

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 8999 OF 2015**

Matsyodari Shikshan Sanstha
Jalna's, Arts College Tirthpuri,
Tq. Ghansawangi, Dist. Jalna
Through its Administrative Officer,
Mr. Babasaheb Ramchandra Gaikwad,
Age : 55 years, Occ : Service,
Office at : Matsyodari Shikshan Sanstha
Gat no.488, Near Railway over bridge,
Old Jalna, Dist. Jalna.

..PETITIONER**-VERSUS-**

1. The State of Maharashtra
Through its Secretary
Higher Education Department,
Mantralaya, Mumbai.
2. The Director of Higher Education,
Central Building, Pune 411001
Maharashtra State.
3. The Joint Director of Higher Education,
Aurangabad Division,
(New Building), Near Deogiri College,
Railway Station road, Aurangabad.
4. Assistant Commissioner
Backward Class Cell,
Divisional Commissioner Office,
Aurangabad, Dist. Aurangabad.

..RESPONDENTS

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Advocate for Petitioner : Mr. S.S. Tope
AGP for Respondent/State : Mr. S.K. Kadam

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

Dated: December 07, 2015

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ORAL JUDGMENT (S.S. SHINDE, J) :

Heard.

2. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

3. Being aggrieved by the impugned communication dated 5th August, 2015 issued by the Respondent No.3, this Petition is filed by the petitioner. By the impugned communication, it is communicated to the petitioner by the Respondent No.3 that, since the petitioner-institution has sought permission to fill in the post of Principal in Arts College at Tirthpuri, Tq. Ghansawangi, Dist. Jalna, and there are three posts of Principals in the petitioner – Shikshan Sanstha, as per roster duly verified by the office of the Divisional Commissioner, post of Principal cannot be filled in by the candidate from the open category.

4. The background facts for filing the Writ Petition are as under :

5. It is the case of the petitioner that, the present petitioner is Matsyodari Shikshan Sanstha, Jalna, which is running Arts College at Tirthpuri, Tq. Ghansawangi, Dist. Jalna. The petitioner Shikshan Sanstha has filed proposal to start the new college of Arts faculty at Tirthpuri, Tq. Ghansawangi, Dist. Jalna from the academic year 2000-2001. Thereafter, the Director Board of college and University Development of Dr.Babasaheb Ambedkar Marathwada University by letter dated 30th December, 1999 recommended positively towards the State Government to start the new college at Tirthpuri. Accordingly, after completing due requirements, the Respondent No.1 by letter dated 28th June, 2000 granted permission to the petitioner institution to start Arts college at Tirthpuri, Tq. Ghansawangi, Dist. Jalna from the academic year

2000-2001. Since then the petitioner institution is running the said college of Arts faculty at Tirthpuri.

6. It is the further case of the petitioner that, Dr. Babasaheb Ambedkar Marathwada University by following due process has issued a letter dated 13/18th July, 2000, thereby intimated the petitioner institution to give the admission to the students as per permission granted by the State Government. The Respondent No.3 by letter dated 19th October, 2005 recommended to the Government for granting grant-in-aid to the said college. Thereafter, respondent no.2 has granted 25% grant-in-aid and thereafter by order dated 8th February, 2006 has granted 50% grant-in-aid from the year 2004-2005.

7. It is the case of the petitioner that, the Respondent has started 100% grant-in-aid by order dated 31st October, 2006. Since then from the academic year 2006-2007, the present petitioner college is on

100% grant-in-aid. The petitioner college thereafter filled up the post of Principal of Scheduled Caste Category by appointment order dated 16th July, 2008. However, on 31st August, 2010, the person from Scheduled Caste category to whom appointment order was issued is retired under voluntary retirement scheme. Thereafter, the institution has submitted an application to Dr. Babasaheb Ambedkar Marathwada University for the permission of issuance of advertisement to fill up the post of Principal. Accordingly, the University has granted permission thereby intimated to fill up the said post from scheduled tribe category. The petitioner has issued an advertisement on 7th December, 2010, which is published in daily "Sakal" thereby inviting the applications for the post of Principal from eligible candidates along with the required documents from Scheduled Tribe Category. Accordingly, in response to the said advertisement some of the candidates applied who have been interviewed and selected, however, the

candidate of Scheduled Tribe category for the petitioner college to whom appointment order was issued has not joined the college in spite of appointment order.

