

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2215 OF 2014

Enus s/o Rajjat Khatik,
Age-45 years, Occu:Service,
R/o-Dondaicha, Sindkheda,
Tq-Sindkheda, Dist-Dhule.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai-32,
- 2) Joint Director,
Higher Education Department,
Jalgaon Region, Dist-Dhule,
- 3) The North Maharashtra University,
Through its Registrar,
Jalgaon, Dist-Jalgaon,
- 4) Swoddharak Vidyarthi Sanstha,
Through its Chairman,
Dondaicha, Tq-Sindkheda,
Dist-Dhule,
- 5) The Principal,
Swoddharak Vidyarthi Sanstha's
Art and Science College,
Dondaicha, Tq-Sindhkheda,
Dist-Dhule.

...RESPONDENTS

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Mr.P.D. Bachate Advocate h/f. Mr. N.L.
Chaudhari Advocate for Petitioner.
Mr.S.B. Yawalkar, Additional Government
Pleader for Respondent Nos. 1 and 2.
Mr.Y.B. Bolkar Advocate h/f. Mr. A.B. Girase
Advocate for Respondent No.3.
Mr.P.R. Patil Advocate for Respondent
Nos.4 and 5.

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**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE : 22ND JANUARY, 2018

ORDER [PER S.S. SHINDE, J.] :

1. This Petition under Article 226 of the
Constitution of India is filed with following
prayers:

"B) By way of appropriate writ, order
or direction in the like nature, the
Order dtd. 21/07/2006, passed by the
respondent No.1, may kindly be quashed
and set aside.

C) By way of appropriate writ, order or direction in the like nature, the appointment of the Petitioner as a Lecturer in Hindi made by respondent No.5's appointment order dated 11/09/1995 and approved by respondent No.3 University's letter dtd.17-18/06/1996, and 26/6/1998, on temporary basis against the post reserved for S.T. category be declared as illegal.

D) By way of appropriate writ, order or direction in the like nature, the respondent No.2, 4 and 5 be ordered and directed to treat the appointment of the petitioner as Lecturer in Hindi in respondent No.5 college by respondent NO.4's appointment order dtd.11/9/1995 and approved by the respondent No.3 University by its letter dated 17-18/06/1996 and 26/6/1998 against

permanent post of open category and to continue the services of the Petitioner accordingly."

2. It is the case of the Petitioner that he has been serving as a lecturer in Hindi from the academic year 1992-93 under Respondent No.5 college. It is submitted that during the academic year 1992-93, Respondent Nos.4 and 5 published an advertisement inviting applications from eligible candidates for the post of Lecturer in Hindi. In response to the said advertisement, the Petitioner applied for the said post and he was interviewed and selected for the post of lecturer on 17th February, 1993, on clock hour basis, by the duly constituted selection committee. Respondent No.3 also accorded approval to the petitioner's selection and appointment to the said post. Respondent Nos.4 and 5 continued the service of the Petitioner as a Lecturer in Hindi even during further two academic years of 1993-94 and 1994-95.

3. It is the further case of the Petitioner that as the work load was increased, the Petitioner though initially appointed on clock hour basis, he was continued as full time teacher in Hindi from the commencement of academic year 1993-94. The work load was further increased in the academic year 1994-95, the Petitioner was shown as full time Lecturer in Hindi in the muster and pay role of Respondent No.5 college. At the commencement of the academic year 1995-96, Respondent Nos.4 and 5 published an advertisement again inviting applications from the eligible candidates from those posts which were already notified in the advertisement of 1992-93, including the post held by the Petitioner. In the said advertisement of 1995-96 all the posts were shown as reserved for Backward Classes, though none of the posts were shown as reserved for such classes in the previous advertisement of 1992-93. The said advertisement of 1995-96 was not only

contrary to the directions contained in the Government of Maharashtra Resolution dated 24th April, 1995 but also in violation of the provisions of Constitution of India. The Petitioner again appeared for interview before the Selection Committee and he was again selected and fresh appointment order was given to him. The Petitioner came to be selected and appointed as a candidate belonging to open category. However, the post on which the Petitioner was appointed, was shown as reserved for S.T. category. In the academic year 1997-98 services of the Petitioner were continued as before as full time lecturer. In the academic year 1997-98 again advertisement was published inviting applications for several posts including the post of lecturer in Hindi which was held by the Petitioner, and the said post was again shown as reserved for S.T. category. However, the Petitioner was continued on the said post.

