

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1060 OF 2001

Arun Atmaram Margaj

... Petitioner

Vs.

Principal, Sant Rawool Maharaj
Mahavidyalaya & Ors.

... Respondents

....

Mr. A.G. Toraskar for the Petitioner.

Smt. P.U. Badadare for the Respondent Nos. 1 and 2.

Mr. Rui Rodrigues for the Respondent No. 3.

....

CORAM : A.A. SAYED, J.

DATE : 2 MARCH 2017

P.C.:

1 The challenge in this Petition under Article 227 of the Constitution of India is to the order dated 10 January 2001 passed by the University and College Tribunal, Mumbai. By the impugned order, the Appeal filed by the Petitioner/Original Appellant seeking to quash and set aside the order of termination dated 27 June 2000 and to reinstate the Petitioner in the Respondent college to the post of lecturer in Marathi along with back wages came to be dismissed.

2 The Petitioner/original Appellant was appointed as a lecturer in Marathi in the college run by the Respondent No. 2 on 4 August 1995. The appointment was on temporary basis for the academic year 1995-1996. The Petitioner was, thereafter, appointed as a lecturer in the year 1996-1997, 1997-1998, 1998-1999 and 1999-2000. The Petitioner was

appointed on temporary basis by the Local Selection Committee. The appointment of the Petitioner was against a reserved post for Schedule Caste Category which was also mentioned in the advertisement.

3 The Respondent No. 2, thereafter issued an advertisement on 9 June 2000 inviting the Applications for the post of lecturer in Marathi from Schedule Caste Category. Pursuant thereto, the Regular Selection Committee selected a person from the Schedule Caste Category who is appointed on the said post. Admittedly, the Petitioner belongs to open category. The Tribunal has rightly observed that the Petitioner cannot hold the post which is meant for reserved category of schedule caste. The Tribunal has recorded that from 1997 it was advertised that the post was reserved for schedule caste. Hence, the Tribunal rightly came to the conclusion that the post which is meant for reserved category of schedule caste cannot be given to the Petitioner.

4 In **Mrs. Rajani R. Moti Vs. S.N.D.T. College of Home Science & Others** (WP/1766/2003), the Division Bench of this Court in para 2 has observed as follows:

“2. It is not disputed before us that there is no automatic dereservation of the reserved post. In **Ayurvedya Prasarak Mandal and anr. Vs. Geeta Bhaskar Pendse (Mrs) and others** (1991) 3 SCC 246 and **Dr. Chanchal Goyal (Mrs) Vs. State of Rajasthan** (2003) 3 SCC 485, the Apex Court has held that when there is a suitable candidate available in

the reserved category he must be appointed despite the fact that the candidate from the open category had continued for many years against the reserved category post. In the case of Dr. Chanchal Goyal it was held that although the petitioner had been continued in service for 28 years, 14 years by the time the order of termination was passed and 14 years on the basis of interim directions given by the High Court and Supreme Court, she could not claim permanency. The Apex Court also held that doctrine of legitimate expectation would not apply since there would be no waiver against the requisite compliance with law.”

5 It has been vehemently urged by the learned Counsel for the Petitioner that the Petitioner has been in service to the last almost two decades and therefore, his services are required to be protected. However, it is not possible to accept the said contention. Admittedly, the Petitioner was appointed on temporary basis on a posts reserved for Schedule Caste Category and the Petitioner belongs to open category. The regular selection committee has now selected a person from the schedule caste category and is appointed after following due procedure. After the impugned order was passed on 10 January 2001, the Petitioner is continued in service merely because of the interlocutory orders passed by this Court on 29 January 2001 and 27 April 2001 while admitting the Petition. As held by the Division Bench in the aforementioned decision, the Petitioner cannot claim permanency on the basis of interim directions given by this Court.

6 In light of the above, the Petition is required to be dismissed and accordingly dismissed. Rule is discharged. There shall be no order as to costs.

7 On the request of learned Counsel for the Petitioner, it is clarified that the Petitioner shall be entitled to all other dues, if any, in accordance with law. On the further request of learned Counsel for the Petitioner, the ad-interim order dated 27 April 2001 granted by this Court while admitting the Petition is continued for a period of eight weeks from today.

(A.A. SAYED, J.)