

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

WRIT PETITION NO. 2048 OF 2015

Dr. Kirankumar S/o Laxmanrao Bondar
Age : 41 years, Occ : Service,
R/o 69/A, Ramanand Nagar,
Pawadewadi Naka, Nanded,
Tq. and Dist. Nanded. ..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through the Principal Secretary
Higher and Technical Education
Department, Mantralaya,
Mumbai - 32.
2. The Director of Higher Education,
Maharashtra State, Pune.
3. The Joint Director,
Higher Education, Nanded Region,
Govt. Polytechnic College Area,
Nanded, Dist. Nanded.
4. The Swami Ramanand Teerth,
Marathwada University Nanded,
Dist. Nanded
Through its Registrar
5. The Nanded Education Socceity's
Science College, Nanded
Through its Principal. ..RESPONDENTS

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Advocate for Petitioner : Mr. V.M. Chate
AGP for Respondent/State : Mr. S.B. Yawalkar
Advocate for Respondent no.4: Mr. Y.V. Kakade
Advocate for Respondent no.5 : Mr. S.V. Natu

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**CORAM : S.S. SHINDE &
SANGITRAO S. PATIL, JJ.
RESERVED ON : May 3, 2016
PRONOUNCED ON : June 6, 2016**

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JUDGMENT (PER S.S. SHINDE, J)

This Petition takes exception to the decision dated 6th September, 2014 taken by the Selection Committee, the communication dated 25-28th January, 2015 and also seeks directions to Respondent no.4 to issue approval to the appointment of the petitioner as Professor by direct recruitment/deputation on 6th September, 2014 in Respondent no.5 — college.

2. The petitioner possesses degree of M.Sc. Mathematics and also has been awarded Ph.D. in mathematics by Respondent no.4 — university. It appears that respondent no.5 — college invited applications from the eligible candidates for appointment to the post of Professor. It appears that three posts were advertised. Out of three posts, two posts were to be filled up from the category of Associate Professors by promotion and one by direct recruitment. The allotment of posts, by promotion and direct

recruitment, was in the ratio of 75 and 25 respectively. The petitioner is serving with Respondent no.5 – college as Assistant Professor. He filed application for the appointment on the post of Professor. The petitioner was interviewed by the Selection Committee, duly constituted by the University as per the University Grants Commissions Regulations. After selection, the candidature of the candidates by promotion from category of Associates Professors was accepted, however, the petitioner's candidature for the post of Professor was rejected on the ground that the petitioner did not possess the minimum requirements to be qualified, as per the norms, for deputation (Internal).

3. The learned counsel appearing for the petitioner invited our attention to the letter/notification dated 31st December, 2008 issued by the Deputy Secretary, Government of India in the Ministry of Human Resource Department and Department of Higher Education addressed to the Secretary, University Grants Commission, Bahadur Shah Zafar Marg, New Delhi. According to the learned counsel appearing for the petitioner, the petitioner possesses requisite qualification for the

post of Professor. He submits that the relevant Regulation governing the field is 6.5.0 of the Regulations published by the University Grants Commission on 30th June, 2010. The said Regulation provides that one-fourth (25%) of the posts of Professors in Under Graduate Colleges shall be directly recruited or filled up by deputation from amongst eligible teachers and the remaining three-fourth (75%) of posts shall be filled up by CAS promotion from amongst eligible Associate Professors of the relevant departments of the Under Graduate College. In his submission, while appointing one-fourth posts of Professors directly from amongst eligible teachers, who possess the qualifications laid down in the said Regulation are entitled to be considered for the posts of Professors from 25% quota of direct recruitment. The learned counsel invites our attention to sub-section (34) of Section 2 of the Maharashtra Universities Act, 1994, and submits that the Teacher means full-time approved professor, associate professor, assistant professor, reader, lecturer, librarian, [principal, deputy or assistant librarian and documentation officer in the university, and college librarian],

Director or Instructor of physical education in any university department, conducted, affiliated or autonomous college, autonomous institution or department or recognised institution in the university.

4. Therefore, according to the learned counsel appearing for the petitioner, when the performance of the petitioner was assessed by two members, out of seven members of the Selection Committee and the petitioner secured 87 and 85 marks, and all these Committee members signed the report of the Selection Committee, Respondent no.4 ought to have granted approval to the petitioner for the post of Professor. He further submits that the Government Resolution dated 30th July, 2010 issued by the Higher and Technical Education Department is being misinterpreted by the respondents. In fact, the Regulations framed by University Grants Commission on 10th June, 2010 have been accepted by the State Government by issuing the Resolution dated 15th February, 2011 in the Higher and Technical Education Department, Government of Maharashtra. Therefore, relying upon the pleadings in the Petition, annexures thereto, rejoinder affidavit and relevant provisions

of the Regulations and also provisions of the Maharashtra Universities Act, 1994, the learned counsel appearing for the petitioner submits that the Petition deserves to be allowed.

