

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

Writ Petition No.2438 of 2014

(Satyanarayan Natha Nagre .vs. Joint Director of Higher Education, Education Office of
Higher Education, Amravati and Ors.)

with

Writ Petition No.2439 of 2014

(Dr. Shilpa Deepak Kakade .vs. Joint Director of Higher Education, Education Office of
Higher Education, Amravati and Ors.)

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

Court's or Judge's orders

CORAM : B.P.DHARMADHIKARI &
A.P.BHANGALE, JJ.

DATE : 23rd JANUARY, 2015.

Heard Mr.F.T.Mirza, learned Counsel for the petitioners, Mr.D.M.Kale, learned A.G.P. for respondent no.1. Nobody appears on behalf of respondent nos. 2 to 4 in both the matters.

Mr.D.M.Kale, learned A.G.P. for respondent no.1 is seeking time to obtain additional instructions as, according to him, reply placed on record does not contain necessary material.

Mr.F.T.Mirza, learned Counsel for the petitioners, however, has pointed out the reasons given in the impugned order refusing approval to the petitioners and the reasons reflected in the affidavit are mutually inconsistent. He also points out that the affidavit-reply points out some fraud played by respondent no.3 and 4/management upon the department way back in the year 1999.

The petitioner in Writ Petition No.2439 of 2014 has been duly selected as a Lecturer to teach Marathi in 2003. The petitioner in the other Writ Petition has been similarly selected in the year 2009 to teach English.

They have continued to work till passing of impugned orders dt.15.12.2012 without any objection. On that day, for the first time, two posts in English and one post in Marathi are declared surplus by respondent no.1. It is against this action that the present petitions have been filed.

The petitioners have not received their salary after November, 2012.

Mr.F.T.Mirza, learned Counsel for the petitioners submits that the vacancies were permitted to be filled in by the competent Authority and in response to public advertisement and open selection process, the petitioners have been selected on their own merits. Representatives of the Office of respondent no.1 as also respondent no.2/University have attended those interviews. The petitioners were then selected and appointed. The learned Counsel invites our attention to reply-affidavit to show that, in paragraph 4, respondent no.1 has pointed out that though the Government permitted additional one section on no grant-in-aid basis, as per letter dt.24.6.1999, respondent no.4 informed that said section was on grant-in-aid basis and accordingly, got the post sanctioned by showing total two grant-in-aid sections. The learned Counsel contends that all these facts must have been within the knowledge of respondent no.1 and other Authorities. The petitioners cannot be held privy to any such alleged illegalities.

The learned A.G.P. is relying upon reply-

affidavit. He states that, as one section was erroneously accepted as on grant-in-aid, staff justification for total two sections was worked out. When the error was discovered, the posts have been rightly found surplus. He points out that respondent no.1 has only acted in accordance with law and in public interest.

After hearing the learned Counsel for the respective parties, atleast, at this stage, we are not in a position to hold the petitioners guilty of any fraud or falsehood in the matter. They have participated in open selection process and have been legally appointed. They have also worked thereafter and are in service even today.

Hence, if alleged fraud played by respondent nos. 3 and 4 was to be used to the prejudice of petitioners, it was necessary for respondent no.1 to extend the petitioners an opportunity of hearing. That opportunity appears to not have been extended. Thus, keeping rival contentions open, we direct respondent no.1 to hear the petitioners as also respondent nos. 3 and 4 and thereafter to take suitable decision in accordance with law.

Petitioners and respondent nos. 3 and 4 are directed to appear before respondent no.1 on 2.3.2015 and to abide by his further instructions in the matter. The said Authority shall, after hearing all the concerned, take appropriate decision in accordance with law within next eight weeks.

The salary of the petitioners for the period from 1.11.2012 onwards shall be paid by respondent nos. 3 and 4. Arrears till date shall be cleared within one month and respondent nos. 3 and 4 shall continue to pay them their

regular salary till adjudication of controversy by respondent no.1.

The Writ Petitions are, thus, partly allowed and disposed of. No costs.

JUDGE

JUDGE

jaiswal