

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 3433 OF 2002**

1. Deccan Education Society,)
 Deccan Education Society,)
 Having office at Fergusson College Campus)
 Pune – 411 004)

2. The Principal,)
 Willingdon College, Sangli,)
 District Sangli)

3. The Principal,)
 Chintamanrao College of Commerce,)
 Sangli, District Sangli)

..... Petitioners**VERSUS**

1. Mrs.Leena Ravindra Kakrambe,)
 Adult, Residing at B-6 Akshay Apartments)
 Chintamani Nagar, Sangli,)
 District Sangli)

2. The Director of Higher Education,)
 Maharashtra State, having his office at)
 Central Building, Pune.)

3. The State of Maharashtra,)
 Through the Secretary,)
 Department of Higher Education,)
 Mantralaya, Mumbai)

4. The Presiding Officer,)
 Pune Shivaji University and College Tribunal)
 Shivaji University, Kolhapur – 416 004)

..... Respondents

Mr.Ameya Borwankar, i/b. Mr.V.D.Borwankar for the Petitioners.

Mr.N.V.Bandi Wadekar, i/b. Mr.Gajanan Savagave for Respondent No.1.

Ms.M.S.Bane, A.G.P. for Respondent nos. 2 and 3.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 13th JUNE, 2016

PRONOUNCED ON : 29th JUNE, 2016

JUDGMENT :

By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioners have impugned the order passed by the Presiding Officer, Pune/ Shivaji University and College Tribunal, Shivaji University, Kolhapur dated 6th June, 2002 allowing the appeal filed by the respondent no.1 and directing the petitioners to issue an order of reinstatement to the respondent no.1 and to pay her all the arrears of back-wages by fixing her salary after considering the due increment by treating her a permanent full time lecturer in the subject of Statistics from the academic year 1992 as per the rules. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The petitioner no.1 runs Willingdon College, Sangli and Chintamanrao College of Commerce, Sangli. It was the case of the respondent no.1 that she was holding M.Sc.degree in Statistics. During the period between 21st August, 1989 and 31st October, 1989, the respondent no.1 was appointed in the Willingdon College, Sangli on temporary basis as full time lecturer. During the period between 1990 and 1991, the respondent no.1 was appointed in the SNTD College on clock hourly basis.

3. On 7th November, 1991, the petitioners issued an advertisement for the recruitment of the full time lecturer on the post reserved for scheduled caste and scheduled tribe in the Willingdon College. On 6th December, 1991, the respondent no.1 was appointed in the said Willingdon College as and by way of temporary

appointment w.e.f. 15th November, 1991 to 14th December, 1991. It is the case of the petitioners that during the period between 14th December, 1991 and 12th August, 1992, the respondent no.1 did not work in any of the colleges run by the petitioners.

4. On 3rd August, 1992, the petitioners issued an advertisement for the recruitment of the full time lecturer in its Willingdon College. On 5th August, 1992, the respondent was appointed in the said Willingdon College as and by way of temporary appointment w.e.f. 13th August, 1992 to 30th April, 1993. On 26th March, 1993, the petitioners issued termination letter for the academic year 1992-93 after office hours to the respondent no.1. It is the case of the petitioners that from 30th April, 1993 the respondent no.1 did not work in any of the colleges run by the petitioners for the period of four months.

5. On 8th August, 1993, the respondent was appointed in the said Willingdon College as and by way of temporary appointment w.e.f. 27th August, 1993 to 31st October, 1993. It is the case of the petitioners that the respondent no.1 thereafter did not work during the period between 31st October, 1993 and 7th December, 1993 in any of the colleges run by the petitioners.

6. The respondent no.1 was given temporary appointment on 24th March, 1994 in the Willingdon College w.e.f. 8th December, 1993 to 20th April, 1994. The petitioners thereafter issued an advertisement on 22nd June, 1994 for recruitment of full time lecturer for the post reserved for SC in its Willingdon College.

7. It is the case of the petitioners that during the period between 21st April, 1994 and 30th June, 1994 the respondent no.1 did not work in any of the

colleges run by the petitioners. On 29th September, 1994, respondent no.1 was given temporary appointment in the Willingdon College w.e.f.1st July, 1994 to 31st October, 1994. It is the case of the petitioners that during the period between 31st October, 1994 and 30th November, 1994, the respondent no.1 did not work in any of the colleges run by the petitioners. The respondent no.1 was once again given temporary appointment to the period 1st December, 1994 to 20th April, 1995 in the Willingdon College.

8. It is the case of the petitioners that during the period between 21st April, 1995 and 15th June, 1995, the respondent no.1 did not work in any of the colleges run by the petitioners. On 10th October, 1993, the respondent was given temporary appointment in the Willingdon College for the period between 16th June, 1995 and 15th October, 1995. It is the case of the petitioners that from 16th October, 1995 till 26th November, 1995, the respondent no.1 did not work in any of the colleges run by the petitioners.

