

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD
WRIT PETITION NO.10369 OF 2013

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
--	---------------------------

Mr.N.B.Suryawanshi, advocate for the Petitioner.
Mr.K.G.Patil, Addl. Govt. Pleader for the State.
Mr.A.B.Girase, advocate for Respondent No.1.
Mr.V.D.Sapkal, advocate for Respondent Nos.5 to 15.

**CORAM : S.V.GANGAPURWALA &
V.L.ACHLIYA, JJ.**
Date : 04.03.2015.

PER COURT :

1. Heard.
2. Mr.Suryawanshi, learned counsel for the petitioner strenuously contends that the petitioner is an Association of the Officers and the Employees of the Respondent No.1-University and is prosecuting the same in the larger interest of its members. According to the learned counsel, the advertisement bearing No.5/13 invited applications for various posts is illegal on two counts; (i) Ratio of 50% for appointment by nomination and promotion is not maintained; (ii) As per Section 52 of the Maharashtra Universities Act, the Rules have to be approved by the Hon'ble Chancellor. In absence of any Rules being approved by the

Hon'ble Chancellor, the advertisement on the basis of said Rules is illegal. The qualification prescribed in the advertisement as per the draft Rules can not be insisted upon. According to the learned counsel, as petitioner is an Association, it is concerned with the larger interest of its members and only because some of the members are selected that would not affect the right of the Association to file the petition and challenge the advertisement when the advertisement is per se and ex-facie erroneous and not supported by any valid Rules. Subsequent to the present advertisement, the Respondent No.1 had also issued advertisement bearing No.10/2014, which was also assailed by the petitioner by way of a separate Writ Petition. The advertisement was withdrawn by Respondent No.1. The challenge was on the same grounds.

3. Mr.Girase, and Mr.Sapkal, learned counsel for the Respondents submit that the petition would not be tenable inasmuch as the Respondents who are selected are the members of the petitioner Association and the petitioner Association can not prosecute a petition against the interest of its own members. Many of the members of the petitioner Association have participated in the selection process. The learned counsel relies on the judgment of the Apex Court in a case of **“Rameshchandra Shah and others Vs. Anil Joshi and others”** reported in **AIR 2013 Supreme Court 1613**. According to the learned counsel, the ratio of 50:50% for

appointment by nomination and promotion has been followed. The Rules are framed. They are also approved by the Management Council and are submitted to the State in February 2013.

4. The advertisement is issued on 1.10.2013. As per the advertisement, the applications were invited upto 18.12.2013. The written examination was to be held on 22.12.2013. The interviews were conducted on 27th and 28th December, 2013. It is not a matter of debate that the Respondents who are selected and appointed are the members of petitioner Association. It is also not a matter of debate that many members of petitioner Association have participated in the selection process, pursuant to the impugned advertisement dated 1.10.2013.

5. When the members of the petitioner Association voluntarily participated in the selection process and some of them have also been selected and appointed, it would not be appropriate to consider the case of the petitioner at this stage. We would have considered the case of the petitioner, had the petition been filed prior to the selection process being conducted. Considering the above, we are not inclined to entertain the petition. In light of the fact that we have disposed of the petition on the aforesaid aspect, respective contentions on merits have not been considered and they are kept open.

6. The Writ petition is disposed of. No costs.

(V . L . ACHLIYA, J .)

(S . V . GANGAPURWALA, J .)

Dt..04.03.2015.
asp/office/wp10369.14