

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.444 OF 2014

Modern Education Society

... Petitioner

Vs.

The University of Pune
through Secretary & Ors.

... Respondents

Mr.Mihir Desai for the Petitioner
Mr.Rajendra Anbhule for Resp. No.1
Mr.A.I. Patel, AGP, for Respondent Nos.2 to 4

**CORAM: SMT. VASANTI A. NAIK &
SHRI C.V. BHADANG, JJ.**

DATE: 6th JANUARY, 2015

P.C.:

Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned Counsel for the parties.

By this petition, the petitioner society impugns the communications dated 14.6.2013 and 3.10.2013 directing the petitioner society to appoint a person from the scheduled castes on the post of Principal in Nowrosjee Wadia College of Arts and Commerce, Pune.

The petitioner – society runs and manages 3 educational institutions namely, Nowrosjee Wadia College of Arts and Commerce, Pune, Ness

Wadia College of Commerce, Pune and D.G. Ruparel College of Arts, Science and Commerce, Mumbai. The Principal's post in the Nowrosjee Wadia College of Arts and Commerce fell vacant in view of the retirement of the Principal w.e.f. 1.6.2013. The petitioner – society immediately applied to the State Government for permission to fill the post of Principal in the said college. The respondent No.3 – Joint Director (Higher Education), Pune directed the petitioner, by the communication dated 14.6.2013 that the post be filled up by a candidate belonging to the Scheduled Castes. By a subsequent communication dated 3.10.2013, the respondent No.1 – University of Pune informed the petitioner that the post of Principal should be filled up as per the reservation. The petitioner has impugned the said communications in the instant petition.

Mr.Mihir Desai, the learned Counsel for the petitioner, submitted that the respondents were not justified in directing the petitioner to appoint a candidate from the Scheduled Castes on the post of Principal in the Nowrosjee Wadia College of Arts and Commerce, Pune as the said post was a solitary post under the cadre and was not amenable to reservation. It is submitted that though this Court has, by the order dated 30.11.2011 in Writ Petition No.749 of 1997 held that the post of Principal in each of the colleges run by an educational society would be a single post in the cadre

and would not be amenable to reservation, the respondent Nos.1 and 3 had declined to permit the petitioner to fill up the post. It is stated that the issue involved in this case is no more *res integra* as the said issue has been decided by the Hon'ble Supreme Court as early as in 1998 by a judgment reported in **AIR 1998 SC 1767** (*Post Graduate Institute of Medical Education and Research, Chandigarh v. Faculty Association and Ors.*).

Mr.Patel, the learned Assistant Government Pleader, for Respondent Nos.2, 3 and 4, supported the action of the respondents and submitted that since the petitioner – society was running 3 different colleges, the reservation policy was liable to be applied.

On hearing the learned Counsel for the parties, it appears that the impugned orders cannot be sustained. The issue involved in this case stands answered in favour of the petitioner by the judgment of the Hon'ble Supreme Court reported in **AIR 1998 SC 1767** and followed by this Court in the order dated 30.11.2011 in **Writ Petition No.749 of 1997**. It appears from the aforesaid judgments that unless there is a plurality of posts in a cadre, the question of reservation would not arise. It was held by the Hon'ble Supreme Court that the post of Principal in each of the colleges run by an education institution is a solitary post in a cadre and is not

amenable to reservation. Since the issue stands answered in favour of the petitioner, the prayers made in the writ petition need to be granted.

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned orders are quashed and set aside. Rule is made absolute in terms of prayer clauses (a) and (b). In the facts of the case, there would be no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)