9. It is the case of the petitioners that on 30th March, 1996 the respondent no.1 was given temporary appointment between 27th November, 1995 and 15th April, 1996 in the Willingdon College. The petitioners thereafter once again issued an advertisement on 14th September, 1996 for recruitment of the full time lecturer for the post reserved for scheduled caste in the Willingdon College. The respondent no.1 was given temporary appointment on 1st January, 1997 in the Willingdon College w.e.f. 25th September, 1996 to 30th November, 1996. The petitioners once again gave temporary appointment to the respondent no.1 for the period 4th December, 1996 to 20th April, 1997 in the Willingdon College. It is the case of the petitioners that from 21st April, 1997 to 30th July, 1998 the respondent no.1 did not work in any of the college run by the petitioners.

10. On 20th July, 1998, the petitioners issued an advertisement for recruitment of full time lecturer in its Chintamanrao College, Sangli. The respondent no.1 applied for the said post. It is the case of the petitioners that on 1st February, 1999, the respondent no.1 was given temporary appointment in the said Chintamanrao College run by the petitioner no.1 between 1st August, 1998 to 20th April, 1999. It is the case of the petitioners that from 21st April, 1999 to 30th June, 1999, the respondent no.1 did not work in any of the colleges run by the petitioners.

11. According to the petitioners, on 30th June, 1999 the respondent no.1 was given temporary appointment in Chintamanrao College w.e.f. 1st July, 1999 to 31st October, 1999.

12. The petitioners issued another advertisement on 15th July, 1999 for recruitment of full time lecturer in Chintamanrao College reserved for schedule caste. The respondent no.1 applied for the said post. On 24th December, 1999 Shivaji University, Kolhapur granted approval to the temporary appointment of the respondent no.1 as full time lecturer on temporary basis for the academic year 1999-2000.

13. The petitioners thereafter issued another advertisement on 9th July, 2000 for recruitment of full time lecturer for the post reserved for scheduled caste in Chintamanrao College. It is the case of the petitioners that the respondent no.1 was appointed as full time lecturer in Chintamanrao College and was given temporary appointment in Chintamanrao College during the period between 23rd June, 2000 to 31st January, 2001.

14. On 27th January, 2001 the petitioners appointed Mr.G.S.Dhanawade in place of the respondent no.1 who belonged to reserved category subject to the compliance of other conditions including requisite qualifications for the post of lecturer in Statistics.

15. On 31st January, 2001 the petitioner no.1 issued a letter of termination to the respondent no.1 thereby terminating her services w.e.f. 31st January, 2001 on the ground that the reserved category candidate was appointed w.e.f. 1st February, 2001. The respondent no.1 accepted the said letter of termination under protest. The respondent no.1 thereafter made a representation to the management.

16. In the year 2001, the respondent no.1 impugned the said letter of termination by filing an appeal before the Presiding Officer, College Tribunal, Pune/Shivaji University Pune. The said appeal was resisted by the petitioners by filing written statement. By an order and judgment dated 6th June, 2002, the learned Presiding Officer, Pune/ Shivaji University and College Tribunal, Shivaji University, Kolhapur allowed the said appeal filed by the respondent no.1 and directed the petitioners to immediately issue a direction to reinstate to the respondent no.1 and to pay her all the arrears of back-wages by fixing her salary after considering the due increments by treating her a permanent employee as a full time lecturer in the said subject of statistics from the academic year 1992 onwards as per rules.

17. By an order dated 2nd July, 2002 this court admitted this writ petition and granted interim stay of the impugned order passed by the tribunal subject to the condition that the petitioners deposit in this court the amount of back-wages

awarded by the tribunal within a period of eight weeks with due intimation to the respondent no.1. This court permitted the respondent no.1 to withdraw the said amount deposited by the petitioners on furnishing security to the satisfaction of the Registrar of this Court. The respondent no.1 has withdrawn the said amount deposited by the petitioners in this court pursuant to the liberty granted by this court by the said order dated 2nd July, 2002.

18. Learned counsel for the petitioners invited my attention to the various documents referred to aforesaid and also the findings recorded by the tribunal. It is submitted by the learned counsel for the petitioners that the respondent no.1 had worked in the Willingdon College for a period of 38 months during the period between 1991 and 1997 and had worked in the Chintamanrao College during the period between 1998 and part of 2001 for a period of 31 months. He submits that the respondent no.1 has worked in both the colleges for a total period of 69 months. He submits that out of the said period, the respondent no.1 did not work in any of the colleges run by the petitioners for a period of 34 months. He invited my attention to the various appointment letters issued by the petitioner no.1 to the respondent no.1 and would submit that in each of such appointment letter issued to the respondent no.1, it was made clear that the appointment of the respondent no.1 was a temporary appointment.

19. It is submitted that the appointment of the respondent no.1 was for a short duration between one month to eight month with a break for substantial period. The respondent no.1 had not worked in any of the colleges run by the petitioners for substantial period. During that period, there was no continuity of the work. He submits that though Willingdon College and Chintamanrao College were run by the same management, both the colleges were different. He submits

that the respondent no.1 could not claim the continuity of services in both the colleges since the appointment made by the management in both these colleges were different. He submits that the respondent no.1 had responded to the advertisement issued by the petitioners from time to time and thus the appointment made by the petitioners were new appointments and not in continuity of the earlier appointment. He submits that the respondent no.1 thus not having completed the period of five years in continuity, the petitioners had rightly terminated her services in view of the fact that a reserved category candidate was available for the said post reserved for reserved category.

