

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

**WRIT PETITION NO.4457 OF 2006
with
CIVIL APPLICATION NO.11013 OF 2008
in
WRIT PETITION NO.4457 OF 2006**

Varsha D/o Manohar Dhongade)
Aged 38 years, occu: Nil,)
R/o B-4, Abhishekh Apartment,)
Vedant Nagar Railway Station Road,)
Aurangabad.) .. Petitioner/
Applicant

Versus

1. The Marathwada Legal and General)
Education Society (Through Its Secretary)
Shri J.K.Vasadikar))
Aged 45 years, Occu: Legal Profession,)
R/o.M.P.Law College Campus Samarthanagar))
Aurangabad.)

2. The Principal)
Mahila Kala Mahavidyalaya,)
Aurangabad.)

3. Dr.Babasaheb Ambedkar Marathwada)
University, (Through Its Registrar))
University Campus, Aurangabad.) .. Respondents

Ms.Pradnya Talekar for the petitioner.
Mr.S.P. Shah for the respondent nos.1 and 2.

**CORAM : R.D. DHANUKA AND
SUNIL K. KOTWAL, JJ.**
RESERVED ON : 12th October 2017
PRONOUNCED ON : 20th December 2017

Judgment (Per R.D. Dhanuka, J.):

. By this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks writ of mandamus against the respondent nos.1 and 2 i.e. The Marathwada Legal and General Education Society and the Principal respectively to apply for de-reservation of post of Lecturer in English reserved for Scheduled Tribes and to take necessary steps for de-reservation of posts, as provided under Government Resolution Dated 5th December 1994. The petitioner also seeks a writ of certiorari for quashing and setting aside the decision of the management Council of Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, the respondent no.3 herein by which the recommendations of the University Grievance Redressal Committee in respect of regularization of services of the petitioner in its meeting held on 29th January 2003 was rejected. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. It is the case of the petitioner that the respondent no.1- Society is running Women College as well as Law College at Samarthanagar, Aurangabad duly registered under the Bombay Public Trusts Act, 1950 as well as Registration of Societies Act, 1860. The petitioner possessed M.A. (English). It is the case of the petitioner that

the petitioner had passed M.Phil examination. She had passed examination prior to the date of filing of writ petition but had to submit thesis for the purpose of obtaining M.Phil degree. The petitioner had also applied for National Eligibility Test Examination and had proposed to appear for the said examination which was scheduled to be held on 25th June 2006.

3. On 1st July 1994, the petitioner applied for post of Lecturer in English pursuant to an advertisement published in daily “Lokmat.” The petitioner was selected by the Local Managing Committee and was appointed as Contributory Lecturer in English in Mahila Kala Mahavidyalaya, Aurangabad vide an order dated 5th October 1994.

4. It is the case of the petitioner that in the meanwhile, the post of Lecturer in English was advertised in daily “Lokmat Times” published on 18th August 1996. The petitioner appeared before the duly constituted Selection Committee. The petitioner was interviewed by the Committee consisting of President of the respondent no.1-Society, nominee of the Vice Chancellor of the University, Subject Expert, Head of Department of English of the College and the Principal of the College. The said duly constituted Selection Committee selected the petitioner and

recommended her name for the said post. The Vice Chancellor of the University granted an approval to the appointment of the petitioner as a Lecturer in English on temporary basis upto the end of the second term of the academic year 1996-97. It is the case of the petitioner that the University, however, did not grant permanent approval for the obvious reason that she did not belong to Scheduled Tribe and at the same time, she had not acquired NET/SET qualification. The said post in which the petitioner was appointed was reserved for Scheduled Tribe. In the advertisement, it was made clear that in case no candidate from Scheduled Tribe category was available, then candidate from another category would be selected.

5. It is the case of the petitioner that the petitioner was appointed as full time Lecturer in English again on temporary basis and on probation for the academic year 1996-97 with effect from 1st October 1996 subject to approval of Competent Authorities vide letter dated 30th August 1996. The Vice Chancellor of the respondent no.1 again approved her appointment as Lecturer in English on temporary basis upto second term of the academic year 1996-97 vide an order dated 12th December 1996 and she was given workload of full time lecturer in English.

6. The said post of lecturer in English was again advertised by the respondent nos.1 and 2 for third time in daily “Tarun Bharat” in its issue dated 22nd June 1998. It is the case of the petitioner that her appointment was continued again as contributory Lecturer in English with effect from 6th August 1994 and was given workload of full time lecturer.

7. It is the case of the petitioner that the said post of lecturer in English was again advertised for forth time in daily “Tarun Bharat” in its issue dated 1st October 1998. Since the candidate belonging to Scheduled Tribe for whom the said post was reserved was not available, the services of the petitioner were continued as contributory Lecturer in English with effect from 25th June 1999 and thereafter with effect from 20th June 2000 vide orders dated 23rd June 1999 and 19th June 2000 respectively. The said post of Lecturer in English was again advertised i.e. fifth time in daily “Sakal” in its issue dated 24th October 2001. It is the case of the petitioner that she was continued as contributory Lecturer in English. All throughout for the academic year 1997-98 to 2001-02, the petitioner was given workload of full time Lecturer in English.

8. It is the case of the petitioner that the said post of Lecturer in English was again advertised i.e. sixth time in daily “Times of India” in its issue dated 26th March 2002. The services of the petitioner were continued as contributory Lecturer in English with effect from 14th July 2003 vide order dated 13th July 2003. The said post was once again advertised i.e. for seventh time in daily “Sakal” in its issue dated 26th March 2002.

9. It is the case of the petitioner that the Principal of the College sought permission to shift reservation of Scheduled Tribe for the post of Lecturer in English to that of Lecturer in Marathi since one post of Lecturer in English had fallen vacant due to retirement of Dr.Lata Mohrir. The Director, Board of College and University Development communicated the decision of the Vice Chancellor shifting reservation meant for Scheduled Tribe from the post of Lecturer in English to the post of Lecturer in Marathi vide order dated 11th September 2003. It is the case of the petitioner that since the post of Lecturer in English was de-reserved, the same was again advertised in daily “Deogiri Tarun Bharat” in its issue dated 2nd November 2003. It is the case of the petitioner that her services were continued on contract basis despite the fact that she was given workload of full time Lecturer vide an order dated

12th November 2003. She appeared before the Local Selection Committee consisting of Chairman of the Governing Body, nominee of Backward Classes, Lady Representative, Nominee of Director of Higher Education, Head of Department, two experts nominated by the Chairman and the Principal of the College for the purpose of selection/ appointment as College teacher on contract basis.