4. It is the case of the Petitioner that, as a matter of fact he ought to have been selected and appointed against open category post as the post to which he was appointed was legally liable to be treated as open category post. The Petitioner approached the Grievance Committee but his grievance was not redressed. Therefore he filed Writ Petition No.5364 of 1999 before this Court, thereby seeking direction that his appointment as lecturer in Hindi made by Respondent No.4 in 1995 and approved by Respondent No.3 University by letter dated 17-18/6/1996 and 26-6-1998 on temporary basis against the post reserved for S.T. Category be declared as illegal, and the concerned Respondents be directed to treat the said appointment against permanent post for open category and to continue the services of the Petitioner accordingly. By order dated 24th October, 2005 the said Petition was allowed and the University was directed to forward the said

proposal sent by management to State Government for de-reservation within a period of 15 days from the date of the order. The State Government was further directed to pass appropriate orders for de-reservation for the said post within eight weeks. By order dated 21st July, 2006 the said proposal for de-reservation of the post held by the Petitioner was rejected by the Government of Maharashtra. Challenging the said order dated 21st July, 2006, the Petitioner has again filed Writ Petition No.3897 of 2012, which came to be disposed of, with liberty to the Petitioner to file a fresh Petition or take other steps raising all relevant grievances.

5. It is the case of the Petitioner that in pursuance to the advertisement dated 3rd July, 1995, one B.N. Patil is appointed as lecturer in Hindi subject, who is junior to the Petitioner as the Petitioner is appointed on 1st March, 1993. It is submitted that Respondent Nos.4 and 5 have

considered said B.N. Patil as senior most teacher and his appointment is shown as a full time lecturer in Hindi subject along with the Petitioner. Up-to 2000, the University has accorded the approval as a full time lecturer, but the appointment of the Petitioner was shown as against the S.T. reserved category. It is submitted that Respondent Nos. 4 and 5 have considered the appointment of B.N. Patil from OBC category as full time lecturer. The appointment of the Petitioner even though he is a senior has not been considered from OBC category as the Petitioner was not having caste certificate at the relevant time. Hence this Petition is filed by the Petitioner praying for the reliefs stated herein above.

6. Learned counsel appearing for the Petitioner referring to the grounds taken in the Petition and rejoinders filed on behalf of the Petitioner, submits that since the year 1993 the

Petitioner is working in Respondent No.5 college as a Lecturer in Hindi subject. It is submitted that initially the Petitioner was selected as a candidate belonging to the open category, however since the year 1995-96 the post held by the Petitioner was shown as reserved for S.T. category and the said action of the management is contrary and in violation of the Rule which requires that reservation of the posts for all backward classes together should not exceed 50% of the total posts in the given year of recruitment. It is submitted that such reservation notifying all posts as reserved, was made without applying the roster as was then prescribed by the Government of Maharashtra. It is therefore prayed that the Petition deserves to be allowed.

7. On the other hand, learned Additional Government Pleader appearing for the State, referring to the affidavit in reply filed on behalf of Respondent No.2 submitted that the

Petitioner initially came to be appointed as a Lecturer in Hindi subject for the academic year 1992-93 by Respondent Nos.4 and 5 on clock hour basis, and thereafter during the academic year 1995-96 without following rosters and the mandatory rules as regards reservation post posts for backward classes, the Petitioner was appointed against a post reserved for the S.T. category, though the Petitioner belongs to open category. Referring to the order passed by this Court in Writ Petition No.5364 of 1999, which was filed by the Petitioner, it is submitted that the Government has considered the proposal submitted by the University for de-reservation of the post held by the Petitioner and rejected the said proposal on the ground that the post held by the Petitioner was not full time post. Learned Additional Government Pleader further referred to Writ Petition No.3897 of 2012 filed by the Petitioner and the order passed therein. It is submitted that for de-reservation, there has to be

a full time post and part time posts cannot be subjected to the process of de-reservation. Therefore, it is submitted that the Government has correctly declined the request of the Petitioner for de-reservation.

8. Learned Additional Government Pleader further referred to another affidavit in reply filed on behalf of Respondent Nos.1 and 2 in respect of work load available with Respondent No.5 college. It is submitted that the Petitioner cannot be considered for the full time lecturer as only one post could be accommodated for full time workload and one person namely, B.N. Patil is already working on full time basis. It is submitted that there is no workload available with Respondent No.5 College to accommodate the Petitioner. It is submitted that there is no substance in the Writ Petition and the same is liable to be rejected.

