

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2149 OF 1997

Ms.Geeta d/o Nanda Choudhari,
Aged : 28 years, Occupation : Nil,
R/o Bafna Chawl, Old Taloda Road,
Nandurbar, District Dhulia.

...PETITIONER

-VERSUS-

- 1 Jeejamata Education Society.
(Through its Chairman),
O/o Jeejamata Arts, Science
and Commerce College, Nandurbar,
District Dhulia.
- 2 The Principal,
Jeejamata Education Society's
Arts, Science and Commerce College,
Nandurbar, District Dhulia.
- 3 The Joint Director,
(Higher Education), Jalgaon.
- 4 The North Maharashtra University
(Through its Registrar),
Jalgaon.

...RESPONDENT

...
Advocate for Petitioner : Shri S B Talekar a/w Shri Ajinkya Kale.
Advocate for Respondent Nos.1 and 2 : Shri Kalyan V. Patil h/f Shri
S.R.Barlinge.
AGP for Respondent 3 : Shri N.T.Bhagat.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th December, 2016

Oral Judgment :

1 The Petitioner is aggrieved by the judgment dated 21.03.1997 delivered by the University and College Tribunal by which Appeal No.NM-9/1994 filed by her has been dismissed.

2 This Writ Petition was admitted on 25.06.1997. No relief was granted to the Petitioner.

3 Shri Talekar, learned Advocate appearing on behalf of the Petitioner has strenuously contended as under:-

- (a) The Petitioner was appointed as a Lecturer in Economics by the Respondent/ Educational Society on 25.12.1990.
- (b) No appointment order was issued.
- (c) On 01.06.1991, the Respondent/ Management published an advertisement in daily "Lokmat".
- (d) Three posts for Economics subject were advertised.
- (e) All the three posts were for Open Category.
- (f) The Petitioner applied pursuant to the said advertisement.
- (g) Upon being selected by order dated 20.06.1991, the Petitioner was appointed as a Lecturer in Economics for a period of one year purely on temporary basis.

- (h) The said order should have been an appointment order for two years on probation.
- (i) The selection committee of the University was duly constituted under Statute No.415 of the then University of Poona comprising of the Chairman of the Educational Society, a nominee of the Vice Chancellor, subject expert and the Principal of the College.
- (j) By communication dated 05.09.1992, the Petitioner was granted approval by the University for one academic year on temporary basis.
- (k) By communications dated 10.10.1992 and 04.01.1993, the Management informed the University that the Petitioner was working from 25.12.1990 and she should be considered for approval on permanent basis.
- (l) By communication dated 13.01.1993, the University rejected the request of the Management and concluded that the Petitioner was appointed for only one academic year on temporary basis and the said approval was, therefore, sustained.
- (m) The appeal was preferred before the University and College Tribunal.
- (n) By the impugned judgment, the appeal has been rejected.

- (o) The Tribunal lost sight of the fact that three out of four members had participated in the selection process.
- (p) The Petitioner's selection was legal and valid.
- (q) It was not a selection at the hands of the local Selection Committee.
- (r) The Petitioner should have been appointed on probation for two years.
- (s) In July, 1993, the Petitioner was orally terminated and by that time, she completed two years in service on probation.
- (t) The Tribunal has ignored the above aspects and has erroneously delivered the impugned judgment.

4 Shri Patil, learned Advocate appearing for the Respondent/ Management, submits as under:-

- (a) The advertisement published in 1991 led to the appointment of the Petitioner by order dated 20.06.1991.
- (b) The selection committee conducted interviews on 19.01.1992 at 10:00 am..
- (c) The earlier appointment was purely on temporary basis without following any procedure for selection.
- (d) Pursuant to the interviews on 19.01.1992, the Petitioner was appointed on temporary basis for one academic year by order

dated 05.09.1992.

- (e) The request of the Management to treat the Petitioner as on duty for two years from 25.12.1990 was rejected by the University.
- (f) The Management had no option but to publish a fresh advertisement and on 05.07.1993, the duly constituted Selection Committee interviewed 20 candidates including the Petitioner.
- (g) The Petitioner was not selected and as such, she could not be appointed.
- (h) The Petitioner, therefore, stood disengaged after her non selection.

5 I have considered the submissions of the learned Advocates for the respective sides as have been recorded herein above.

6 There is no dispute that after the advertisement was published on 01.06.1991, the Selection Committee consisting of only three members purportedly conducted the interviews on 19.01.1992. The earlier appointment of the Petitioner on 20.06.1991, therefore, has no significance as the same is apparently at the hands of the Principal of the Institution and which cannot be termed as being a lawful entry in service.