10. It is the case of the petitioner that her name was recommended by Local Selection Committee subject to the decision of the University and College tribunal in the proceedings filed by the another Lecturer Smt. Mehrunissa Saheblal Pathan. It was the case of the said Smt. Mehrunissa Saheblal Pathan in the said appeal filed before the University and College tribunal that the post of Lecturer in English which was reserved for Scheduled Tribe could not have been de-reserved and in any case, the reservation did not shift from the post of Lecturer in English to the post of Lecturer in Marathi. By an order and judgment dated 2nd December 2004 passed by the University and College tribunal, Aurangabad, the said appeal filed by the said Smt. Mehrunissa Saheblal Pathan came to be dismissed. The University and College tribunal, however, made it clear in the said order that de-reservation of the post

has to be made only as per the direction contained in the Government Resolution dated 5th December 1994.

11. It is the case of the petitioner that the Government of Maharashtra has taken a policy decision regarding de-reservation of post reserved for Backward Classes vide Government Resolution dated 5th December 1994. As per the said Resolution, the post reserved for either Schedule Castes or Schedule Tribes or VJ or Nomadic Tribes or Other Backward Classes could be kept vacant for a period of five years if the candidates belonging to such reserved post was not available. If the candidate from particular reserved category was not available despite efforts made continuously for five years, post reserved for one category could be filled in by exchanging reservation for some other reserved category as per the said Resolution. If the candidate was not available in the sixth year, the management was required to appoint the candidate from open category by getting the post de-reserved with an approval of the General Administration Department.

12. The respondent nos. 1 and 2 issued a fresh advertisement in daily "Lokmat" in its issue dated 13th May 2006 inviting applications for two posts of Lecturer in English of which one is reserved for

Schedule Tribes. It is the case of the petitioner that since 17th March 2006, the petitioner was out of service.

13. In the meanwhile, in the month of October 2002, the petitioner applied for regularization of her services to the University Grievance Redressal Committee, Aurangabad. It is the case of the petitioner that the said University Grievance Redressal Committee had upheld the grievance of the petitioner and recommended her case for absorption/regularization of services on the lines of the decision taken by the Management Council in its meeting held on 14th March 2002. The said University Grievance Redressal Committee had passed a Resolution in its meeting held on 22nd November 2002 recommending the case of the petitioner for absorption/regularization of services. The said recommendation was placed before the Management Council in its meeting held on 29th January 2003 and was however rejected by the Management Council on the ground that the post of Lecturer in English was reserved for Scheduled Tribes. The said information was supplied to the petitioner vide letter dated 25th August 2006 by the Information Officer and Deputy Registrar (Education) of the respondent no.3-University.

14. It is the case of the petitioner that the Management Council had decided to regularize the services of some other candidates who were appointed against the post reserved for Scheduled Tribe in its meeting held on 14th March 2002. The petitioner however, was singled out and was discriminated contrary to the recommendations made by the University Grievance Redressal Committee. The petitioner therefore filed a writ petition and initially prayed for a writ of mandamus against the respondent nos.1 and 2 to apply for de-reservation of the post of Lecturer in English reserved for Scheduled Tribes and to take steps for de-reservation of the said post in terms of the Government Resolution dated 5th December 1994 and prayed for a writ of certiorari for quashing and setting aside the decision taken by the Management Council of the respondent no.3-University refusing to regularize the services of the petitioner.

15. During the pendency of this writ petition, this Court passed an order dated 27th June 2006 granting ad-interim injunction restraining the respondents from making any appointment against the post of Lecturer in English pursuant to the advertisement published in daily "Lokmat" in its issue dated 13th May 2006. However, by an order dated 6th November 2006, the said ad-interim order granted by this Court on

27th June 2006 came to be vacated and this writ petition was admitted. In the reply filed by the management before this Court, it is stated that the interviews for the said post advertised were already held and certain candidates were selected. Names of such candidates find place in paragraph 8 of the affidavit-in-reply filed by the respondent no.3 on 8th August 2006. This Court, however, while vacating the ad-interim injunction made it clear that the appointment to be made by the respondent-management to the subject post of Lecturer (English) would be subject to the outcome of this writ petition.

16. During the pendency of this writ petition, the petitioner filed an appeal in the month of June, 2017 before the University and College tribunal, Aurangabad inter alia praying for an order and direction against the respondent nos.1 and 2 to reinstate the petitioner on the post of the Assistant Professor of English in Scheduled Tribe category post being de-reserved as open category post and grant entire back wages with interest 18% p.a. The petitioner also applied for an order and direction to regularize the services with effect from date of first appointment i.e. 5th October 1994 and to grant all other consequential benefits including arrears of salary, seniority in service etc. The petitioner also applied for condonation of delay in filing the said appeal

before the University and College tribunal. The said application for condonation of delay as well as the said appeal are pending before the University and College tribunal.

17. Ms.Talekar, learned counsel appearing for the petitioner invited our attention to various annexures to the affidavit-in-reply filed by the respondent no.1 and also affidavit-in-rejoinder and also the averments and the annexures to the short affidavit dated 19th June 2017.

18. It is submitted by the learned counsel that since the said post of Lecturer in English which was reserved for Scheduled Tribe was advertised for more than seven times in view of the fact that the candidate for the said category was not available and on which the petitioner was continuously appointed as contributory Lecturer and her appointment was approved from time to time by the respondent no.3, the respondent nos.1 and 2 were required to apply for de-reservation of post for open category candidate by following requisite procedure under the Government Resolution dated 5th December 1994. She submits that the petitioner was already selected by duly constituted Selection Committee and thus her appointment was required to be regularized once the post of Lecturer in English was de-reserved. She submits that the Management Council of the respondent no.3 could not have refused to regularize

the services of the petitioner though the same was recommended by the University Grievance Redressal Committee in its meeting dated 29th January 2003.

19. It is submitted by the learned counsel that though the petitioner was appointed on temporary basis from time to time, the petitioner was all throughout given workload of the Lecturer of English and her appointment was made by the duly constituted Selection Committee appointed by the respondent no.3-University. The approval was granted by the respondent no.3-University from time to time. It is submitted that the Government Resolution dated 5th December 1994 was applicable and binding on the respondents and in view of the fact that the Scheduled Tribe category candidate was not available for five years and thereafter even for the sixth year, though other reserved category candidate was available, in the seventh year, the said post was liable to be de-reserved for the open category candidate. She submits that instead of applying for de-reserving the said post which was reserved for Scheduled Tribe candidate, the respondent no.1 applied for permission to shift the said reserved post from the post of Lecturer in English to the post of Lecturer in Marathi.