20. Learned counsel for the petitioners placed reliance on Statute 195 (4) framed under the Shivaji University Act and would submit that the respondent no.1 was given temporary appointment on recommendation of a local selection committee. In support of this submission, the learned counsel for the petitioners placed reliance on various correspondence addressed by the respondent no.1 and also on the pleadings and would submit that it was admitted by the respondent no.1 herself that the appointment was made on recommendation of local selection committee and not by the selection committee under Statute 195 framed under the Shivaji University Act, 1974.

21. It is submitted by the learned counsel for the petitioners that under the Government Resolution dated 5th December 1994, if any appointment was made of a candidate from open category in the post for reserved category continuously for a period of five years, in the 6th year, post had to be filled in by interchangeably and in the 7th year, if a candidate from reserved category was not available, the said post which was reserved post could be de-reserved and a candidate from open category could be considered. He submits that since the

respondent no.1 did not complete five years continuous service in the Willingdon College, Sangli or in the Chintamanrao College of Commerce, Sangli, the said post could not have been de-reserved and the respondent no.1 who belonged to open category could not have been continued in the said post. He submits that admittedly during the period between 1997-1998, the respondent no.1 was not appointed in any of two colleges run by the petitioner no.1.

22. It is submitted that there were intermittent breaks for a substantial period. It was not the case of the respondent no.1 that the intermittent breaks given to the respondent no.1 were with any malafide intention on the part of the management. He submits that the breaks were not given to the respondent no.1 to deprive her of continuity of service but were given in view of the terms of letters of appointment. He submits that since the respondent no.1 was not a permanent employee, the finding rendered by the university tribunal that the respondent no.1 was a permanent employee is perverse and contrary to the facts on record.

23. It is submitted by the learned counsel that in the year 1991-1992, the respondent was appointed for a period of one month in the post for reserved category. This employment of the respondent no.1 for a period of one month could not be considered as an appointment of one year. He submits that the respondent no.1 thus could not be given benefit of government resolution dated 5th December 1994.

24. In support of the submission that the respondent no.1 having been given temporary appointment all throughout, she could not have claimed to be a permanent employee, learned counsel for the petitioner placed reliance on the

judgment of the Supreme Court in the case of ***Indian Drugs & Pharmaceuticals Ltd. Vs. Workman, Indian Drugs & Pharmaceuticals Ltd.***, reported in ***2007 (1) SCC 408*** and in particular paragraph 5 thereof. Reliance is also placed on the judgment of this Court in the case of ***Krishna Dnyandeo Lad Vs. Chairman, Rahmatpur Panchkrushi Shikshan Mandal & Ors.***, reported in ***2008 (2) Bom.C.R. 20*** and in particular paragraph 4 thereof.

25. Learned counsel placed reliance on the judgment of this Court in the case ***Kini Karyat Shikshan Mandal & Anr. Vs. Pramod Satuppa Oulkar & Ors.***, reported in ***2007 (6) Bom. C.R. 96*** and in particular paragraphs 3 and 9 thereof in support of the submission that open category candidates cannot claim permanency in a reserved category post. It is submitted by the learned counsel for the petitioners that admittedly in the year 1999, the respondent no.1 was appointed on leave vacancy and not on permanent vacancy. This period thus could not have been considered for the computation of the period of five years under the said government resolution dated 5th December 1994.

26. It is submitted by the learned counsel for the petitioners that though the petitioners had produced roaster for the reserved post before the university tribunal for consideration, the tribunal has not considered the said crucial document and would submit that the impugned order thus deserves to be set aside on that ground also. Learned counsel placed reliance on the judgment of this Court in the case ***Ramkrishna Chauhan & Ors. Vs. Seth D.M. High School & Ors.***, reported in ***2013 (2) Bom. C.R. 481*** and in particular paragraphs 18 and 24 thereof. It is submitted by the learned counsel for the petitioners that admittedly the respondent no.1 did not challenge her appointment as a temporary appointment from 1989 till 2001 and thus the respondent no.1 could not be

allowed to raise an issue at the belated stage that the respondent no.1 was appointed on a permanent post on a clear vacancy. The respondent no.1 also did not challenge various intermittent breaks given to her.

27. Learned AGP appearing for the respondent nos.2 and 3 submits that since no reliefs are granted by the university tribunal against the respondent nos.2 and 3, this Court may pass appropriate order.

28. Mr.Bandiwadekar, learned counsel appearing for the respondent no.1 submits that admittedly 7 advertisements were issued by the petitioners in last 10 years' period for recruitment of the post of a full-time lecturer in two of the colleges run by the petitioner no.1. He submits that his client does not dispute that the said post was for reserved category and that the respondent no.1 belonged to an open category. Learned counsel invited my attention to various provisions of statute framed under the Shivaji University Act, 1974. He submits that under the statute 195, a procedure is prescribed for an appointment of an open category candidate in the post for reserved category. He submits that under the said provision, though the post is a permanent post, if a reserved category candidate is not available, a candidate from open category can be appointed on temporary basis.

