

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

WRIT PETITION NO.1873 OF 2014

Dr.Sudhir Babarao Wadatkar and others

-vs-

The State of Maharashtra and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.B.G.Kulkarni, counsel for the petitioners.
Mrs.Bharti Dangre, GP for the respondent No.1.
Mr.N.S.Khubalkar, counsel for the respondent No.2.
Mr.A.R.Patil, counsel for the respondent Nos.3 and 4.

CORAM : SMT. VASANTI A. NAIK &
A.M.BADAR, JJ.

DATE : 27.04.2015.

By this petition, the petitioners, who are working on the posts of Professors and Associate Professors in the Agricultural Universities, challenge the advertisements issued by the Maharashtra Council of Agricultural Education and Research, Pune on 26/06/2013 and 06/02/2014.

The petitioners are working in the Agricultural Universities on the posts of Professor and Associate Professor. By the advertisements, issued by the Maharashtra Council of Agricultural Education and Research, Pune on 26/06/2013 and 06/02/2014, applications were called from candidates interested in appointment on the posts of Professor, Head of the Department and Dean. According to the petitioners, the said advertisements are not issued in consonance with the amended provisions of Section 58(1) of the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983, inasmuch as though Section 58(1) provides that an appointment of an academic staff would be made on the

recommendations of a Selection Board, the respondents have not constituted the Selection Board as yet. It is stated that the Selection Board constituted by the State Government by the notification dated 21/10/2014 is not in consonance with the provisions of Section 58(1) of the Act of 1983. It is stated that as per the advertisements, the API score of the candidates interested in seeking appointment is to be considered for a period of five years preceding the date of issuance of advertisements. It is stated that the API score could not have been considered from the year 2009 when the advertisements were issued in 2013 and February, 2014 specifically when the statute governing API score was for the first time brought into force with effect from March, 2014. It is stated that the advertisements are liable to be set aside, as they are not in conformity with the provisions of Section 58(1) of the Act of 1983 and the API score of the candidates for a period of five years is sought to be considered.

Mrs. Dangre, the learned Government Pleader appearing on behalf of respondent No.1, submitted that the submission made on behalf of the petitioners that the Selection Board, as provided under Section 58(1) is not constituted, is incorrect. It is stated that in view of the amended provisions of Section 58(1), an appointment of an academic staff could be done only on the recommendations of the Selection Board. It is stated that in pursuance of the amended provisions of Section 58(1), the Selection Committees were done away with and instead the Maharashtra Agricultural Universities Recruitment Board is constituted in view of the proviso to sub-section (1) of Section 58 of the Act of 1983. It is stated that the advertisements refer to the posts of Dean, Associate Dean, Head of the Department and Professor and the proviso to

sub-Section (1) of Section 58 clearly mentions that the appointment to these posts could be made on the recommendations of the Maharashtra Agricultural Universities Recruitment Board constituted by the State Government. It is stated that the Maharashtra Agricultural Universities Recruitment Board is constituted by the State Government and it has started functioning. It is stated that the petitioners are erroneously referring to the Selection Board constituted in pursuance of the notification dated 21/10/2014. It is stated the said Selection Board is referable to the appointments of the academic staff, other than the Director, Dean, Associate Dean, Head of the Department and Professor. It is stated that the Selection Board constituted by the notification dated 21/10/2014 has nothing to do with the selection of the persons seeking appointment on the posts advertised by the impugned advertisements. It is stated that both the boards are different and the Selection Board constituted by the notification dated 21/10/2014 deals with the appointments of the academic staff other than the posts mentioned in the advertisements.

