

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

WRIT PETITION NO. 202 OF 1997  
WITH  
CIVIL APPLICATION NO.942 OF 2017

Anjuman Ishat-E-Talim,  
Beed, through its Secretary.

...PETITIONER.

-VERSUS-

1. Gangadhar Mahadeorao Sanap,  
Age. 50 yrs., Occ. Assistant Teacher,  
Zilla Parishad Girls High School,  
Hingoli, Dist. Hingoli.
2. Principal, Miliya Senior  
College of Arts & Science,  
Beed.
3. Registrar, Dr. Babasaheb  
Ambedkar Marathwada  
University, Aurangabad.
4. The Presiding Officer,  
University & College Tribunal,  
Dr. Babasaheb Ambedkar Marathwada  
University, Aurangabad.

...RESPONDENTS.

...  
Advocate for Petitioner : Shri M.M. Patil (Beedkar).  
...

**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 25<sup>th</sup> January, 2017**

Oral Judgment :

1 Respondent No. 4 being the University and College Tribunal,

stands deleted from this proceedings.

2           The Petitioner is aggrieved by the judgment of the University and College Tribunal dated 20/09/1996 by which Appeal No.BAMU-06/1996 was allowed and the order of termination dated 01/09/1994 was set aside by granting Respondent No.1/employee, reinstatement with continuity. The period from termination till the reinstatement was to be treated as extra ordinary leave (leave without pay).

3           The learned Division Bench of this Court by order dated 17/01/1997, issued notice to the Respondents and restrained the Respondent No.1/ original Appellant from resorting to coercive steps for implementation of the impugned judgment.

4           Despite service of court notice on all the Respondents, neither the original Appellant nor the Principal of the College as well as the Registrar of University have entered an appearance.

5           While hearing this petition on 12/01/2017, I found that Respondent No.1/ Appellant needed to be heard in the matter. The Petitioner, therefore, agreed to have the notice published in Marathi Daily "Lokmat", Hingoli Edition where Respondent No.1/ Appellant is said to be

residing and presently discharging his duties as an Assistant Teacher in the Zilla Parishad Girls High School, Hingoli.

6           The copy of the newspaper publication is placed on record along with the service affidavit of the Petitioner dated 23.01.2017 to evidence the publication of notice. As such, Respondent No.1 stands served. No appearance has been entered either through an advocate or in person.

7           In this backdrop, I have heard the learned Advocate for the Petitioner.

8           The record reveals that the selection committee was duly constituted by the erstwhile Marathwada University under Statute No.219(A)(1) of the Statutes framed under the Marathwada University Act, 1974. A conditional approval was granted to the selection and appointment of Respondent No.1/Appellant. Pursuant to this exercise, he was appointed as a Lecturer in the Botany for the academic year 1993-1994.

9           Statute No.219(A), which prescribes the mode of recruitment of teachers in affiliated colleges, has prescribed the selection committee

for making recommendations to the Governing Bodies of the colleges for the appointment of teachers and principals in all such colleges and institutions recognized by the University. The committee prescribed for selection of teachers is as follows:-

*"S.219 (A) : Mode of Recruitment of Teachers in Affiliated Colleges:*

*Recruitment of Teachers and Principals of the Colleges affiliated to the University shall be as under:-*

*(1) Selection Committee:*

*There shall be Selection Committees for making recommendations to the Governing Bodies of the Colleges for the appointment of Teachers and the Principals in all the Colleges affiliated to and the institutions recognised by the University constituted as under:-*

*(a) Teachers:-*

*(1) The Chairman, Governing Body of the College or his nominee to be the Chairman of the Selection Committee;*

*(2) A nominee of the Vice Chancellor;*

*(3) One expert nominated by the University;*

*(4) One nominee of the Director of Higher Education;*

*(5) The Principal of the College, and*

*(6) The concerned Head of the Department in the College. The Principal of the College shall be the Secretary of the Selection Committee."*

10 Statute No.219(A)(2)(c) states that the quorum to constitute a meeting of every Selection Committee shall be four members. The selection would not be valid unless the subject expert nominated by the University is present.

11           The Tribunal has negated the objection of the University that the condition of minimum required quorum was not complied with. The Chairman of the College, the Principal of the College, the Nominee of the Director of Higher Education and the subject expert Shri M.A.Wadod Khan are said to have participated in the interviews that were conducted. The Tribunal has concluded that the quorum was full and the nominee of the University was also present. Nevertheless, the university had granted its approval for only one year and the Appellant was appointed as per the said approval.

12           The record does not reveal that either the Appellant or even the Petitioner Institution had objected to the denial of approval by the University for a period of two years so as to place the Appellant on probation for the said period. The Appellant accepted the said appointment and the approval and worked for one academic year. Since the University had granted approval for only one academic year, the Petitioner Institution was under an obligation to re-advertise the post and conduct a fresh selection process.

13           The issue is as to whether, the Tribunal, while dealing with the termination of Respondent No.1/Appellant, could have reopened the issue of grant of approval and whether, the Tribunal could have presumed

that the approval granted was bad in law and hence, Respondent No.1/Appellant could be treated as being on probation for the period of two years as is mandated by Statute No.219(B). In my view, the Tribunal has overstepped its jurisdiction and more so, in the light of the fact that Respondent No.1/ Appellant accepted his appointment for one academic year without any murmur or protest, much less challenged the same. It was only after his disengagement that he has approached the Tribunal.

14           The subsequent events after the termination of the Appellant cannot be ignored. A fresh advertisement was published on 06/06/1994 calling for applications for appointment to the post of Lecturer in Botany in the concerned college. The record does not reveal that Respondent No.1/ Appellant challenged this advertisement. The record, however, reveals that Respondent No.1/ Appellant had applied pursuant to the said advertisement. Ms.Bhalerao and Ms.Siddique were selected and the Appellant was not selected. Ms.Siddique had joined employment and as she subsequently left the post, the Institution appointed one Shri Jamir Khan as a Lecturer on the basis of the selection made by the local selection committee. This would, therefore, indicate that Respondent No.1/ Appellant applied pursuant to the advertisement dated 06/06/1994 and having not been selected, he has challenged his disengagement in 1994 by filing Appeal No.BAMU-06/1996.

15           Considering the above, Respondent No.1/ Appellant could not be treated as being on probation for two years. Even otherwise, until he completed his probation period satisfactorily, he could not have been considered for regular appointment. The Tribunal has concluded that since he was orally terminated on 01/09/1994, he deserves to be reinstated. In my view, the Tribunal has fallen in an error in issuing such directions.

16           By Civil Application No.942/2017, the Petitioner has placed on record the seniority list of the teachers working in the Zilla Parishad. The name of Respondent No.1/ Appellant appears at serial No.136 and he is shown to be working in the secondary school at Hingoli and was appointed on 14/10/1996. This, therefore, indicates that Respondent No.1/ Appellant is settled in employment from the said date. In the light of the above, the pending Civil Application is disposed of.

17           Considering the above, this Writ Petition is allowed. The impugned judgment of the Tribunal dated 20/09/1996 is quashed and set aside and Appeal No.BAMU-6/1996 stands dismissed. Rule is made absolute.