counsel appearing for the petitioner, the learned Counsel appearing for respondent Nos. 2 & 3 and also learned A.G.P. appearing for respondent Nos. 1 and 4. We have carefully perused the pleadings in the petition, annexures thereto, and judgments cited across the Bar. Upon careful perusal of the documents placed on record and in particular, judgment and order in Writ Petition No. 2558/2003 (Vidya Prasarak Mandal vs. The University of Mumbai and others), in our opinion, the issue raised

in the present petitions is no longer *res integra* and is covered by the aforementioned authoritative pronouncements.

. In the facts of the ***Vidya Prasarak Mandal*** (supra), the petitioner therein, is a public trust registered under the Bombay Public Trust Act. The said trust runs Arts, Commerce and Science Colleges affiliated to Pune University. The College was bifurcated in the year 1976 into two independent colleges and both colleges were affiliated to Bombay University because territory jurisdiction of the Bombay University was extended to Thane. The petitioner-institution therein, was running three more colleges. The petitioner therein, was running in all five faculties which are managed independently, administratively and financially and they are separate and distinct entities. On superannuation of the Principal of one college, the petitioner therein, submitted proposal for appointment of Principal to the Bombay University. The Bombay University informed the Chairman of the petitioner therein, that, the post of Principal has been identified as a post reserved for backward class and that, the petitioner should take steps to make appointment of Principal on regular basis obviously from reserved category.

9. After considering the facts involved in the said case and appreciating the contentions of the parties, this Court in paragraphs-4 and 5 held thus:

"4. So far as the circular dated 15.3.1999 issued by the Director of Education is concerned, firstly we have not been pointed out any authority-conferred on the Director of Education by any law authorizing him to issue such circular. In our opinion, this being a matter of policy either such decision could have been taken by an authority which is authorised by Law to take such a decision or such a decision can be taken by the State Government itself. We have not been pointed out any decision taken up by the State Government in relation to the reservation in the post of Principal of affiliated colleges. In our view, the circular dated 15.3.1999 is clearly without any authority of law. Really speaking the decision of the University to reserve the post of Principal of Arts and Commerce College of the petitioner which is clearly based on the circular dated 15.3.1999 is liable to be set aside only for this reason that the Circular dated 15.3.1999 is without any authority of law.

5. It is further pertinent to be noted that we not only find that there is no authority or statutory provision providing for reservation in the post of Principal but we also find that the observations made by the Supreme

Court in its judgment in the case of “Indra Sawhney Vs. Union of India, AIR 1993 Supreme Court 477” go to show that there cannot be any reservation in the post of Principal. Specially the observations found in paragraph 112 which is a judgment delivered by Hon’ble Mr. Justice B.P.Jeevan Reddy which is a majority view, in our opinion, are pertinent, they read as under:-

“112. While on Art.335, we are of the opinion that there are certain services and positions where either on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit as explained hereinabove, alone counts. In such situations, it may not be advisable to provide for reservations. For example, technical posts in research and development organisations/ departments/ institutions, in specialties and super-specialties in medicine, engineering and other such courses in physical sciences and mathematics, in defence services and in the establishments connected therewith. Similarly, in the case of posts at the higher echelons e.g., Professors (in Education), Pilots in Indian Airlines and Air India Scientists and Technicians in nuclear and space application, provision for reservation would not be advisable.

As a matter of fact, the impugned Memorandum dated 13th August, 1990 applies the rule of reservation to “civil posts and services under the Government of India” only, which means that defence

forces are excluded from the operation of the rule of reservation though it may yet apply to civil posts in defence services. Be that as it may we are of the opinion that in certain services and in respect of certain posts, application of the rule of reservation may not be advisable for the reason indicated hereinbefore. Some of them are: (1) Defence Services including all technical therein but excluding civil posts. (2) All technical posts in establishments engaged in Research and Development including those connected with atomic energy and space and establishment engaged in production of defence equipment. (3) Teaching posts of Professors – and above, if any. (4) Posts in super-specialties in Medicine, engineering and other scientific and technical subjects.

(5) Posts of Pilots (and co-pilots) in Indian Airlines and Air India. The list given above is merely illustrative and not exhaustive. It is for the Government of India to consider and specify the service and posts to which the Rule of reservation shall not apply but on that account the implementation of the impugned Office Memorandum dated 13th August, 1990, cannot be stayed or withheld.

We may point out that the services/posts enumerated above, on account of their nature and duties attached, are such as call for highest level of intelligence, skill and excellence.

Some of them are second level and third level posts in the ascending order. Hence, they form a category apart. Reservation therein may not be consistent with "efficiency of administration" contemplated by Art.335."

The Supreme Court has, thus, stated that application of the rule of reservation in relation to certain services and certain posts is not advisable. One of the posts indicated by the Supreme Court is the post of Principal which is above the post of professor. As we find that there is no valid statutory provision providing for reservation in the post of Principal, it is not necessary for us to consider whether for the purpose of reservation of the post of Principal, the post of Principal in different colleges run by the same institution could have been clubbed together. We find that the University was not at all justified in directing the petitioner to fill in the post of Principal of the Arts and Commerce college by reserving it for backward class."

10. In the facts of the present case also petitioners has clearly stated in the petition that, both the colleges are administered separately and run independently. In the light of authoritative pronouncement of this Court in the case of **Vidya Prasarak Mandal** (supra), in our considered opinion the issue raised in the petition is no longer *res integra*, and is covered by the

aforementioned authoritative pronouncement.

11. In the result, the writ petition succeeds and the same is allowed. The communication/order dated 16/04/2015 is quashed and set aside. Rule made absolute in the above terms with no orders as to costs.

[A.M. BADAR, J.]

[S.S. SHINDE, J.]

kadam/