Shri Khubalkar, the learned counsel for the respondent-Maharashtra Council of Agricultural Education and Research, Pune, states that a Council had rightly decided to consider the API score of the candidates for a period of five years preceding the date of the issuance of the advertisements. It is stated that though the statute governing API score was brought into force in March, 2014, the draft notification in regard to the statute was sent to the Government in the year 2012. It is stated that because the Government was taking some time in promulgating the statute, the Council issued the advertisements mentioning therein the benchmark in respect of the API score, for a

period of five years preceding the date of issuance of the advertisements. It is stated that such a practice is not new and the Hon'ble Supreme Court in a matter involving a similar issue had held that the action on the part of the Union Territory in that case, of laying down the criteria as per the draft notification was correct. The learned counsel relied on the judgment of the Hon'ble Supreme Court, reported in (2011) 9 SCC 645 (Chandigarh Admn. v. Usha Kheterpal Waie) to substantiate his submission. It is also stated that by the Government Resolution dated 18/03/2010, the benefits of the 6th Pay Commission Recommendations were granted to the employees including the petitioners on certain conditions, one being that their API's would be considered in future and since the petitioners have received the benefits of the 6th Pay Commission Recommendation, the petitioners cannot be heard to say that the Council could not have decided to consider the API score of the candidates for a period of five years. The learned counsel sought for the dismissal of the writ petition.

Shri Patil, the learned counsel for the University had nothing much to say in the matter except that the appointments would be made by the University as per the recommendations of the Council-respondent No.2.

On hearing the learned counsel for the parties, it appears that there is no merit in the submissions made on behalf of the petitioners and the petition is liable to be dismissed. In view of the provisions of Section 58(1) of the Act of 1983, no appointment could be made except on the recommendation of the Selection Board constituted by the State Government. The petitioners have relied on the provisions of Section 58(1) of the Act of 1983 without giving any weightage to the proviso to the said provisions. The

proviso to Section 58(1) clearly stipulates that the appointments to the posts of Director, Dean, Associate Dean, Head of the Department and Professor could be made only on the recommendations of the Maharashtra Agricultural University Recruitment Board. In this case we are concerned only with the appointment to the posts of Director, Dean, Associate Dean, Head of the Department and Professor. We are not concerned with the appointment of the other academic staff. Hence, the advertisements could not have been challenged on the ground that the Selection Board was not constituted for making the recommendations for appointment. It is pointed out on behalf of the State Government that in view of the proviso to Section 58(1), the State Government has constituted the Maharashtra Agricultural University Recruitment Board and the said board is functioning. The reference made by the learned counsel for the petitioners to the constitution of the Selection Board by the notification dated 21/10/2014 is ill founded as the said Selection Board is constituted for making the appointments of the other academic staff excluding the Director, Dean, Associate Dean, Head of the Department and Professor.

There is also no merit in the submission made on behalf of the petitioners that the API score for a period of five years preceding the date of issuance of the advertisements could not have been considered. The submission made on behalf of the petitioners in that regard is liable to be rejected for the reasons stated by the Council in its affidavit-in-reply. By the Government Resolution dated 18/03/2010, the benefits of the 6th Pay Commission Recommendations were granted to the employees including the petitioners only on the acceptance of certain conditions which included a condition that the API score of the employees would be

considered in future. It is stated that the petitioners sought the benefits in terms of the Recommendations of the 6th Pay Commission by accepting the conditions mentioned in the Government Resolution dated 18/03/2010. The petitioners, therefore, cannot make a grievance after seeking the benefits of the 6th Pay Commission Recommendations on the conditions mentioned in the Government Resolution, that the API Score of five years should not be considered while considering their case for appointment on the various posts advertised by the impugned advertisements. Also, it is necessary to note that a draft notification in relation to the proposed statute governing API score was sent to the Government in the year 2012 and since the State Government was taking some time, the advertisements were issued mentioning there that the API score of the candidates for a period of five years preceding the date of issuance of the advertisement would be considered. It appears that just after the issuance of the advertisements, in March 2014, the statute governing API score was brought into force. A simple issue was considered by the Hon'ble Supreme Court and the same is answered against the case of the petitioners by the judgment reported in (2011) 9 SCC 645.

Since there is no merit in the submissions made on behalf of the petitioners, the writ petition is dismissed with no order as to costs.

JUDGE

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