20. Learned counsel for the petitioner invited our attention to the order and judgment dated 2nd December 2004 delivered by the learned Presiding Officer, University and College Tribunal, Aurangabad thereby dismissing the Appeal No.BAMU/28/2003 filed by Mehrunnisa S. Pathan against the respondents. She submits that the University and College tribunal had though dismissed the appeal filed by the said Mehrunnisa S. Pathan, it was held by the said tribunal that the tribunal need not go into the question whether the shifting of reservation is legal and proper or not. The said tribunal considered the Government Resolutions dated 5th December 1994, 24th April 1995 and 18th October 1997 and held that the Government Resolutions dated 4th April 1995 and 18th October 1997 did not make any change with respect to direction given in the Government Resolution dated 5th December 1994 regarding de-reservation. It is held that any de-reservation is to be effected, then it must be effected as per the directions given in Government Resolution dated 5th December 1994. It is held that post of Lecturer of any category has to be reserved and for that category the 100 points roster is to be made applicable and the reservation is to be fixed as per 100 points roster.

21. The tribunal held that in that case, one post of Lecturer in English was reserved for Scheduled Tribe category, then de-reservation can be made only as per the directions contained in the Government Resolution dated 5th December 1994. The tribunal made it clear that there was clear misunderstanding on the part of the Management of the Government Resolutions dated 5th December 1994 and 24th April 1995. The University has no such power to de-reserve such post once the same was reserved for a particular caste or tribe. The 50% reservation is not subject wise but it is category wise and the post of Lecturer is one such category where there should be 50% reservation. A proposal has to be submitted to the General Administration Department and then as per the directions contained in the said Government Resolution, the de-reservation can be permitted after the approval from the concerned Minister and the Chief Minister. The tribunal held that the services of the appellant in that matter stood terminated because her appointment was for a fixed period and on the expiry of that period her services stood terminated and not because of change in reservation. It is submitted by the learned counsel that various findings rendered by the tribunal against the respondent nos.1, 2 and 3 have attained finality in view of the admitted fact that none of these respondents have impugned the said decision and/or findings rendered by the said tribunal.

22. Learned counsel for the petitioner invited our attention to the Government Resolution dated 2nd November 2005 issued by the State Government and would submit that under the said Resolution, it was made clear that the reservation post should be de-reserved and no fresh advertisement is required for filling such de-reserved post and teachers who were already in service for more than 10 to 12 years, their services should be continued. She submits that by the said Resolution dated 2nd November 2005, the conditions for issuing fresh advertisement was deleted and the teachers who were continuing in the employment with the Institution were to be continued. It is submitted by the learned counsel for the petitioner that in view of the Resolution dated 2nd November 2005, since the petitioner was already working for 10 to 12 years with the respondent no.1, the petitioner was entitled to be absorbed and her services were required to be regularized. She submits that the impugned order passed by the Management Council of the respondent no.3 refusing to regularize the services of the petitioner though the University Grievance Redressal Committee had recommended the services of the petitioner is contrary to the Government Resolution dated 2nd November 2005 and also contrary to the law. She submits that when the petitioner was appointed for the first time in the year 1991, the requirement of passing NET examination was not mandatory.

23. Learned counsel for the petitioner placed reliance on the following judgments in support of the aforesaid submissions :-

- (i) *Nitin Anand Anbhule Vs. State of Maharashtra & Ors. reported in 2007 SCC OnLine Bom 658 (paragraphs 11, 13 and 18);*
- (ii) *Deepa Gourang Murdeshwar Katre Vs. Principal V.A.V.College of Arts and Ors., reported in (2007) 14 SCC 108 (paragraph 38);*
- (iii) *Harshendu Vinayak Madge Vs.Chembur Trombay Education Society, reported in 2009 (3) Mh.L.J. 323 (paragraphs 17, 18 & 19);*
- (iv) *Ashok Chandrashekhar Rao Vs. University of Mumbai & Ors, reported in 2016 SCC OnLine SC 1200 (paragraphs 8 & 9);*
- (v) *R.B.Singh Vs. Principal, Sonopant Dandekar Arts College, Palghar and others, reported in 2007 (4) Mh.L.J. 846 (paragraphs 2 & 4);*
- (vi) *Ruchira S. Manjarekar Vs. Principal, D.G.Ruparel College of Arts, Science and Commerce and others, reported in 2014 (3) Mh.L.J. 487 (paragraphs 14 & 18);*
- (vii) *Kakoli Shyamlal Sircer Vs. Nagpur University and others, reported in 2002 (2) Mh.L.J. 673 (paragraphs 6 & 7) and;*
- (viii) *Maharashtra Federation of University & College Teachers Organizations Vs. The State of Maharashtra & Ors., reported in 2015 SCC OnLine Bom 6820 (paragraphs 35, 58, 75 to 81, 85 to 87 and 93).*

24. Mr.Shah, learned counsel appearing for the respondent nos.1 and 2, on the other hand, invited our attention to various averments made by the petitioner in her writ petition, to various exhibits annexed to the pleadings and would submit that it was the case of the petitioner herself that the respondent nos.1 and 2 had already sought permission to seek reservation of Scheduled Tribe from the post of Lecturer in English to the post of Lecturer in Marathi and the said post of Lecturer in English is de-reserved. He submits that prayer clause (A) for writ of mandamus against his client to apply for de-reservation of post of Lecturer in English itself was not maintainable. He submits that in so far as the additional prayer which was inserted by way of amendment to the petition i.e. prayer clause (E) is concerned, the petitioner had already filed an appeal before the University and College Tribunal inter alia praying for an order of regularization of her services which appeal is still pending. No such relief can be granted by this Court in this writ petition.

25. Learned counsel invited our attention to the averments made in paragraph 41 of the writ petition stating that the petitioner was restricting her claim in this petition to the decision not to de-reserve and thus cannot apply for regularization of her services in the teeth of the

averments made in paragraph 31 of the writ petition. He submits that admittedly since 17th March 2006, the services of the petitioner were not continued by the respondent nos.1 and 2. Interim relief initially granted by this Court in favour of the petitioner admittedly came to be vacated by this Court by a detailed order dated 6th November 2006. The respondent nos.1 and 2 has already appointed one of the candidates to the said post who continues to be in the employment of the respondent nos.1 and 2 on the said post. Though the name of the said candidate was disclosed in the affidavit-in-reply filed by the respondent nos.1 and 2 long back, the petitioner has not impleaded the said Lecturer as a party to this petition. No relief thus can be granted in favour of the petitioner which would affect the said candidate of Lecturer without her impleadment as a party to this petition.