5. On the other hand, the learned A.G.P. and the learned counsel appearing for Respondent nos. 4 and 5, relying upon the affidavits-in-reply submits that the petitioner, who is serving as Assistant Professor is not entitled to be considered for the post of Professor. The Government Resolution dated 30th July, 2010 provided that ten per cent of the number of sanctioned posts of Associate Professors in an Under Graduate College shall be that of Professors and shall be subject to the same criterion for selection/appointment as that of Professors in Universities, provided that there shall not be more than one post of Professor in each Department; and provided further that one-fourth (25%) of the posts of Professor in UG Colleges shall be directly recruited or filled up by deputation from amongst eligible teachers and the remaining three-fourth (75%) of posts of Professors shall be filled up by promotion from among

eligible Associate Professors of the relevant department of the Under Graduate college. Identification of posts of Professor in an Under Graduate College for being filled up through direct recruitment/deputation shall be within the competence of the University acting in consultation with the College. The learned A.G.P. submits that for the direct recruitment, Respondent no.5 was supposed to advertise the post by calling applications from the eligible candidates and also verify the roster point from B.C. Cell so as to fill up the posts from the reserved categories in case there existed backlog. However Respondent no.5 has not followed relevant criteria, which is required to be followed while filling up the posts by direct recruitment, such as issuing advertisement, calling applications from the eligible candidates nor the Management has verified the roster point from the B.C. cell so as to fill up the said posts.

6. We have considered the submissions advanced by the learned counsel appearing for the petitioner, the learned A.G.P. appearing for the Respondent/State and the learned counsel appearing for Respondent nos. 4 and

5. With their able assistance, we have perused the pleadings in the Petition, annexures thereto and all other documents placed on record. It is true that the petitioner applied for the post of Professor. The petitioner at the relevant time was working as Assistant Professor. The petitioner possesses the qualification required for the post of Professor. He has also published the research papers. However, he is non-suited only on the ground that being Assistant Professor, he cannot be directly considered for the appointment to the post of Professor. It is true that for the present case, relevant Regulation is 6.5.0. The said Regulation provides for appointment of Professors in Under Graduate and Post Graduate Colleges. The said Regulation provides that the ten percent of the number of the posts of Associate Professors in an Under Graduate College shall be that of Professors and shall be subject to the same criterion for selection/appointment as that of Professors in Universities, provided that there shall be no more than one post of Professor in each Department. It also provides further that one-fourth (25%) of the posts of Professors in Under Graduate

Colleges shall be directly recruited or filled up by deputation from amongst eligible teachers and the remaining three-fourth (75%) of posts shall be filled up by CAS promotion from amongst eligible Associate Professors of the relevant department of the Under Graduate College.

7. However, the Government of Maharashtra has issued Resolution on 30th July, 2010 in its Higher and Technical Education Department, Mantralaya Mumbai. The relevant portion of the said Government Resolution reads thus :-

"5. Considering all relevant facts in connection with the aforesaid subject, Government issues the following orders.

i) There shall be only one post of Professor in any department of an affiliated college. The number of such posts of Professors shall be 10% of the sanctioned strength of Associate Professors in the concerned College, 25% of the posts of Professor in each college shall

be filled up through direct recruitment or by deputation (including internal deputation) and the remaining 75% of the posts shall be filled up by merit promotion from among the eligible Associate Professors of the relevant departments of the College. While fixing up the number of posts of Professor in a college for filling up by merit promotion or by direct recruitment/deputation, if the respective number is not an integer, the same shall be rounded off to the next higher integer."

8. In the aforesaid Government Resolution, nowhere it is mentioned that 25% of the posts of Professors in each college shall be filled up through direct recruitment from amongst eligible teachers. It provides that both 25% and 10% as amongst the eligible Associate Professors of the relevant departments of the College. It is true that by Government Resolution dated 15th February, 2011 issued by Higher and Technical Education Department, the Government of Maharashtra has decided to accept most of the provisions in

the Regulations, however, in the said Government Resolution at Sr. no.11, there is reference of Regulation no.6.5.0. It appears that the said Regulation is not accepted as it is and so far the said Regulation is concerned, it is observed thus :-

११.	परि.क्र.६.५.०	या संदर्भात शासन निर्णय क्र.एनसीजी-२०१०/(४१५/१०) विशि-१ दि.३० जुलै, २०१० अन्वये निर्गमित केलेले आदेश लागू राहतील
१२.	परि.क्र.६.६.०	या परिच्छेदातील सर्व उपपरिच्छेद म्हणजे ६.६.० ते ६.६.५ येथील सर्व बाबी जशाच्या तशा लागू करण्यात येत आहेत.

9. Therefore, it follows from the aforementioned Government Resolution that the Government of Maharashtra has not accepted the said Regulation no. 6.5.0. as it is. Therefore, while filing up 25% posts directly the word 'eligible teachers' is not mentioned in the Government Resolution dated 30th July, 2010. The said Resolution also mentions in clause 5(vii) that all the Universities concerned and their affiliated Colleges shall expeditiously amend their Statutes and Ordinance as may be necessary in connection with the appointment of Professors and Heads

of Departments in terms of this Resolution.

10. In the light of discussion hereinabove, there is anomalous situation, in as much as, in the University Regulations, the source of appointment to the post of Professors from 25% directly, the word 'eligible teachers' is mentioned and the Government Resolution dated 10th June, 2010 contemplates that appointments on the post of Professors, either directly or by promotion should be from the Associate Professors. Therefore, we are unable to persuade ourself to give any directions to the Respondents, as sought by the petitioner in the present Writ petition. Hence the Petition stands rejected.

(SANGITRAO S. PATIL, J.) (S.S. SHINDE, J.)

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