29. It submitted that merely because in the appointment letter, the petitioners had described the appointment of the respondent no.1 on temporary basis, it cannot be allowed to be urged that the said appointment was a temporary appointment and no permanency could be claimed by the respondent no.1 in the said post of a full-time lecturer. He submits that clause 4 of the said statute which provided for temporary appointment would not be applicable to the facts

of this case.

30. Learned counsel for the respondent no.1 invited my attention to paragraph 8 of the impugned order passed by the university tribunal which records that it was not in dispute that the appointment of the respondent no.1 herein was effected at least for five years as on the basis of her selection by the statutorily appointed selection committee right from the year 1997-1998. He submits that the powers of the selection committee under statute 195 (1) of the Shivaji University Act , 1974 are different than the powers of the selection committee under statute 195 (4) in case of temporary appointment.

31. My attention is invited to the resolution passed by the selection committee dated 1st September 1999 sanctioning the appointment of the respondent no.1 from 1st July 1999 for the academic year 1999-2000. Learned counsel for the respondent no.1 placed reliance on an unreported judgment of this Court dated 25th February 1997 in the case of ***Bharatiya Vidya Bhavan & Anr. Vs.Smt.Chetna Nagori & Ors.*** in the Petition No.1221 of 1997 and in particular on page 8 thereof and would submit that since the management did not take appropriate steps within the stipulated period to claim de-reservation and if in the meantime the stipulated period is over then the teacher who is appointed against a reserved vacancy is entitled to claim permanency.

32. Learned counsel placed reliance on the government resolution dated 5th December 1994 and would submit that since the respondent no.1 had completed 10 year's service in the colleges run by the petitioner no.1, after expiry of 6 years, the petitioners were entitled to apply for de-reservation for the said post of a full-time lecturer and thus the respondent no.1 was entitled to the

said post after expiry of 6 years though the respondent no.1 belongs to an open category candidate. He submits that the respondent no.1 was entitled to avail of benefits of the said government resolution. The university tribunal has rightly construed the said government resolution and has accordingly held that the respondent no.1 was entitled to the said post on permanent basis after expiry of 6 years. He submits that this Court has to consider the totality of circumstances. The services rendered by the respondent no.1 were unblemished.

33. It is submitted that pursuant to the advertisements issued by the petitioners from time to time, the respondent no.1 was interviewed by the petitioners and was given appointment for short period deliberately. He submits that admittedly during the period when the respondent no.1 was given intermittent breaks by the petitioners, no other person was appointed to the said post and the same was lying vacant. It is submitted that the said government resolution did not provide that period of breaks in service was not required to be counted for the purpose of granting benefits under the said government resolution. The university tribunal has rightly rendered a finding that there was continuity of service of the respondent no.1 in the colleges run by the petitioner no.1. The entire period of employment in both the colleges has to be considered for the purpose of benefits under the said government resolution. He submits that the said government resolution did not provide that the employment of lecturer should be in the same college.

34. It is submitted by the learned counsel for the respondent no.1 that the university tribunal has rendered a finding that when the respondent no.1 was given breaks in the service, no other candidate was appointed by the petitioners

to the said post and thus according to the conditions of service of the respondent no.1, even for those small intermittent breaks from August 1992 will have to be held as a continuous service of a permanent employee as a full-time lecturer in the subject statistics for all the purposes including salary, increments etc. He submits that this finding of fact rendered by the university tribunal was not perverse and is in conformity with the provisions of law and the law laid down by the Supreme Court and by this Court.

35. In so far as the appointment of Mr.Dhanawade who belonged to a reserved category is concerned, it is submitted that he was appointed to the said post after expiry of 10 years of the appointment of the respondent no.1. After expiry of 6 years of the appointment of the respondent no.1, the said post was liable to be de-reserved and the respondent no.1 was required to be appointed in the said post on permanent basis. He submits that the appointment of the said Mr.Dhanawade itself was illegal and did not create any rights in his favour. He submits that since the appointment of Mr.Dhanawade is illegally made by the petitioners for the said post and he has now been removed from service on the ground that he was not qualified, the reinstatement of the respondent no.1 could not have been refused by the petitioners. He submits that admittedly service of Mr.Dhanawade was terminated on 31st May 2011 as he did not have NET/SET qualification which was mandatory after the year 1995. It is submitted that admittedly writ petition filed by Mr.Dhanawade impugning the letter of termination is dismissed.

36. It is submitted by the learned counsel for the respondent no.1 that admittedly service of the respondent no.1 was terminated by the petitioners on the ground that the reserved category candidate was available and not on the

ground that she was not having requisite qualification. He submits that the respondent no.1 was not required to obtain any NET/SET qualification when she was appointed and thus even if the order granting reinstatement by the university tribunal is upheld by this Court, the petitioners cannot insist the respondent no.1 to have NET/SET qualification at this stage.