26. In support of this submission, learned counsel invited our attention to the order dated 6th November 2006 passed by this Court recording a statement made by the learned counsel for the petitioner that the petitioner was seeking a limited relief for de-reservation of the post and did not seek to challenge the alleged termination of the services of the petitioner. He submits that the petitioner cannot thus seek a relief for regularization of her services also in view of her statement made

before this Court on 6th November 2006. He submits that when this Court allowed the petitioner to carry out amendment to the petition and to seek regularization of her services, the statements made by the petitioner in the petition and before this Court on 6th November 2006 were not brought to the notice of this Court. This Court thus cannot consider the relief for regularization of her services in this petition.

27. Learned counsel for the respondent nos.1 and 2 submits that admittedly when the petitioner was appointed for the first time and since the date of her appointment, she did not possess NET/SET qualification. She has admittedly passed M.Phil examination after she ceased to be in service with the respondent nos.1 and 2. In so far as the issue of de-reservation of the post is concerned, it is submitted by the learned counsel that prior to the year 2002-03, there were two posts of English teachers sanctioned by the University. One additional post was sanctioned in the year 2002-03. He invited our attention to the averments made in paragraph 8 of the writ petition admitting that the petitioner had not acquired NET/SET qualification even on the date of filing of the said writ petition. He submits that the petitioner was thus appointed on temporary basis since the said post was reserved for

Scheduled Tribe candidate who was not available and in view of the fact that the petitioner was not having requisite NET/SET qualification.

28. It is submitted by the learned counsel that vide letter dated 1st September 2003, the respondent no.1 made a proposal to the respondent no.3-University for transfer of reserved post of Lecturer in English to the post of Lecturer in Marathi. The respondent no.1 was sanctioned one extra post in open category for Lecturer in English. The respondent no.1 had issued an advertisement for the said post of Lecturer in English in open category. The petitioner had participated in response to the advertisement issued by the respondent no.1 and was appointed in open category as a Lecturer in English in the said open category post. He submits that no candidate having NET/SET qualification was available, the petitioner was appointed on temporary basis subject to the petitioner obtaining such qualification. It is submitted that the post of Lecturer in English was thus already de-reserved by the respondent no.1 admittedly and thus no such relief can be sought by the petitioner.

29. It is submitted by the learned counsel that sometime in the year 2012, in view of the workload, post was reduced and only two posts were continued by the respondent no.1 i.e. one post in the subject

of English in open category and another in Scheduled Tribe. He submits that the petitioner did not participate in the advertisement issued on 13th May 2006. Ms.Dalvi was appointed on the said open category post who had complied with the requirement of NET/SET qualification. The said Ms.Dalvi continues to be on the said post even today.

30. It is submitted by the learned counsel for the Management that since the reservation in respect of one of the posts of Lecturer in English was already shifted and was already de-reserved in the year 2002-03 and after de-reserving the said post, the respondent no.1 had already acted upon the said permission granted by the said University by issuing an advertisement for open category candidates, the question of further de-reservation under the Government Resolution dated 2nd November 2005 did not arise.

31. In so far as various observations and the findings recorded by the University and College tribunal in the appeal filed by Smt. Mehrunissa Saheblal Pathan in the order and judgment dated 2nd December 2004 is concerned, it is submitted by the learned counsel that such observations and findings recorded by the University and College tribunal in the said order and judgment are in the nature of *obiter* and are not binding on the management in view of the fact that the said appeal

filed by the said Lecturer Smt.Mehrunissa Saheblal Pathan was admittedly dismissed by the University and College tribunal.

32. In so far as the issue as to whether qualification of NET/SET was mandatory for the purpose of appointing the petitioner to the post of Lecturer in English is concerned, it is submitted by the learned counsel that the University Grants Commission has prescribed such qualification as mandatory under the Circular dated 19th September 1991 which condition continued to be in force till 14th June 2006 and were relaxed for those candidates who had possessed degree in M.Phil. He submits that since 11th July 2009, the University Grants Commission once again made it compulsory the said NET/SET qualification as one of the eligibility conditions.

33. Learned counsel for the respondent nos.1 and 2 placed reliance on the judgment delivered by the Division Bench of this Court in the case of ***Sudhir s/o Sharadrao Hunge & Anr. Vs.State of Maharashtra and Ors.***, reported in ***2010 (4) Mh.L.J.572*** and in particular paragraphs 2 and 6 in support of the submission that conditions imposed by the University Grants Commission on 11th July 2009 prescribing compulsory NET/SET qualification for recruitment and appointment of Lecturer in Universities/Colleges/Institutions was not

applicable with retrospective effect. Learned counsel for the Management also placed reliance on an unreported judgment delivered on 20th October 2010 in the case of ***Atul Suresh Patil & Ors. Vs. The State of Maharashtra & Ors.*** in Writ petition No.357 of 2010 and would submit that the petitioner did not get benefit of relaxation of NET/SET criteria. It is submitted by the learned counsel that the eligibility criteria has to be decided by the University Grants Commission and cannot be changed by the State Government by issuing a Government Resolution.

34. In so far as the issue of regularization of the petitioner is concerned, it is submitted by the learned counsel that the University Grievance Redressal Committee did not consider the fact that the petitioner did not have requisite qualification of NET/SET on the date of her appointment. He submits that in any event, the petitioner could claim right to apply for regularization only after completion of 7 years' service from the date of her first appointment during which period, the candidate from Scheduled Tribe category was not available. He submits that in the year 2002-03, the petitioner was already appointed as Lecturer in open category post and thus question of regularization of services of the petitioner on that ground also did not arise. The grievance of the petitioner for regularization is for the period prior to her appointment

to the post of Lecturer in open category. He submits that post was de-reserved because additional post was to be cancelled due to reduction of workload. The averments in the petition did not indicate which post was converted into open category post.

35. Ms.Talekar, learned counsel for the petitioner in rejoinder submits that it is not at all pleaded by the respondent nos. 1 and 2 in the affidavit-in-reply that post of Lecturer in English for which the petitioner has prayed for de-reservation has already been de-reserved by the respondent nos.1 and 2. She invited our attention to the averments made in paragraphs 3, 6 and 7 of the affidavit-in-reply filed by the respondent no.1 and would submit that on the contrary, the respondent no.1 has contended that there is no responsibility and duties of the Management to apply for de-reservation and there is no cause of action against the Management and in favour of the petitioner.

