

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4541/2015

(KU.YASHASHREE BHIMRAO HEDAOO (NOW SAU.YASHASHREE DEORAM NANDANWAR) **VERSUS**
 THE STATE OF MAHARASHTRA & OTHERS)

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

Court's or Judge's orders

Shri S.P. Bhandarkar, counsel for the petitioner.
 Shri P.S. Tembhare, A.G.P. for the R-1 & 4.
 Ms T. Khan, counsel for the R-2 & 3.

CORAM : SMT. VASANTI A NAIK AND
KUM. INDIRA JAIN, JJ.

DATE : SEPTEMBER 26, 2016.

By this writ petition, the petitioner seeks a direction against the respondent-University to appoint the petitioner on the post of Assistant Professor with immediate effect in pursuance of the selection made by the selection committee in the meeting, dated 23.09.2004.

The petitioner claims to belong to Halba Scheduled Tribe. The caste claim of the petitioner was referred to the Scrutiny Committee for verification in February-2002. An advertisement was issued by the respondent-University inviting applications for appointment on the post of Lecturer in Political Science in the department of the University. In pursuance of the said advertisement, the petitioner applied for the post, that was earmarked for the Scheduled Tribes. The petitioner was selected by the selection committee in its meeting, dated 23.09.2004. The petitioner was communicated by the respondent-University vide communication dated 17.11.2004 that the petitioner was selected. By a communication dated, 17.11.2004, the

petitioner was informed that the respondents would not appoint her on the post of Lecturer in Political Science in the absence of a caste validity certificate. In the year 2003, since the petitioner's services were terminated by Binzani college in which the petitioner was serving, for not submitting the caste validity certificate, the petitioner had challenged the order of termination in Writ Petition No.2958 of 2003. This Court directed the Scrutiny Committee, by the order dated 12.02.2004 to decide the caste claim of the petitioner within two months. The services of the petitioner in Binzani college were protected till then. The caste claim of the petitioner was invalidated by the Scrutiny Committee on 28.05.2004. The petitioner had challenged the order of the Scrutiny Committee in the second writ petition. The order of the Scrutiny Committee was quashed and set aside by the order dated 02.11.2004 and the Scrutiny Committee was directed to re-decide the caste claim of the petitioner within three months. After the second writ petition was partly allowed and the order of the Scrutiny Committee was quashed, the petitioner was selected on the post of Lecturer in Political Science by the respondent-University. In pursuance of the directions in the second writ petition filed by the petitioner, the Scrutiny Committee decided the caste claim of the petitioner and invalidated the same by the order dated 28.05.2005. The petitioner filed the third writ petition bearing Writ Petition No.3460 of 2005 challenging the order of the Scrutiny Committee. The order of the Scrutiny Committee was stayed by an interim order dated 12.07.2005. It is the case of the petitioner that after the order of the Scrutiny Committee was stayed, the petitioner made several

representations to the respondent-University from 2005 till 2007, asking the University to appoint the petitioner on the post of Lecturer in Political Science as per the selection made in September-2004. In the absence of the validity certificate, the University did not appoint the petitioner on the post of Lecturer. This Court had allowed the third writ petition filed by the petitioner on 23.10.2012, and after setting aside the order of the Scrutiny Committee, the Scrutiny Committee was directed to grant a validity certificate in favour of the petitioner. The validity certificate was granted to the petitioner on 05.12.2012. After the same was granted, the petitioner again started making representations to the respondent-University for appointment on the post of Lecturer in pursuance of the selection made in the year 2004. The University asked the State Government as to what could be done in the matter pertaining to the appointment of the petitioner and the State Government informed the University that since the select list gets exhausted within a few years from the date of preparation of the same, the petitioner cannot be appointed and the University may take a necessary decision at its level. Since the validity certificate was issued in favour of the petitioner on 05.12.2012, the petitioner has sought a direction against the respondent-University to appoint the petitioner on the post of Lecturer in Political Science in pursuance of her selection in 2004.

Shri Bhandarkar, the learned counsel for the petitioner, submitted that in the peculiar facts of the case, a direction to the respondent-University to appoint the petitioner on the post of Lecturer would be necessary, specially when the petitioner is not at fault. It is submitted

that even before the issuance of the advertisement on 12.02.2004, the petitioner had submitted the caste claim for verification to the Scrutiny Committee. It is stated that the petitioner has now secured the validity certificate and coincidentally, an appointment is not made by the respondent-University on the post of Lecturer in Political Science, for which the petitioner was selected. It is stated that the petitioner belongs to the Scheduled Tribes and no candidate from the Scheduled Tribes is available for appointment. It is stated that the Government has directed the University to consider the claim of the petitioner for appointment, at the level of the University and a direction to the University to appoint the petitioner on the post of Lecturer would be necessary. It is stated that this Court had, by the judgment dated 25.10.2013 in Writ Petition No.5799 of 2012 directed the Zilla Parishad to appoint the petitioner therein on the post for which she was selected. It is stated that a similar order could be passed in this writ petition also.