37. Learned counsel for the respondent no.1 invited my attention to the order passed by this Court on 19th October 2005 in Civil Application No.2059 of 2005 which was filed by the respondent no.1 in this petition directing that if any appointment is made to the post of lecturer by the petitioners, the same will be subject to the result of this writ petition. The petitioner no.1-Society was directed to inform the incumbent candidate about the said stipulation. By an order dated 20th February 2004 in Civil Application No.2211 of 2003 which was filed by the respondent no.1 herein in this writ petition, this Court once again clarified that appointment made during the pendency of the petition to the post to which the petitioner had been reinstated by the university tribunal will be subject to the out come of this writ petition and the candidate selected will not be able to claim any equities, if ultimately this petition fails. He submits that it is thus clear that any appointment made by the petitioners to the said post of lecturer to which the respondent no.1 was allowed to be reinstated by the order of the university tribunal, the appointment made by the petitioners would be subject to the out come of this writ petition and such candidate cannot seek any equities. He submits that in any event, admittedly the said post is not filled up by the petitioners after termination of the services of Mr.Dhanawade and the said post is lying vacant.

38. In so far as the submission of the learned counsel for the petitioners

in respect of the challenge of the petitioners to the order of back wages awarded to the respondent no.1 by the university tribunal is concerned, it is submitted by the learned counsel for the respondent no.1 that no special reasons are shown to the petitioners as to why 100% back wages awarded by the university tribunal in favour of the respondent no.1 ought to have been refused. He submits that at the relevant time, the management was required to prove that the employee was gainfully employed after termination of her services and during pendency of the appeal before the university tribunal or even thereafter which the management in this case had failed. He submits that the respondent no.1 had not been employed anywhere during the pendency of the appeal or this writ petition. It is also not the case of the petitioners that the respondent no.1 was gainfully employed with anybody during the pendency of the appeal before the university tribunal or during the pendency of this writ petition before this Court.

39. In so far as the submission of the learned counsel for the petitioners that the impugned order passed by the university tribunal is vague and is un-executable is concerned, it is submitted that the university tribunal in its operative order has directed the management to issue order of reinstatement to the respondent no.1 as a full-time lecturer in the subject of statistics for the academic year 1999-2000 onwards. He submits that the order passed by the university tribunal is clear and not vague. It is for the petitioners to implement the said order by reinstating the respondent no.1 to the said post in the colleges run by the petitioner no.1. He submits that admittedly the post of a full-time lecturer is available. It is submitted that in any event, even if the post may be different, the Petitioners have to implement the said order of reinstatement of the respondent no.1 however subject to condition that all the emoluments directed by the university tribunal shall be paid to the respondent no.1 as directed.

40. Learned counsel for the petitioners in rejoinder invited my attention to the letter dated 25th October 2002 addressed by the respondent no.1 to the management recording that she was appointed in the colleges run by the petitioner no.1 by the local managing committee. He submits that the respondent no.1 now cannot be allowed to urge that she was appointed by the selection committee. He submits that the minutes of meeting of selection committee dated 20th September 1999 annexed at page 128 of the petition shows that the said minutes were only in respect of appointment of the respondent no.1 in respect of Chintamanrao College of Commerce, Sangli, and not in respect of Willingdon College, Sangli. He submits that earlier resolutions passed by various local managing committees have not been considered by the university tribunal. He submits that 7 advertisements referred by the petitioners and issued during the period of 10 years were issued in two different colleges. The appointment letters were also issued in two different colleges which were separately issued. He submits that there was no transferable post of a full-time lecturer from Willingdon College, Sangli to Chintamanrao College of Commerce, Sangli and vice versa.

REASONS AND CONCLUSIONS :-

41. There is no dispute that the petitioners had issued advertisements 7 times during the 10 years' period when the respondent no.1 was appointed from time to time either in Willingdon College, Sangli or in Chintamanrao College of Commerce, Sangli for different purposes. It is the case of the petitioners that the respondent no.1 had worked in Willingdon College, Sangli for a period of 38 months during the period between 1991 and 1997 and had worked in Chintamanrao College of Commerce, Sangli for a period of 31

months i.e. for a total period in both the colleges for 69 months. It is the case of the petitioners that during the period between 1999 and 2001, the respondent no.1 did not work in any of the colleges run by the petitioner no.1 for a period of 34 months.

42. There is no dispute that when the respondent no.1 was appointed by the petitioners in either of two colleges i.e. Willingdon College or Chintamanrao College of Commerce, the said post was reserved for reserved category whereas the respondent no.1 belonged to an open category. There is also no dispute that in the appointment letter issued to the respondent no.1 by the petitioners, it was recorded that the respondent no.1 was given temporary appointment to the post of full-time lecturer in one of the colleges run by the petitioner no.1. The question that arises for consideration of this Court is whether the respondent no.1 had worked for a continuous period of 5 years on the reserved post and thus she was entitled to be appointed to the said post after completion of 5 years though she belonged to an open category candidate under the government resolution dated 5th December 1994.