36. It is submitted by the learned counsel that even after shifting of one post of Lecturer in English to the post of Lecturer in Marathi, even till today, there is admittedly one post is meant for Scheduled Tribe category and another post is meant for open category. She submits that post which is reserved for Scheduled Tribe category is still available and deserves to be de-reserved in view of the Government Resolution

dated 5th December 1994 without prejudice to the contention of the petitioner that the petitioner having already worked for 10 to 12 years with the respondent no.1 from the date of the alleged termination in view of the Government Resolution dated 2nd November 2005, the services of the petitioner are required to be continued to the same post.

37. It is submitted by the learned counsel that in view of 50% reservation, the last post which was added subsequently, was to be abolished. Ms.Dalvi was to be appointed to the post of open category. Her appointment was admittedly made subject to outcome of this writ petition. She was thus neither necessary nor proper party to this petition. He submits that shifting of reservation by the respondent no.1 of one post of Lecturer in English was itself on wrong premise and in any event, cannot amount to de-reservation of the said post as prescribed under the Government Resolution dated 5th December 1994. The petitioner is seeking her claim on the original post which was reserved for Scheduled Tribe which is lying vacant even today. She submits that the respondent nos.1 and 2 thus cannot be allowed to take a stand now that the post of Lecturer in English which was reserved for Scheduled Tribe category candidate was already de-reserved by the respondent nos.1 and 2. She submits that one post was abolished by the respondent

nos.1 and 2 and not de-reserved. Learned counsel for the petitioner strongly placed reliance on the observation and findings made by the University and College tribunal in the appeal filed by Smt. Mehrunissa Saheblal Pathan and would submit that the findings recorded by the University and College tribunal in respect of the de-reservation of the post against the respondent nos.1, 2 and 3 have attained finality and are not in the nature of *obiter* as sought to be canvassed by the respondent nos.1 and 2.

38. In so far as the issue as to whether qualification of NET/SET is required to be obtained was mandatory or not is concerned, it is submitted by the learned counsel that the petitioner had already passed M.Phil examination. Though the petitioner had made an averment that she would apply for NET/SET qualification and would appear for the said examination, the petitioner did not appear for NET/SET examination.

39. Learned counsel for the petitioner invited our attention to the notification dated 15th June 2007 annexed at Exhibit A-8 to the petition issued by the respondent no.3 University certifying that the result of the petitioner registered for M.Phil (English) during the academic year 1992-93 was declared as Passed In Second Division on 6th June 2007. The petitioner did not have M.Phil certificate when she was appointed in

the respondent no.1. She however submits that when the petitioner was appointed, the M.Phil qualification was also not compulsory. The petitioner had already obtained 55% marks in M.A.(English).

40. In so far as the submission of the learned counsel for the respondent nos.1 and 2 that the petitioner cannot seek any relief for regularization of her services is concerned, it is submitted by the learned counsel that the amendment was sought by the petitioner in the writ petition seeking additional relief and raising additional grounds which amendments were allowed by this Court by an order dated 25th September 2008 in Civil Application No.806 of 2006. The said order passed by this Court allowing the amendment was not challenged by the respondent nos.1 and 2. She submits that the petitioner is thus entitled to seek all the reliefs prayed in the petition including the amendment which is granted by this Court. The original averment made in the petition as well as the statement made before this Court thus cannot be interpreted as sought to be interpreted by the respondent nos.1 and 2. She submits that if this Court grants prayer for regularization of the services of the petitioner, the petitioner would withdraw the appeal filed by her before the University and College tribunal seeking regularization of her services except the prayer for back wages and consequential benefits.

41. In so far as the submission of the learned counsel for the respondent no.1 that the Government Resolution dated 2nd November 2005 would not apply to the fact of this case is concerned, it is submitted by the learned counsel for the petitioner that the petitioner had already prayed for writ of mandamus against the respondent nos.1 and 2 to apply for de-reservation of post of Lecturer in English which was reserved for Scheduled Tribes candidates. The said Government Resolution dated 2nd November 2005 was issued based on the judgment of this Court. She submits that this Court in one of the judgments referred to aforesaid had directed the Management and University to regularize the services of the petitioner therein though there was no Government Resolution issued by that time which the petitioner had already completed more than 10 to 12 years. The said Government Resolution was issued based on the said judgment of this Court. She submits that the said resolution would squarely apply to the facts of this case. She submits that subsequent circular issued by the University Grants Commission relied upon by the respondent nos.1 and 2 would not apply to the appointment already made such that of the petitioner and thus the reliance placed by the respondent nos.1 and 2 on this circular issued post the date of the appointment of the petitioner is misplaced. Learned counsel for the petitioner distinguishes the judgment cited by the learned counsel for the respondent nos.1 and 2.

REASONS AND CONCLUSIONS :-

42. A perusal of the record indicates that the petitioner had possessed degree of M.A. (English) on the date when the petitioner had applied for the post of Lecturer in English pursuant to the advertisement published in daily “Lokmat.” A perusal of the petition indicates that it was averred by the petitioner that she had passed M.Phil Examination prior to the date of filing of writ petition but had to submit thesis for the purpose of obtaining M.Phil degree. The petitioner had also applied for National Eligibility Test Examination and had proposed to appear for the said examination which was scheduled to be held on 25th June 2006.

43. During the period between 1st July 1994 and July 2003, the respondents had issued advertisements from time to time for the post of Lecturer in English for the post reserved for Scheduled Tribe category. The petitioner was appointed from time to time to the said post in view of the fact that no candidate from Scheduled Tribe category was available. The post of Lecturer in English was once again advertised for the 7th times in daily “Sakal” in its issue dated 26th March 2002.

44. In the meanwhile, the respondent no.1 college applied to the university for shifting reservation of Scheduled Tribes from the post of Lecturer in English to that of Lecturer in Marathi on the ground that one

post of Lecturer in English had fallen vacant due to retirement of Dr.Lata Mohrir. The said post of Lecturer in English was thus once again advertised in daily “Deogiri Tarun Bharat” in its issue dated 2nd November 2003. The name of the petitioner was recommended by Local Selection Committee subject to the decision of the University and College tribunal in the proceedings filed by the another Lecturer Smt. Mehrunissa Saheblal Pathan. The said appeal filed by the said Lecturer came to be dismissed by the University and College tribunal, Aurangabad on 2nd December 2004.

