

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7423 OF 2012

Mr. Dattatraya Tukaram Patil	..Petitioner
Versus	
State of Maharashtra & Ors.	..Respondents

Mr. M.S.Topkar , Advocate for the Petitioner.
Mrs. M.P.Thakur, AGP for the State-Respondent Nos.1 to 3.
Ms. Vaishali Bhilare, Advocate for Respondent Nos.4 and 5.

**Coram : SHANTANU KEMKAR &
RANJIT MORE, JJ.**

Date : 3rd May, 2016.

P. C. :

Parties through their counsel.

2 **Rule.** Rule made returnable forthwith. With consent of the parties, the Petition is taken up for final hearing immediately.

3 By filing this Petition, the Petitioner is seeking direction to the Respondent Nos.1 to 3 to approve the Petitioner's appointment as regular full time teacher with retrospective effect from 10.6.2008 with all consequential benefits. The Respondents have filed reply and have stated that the Petitioner has violated Government Resolution as the post reserved for the Scheduled Castes and the Scheduled Tribe have not been filled up and in violation appointments have been made by the institute where the Petitioner

is working. The learned counsel for the Petitioner has pointed out that the question involved in this petition is already considered and decided by the Division Bench of this Court in Writ Petition No.3680 of 2004 in the case of **Nishad Sadashiv Pawar & Ors. v. Dnyanasadhana College & Ors.** vide judgment dated 25.2.2005. The following are the observations made by the Division Bench in paragraphs 3 and 4 of it which are as follows:

“3 It appears that the authority has proceeded on the footing that what has to be applied is Government Resolution in the matter of reservations. The G.R. is nothing but administrative instructions which will be applicable, if there is no primary or secondary legislation in force. In the instant case, under the MEPS Act, the Rules, have been framed. Rule 9[7] provides that the Management shall reserve 34% of the total number of posts of the teaching as well as non teaching staff for the members of S.C., S.T. And backward communities. In other words it is clear that rules in force being subordinate legislation were applicable. The issue is whether the G.Rs will prevail over the Rules. G.Rs are issued pursuant to the executive powers of the State as provided by Article 162 of the Constitution of India. The Rules are framed pursuant to delegation of powers by the Legislature on the delegate. The rule making power is subject to Legislative control. Rules are subordinate legislation whereas administrative instructions are not. Administrative instructions cannot contravene the rules, See Nejudappa R.N. Vs. Themmath T [1972] 1

SCC 409. The Rules therefore, will prevail over the G.R.

4 The authorities under MEPS Act have to follow strictly Rule 9[7] of MEPS Rules in so far as recruitment to the posts governed by the MEPS Act and rules. The G.Rs as issued by the Government from time to time in the exercise of its administrative powers under Article 162 of the Constitution of India would be inapplicable to appointments in Schools and junior Colleges.

Consequently if the contentions raised in ground [c] are considered, the Petitioners are right and the Petitioners can be posted against the posts presently held by them. Considering that and as the issue has not been answered, Petition will have to be partly allowed."

4 Today, the learned counsel for the Petitioner has made limited prayer that this Petition may be disposed of by directing Respondent Nos.1 to 3 to consider Petitioner's grievance and take appropriate decision keeping in view the law laid down by the Division Bench in **Nishad Sadashiv Pawar & Ors.** (Supra).

5 In view of the aforesaid limited prayer and without commenting on the merits of the Petition, we dispose of the Petition by directing Respondent Nos.1 to 3 to take appropriate decision keeping in view the observations made by the Division Bench in **Nishad Sadashiv Pawar & Ors.** (Supra) as expeditiously as possible but not later than two months from the date of receipt of the copy of this order.

6 Rule made absolute accordingly.

[RANJIT MORE, J.]

[SHANTANU KEMKAR, J.]