7 Even if the appointment of the Petitioner subsequently on 05.09.1992 on the basis of the interviews conducted on 19.01.1992 is to be considered, it cannot be ignored that Statute 415 of the then University of Poona applicable to the Respondent/ Management mandates six persons mentioned in Statute 415 to be the members of the Selection Committee so as to make a duly constituted Selection Committee. Relevant portion of the Statute 415 reads as under:-

"S.415. Recruitment of Teachers of Constituent and Affiliated Colleges/ Recognised Institutions.

1. There shall be Selection Committee for making recommendations to the Management for appointment of teachers.

Every Selection Committee shall consist of :-

- (a) Chairman, Governing Body of the College or/ his Institution nominee.*
- (b) A nominee of the Vice Chancellor.*
- (c) One Expert to be nominated by the University.*
- (d) One nominee of the Director of Higher Education, not below the rank of Deputy Director of Higher Education.*
- (e) Principal of the College/ Head of the Recognized Institution.*
- (f) Head of the Department concerned of the College/ Institution.*

2. Procedure :

- (a) All posts of the teachers shall be widely advertised with particulars of minimum and other qualifications, if any, and emoluments. Reasonable time shall be allowed to the applicants, to submit their applications.*
- (b) The date of the meeting of the Selection Committee*

shall be so fixed as to allow the notice of fifteen days to each member and to the candidates. The particulars of each candidate called for interview, in consultation with the Head of the Department/ Principal of the College, Head of the Recognized Institution, shall be supplied to each member, so as to reach him seven days before the date of the meeting.

- (c) The quorum to constitute a meeting of the Selection Committee shall be four members of whom, one being an expert nominated by the University.*
- (d) The Selection Committee shall interview and adjudge the merits of each candidate in accordance with the qualifications advertised, and report to the Competent Authority the names arranged in order of merits giving reasons for the order of preference. If no person is selected a report to that effect be made. The Committee may recommend only one name if others are not found suitable.*
- (e) The Competent Authority, with the approval of the Vice Chancellor, shall appoint from amongst the persons so recommended the number of persons required to fill in the posts.*

Provided that where the Appointing Authority proposes to make an appointment otherwise than in accordance with the order of merit arranged by the Selection Committee shall record its reasons in writing and refer back the matter to the Selection Committee for reconsideration within fifteen days from the date of report. Thereafter, the decision of the Competent Authority, if approved by the Vice Chancellor, shall be final."

8 Sub-clause (c) under Statute 415(2) would indicate that the presence of four members of the Selection Committee would constitute the quorum and the subject expert nominated by the University is necessary member for the quorum. Only three members were present

when the interviews were conducted on 19.01.1992. As such, the entire selection process was vitiated as the Principal of the College Mr.A.N.Jondhale did not remain present for the interviews. The conclusion of the Tribunal that the entire selection process is vitiated on account of lack of quorum is proper and sustainable.

9 Consequent to the above, the Petitioner was treated to have been appointed only for one academic year on temporary basis by the Respondent / Management which forwarded her proposal for approval accordingly. The University accorded approval as per the request of the Management considering the above details.

10 It is quite surprising that the Management thereafter, tried to manipulate the record by submitting the proposals dated 10.10.1992 and 04.01.1993 by which the Petitioner was sought to be regularized in service from 25.12.1990 when the interviews had actually taken place on 19.01.1992. The University rightly noticed the mischief and rejected the same by its communication dated 13.01.1993.

11 Subsequently, an advertisement was once again published and the duly constituted Selection Committee interviewed 20 candidates inclusive of the Petitioner. The Petitioner has neither challenged the

advertisement nor the proposed interviews, rather she participated in the entire selection process. As she was not selected on 05.07.1993, she preferred her appeal on 29.12.1993. On this ground as well, the grievance of the Petitioner cannot be entertained as she accepted the advertisement, applied pursuant to the same and after undergoing the selection process and having not been selected, has chosen to challenge her purported oral termination. The Tribunal has, therefore, rightly rejected the contention of the Petitioner.

12 The Petitioner contends that, by the conduct of the Management, it created a picture that the Petitioner would be confirmed in employment from 25.12.1990 by making representations to the University on 10.10.1992 and 04.01.1993. The request of the Petitioner for seeking damages/ costs is not being considered in this petition. The said issue is left open.

13 In the light of the above, this Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.