43. Learned counsel for the respondent no.1 has placed reliance on statute 195 framed under the Shivaji University Act, 1974 in support of his submission that though in the appointment letters issued by the petitioners from time to time to the respondent no.1, it was provided that she was given temporary appointment to the said post of lecturer in one of the two colleges run by the petitioner no.1, admittedly the said post was for a full-time lecturer and was reserved for reserved category candidate. There is no dispute that the said post was a permanent post of full-time lecturer. Since the said post was reserved post and since the petitioners were not getting a candidate from reserved

category, the respondent no.1 was given appointments to the said post from time to time during the period between 2001 and 2009 on temporary basis which would mean subject to the availability of the reserved category candidate who will satisfy all the conditions for such appointments.

44. In my view, if in the appointment letters, the petitioners had mentioned that the respondent no.1 was given temporary appointment in view of the said post is reserved for reserved category candidate and since the reserved category candidate was not available during the last 9 years to the said post of lecturer, it cannot be urged by the petitioners that the said appointment was on temporary basis or that the respondent no.1 could not have claimed to be a permanent though was appointed to the said post for continuous period of more than 5 years. In my view, the submission of the learned counsel for the petitioners is contrary to statute 195 framed under the Shivaji University Act, 1974.

45. This Court in an unreported judgment dated 25th February 1997 in the case of ***Bharatiya Vidya Bhavan & Anr. (supra)*** has held that a teacher who is appointed against a vacancy in reserved category, joins an institution with the legitimate expectation that if the management does not secure the services of a candidate belonging to reserved category then at the end of the stipulated period she would be entitled to claim permanency. This Court has also considered the fact that during the period when the employee in that matter was appointed in the year 1990 and continued till 1995, it was not the case of the management before the tribunal that a suitable reserved category candidate was available. This Court has held that if for the stipulated period, the management did not take appropriate steps to claim de-reservation and if in the meantime

the stipulated period is over then the teacher who is appointed against a reserved vacancy is certainly entitled to claim permanency. In my view, the judgment of this Court in the case of ***Bharatiya Vidya Bhavan & Anr. (supra)*** squarely applies to the facts of this case. I am respectfully bound by the decision of this Court in the said judgment.

46. A perusal of the judgment rendered by the university tribunal indicates that the university tribunal after considering the government resolution dated 5th December 1994 has held that under the said government resolution, it was clear that if the candidate from any of the category was given appointment in the vacancy of reserved category for continuous period of 5 years and if the management is not able to find out suitable candidate for the 6th year, the management should directly issue appointment to the said earlier selected candidate who had rendered the continuous service of 5 years without asking him even to submit the application for that purpose and at the same time simultaneously shall start correspondence with the government through the officer of the Director/Joint Director, Higher Education for getting the said post de-reserved. The university tribunal has rightly applied the judgment of this Court in the case ***Bharatiya Vidya Bhavan & Anr. (supra)*** while allowing the appeal filed by the respondent no.1.

47. The university tribunal has held that it was not the case of the petitioners herein that till the selection of Mr.Dhanawade was made, the petitioners had come across any other suitable candidate on the earlier occasion either during the academic year 1997-98 or 1998-99 or 2000-2001. The university tribunal has also recorded a finding that unless and until there was a real break in the service of the respondent no.1 herein by virtue of appointment

of any other candidate, it will have be held that even for those small intermittent breaks from August 1992, it was a continuous service of the respondent no.1 as a full-time lecturer in the subject statistics as permanent employee for all the purposes such as salary, increments etc. In my view, this finding of fact being not perverse, cannot be interfered with in this petition filed under Article 227 of the Constitution of India.

48. A perusal of the records clearly indicates that it was not the case of the petitioners that during the period from 1991 till 2001 when the respondent no.1 was appointed to the said post from time to time which was reserved for reserved category candidate and though the respondent no.1 belonged to an open category, the petitioners had appointed any other candidate during the period when the respondent no.1 was given intermittent breaks. It is an admitted position that Mr.Dhanawade who was appointed to the said post of full-time lecturer, was also given temporary appointment subject to compliance of various conditions including the condition that he should possess NET/SET qualification. It is also an admitted position that the said Mr.Dhanawade who belonged to reserved category could not fulfill the said condition by obtaining NET/SET qualification and accordingly, his services were terminated by the petitioners. The proceedings filed by the said Mr.Dhanawade impugning the said letter of termination also came to be dismissed. The said post of full-time lecturer is admittedly lying vacant.

49. A perusal of the records further indicates that though the respondent no.1 was appointed to the said full-time and permanent post during the period between 1991 and 2001, even after expiry of 5 years from the date of her appointment by the petitioners, the petitioners did not take any steps to apply to

the Education Department for de-reservation of the said post. In my view, since the said government resolution dated 5th December 1994 was binding on the petitioners, after expiry of specified period mentioned during which the respondent no.1 was in continuous service of the management, the petitioners were under an obligation to appoint the respondent no.1 to the said post of lecturer on permanent basis. The petitioners at the same time were to apply to the government for de-reservation of the said post. The petitioners having failed to comply with the conditions provided in the government resolution dated 5th December 1994 by not appointing the respondent no.1 on permanent basis after expiry of the said specified period mentioned in the said resolution, in my view, the university tribunal is right in its decision to order reinstatement of the respondent no.1 with continuity of service.

