

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 221/2015

(Ms.Swati Dindorkar Katole vs.Punjabrao Deshmukh Krishi Vidyapeeyth, Akola.

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

CORAM : B.R.GAVAI &
Mrs. MRIDULA BHATKAR, JJ.
DATED : 19th January, 2015.

The petitioner has approached this Court praying for a direction to the respondents to accept the application form of the petitioner for the post of Junior Research Assistant and Senior Research Assistant and permit her to compete for both the posts in furtherance of the advertisement dated 17th July, 2014.

Heard Shri C.B. Dharmadhikari, learned counsel for the petitioner and Smt. Chaudhari, along with Shri Abhay Sambre, learned counsel for respondent University.

Shri Dharmadhikari, learned counsel relying on the communication from the State Government dated 3rd December, 2011 submits that the upper age limit for the post of Jr. Research Assistant and Sr.Research Assistant is

40-years. He submits that in any case in view of the judgment of the Apex Court in the case of **Hitendra Singh s/o Bhupendra Singh and others vs. Dr.Punjabrao Deshmukh Krishi Vidyapeeth and others** in Civil Appeal No. 4412/2014, the Apex Court has directed that relaxation should be granted in favour of the persons who were part of an illegal selection process. Learned counsel further submits that when the candidates who were part of an illegal selection process are granted age relaxation by the Apex Court, there is no reason as to why a candidate who has been participating in the selection process but not selected, should be given the same benefit. Learned counsel submits that the petitioner has a 'legitimate expectation' regarding grant of age relaxation.

Learned counsel for the respondent, on the contrary, submits that the Resolution dated 7.8.2014 specifically provides that the upper age limit in case of the candidates belonging to the General category is 33 years and for backward classes it is 38 years. It is submitted that so far as Smt. Jain is concerned, she is already working in Maharashtra State Seeds Corporation (Mahabead) and as such, in view of the Govt. Circular dated 1st November 2003, she is entitled to age relaxation.

Insofar as the first contention is concerned, the reliance on the communication dated 3rd December, 2011

would be of no assistance in view of the Govt. Resolution dated 17th August, 2004 which provides that the upper age limit in case of general category candidates would be 33 years. Insofar as the case of Smt.Jain is concerned, the same would be governed by the Govt.Circular dated 1st November,2003.

Insofar as the contention regarding the judgment of the Apex court in the case cited *supra* is concerned, the Apex Court has upheld the judgment of this Court finding the selection process to be tainted and as such, the termination on that ground invalid. However taking into consideration the fact that there was no finding regarding bribery, the Apex court found that such of the employees who were selected in earlier selection process were entitled to the relaxation of age. What would be the power of the Apex Court referable under Article 142 of the Constitution and what would be a law laid down by the Apex Court in under Article 141 has been recently considered by the Full Bench of this Court in the case of **Arun Vishwanath Sonune vs. State of Maharashtra and others : 2015 (1) Mh.L.J. 457.**

The Apex Court in the present case has categorically used the words “such of the petitioners who were selected in the earlier selection process” and as such though the Apex Court had upheld the judgment of the Division Bench of this Court, by exercising the powers under Art.142, has granted a limited relief of age relaxation to such of the persons who were

petitioners before the Court and as such the powers exercised by the Apex Court were squarely under Art. 142 of the Constitution. Such a power is not available to this Court under Art.226 of the Constitution. Hence the contention in that regard will also have to be rejected.

The petition being devoid of merit, is dismissed.

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