45. Various observations were made by the University and College tribunal, Aurangabad in the said judgment. It was held that de-reservation of the post has to be made only as per the direction contained in the Government Resolution dated 5th December 1994. It was held by the said tribunal that the tribunal need not go into the question whether the shifting of reservation is legal and proper or not. There was no change with respect to direction given in the Government Resolution dated 5th December 1994 regarding de-reservation by the Government Resolutions dated 4th April 1995 and 18th October 1997. The tribunal held that if any de-reservation is to be effected, then it must be effected as per the directions given in Government Resolution dated 5th December 1994.

46. It is held that in that case, one post of Lecturer in English was reserved for Scheduled Tribe category, then de-reservation can be made only as per the directions contained in the Government Resolution dated 5th December 1994. The tribunal observed that there was clear misunderstanding on the part of the Management, of the Government Resolutions dated 5th December 1994 and 24th April 1995. The University has no such power to de-reserve such post once the same was reserved for a particular caste or tribe. A proposal has to be submitted to the General Administration Department and then as per the directions contained in the said Government Resolution, the de-reservation can be permitted after the approval from the concerned Minister and the Chief Minister. The said tribunal in that matter held that the services of the appellant i.e. Smt. Mehrunissa Saheblal Pathan stood terminated because her appointment was for a fixed period and on the expiry of that period, her services stood terminated and not because of change in reservation. It is not in dispute that the said findings rendered by the University and College tribunal against the respondent no.1 have not been challenged by the respondent no.1.

47. A perusal of the record further indicates that the representation of the petitioner to the University Grievance Redressal

Committee was accepted and a recommendation was made for absorption/regularization of the services of the petitioner by passing a Resolution on 22nd November 2002. The management Council however in its meeting held on 29th January 2003 rejected the said recommendation made by the University Grievance Redressal Committee on the ground that the post of Lecturer in English was reserved for Scheduled Tribe. It is not in dispute that during the pendency of this writ petition, though initially this Court had granted ad-interim injunction restraining the respondents from making any appointment against the post of Lecturer in English pursuant to the advertisement published on 13th May 2006, the said ad-interim order was vacated on 6th November 2006. It was however made clear that the appointment to be made by the respondent-management to the subject post of Lecturer (English) would be subject to the outcome of this writ petition.

48. The respondent no.1 thereafter appointed another Lecturer to the said post of Lecturer in English in open category. It is also not in dispute that the petitioner has filed an appeal in the month of June, 2017 before the University and College tribunal, Aurangabad inter alia praying for an order of reinstatement of the the petitioner on the post of the Assistant Professor of English in Scheduled Tribe category post being

de-reserved as open category post and with the entire back wages with interest. The petitioner had applied for condonation of delay in filing the said appeal before the University and College tribunal. The said application for condonation of delay is still pending.

49. The whole arguments of the petitioner in this petition is mainly based on the condition laid down in the Government Resolution s dated 5th December 1994 and 2nd November 2005.

50. It is not the case of the respondents in their affidavit-in-reply that the said post of Lecturer in English reserved for Scheduled Tribe category was de-reserved and was made available for the post of Lecturer in English from open category in compliance with the Government Resolution dated 5th December 1994. On the contrary, a specific case of the respondents was that the respondents had applied for permission to the University and College Tribunal to reduce one post of Lecturer in English due to reduction in workload and to convert the said post as post of Lecturer in Marathi. The said permission was granted by the University and College Tribunal. The management had thereafter issued a fresh advertisement for the post of Lecturer in English. The petitioner had applied for the said post and was temporarily appointed to the post of Lecturer in English in the said open category

post in view of the fact that no candidate having NET/SET qualification was available.

51. The question that arises for consideration of this Court is whether one of the posts of Lecturer in English which was reserved for Scheduled Tribe category, if no candidate from Scheduled Tribe category was available for a period of six years and even in the seventh year, no other candidate from reserved category on the basis of inter changibility was available in the seventh year, the said reserved post for Scheduled Tribe category candidate was liable to be de-reserved and ought to have been made available exclusively for the candidates from open category. Admittedly the respondent no.1 had not applied for de-reservation of the said post of Lecturer in English which was reserved for Scheduled Tribe category even though no candidates from that category were available for seven years. The petitioner was admittedly appointed to the said post from time to time though the petitioner did not belong to the Scheduled Tribe category however, on temporary basis since no Scheduled Tribe candidate was available.

52. Mr.Shah, learned counsel for the respondent nos.1 and 2 could not justify as to why the respondent no.1 did not de-reserve the said post of Lecturer in English which was reserved for Scheduled Tribe

category candidates though for consecutive period of seven years, no such reserved category candidate was available.

53. In so far as the Government Resolution dated 5th December 1994 is concerned, the petitioner has not produced any material on record to demonstrate that the petitioner had completed twelve years or more on the said post of Lecturer in English. In our view, the petitioner thus cannot avail of any benefit under the said Government Resolution dated 2nd November 2005.

54. The petitioner in her rejoinder averred that the norms prescribed by the University Grants Commission (UGC) which are interpreted in Ordinance 168B of the Ordinances framed by the University although requires that a candidate shall possess NET/SET in the concerned subject, the requirement has been relaxed, in case of candidates who possess M.Phil degree. She placed reliance on the Circular dated 4/5th July 2006 in support of this submission. The respondent no.3-University extended the period to complete M.Phil till 30th June 2007 in case of old students who were already registered vide Circular dated 3rd August 2006. It is contended by the petitioner that the Government of Maharashtra issued a Resolution relaxing the requirement of passing NET/SET as a condition precedent to continue in service in

case of those Lecturers who were appointed prior to October 2000. It is the case of the petitioner that she was appointed since 1st October 1996 and she was protected under the Government Resolution dated 4th April 2000.

55. During the pendency of this petition, the petitioner has amended this writ petition and has annexed a notification dated 15th June 2007 at Exhibit 'A-8' to the petition issued by the Controller of Examinations of the respondent no.3-university to the effect that the result of the petitioner who had registered her name for M.Phil (English) during the academic year 1992-93 was declared as 'Passed in Second Division' on 6th June 2007.

56. During the course of the arguments, learned counsel for the petitioner admitted that the petitioner though had made an averment that she would appear for NET/SET examination, she did not appear for the said examination. She also made a statement that she did not have M.Phil certificate when she was appointed in the respondent no.1-college. It is however the case of the petitioner that when she was appointed, M.Phil examination was also not compulsory. The petitioner had already obtained 50% marks in M.A. (English).

