

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

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.: 9107 OF 2010

1. **Sahyadri Bahujan Vidya**
Prasarak Samaj at Sangamner,
A Registered Public Trust under
the Bombay Public Trust Act, 1950,
Tq. Sangamner, Dist. Ahmednagar,
Through its Secretary,
Prataprao S/o Jayantrao More,
Age: 79 years, Occu: Social Work,
R/o Wadgaonpan, Tq. Sangamner,
Dist. Ahmednagar.

2. **The Principal,**
Sahakar Maharashi Bhausahab Thorat
College of Arts, Commerce & Science,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar. ... **PETITIONERS**

VERSUS

1. **The Registrar,**
Pune University,
Pune.

2. **The Joint Director of**
Higher Education, Pune.

3. **Pandurang S/o Bhausahab Choudhari,**
Aged: 48 years, Occu: Service,
R/o C/o Smt. V. P. Choudhari,
Pravara Public School,
Pravara Nagar, Tq. Rahata,
Dist. Ahmednagar. ... **RESPONDENTS**

Mr. Mobbin Shaikh, Advocate h/f Mr. Vikram R. Dhorde, Advocate for the Petitioners.

Mr. A. R. Kale, Advocate h/f Mr. A. R. Joshi, Advocate for Respondent No.1.

Mr. S. P. Dound, A.G.P. for Respondent No.2.

Mr. L. V. Sangit, Advocate for Respondent No.3.

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CORAM:-

N. W. SAMBRE, J.

DATED:-

20th APRIL, 2015.

ORAL ORDER:

1. Heard learned counsel for the Petitioners society and Mr. Sangit, learned counsel for the Respondent employee.

2. The order passed by the grievance committee constituted under the Maharashtra Universities Act, 1994 with the Pune University is questioned which was passed in Proceeding No.12 of 2007. By the said order, the grievance committee has ordered the Petitioner and Respondent University to grant continuous approval to the respondent employee from 3rd July, 1991. The consequential benefits viz. seniority, increments were also ordered to be given.

3. The petitioner management has urged that every

year from 1990 the post in question was advertised and since two posts were available at the relevant time, petitioner was selected and appointed from 1991-92 against a seat reserved for backward class category. In support of these contentions, he has produced on record the appointment orders issued to the respondent employee every year. It will be proper to refer to few of the appointment orders such as dated 30th July, 1991 for a period from 1991-92, 28th June, 1993 for a period from 1992-93, dated 18th September, 1993 for a period from 18th September, 1993 to 10th September, 1993 against a seat reserved for Scheduled Tribe category, etc.

4. It appears from the record that the Petitioner was lastly issued an appointment order, appointing him on probation, by an order dated 12th August, 1996 in pursuant where to he has joined the services and still working with the petitioner management.

5. The respondent-employee, feeling aggrieved by the alleged termination order preferred appeal No.45 of 1996 before the Presiding Officer, University and College

Tribunal, Pune University. The said appeal came to be dismissed by an order dated 1st August, 2000 on the ground that the petitioner management has come out with a case that the services of the respondent employee were not terminated and he was in employment of the petitioner management since 1991.

6. Based on the above referred developments, it appears that the Respondent preferred an appeal before the Grievance Committee. The Grievance Committee, taking into consideration the fact that the respondent employee was in employment of the petitioner management since 1991, has proceeded to allow the claim of the respondent employee directing the petitioner management to submit his proposal for approval in pursuance of which the University was directed to approve the services of Respondent employee from 3rd July, 1991. It was also ordered that the Respondent employee be given all the benefits considering that he is in employment of the petitioner management since 1991.

7. The petitioner management has made a grievance in

regard to the said order in view of the fact that the respondent employee was appointed from 1991 till he was given an order appointing him on probation against a seat meant for scheduled tribe/ reserved category. According to the petitioner management the said fact was not taken into account by the Grievance Committee and the Grievance Committee has straightway proceeded to pass the order directing conferring the benefits from the first date of appointment in the year 1991. In support of his contention, learned counsel for the Petitioner has taken me through each of the appointment orders issued to the respondent employee in each of the academic year.

8. Shri Sangit, learned counsel for the Respondent would urge that even if the services of the respondent employee were taken to be from year to year basis still fact remains that he remained in continuous employment of the petitioner management. In addition to above, he would urge that the undertaking/ submissions made by the petitioner management before the Tribunal in Appeal No.45 of 1996 takes the parties to the only conclusion that the services of the respondent employee since 1991 are

continuous. He would further urge that even if the permanency is conferred on the respondent employee it must relegate back to the date of service i.e. 1991 and not 1996. As such he has prayed for dismissal of the petition.

9. Having considered the rival contentions of the parties, it is noticed that the employment of the Respondent employee since 1991 with the petitioner management is not in dispute. What is disputed by the petitioner management is that the advertisement against which the respondent employee was appointed was meant for a scheduled tribe category candidate. According to him, such post, which was meant for scheduled tribe candidate, cannot be filled in from an open category unless a procedure for conversion/ de-reservation or shifting of the reservation is followed. The said contentions are required to be accepted in view of the existing policy of the government to that effect. Admittedly, the respondent employee, who was appointed, does not belong to a reserved category particularly the scheduled tribe category. In view of the said fact the petitioner management was right in appointing him from year to year

basis and the fact was well within the knowledge of the respondent employee, as is apparent from the various appointment orders acknowledge by the respondent employee. The petitioner management had admitted that order in favour of the present respondent employee was issued in 1996, to be more precise on 12th August, 1996 appointing him on probation. Once the respondent employee has accepted the said order of appointing him on probation on 12th August, 1996 and has not made any grievance in relation to the said order, it will be a case of acquiescence on the part of the respondent employee as he has not raised any challenge to the said conduct of the petitioner management up to 2007 from 1996. This Court must take note of the fact that from 1991 till 11th August, 1966 no post from open category was vacant/ available against the sanctioned strength approved by University.

10. There is one more aspect of which this Court must take note of which, the Respondent University was directed by this Court on an earlier occasion to produce the appointment orders which were forwarded by the petitioner management appointing the respondent

employee on the post in question. Even the University has produced the same orders which are relied upon by the petitioner management and the said documents are not disputed by the respondent employee.

11. In view of above reasons, the order impugned, delivered by the Grievance Committee in Proceeding No.12 of 2007 is not sustainable as such said order is hereby quashed and set aside.

12. However, it will be appropriate to observe that since the respondent employee is appointed by appointment order dated 12th August, 1996 he shall be entitled to all such benefits, including that of seniority, consequential benefits of his seniority, including that of pay scale. With the above observations, the petition stands disposed of.

[N. W. SAMBRE, J.]

Dated:20/04/2015.
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