

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.12008 OF 2015
IN
WRIT PETITION NO.2255 OF 2001

THE STATE OF MAHARASHTRA
AND OTHERS

APPLICANTS

VERSUS

SANDESH LAXMIKANT KULKARNI
AND OTHERS

RESPONDENTS

Mr.A.M.Phule, Advocate for the applicants.
Mr.P.R.Patil, Advocate for respondent No.1.

(CORAM : S.V.GANGAPURWALA AND
RAVINDRA V. GHUGE, JJ.)

DATE : 14/10/2015

PER COURT :

1. Vide the present civil application, the applicants seek review of the order passed by this Court on 10/04/2015 in Writ Petition No.2255/2001.

2. The learned AGP submits that in fact the Apex Court, vide its order of 25/03/2015, has directed to club all the matters involving the issue of possessing NET/SET qualification so also regarding CAS benefits, to be placed before the Principal Seat at Bombay. The writ petition was decided on 10/04/2015.

3. According to the learned AGP, the present respondent was selected as against the seat reserved for S.C. category. As such, he could not have been granted permanency. The said post was meant for the reserved category. The reservation cannot be changed.

4. I have heard Mr.P.R.Patil, the learned counsel for the original writ petitioner.

5. While delivering the judgment dated 10/04/2015 in Writ Petition No.2255/2001, we had considered that the appointment of the petitioner is dtd. 16/08/1990 as a Lecturer in Statistics. The said appointment was made by following due procedure of law i.e. after giving advertisement etc. The post was reserved for S.C. category candidate. No candidate was available from the said reserved category even after issuing publication for 7 years. Right since 1988, the College was issuing advertisement for filling in the post from the reserved category candidate. We had considered the Government Resolution dated 05/12/1994 which states that even after 7 years, if no candidate is available from the reserved category, then, the said seat would be meant for an Open Category Candidate. We had relied upon the judgment of the Apex Court in the case of Deepa Gourang Murdeshwar Katre Vs.Principal, V.A.V. College of Arts

and others. It has observed as under :-

“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. We had observed that in the present case, the petitioner has put in more than 25 years of service. He is appointed in the year 1990. In 1994, he was terminated. The said petitioner filed an appeal before the College Tribunal. The College Tribunal allowed the appeal setting aside the termination order and further observed that the services of the respondent shall be continued on temporary basis and take action in accordance with the Government Resolution dated 05/12/1994. In the year 1995, 7 years had lapsed. For all these 7 years, the advertisement has been given but no candidate was available from the reserved category. As per the Government Resolution dated 05/12/1994, the said post, therefore, was available for the candidate of Open Category. Keeping in view the said aspect of the matter, we had passed the order directing the respondent in the said writ petition to treat the petitioner as a regular and permanent

employee from 01/01/1995.

7. In the light of the above, no case for review is made out. The application has been rejected. No costs.

(RAVINDRA V. GHUGE, J.)

(S.V.GANGAPURWALA, J.)