8. It is the further case of the petitioner that, the petitioner Shikshan Sanstha, Jalna has again published an advertisement in September, 2012 thereby inviting the applications from the eligible candidates for the post of Principal on the Arts College Tirthpuri from S.T. Category. However, not a single candidate applied for the said post, hence the efforts of the institution to fill up the post of Principal from S.T. Category at Arts College of Tirthpuri become unfruitful. It is the case of the petitioner that, on 19th June, 2014, the petitioner institution has thereafter forwarded the roster for the verification towards the respondent no.4. The petitioner institution thereafter submitted a letter dated 25th May, 2015 to Dr. Babasaheb Ambedkar Marathwada University asking permission to fill up the said post of Principal for the petitioner college from

open category. The Director of College and University Development of Dr. Babasaheb Ambedkar Marathwada University granted permission on 10th June, 2015 to fill up the post of Principal of the petitioner college from open category. The petitioner institution has issued a letter dated 27th June, 2015 to the Respondent No.3 thereby asking no objection to fill up the post of Principal from open category. Accordingly the Respondent No.3 by impugned letter dated 5th August, 2015 intimated that, said post has to be fill up as per the roster fixed by the Respondent No.4 on 19th June, 2014. Indirectly, it is intimated that to fill up the said post from Scheduled Tribe category and denied to fill up the post of Principal at the college at Tirthpuri from open category. Hence this Petition.

9. It is the submission of the learned counsel appearing for the petitioner that, by various pronouncements the High Court has taken a view that, the post of Principal is isolated post and reservation for

the said post is neither provided in the University Statute or there cannot be reservation to isolated post, which would amount to 100% reservation to the post of Principal. The learned counsel appearing for the petitioner invited our attention to the pleadings in the Petition, grounds taken therein and the reported judgments of the Bombay High Court at Principal Seat in the case of Vidya Prasarak Mandal V/s University of Mumbai and ors¹, unreported judgment of the Bombay High Court at Principal Seat in the case of Modern Education Society V/s The University of Pune and ors, in Writ Petition No. 444/2014, decided on 6th January, 2015 and the unreported judgments of the Bombay High Court bench at Aurangabad, in the case of Shri Shivaji Mofat Education Society, Kandhar and anr. V/s The State of Maharashtra and others, in Writ Petition no.1281 of 2014, decided on 21st April, 2014, in the case of Shri Sharda Bhavan Education Society V/s The State of Maharashtra, in Writ Petition No. 5118 of 2009, decided on 27th July, 2011 and in the

1 2008(4)Bom.C.R.63

case of Marathwada Sarvoday Shikshan Prasarak Mandal V/s The State of Maharashtra and others in Writ Petition No. 7333/2013 along with other connected matters, decided on 25th March, 2014. The learned counsel appearing for the petitioner therefore submits that, the Petition deserves to be allowed.

10. On the other hand, the learned A.G.P. appearing for the Respondent/State, relying upon the averments in the affidavit in reply, submits that, the petitioner – institution is maintaining the seniority list of the employees of the Colleges run by them and accordingly there are three posts of Principals in the petitioner – institution, and therefore, any one post has to be filled in is as per the common Roster fixed by the Respondent No.4 on 19th June, 2014. It is further submitted that, since the petitioner – institution is receiving grant-in-aid, it is bound to follow the reservation policy and appoint the eligible candidate from the reserved category as Principal.

11. We have given anxious consideration to the rival submissions of the learned counsel appearing for the parties. With their able assistance, we have perused the pleadings in the Petition, annexures thereto, judgments cited across the bar and we are of the opinion that, the issue raised in this Petition is no longer *res integra* and covered by the aforementioned judgments of the Bombay High Court, wherein the view is taken that, the post of Principal is isolated, in as much as, individual college is having an isolated post for the Principal. This Court in the case of Shri Sharda Bhavan Education Society (supra) has also observed that, there can be no doubt that, when there is plurality of posts in a cadre, the reservation policy of the State must be implemented. But, it is difficult to accept that the single post cadre of Principal of a college should be clubbed together with the cadre of Principal in another college, merely because it is being run by the same institution. In that view of the matter,

relying upon the ratio laid down in the aforementioned expositions of the Bombay High Court, we are of the considered view that, the Petition deserves to be allowed.

12. The Writ Petition is allowed. The impugned communication dated 5th August, 2015 issued by the Respondent No.3 is quashed and set aside.

13. Rule is made absolute in terms of prayer clause `B'. The petition stands disposed of.

Sd/-
(**P.R. BORA, J.**)

Sd/-
(**S.S. SHINDE, J.**)

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SGA/-