57. Division Bench of this Court in the case of ***Nitin Anand Anbhule Vs. State of Maharashtra & Ors. (supra)*** has construed the Government Resolution dated 5th December 1994, 19th January 1995 and 2nd November 2005 and has held that since the petitioner in that matter had continued in service for more than six years as Lecturer and the condition of Government Resolution dated 5th December 1999 were fulfilled, the petitioner would be entitled to benefit of the Government Resolution dated 2nd November 2005 and was entitled to the approval for the said appointment, subject to conditions laid down in the resolution. This Court also considered the fact that as per the Government Resolution No.1306/2000 after 4th April 2002, no lecturer either in the University or in the College be appointed without the necessary eligibility. However, there were 6000 lecturers who had not passed either NET or SET examination and they were in service for 7-8 years and, therefore, for protecting their interest the Government had taken the decision.

58. It is held that the Government Resolution laid down that on certain conditions, the lecturers appointed between 19th September 1991 and 11th December 1999 will not be terminated for non-passing of NET or SET examination. The conditions were that the lecturers should pass

either of the examination till December 2003. It is further laid down that those who would not pass either of the two examinations would not be entitled to any monetary benefits such as promotion, higher pay scale, selection grade and until retirement they will continue in the pay scale of Rs.8000-13500. They would be entitled to higher scale, selection grade from the date on which they would pass the examination. These concessions would not be available to those lecturers who come in service after 11th December 1999. It is not in dispute that the petitioner was appointed for the first time pursuant to the advertisement dated 1st July 1994 by an appointment letter dated 5th October 1994.

59. Division Bench of this Court in ***Maharashtra Federation of University & College Teachers Organizations (supra)*** has dealt with all the relevant Government Resolutions issued from time to time prescribing terms and conditions for appointments to various posts including terms and conditions for passing NET/SET examination etc. Division Bench has considered the chequered history of the Resolutions passed by the Government from time to time since 1983 till 27th June 2013. Division Bench has also considered the cases of teachers who were duly appointed without passing NET/SET examination and whether their appointments were required to be regularised or not. This Court

held that the regularisation of service from the date of initial appointment also cannot be disturbed as they have admittedly been working during the situation where NET/SET candidates were not available. The State is required to strike the balance in the interest of all the concerned, being the paying authority of salary and all other related benefits to such lecturers/teachers. This Court also considered the fact that there was no issue that non-NET/SET teachers, inspite of no requisite qualification of NET/SET have been getting pay Commission's scale, HRA, Leave Travel Allowance, DA, TA and all other related benefits, including increments and pension and gratuity.

60. In the concluding paragraph of the said judgment, it is held by the Division Bench that the teachers/professors/lecturers/ candidates who have not acquired NET/SET/TEST qualification and who were appointed during 24th October 1992 to 3rd April 2000 (except 19th September 1991 to 23rd October 1992) were not entitled for CAS (Career Advancement Scheme) and other related benefits except the benefits including the pay scale and increments and other related benefits, as announced by the State, but on conditions so reproduced, it is held that after acquiring NET/SET qualification, the teachers shall be entitled for the CAS and other related benefits in accordance with law from the date

of acquisition of qualification of NET/SET as announced. This Court rejected the challenge to the validity of the State Government Resolution dated 27th June 2013 and upheld the action of the State of Maharashtra and directed the State Government/Universities/Colleges to take steps accordingly.

61. It is not in dispute that the first appointment of the petitioner was made during the period between 24th October 1992 to 3rd April 2000 and more specifically by an order dated 5th October 1994. Though the petitioner had not obtained the certificate of M.Phil degree or had not acquired NET/SET qualification on the date of making an application for the first time, the appointment of the petitioner cannot be rejected on the ground of the petitioner not having acquired NET/SET qualification or not having M.Phil certificate on the date of making of an application for the post of Lecturer in English. The judgment of this Court in the case of ***Maharashtra Federation of University & College Teachers Organizations (supra)*** delivered by this Court on 23rd December 2015 would apply to the facts of this case. We are respectfully bound by the said judgment. In our view, the petitioner would be entitled to avail of the benefits of various Government Resolutions which are specifically dealt with in the said judgment and

her appointment cannot be rejected on the ground that she did not have passed NET/SET examination or did not have certificate of M.Phil degree.

62. A perusal of record clearly indicates that even after expiry of seven years, though the respondent no.1 did not get any candidate for the post of Lecturer in English from Scheduled Tribe category, the respondent no.1 did not de-reserve the said post reserved for Scheduled Tribe and instead of de-reserving the said post and to make the said post available for the candidates from open category, the respondent no.1 applied for shifting of reservation from one post to another. The principles of law laid down by the Division Bench of this Court in the case of **Nitin Anand Anbhule Vs. State of Maharashtra & Ors. (supra)** would squarely apply to the facts of this case. We are respectfully bound by the said judgment. The respondent no.1 could not dispute before this Court that the respondent no.1 had issued advertisement for the said post of Lecturer in English reserved for Scheduled Tribe category for seven years and did not get any candidate from Scheduled Tribe category and that the petitioner was appointed to the said post continuously. The respondent no.1 also did not dispute before this Court that the petitioner was given workload of full time lecturer in English.

63. In so far as the submission of the learned counsel for respondents that the observations made by the University and College Tribunal in the appeal filed by Smt. Mehrunissa Saheblal Pathan were *obiter* and not the ratio is concerned, it is not in dispute that the respondents were parties to the said proceedings and did not challenge the findings rendered by the University and College Tribunal in the said judgment and more particularly about the applicability of the Government Resolution dated 5th December 1994. In our view, the permission sought by the respondent no.1 from the university to shift the reservation of Scheduled Tribe from the post of Lecturer in English to that of Lecturer in Marathi was not in compliance with the condition prescribed in the Government Resolution dated 5th December 1994. The said permission granted by the University allowing the respondent nos.1 and 2 to shift the reservation of Scheduled Tribe from the post of Lecturer in English to that of Lecturer in Marathi could not have been considered as de-reserving post of Lecturer in English in compliance with the terms and conditions of the Government Resolution dated 5th December 1994. We are thus no inclined to accept the submission of the learned counsel for the respondent nos.1 and 2 that the said post of Lecturer in English was already de-reserved by the respondent nos.1 and 2.