50. Full Bench of this Court in the case of ***Ramkrishna Chauhan & Ors. (supra)*** after interpreting the Schedule D appended to the MEPS Rules which provides for form of order of appointment has held that the scheme of the MEPS Act and the MEPS Rules in no way forbid the management to appoint a duly qualified person on temporary basis for a limited duration, until the selection of a duly qualified and “suitable” person for being appointed on probation, to fill in the permanent vacancy. I am thus not inclined to accept the submission of the learned counsel for the petitioners that though the respondent no.1 was given temporary appointment to the post of lecturer and thus could not have claimed to be appointed on permanent basis though she was in continuous service for about nine years on the said post reserved for reserved category. The principles of law laid down by the Full Bench in the case of ***Ramkrishna Chauhan & Ors. (supra)*** squarely applies to the facts of this case. I am respectfully bound by the said judgment. In my view, the finding rendered by

the university tribunal that even for those small intermittent breaks from August 1992, service of the respondent no.1 will have to be held as a continuous service of a permanent employee as a full-time lecturer in the subject statistics for all the purposes is not perverse and does not warrant any interference by this Court.

51. There was no dispute raised by the petitioners at any point of time before the university tribunal or in the present proceedings that the career of the respondent no.1 was unblemished. The university tribunal has rendered a finding that since the career of the respondent no.1 was unblemished, the respondent no.1 could not have been compelled to undergo interview and selection process which procedure followed by the petitioners was not properly explained before the university tribunal and more particularly on the background of the government resolution dated 5th December 1994.

52. This Court in its orders dated 20th February 2004 in Civil Application No.2211 of 2003 and 19th October 2005 in Civil Application No.2059 of 2005 in this writ petition has made it clear that any appointment made to the post of lecturer will be subject to the out come of the writ petition and has directed the petitioner no.1-Society to inform the incumbent candidate about the said stipulation. In my view, the appointment of Mr.Dhanawade was thus in any event subject to the out come of this writ petition. The university tribunal, in my view, thus is right in ordering reinstatement of the respondent no.1 with continuity of service. In so far as the judgments of this Court in the cases of ***Ramkrishna Chauhan & Ors. (supra)*** and ***Krishna Dnyandeo Lad (supra)*** relied upon by the petitioners are concerned, in my view, the said judgment would not assist the case of the petitioners but would assist the case of the respondent no.1. Reliance placed on the said judgments by the petitioners is

misplaced.

53. In so far as the judgment of this Court in the case of ***Kini Karyat Shikshan Mandal & Anr. (supra)*** relied upon by the petitioners is concerned, this Court in the said judgment had not considered the government resolution dated 5th December 1994 which provided for appointment of candidate from open category in the reserved post after completion of specified number of years from appointment. The said judgment thus would not apply to the facts of this case and would not assist the case of the petitioners.

54. Supreme Court in the case of ***Indian Drugs & Pharmaceuticals Ltd. (supra)*** has held that whereas a permanent employee has a right to the post, a temporary employee has no right to the post. There was no issue before the Supreme Court in the said judgment as to the right of an employee who belonged to an open category and was appointed in the reserved post for more than 5 years with continuity of service when no candidate from reserved category was available and whether such an employee could get benefit of the government resolution dated 5th December 1994. In my view, the said judgment of the Supreme Court thus would not assist the case of the petitioners.

55. In so far as the submission of the learned counsel for the petitioners that though Willingdon College, Sangli and Chintamanrao College of Commerce, Sangli were run by the petitioner no.1 management but both the colleges were different and thus the period of employment of the respondent no.1 in both the colleges could not be clubbed for the purpose of availing benefits under the government resolution dated 5th December 1994 is concerned, no such plea was raised by the petitioners before the university tribunal. Be that

as it may, a perusal of the said government resolution does not indicate that for the purpose of computation of period of 5 years for availing benefits under the said government resolution, employment of an employee under different colleges run by the same institute could not be clubbed. In my view, there is thus no merit in the submission of the learned counsel for the petitioners.

56. In so far as the submission of the learned counsel for the petitioners that the respondent no.1 had responded to the advertisements issued by the petitioners from time to time and thus the appointment of the respondent no.1 was a new appointment on each occasion and the same could not be continued with the earlier appointment is concerned, the university tribunal has rendered a finding of fact that the year during the intermittent breaks given by the petitioners to the respondent no.1, the respondent no.1 was to be treated in the employment as a continuous service. There is no perversity in the said finding of fact rendered by the university tribunal. In my view, there is thus no substance in this submission of the learned counsel for the petitioners.

57. In so far as the submission of the learned counsel for the petitioners that the appointment of the respondent no.1 was made on recommendation of local selection committee and not by the selection committee appointed by the university tribunal is concerned, a perusal of the order passed by the university tribunal clearly indicates that the petitioners had made a statement before the university tribunal that from the academic year 1992 onwards, there respondent no.1 herein had been selected throughout till 1997-98 at least for five years as on the basis of her selection by the statutorily appointed by the selection committee. The petitioners had also admitted that the appointment of the respondent no.1 was caused in the vacancy of reserved category for all 6

years till her termination was effected. In my view, there is thus no merit in the submission of this learned counsel for the petitioners.

