

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.3111 OF 2017

Dr. Kavita Rege

..Petitioner

Versus

**Joint Director of Higher & Technical,
Education, Elphinstone Technical,
Institute, Dhobi Talao, Mumbai and others**

..Respondents

**Mr. Mihir Desai, Senior Counsel i/by Mr. Swaraj Sanjay Jadhav,
Advocate for the Petitioner.**

Mr. Manish Upadhye, AGP for Respondent Nos.1 and 2 – State.

**Mr. Rui A. Rodrigues a/w Ms. Yogita Singh, Advocate for Respondent
No.3.**

**Mr. Neel Helekar a/w Ms. Sarika Mehra i/by M/s. LJ Law, Advocate
for Respondent No.4.**

CORAM : B. R. GAVAI &

MANISH PITALE, JJ.

DATE : 7th DECEMBER, 2017

PC.

1] Rule. Rule made returnable forthwith. Heard by consent.

2] The Petition arises out of peculiar facts and circumstances.

The Petitioner was appointed as a Lecturer in Respondent No.4 college on 9th August 1983. In 1997, the post of Principal in Respondent No.4 college became vacant. However, the State Government was of the view that the post of the Principal could only be advertised on a reserved basis.

The management contending that the post of the Principal being an isolated post filed a Writ Petition in this Court being Writ Petition No.749 of 1997. In the said Petition, Rule was granted on 10th July 1997 and interim order allowing the vacancy of the Principal to be filled up as per clause (2) of the Circular of the University dated 14th February 1990. An advertisement was issued in the year 2001 and the Petitioner came to be selected. The Petitioner was issued an appointment order as Principal with effect from 1st October 2001 till 31st May 2003. The University granted approval to the appointment of the Petitioner subject to the final decision in Writ Petition No.749 of 1997. The Petitioner was granted further extension as Principal vide order dated 14th May 2003.

3] The management issued another advertisement on 1st June 2006, thereby notifying that the post of Principal would be filled in temporary. Vide order dated 2nd January 2007, the Petitioner's appointment as Principal came to be continued till final decision in Writ Petition No.749 of 1997. The University also granted approval to the said appointment.

4] Vide order dated 30th November 2011, the Writ Petition No.749 of 1997 came to be allowed and it was held that the post of the Principal being an isolated post cannot be treated as a reserved post. The

Petitioner was accordingly informed by the management on 21st December 2012 that her appointment as Principal shall stand regularised. However, at the instance of Respondent – University the post of Principal came to be re-advertised and in the interviews held on 18th July 2012 the Petitioner was again selected. On 17th October 2017, the Petitioner was informed that since the Petitioner had completed five years period as a Principal in view of the directions of the UGC, she cannot be continued as a Principal. In this background, the Petitioner has approached this Court.

5] Mr. Mihir Desai, learned senior counsel for the Petitioner submits that since the Petitioner was duly selected as a Principal prior to 2010, the direction issued by the UGC would not be applicable and the Petitioner is entitled to be continued as a Principal till she attains superannuation in the year 2020. He further submits that an anomalous situation has arisen in as much as now the Petitioner even continued as a Lecturer as she has kept lien on her post as Lecturer.

6] Mr. Neel Helekar, learned counsel for the Respondent – management submits that had the Petitioner upon completion of her tenure as a Principal applied for continuation as Lecturer to the management, the management would have considered her request favourably.

7] As already discussed hereinabove, the Petition arises out of peculiar facts and circumstances.

8] Though the Petitioner has continued as a Principal right from 2001, on account of the unfortunate circumstances of the Petition being pending and her appointment being temporary and provisional subject to the result of the Petition and in view of the subsequent fresh appointment in the year 2013, it will have to be held that the appointment of the Petitioner in the year 2013 which was undoubtedly a fresh appointment, will be an appointment after 2010. If that be so, then in view of the directions issued by the UGC, the appointment will have to be for a fixed tenure of five years.

9] Be that as it may, the State Government, management as well as the University have permitted to continue as a Principal till the end of October 2018 i.e. upto 31st October 2018. It appears that only after some representation was made by some office bearers of the union, the mistake appears to have been realised. Had such complaint not been made, may be the Petitioner would have continued and superannuated as a Principal in the year 2020. However, in the facts and circumstances of the case and particularly in view of the fact that the Petitioner has worked as a Principal upto 31st October 2017, we find that it will be in

the interest of justice that the Petitioner is treated as superannuated on 31st October 2017 as a Principal.

10] In that view of the matter, Rule is partly made absolute in the following terms :-

- I) It is held and declared that the Petitioner will be treated to have continued as Principal upto 31st October 2017 and superannuated as such from the said date.
- II) The management shall submit necessary papers for making applicable pensionary and terminal benefits to the Petitioner on the basis of aforesaid to the Respondent No.1 within a period of one month from today.
- III) On receipt of the said papers, the Respondent No.2 shall take decision thereon and make pensionary benefits applicable to the Petitioner in the light of the aforesaid directions within a period of two months.
- IV) Needless to state that all the terminal benefits, to which the Petitioner is entitled will be paid to her within a period of six months from today.

[MANISH PITALE, J.]

[B. R. GAVAI, J.]