64. In our view, the petitioner had applied for the said post of Lecturer in English after such permission was obtained by the respondent nos.1 and 2 from the university by shifting of reservation. The petitioner was initially appointed to the said post again on temporary basis. The said application made by the petitioner was in continuation of the earlier applications made from time to time for the said post which was accepted by the respondent nos.1 and 2 and an appointment of the petitioner was made to the said post of Lecturer in English though the petitioner belonged to the open category. In our view, the said post of Lecturer in English reserved for Scheduled Tribe category was required to be de-reserved by the respondent nos.1 and 2 in compliance with the Government Resolution dated 5th December 1994 and was to be filled in by appointing the petitioner to the said post in open category. It is not in dispute that one post of Lecturer in English reserved Scheduled Tribe category candidate is still in existence in the respondent no.1-college and is not de-reserved till date in compliance with the Government Resolution dated 5th December 1994.

65. In so far as the submission of the learned counsel for the respondent nos.1 and 2 that the petitioner had restricted to press relief in the petition to the limited extent of de-reservation of the post and she

did not seek to challenge the alleged termination of the services of the petitioner or that this Court while admitting the petition on 6th November 2006 had recorded the statement of the petitioner that the limited grievance in the petition was to seek direction to the respondent nos.1 and 2 to take steps for de-reservation of the said post and thus the petitioner cannot be allowed to now press relief in respect of regularization of her services is concerned, it is not in dispute that the petitioner had applied for amendment to the writ petition in the year 2009 for seeking amendment to the petition including the additional reliefs.

66. After hearing both the parties, this Court had permitted the petitioner to amend the petition and to seek additional prayer of seeking regularization of her services as recommended by the respondent no.3-university. The said order allowing the amendment to the petition in favour of the petitioner passed by this Court has not impugned by the respondent nos.1 and 2. The petitioner though her learned counsel made a statement before this Court that if this Court allows the said prayer clause (E) to the petition as inserted in the amendment, the petitioner would withdraw her appeal pending before the University and College Tribunal in so far as the prayer for reinstatement is concerned. In our

view, the respondent nos.1 and 2 thus cannot be allowed to oppose the reliefs claimed by carrying out amendment to the writ petition and to seek additional reliefs including the relief of regularization of her services on the ground that amendment was wrongly allowed.

67. It is not in dispute that the university had recommended the case of the petitioner for absorbing the petitioner to the said post, however, the said recommendation was rejected by the management council. In our view, the rejection of recommendation made by the university by the management council is ex facie illegal. In our view, various Resolutions passed by the Government and adopted by the University Grants Commission and the petitioner having fulfilled the conditions prescribed in those Resolutions, the management council was bound to accept the recommendation made by the university and ought to have absorbed the petitioner to the said post by de-reserving the said post of Lecturer in English reserved for Scheduled Tribe category in compliance with the Government Resolution dated 5th December 1994.

68. In so far as the judgment of the Division Bench of this Court in the case of ***Sudhir s/o Sharadrao Hunge & Anr. Vs.State of Maharashtra and Ors. (supra)*** relied upon by the learned counsel for the respondent nos.1 and 2 is concerned, Division Bench of this Court

has considered the issue as to whether introduction of NET/SET as eligibility condition for recruitment and appointment of Lecturers in Universities/Colleges/ Institutions as per Gazette Notification dated 11th July 2009 prescribed by University Grants Commission will affect the selections and appointments made in accordance with the approved advertisements/notifications published before 11th July 2009 when the eligibility condition was not compulsory NET/SET ?

69. A perusal of the said judgment also indicates that even in the said judgment, this Court observed that it was not in dispute that before 11th July 2009, the date on which the UGC had prescribed compulsory NET/SET qualification for the recruitment and appointment of the Lecturers in Universities/Colleges/Institutions, there was exemption to the candidates possessing M.Phil degree by virtue of UGC (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (2nd Amendment), Regulation 2006 dated 14th June 2006. It is held that even if the candidate did not possess NET/SET qualification, if he possessed M.Phil. Degree, he was eligible to apply and for getting selected for teaching under graduate level students. It is held that the candidates who possess the said M.Phil. Qualification

though they did not possess NET/SET qualification, was eligible for being selected and appointed prior to 11th July 2009. The judgment of the Division Bench, on the other hand, in case of ***Maharashtra Federation of University & College Teachers Organizations (supra)*** which judgment delivered by the Division Bench of this Court in the case of ***Sudhir s/o Sharadrao Hunge & Anr. Vs. State of Maharashtra and Ors. (supra)*** thus would not assist the case of the respondent nos.1 and 2 and is clearly distinguishable in the facts of this case.

70. It is not in dispute that at least on 6th June 2007, the petitioner has already been declared passed in second division in M.Phil examination and has been issued a certificate to that effect.

71. In so far as the other judgments relied upon by the learned counsel for the petitioner are concerned, this Court need not multiply the authorities by dealing with those judgments in view of the judgment of this Court in the cases of ***Nitin Anand Anbhule Vs. State of Maharashtra & Ors. (supra)*** and ***Maharashtra Federation of University & College Teachers Organizations (supra)*** being applicable to the facts of this case directly and are binding on this Court.

72. In our view, the petitioner has made out a case for an order and direction against the respondent nos.1 & 2 to apply for de-reservation

of post of Lecturer in English for Scheduled Tribe and for quashing the decision of the management council, Dr.Babasaheb Ambedkar Marathwada University, Aurangabad rejecting the recommendation of the University Grievance Redressal Committee in respect of regularization of services of the petitioner as Lecturer in English.

73. In so far as the submission of the learned counsel for the respondent nos.1 and 2 that the petitioner has not impleaded the Lecturer who has already been appointed to the post of Lecturer in English though the respondent nos.1 and 2 had disclosed the name of the said candidate in the affidavit-in-reply is concerned, it is not in dispute that this Court while admitting this writ petition had made it clear that the appointment of any candidates as would be made by the respondent nos.1 and 2 during the pendency of this writ petition would be subject to outcome of this petition. In our view, there is thus no merit in this submission of the learned counsel for the respondent nos.1 and 2.

74. We therefore pass the following order :-

- (i) Writ petition is made absolute in terms of prayer clauses (A) and (E). Rule is made absolute in aforesaid terms. In view of disposal of the writ petition, civil application does not survive and is disposed of. No order as to costs.

- (ii) The respondent nos.1 and 2 are directed to appoint the petitioner to the said post of Lecturer in English in open category with retrospective effect.
- (iii) The petitioner would be at liberty to press relief of back wages and continuity of service in pending appeal before the University and College Tribunal. The University and College Tribunal to decide the said prayer for back wages and continuity of service after considering the observation made and conclusion drawn in this order.
- (iv) The respondent nos.1 and 2 shall comply with this order within four weeks from the date of this order.
- (v) Parties to act on the authenticated copy of this order.

(SUNIL K. KOTWAL, J.)

(R.D. DHANUKA, J.)