Shri Tembhare, the learned Assistant Government Pleader appearing on behalf of the respondent nos.1 and 4, has opposed the prayer made by the petitioner. It is stated that the selection of the petitioner was made in the year 2004 and the select list gets exhausted within a reasonable time from the date of preparation of the same. It is submitted that a direction cannot be issued against the University after a period of twelve years to appoint the petitioner on the post of Lecturer, in pursuance to the selection of the year 2004.

Ms Khan, the learned counsel for the respondent nos.2 and 3, submitted that after the petitioner was selected

for the post of Lecturer in Political Science, the petitioner was asked to submit the caste validity certificate and was also informed *vide* communication dated 17.11.2004 that an appointment order could not be issued in her favour till she produces a caste validity certificate. It is submitted that the petitioner had made representations to the University and the University had sought the advice of the State Government and since the State Government has informed the University that the select list gets exhausted within a reasonable time from the preparation thereof, the University would not appoint the petitioner on the post of Lecturer in Political Science in terms of the selection, made in the year 2004. The learned counsel sought for the dismissal of the writ petition.

On hearing the learned counsel for the parties, we find that it would not be proper to direct the respondent-University to appoint the petitioner on the post of Lecturer in pursuance to her selection made in the year 2004. The caste claim of the petitioner was pending before the Scrutiny Committee when she was selected by the University on the post of Lecturer in the year 2004. Though the petitioner was informed by the University by the order dated 17.11.2004 that the University cannot appoint her in the absence of a caste validity certificate, the petitioner did not challenge the communication or seek any direction against the University to appoint the petitioner on the post of a Lecturer in pursuance of the selection. The petitioner had challenged the two orders of the Scrutiny Committee invalidating her caste claim. The third writ petition filed by the petitioner against the second invalidation order of the Scrutiny Committee was pending

since the year 2005 and the same was decided on 23.10.2012 and the order of the Scrutiny Committee was set aside. Merely because a caste validity certificate is granted in favour of the petitioner in December-2012, the petitioner cannot seek the appointment on the post of Lecturer in pursuance of the selection made in September-2004. It is rightly submitted on behalf of the respondent nos.1 and 4 that the select list gets exhausted within a reasonable time from the preparation thereof. The petitioner had not filed any proceedings in this Court, or for that matter before any Forum, for a direction against the University not to fill the post of Lecturer, for which the petitioner was selected, till the caste claim of the petitioner is decided and, therefore, there was no order of any Court or Forum directing the University not to fill in the post for which the petitioner was selected. If no proceedings were filed against the University, challenging the communication dated 17.11.2004 or even thereafter for a direction that the post should not be filled, the petitioner cannot, after a period of more than ten years, approach this Court for a direction to the respondent-University to appoint the petitioner on the post of Lecturer, for which she was selected in the year 2004 merely because the post is not filled till today. The submission made on behalf of the petitioner that no Scheduled Tribes Candidate is available for appointment on the post of Lecturer is not well founded. The respondent-University had not advertised the post after the year 2004 and such a statement could be made only if the post was advertised and despite efforts of the respondent-University to fill the post, the post could not have been filled in the absence of a suitable candidate. The judgment dated

25.10.2013 in Writ Petition No.5799 of 2012 cannot be applied to the facts of this case. Only because the petitioner was making representations to the University from 2005 to 2007 and thereafter in 2012, i.e. after securing the caste validity certificate, a direction cannot be issued against the University to appoint the petitioner on the post of Lecturer in pursuance of the selection of the year 2004. It is well settled that a selected candidate does not have a right to seek the appointment on the post for which he/she was selected. If that be the principle, the respondent-University did not commit any error in not appointing the petitioner on the post of Lecturer in the absence of a caste validity certificate. The petitioner cannot, after a period of more than ten years from her selection, seek her appointment on the post of Lecturer merely because the caste validity certificate is issued in her favour in the year 2012. It is well settled that mere making of representations would not stop the period of limitation. The petitioner has attained the age of 45-46 years. Also, the petitioner still continues to work in Binzani College, where she was working in the year 2004 even before the issuance of the advertisement by the respondent-University in the year 2004 and the petitioner is a Senior Lecturer in the said college and has also received the benefits of the Time Bound Promotion.

Since the direction sought by the petitioner cannot be issued against the University, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by: Rohit D. Apte.

Uploaded on :29.09.2016.