58. In so far as the submission of the learned counsel for the petitioners that no evidence was led by the respondent no.1 to show that the intermittent breaks given to the respondent no.1 by the petitioners or that any malafide intention on the part of the management or that such breaks were not given to deprive the respondent no.1 with continuity of service is concerned, the university tribunal, in my view, has rightly rejected this contention of the petitioners and has rendered a finding that even for those small intermittent breaks given by the petitioners, the petitioners had not appointed any other candidate in the said post and thus even during the period of the said intermittent breaks, the respondent no.1 was to be treated as continued on the said post. This finding of the tribunal not being perverse does not warrant any interference. Similarly there is no substance in the submission of the petitioners that the respondent no.1 was given appointment even for a smaller period or on leave vacancy and thus the same could not be considered while computing the period of 5 years to grant benefits under the said government resolution dated 5th December 1994.

59. In so far as the submission of the learned counsel for the petitioners that though the petitioners had produced roaster for the reserved post before the university tribunal for consideration, the university tribunal has not considered the said roaster is concerned, a perusal of the order passed by the university tribunal indicates that the university tribunal has considered this issue in paragraph 8 of the impugned order and has rendered a finding that the issue of maintenance of roaster system did not play any important role in this matter

since the respondent no.1 was appointed in the vacancy of a reserved category for a period of more than 6 years and also on the ground that it was not disputed by the petitioners that the appointment of the respondent no.1 was effected at least for 5 years as on the basis of her selection by the statutorily appointed selection committee right from the year 1997-1998. There is thus no merit in this submission of the learned counsel for the petitioners.

60. In so far as the submission of the learned counsel for the petitioners that the respondent no.1 did not challenge her appointment as a temporary from 1989 till 2001 and thus cannot be allowed to raise this issue at belated stage or that the respondent no.1 did not challenge the intermittent breaks given to her by the petitioners is concerned, under statute 195 (3) (b) framed under the provisions of the Shivaji University Act, 1974, since the petitioners did not get any candidate from reserved category in the said post of lecturer, the petitioners could appoint a candidate from open category only for a limited period prescribed under the said statute. There was, however, no dispute that the said post was a permanent post in which the respondent no.1 was appointed as a full-time lecturer. The said statute was to be read with the government resolutions issued by the government and more particularly the government resolution dated 5th December 1994 which was binding on the petitioners. In my view, there is therefore no substance in this submission of the learned counsel for the petitioners. Be that as it may, the correspondence annexed to the petition clearly indicates that the respondent no.1 had raised a strong protest of giving such temporary appointment though belatedly. Similarly there is also no substance in the submission of the learned counsel for the petitioners that the respondent no.1 did not challenge the intermittent breaks given to her.

61. In so far as the submission of the learned counsel for the petitioners that the university tribunal could not have granted full back wages to the respondent no.1 is concerned, a perusal of the records indicates that though at the relevant time, the onus was on the petitioners to prove that the respondent no.1 was gainfully employed during the pendency of the appeal before the university tribunal, the petitioners had neither raised any such plea nor led any evidence before the university tribunal. Similarly, the petitioners also could not demonstrate before this Court that during the pendency of this petition, the respondent no.1 was gainfully employed with anybody. On the contrary, the learned counsel appearing for the respondent no.1 had made a statement that during the pendency of the appeal before the university tribunal and during the pendency of this writ petition before this Court, the respondent no.1 was not gainfully employed with anybody.

62. Be that as it may, since the services of the respondent no.1 were terminated on 31st January 2001 and since then the appeal filed by the respondent no.1 was pending before the university tribunal till 6th June 2002 and this writ petition is pending since 2002 in this Court, it is appropriate if the order passed by the university tribunal allowing 100% back wages is modified by granting 50% back wages. I am not inclined to modify any other part of the impugned judgment passed by the university tribunal.

63. In so far as the submission of the learned counsel for the petitioners that the impugned order dated 6th June 2002 passed by the university tribunal is vague and cannot be implemented is concerned, a perusal of the operative part of the said impugned order clearly indicates that the respondent no.1 has been granted reinstatement as a full-time lecturer in the subject of statistics

from the academic year 1992 onwards. In my view, there is thus no substance in the submission of the learned counsel for the petitioners. The order passed by the university tribunal is clear and can be enforced by appointing the respondent no.1 in one of the two colleges run by the petitioners.

64. I therefore pass the following order :-

- (a) The petitioners are directed to pay arrears of back wages to the respondent no.1 to the extent of 50% of the back wages awarded by the university tribunal in the impugned order. The petitioners would be entitled to deduct the amount already deposited in this Court;
- (b) The impugned judgment is partly modified to this extent;
- (c) Other part of the impugned judgment dated 6th June 2002 passed by the university tribunal is upheld;
- (d) The petitioners are directed to implement the impugned order passed by the university tribunal duly modified by this order within four weeks from today;
- (e) Rule is made partly absolute to the aforesaid extent;
- (f) No order as to costs.

[R.D. DHANUKA, J.]