

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2033/2015

(DR.DATTATRAYA JAIKRISHNA GOTMARE & ANOTHER **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

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

Court's or Judge's orders

Shri S.P. Bhandarkar, counsel for the petitioners.
 Ms N.P. Mehta, A.G.P. for the R-1 to 4 & 8.
 Shri J.B. Kasat, counsel for the R-5.
 Shri S.P. Dharmadhikari, Senior Counsel with Shri M.D. Lakhey, counsel
 for the R-6.
 Shri S.J. Kadu, counsel for the R-7.

CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATE : SEPTEMBER 9, 2015.

By this petition, the petitioners challenge the permission granted by the respondent no.5-Sant Gadge Baba Amravati University, Amravati, to the respondent no.7-Society for making appointments to the 21 posts of Assistant Professors. The petitioners also seek a declaration that the decision by the ad-hoc body to appoint 21 Assistant Professors is illegal and cannot stand the scrutiny of law. Certain other ancillary directions are also sought.

The petitioners claim to be the president and the secretary of the society which runs the respondent no.7-Jagadamba Mahavidyalaya, Achalpur City. Since there were disputes between the rival factions in the managing body, on an application filed by the petitioners bearing Application no.3 of 2006, the Joint Charity Commissioner appointed an ad-hoc body of four persons to administer the affairs of the trust. By the said order dated 27.04.2006, the ad-hoc trustees were restrained from dealing with the property of the trust and making appointments of the employees. Certain other conditions were also imposed on

the members of the ad-hoc body by the said order. The ad-hoc body was directed to administer the affairs of the trust till Change Report Nos.531 of 2005 and 215 of 2006 were decided by the Deputy Charity Commissioner. The order of the Joint Charity Commissioner dated 27.04.2006 was challenged by the petitioners in a writ petition but, the said writ petition was dismissed. In 2012, an application was made by one of the members of the ad-hoc body for permission to make appointments as there was an emergent need to appoint 21 Assistant Professors in the college run by the society, failing which the college could have been de-recognized. The said application was partly allowed by the Joint Charity Commissioner by the judgment dated 03.08.2012. Since Change Report Nos.531 of 2005 and 215 of 2005 were decided and Change Report No.352 of 2008 was pending, the Joint Charity Commissioner directed by the said judgment that the ad-hoc body would continue till the decision in Change Report no.352 of 2008. The Joint Charity Commissioner asked the ad-hoc body to nominate four members of the trust, who would act as special committee authorized by the trust for making appointments in Jagadamba Mahavidyalaya. It was further held that the appointments should be made strictly in accordance with the Maharashtra Universities Act, 1994 and Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. Change Report No.352 of 2008 was decided by the Deputy Charity Commissioner on 27.11.2014. After Change Report no.352 of 2008 was decided, the Executive Committee of the trust sought permission from the respondent no.5-University to make the appointments of 21 Assistant Professors. It appears that the respondent no.5-University has granted permission to the management to make the appointments by an order dated 05.02.2015. The permission granted by the respondent no.5-University to the management is challenged by the petitioners in the instant petition.

It is submitted on behalf of the petitioners that the respondent no.5-University could not have permitted the management to fill the 21 posts of Assistant Professors despite the judgment of the Joint Charity Commissioner dated 03.08.2012 that the special committee of four members nominated by the general body could have made the appointments. It is submitted that the general body has not nominated four members of the trust to act as a special committee and, hence, the respondent no.5-University was not justified in permitting the management to fill 21 posts of Assistant Professors.

Shri Dharmadhikari, the learned Senior Counsel appearing on behalf of the respondent no.6, submitted that the ad-hoc body constituted in terms of the order of the Joint Charity Commissioner dated 27.04.2006 ceased to exist after Change Report Nos.531 of 2005, 215 of 2006 and 352 of 2008 were decided. It is stated that the ad-hoc body was to continue in terms of the order dated 27.04.2006 and the judgment dated 03.08.2012, only during the pendency of Change Report Nos.531 of 2005, 215 of 2006 and 352 of 2008. It is submitted that Change Report Nos.531 of 2005 and 215 of 2006 were decided even before the application filed by one of the members of the ad-hoc body, bearing Miscellaneous Application No.15 of 2011 was decided by the judgment dated 03.08.2012. It is pointed out that the ad-hoc body was to continue only till Change Report no.352 of 2008 was decided. It is stated that after Change Report no.352 of 2008 was decided, the ad-hoc body ceased to exist and the management sought the permission of the respondent no.5-University to fill the vacancies in the post of Assistant Professors. It is stated that the submission made on behalf of the petitioners that the four member Special Committee should have monitored the selection process in view of the judgment dated 03.08.2012 is not well founded as the ad-hoc committee ceased to exist after Change Report No.352 of 2008 was decided. It is submitted that though the petitioners have

sought to challenge the permission granted by the respondent no.5-University on 05.02.2015, a copy of the order granting permission to the management is not annexed to the petition and the said order is also not challenged.

On hearing the learned counsel for the parties and on a perusal of the order and the judgment of the Joint Charity Commissioner dated 27.04.2006 and 03.08.2012 respectively, it appears that there is no substance in the only ground canvassed on behalf of the petitioners to challenge the permission and the appointments. It is apparent from the reading of the order and judgment of the Joint Charity Commissioner that the ad-hoc body was required to administer the trust only during the pendency of Change Report Nos.531 of 2005, 215 of 2006 and 352 of 2008. Admittedly, all the three change reports were decided and the last Change Report No.352 of 2008 was decided by the Deputy Charity Commissioner on 27.11.2014. Hence, on 27.11.2014, the ad-hoc body of four members ceased to exist. It appears that there was an election to the executive committee of the trust and the reporting trustee filed a change report in respect of the change. It is the case of the respondent no.6 that the duly elected executive committee members sought the permission of the respondent no.5-University after 27.11.2014 to fill the vacant posts of 21 Assistant Professors and by an order dated 05.02.2015, the permission was granted. The order granting permission is neither annexed to the petition nor is subjected to challenge. Even if the order dated 05.02.2015 were to be challenged by the petitioners, the challenge would have failed in view of the order and judgment of the Joint Charity Commissioner dated 27.04.2006 and 03.08.2012 which directed the ad-hoc body to administer the trust only till Change Report Nos.531 of 2005, 215 of 2006 and 352 of 2008 were decided. There is nothing wrong with the permission granted by the respondent no.5-University to fill the 21 posts of Assistant Professors, at least on the ground canvassed by the counsel for the

petitioners. We do not find any reason to interfere either with the permission granted by the respondent no.5-University or the process initiated by the respondent no.6 for making the appointments, on the ground canvassed on behalf of the petitioners in the instant petition.

Since there is no merit in the writ petition, the same is dismissed with no order as to costs.

At this stage, Shri Bhandarkar, the learned counsel for the petitioners, seeks the continuation of the ad-interim relief granted by this Court on 10.04.2015, for a period of two weeks.

The prayer made on behalf of the petitioners is opposed by the counsel for the respondents.

In the circumstances of the case, we reject the prayer.

Order accordingly.

JUDGE

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