9. Learned counsel appearing for Respondent No.3 University, and Learned counsel appearing for Respondent Nos.4 and 5 submits that the Petitioner was appointed on clock hour basis and only one post of full time lecturer is available in Respondent No.5 college which is for reserved category. There is no work load available with Respondent No.5 college to accommodate the Petitioner. It is further submitted that from the initial appointment of the Petitioner, his services were approved only on clock hour basis. In pursuance to the advertisement dated 3rd July, 1995 one B.N. Patil has been appointed as full time lecturer in Hindi subject, from OBC category. It is submitted that for the academic year 1999-2000 only two posts for Hindi subject were approved i.e. one for the Head of Department and another was part time. The Petitioner was working as part-time teacher. It is submitted that since last several years there is no increase in the strength of the students for Hindi subject. It is

further submitted that for the academic years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 only one full time teacher is approved by the Joint Director of Higher Education and second post is on clock hour basis. It is submitted that even today the work load of Hindi teacher is on clock hour basis. Therefore, it is prayed that the Writ Petition may be rejected.

10. We have given careful consideration to the submissions of the learned counsel appearing for the Petitioner, learned Additional Government Pleader appearing for the State, learned counsel appearing for Respondent No.3, and learned counsel appearing for Respondent Nos.4 and 5. We have carefully perused the grounds taken in the Petition, the documents placed on record and also the replies filed by the respective Respondents and the annexures thereto.

11. From the perusal of the documents placed

on record, it is clear that since the academic year 1992-93, the Petitioner was appointed on clock hour basis. On 3rd July, 1995 the Respondent Nos.4 and 5 issued an advertisement for filling the post of a full time lecturer in Hindi subject and the said post was for the candidate from the reserved category. In pursuance of the selection process, one Mr. B.N. Patil has been appointed on 1st September, 1995 as a full time lecturer in Hindi subject from OBC category. In the rejoinder filed on 8th March, 2016 the Petitioner himself has specifically admitted that, the Petitioner was not having the caste certificate at the relevant time when said B.N. Patil was appointed from OBC Category. Thus, it is clear that in Respondent No.5 college only one post of full time lecturer in Hindi subject is available and on the said post Mr. B.N. Patil is already appointed since the year, 1995, that too from the OBC category, as the said post is reserved for the OBC category. After carefully considering the submissions advanced on

behalf of the Respondents and the documents placed on record, it is clear that there is no work load available in Respondent No.4 college to appoint the Petitioner as full time lecturer. Writ Petition No.5364 of 1999 filed by the Petitioner was allowed by the Division Bench of this Court (CORAM: A.P. DESHPANDE AND VASANTI NAIK, JJ.) vide Judgment and order dated 24th October, 2005, and following directions were issued:

"Writ Petition is allowed. We direct the University to forward the said proposal sent by the management to the State Government for de-reservation within a period of 15 days from today. We direct the State Government to pass appropriate orders for de-reservation of the said post as early as possible and not later than eight weeks from the date of receipt of the proposal."

12. In pursuance to the afore-said order passed by this Court, the proposal for de-

reservation of the post held by the Petitioner was considered by the Government of Maharashtra and by order dated 21st July, 2006 the said proposal came to be rejected by observing that for de-reservation of the post, there has to be a full time post and part time posts cannot be subjected to that process.

13. Being aggrieved by the said order passed by the Government of Maharashtra dated 21st July, 2006 rejecting the proposal for de-reservation of the post held by the Petitioner, he filed Writ Petition No.3897 of 2012, in which the Division Bench of this Court (CORAM: B.P. DHARMADHIKARI AND RAVINDRA V. GHUGE, JJ.) on 7th October, 2013, passed following order:

"1] Perused orders passed by this court earlier. In contempt matter, petitioner was given liberty on 1.3.2012 and hence, order passed on 21.7.2006 is questioned before this court. By that

order, State Government has pointed out that for dereservation there has to be a full time post and part time posts can not be subjected to that process. We do not see anything wrong with the conclusions recorded therein.

2] However, till today, petitioner is in service. It appears that he is litigating before various forums since last more than 10 years. The petitioner has not specifically challenged the advertisement issued and advertisement is also not annexed with the petition. There is no attempt to demonstrate that work load otherwise available for a full time post has been split into and part time post has been created.

3] In this situation, looking to the past history and efforts of petitioner, we permit petitioner to file a fresh petition or take other steps, raising all relevant grievances. With said liberty we dispose of the petition No costs."

14. Again in the year 2014 this Petition is filed by the Petitioner challenging the order passed by the Government of Maharashtra on 21st July, 2006 rejecting the proposal for de-reservation of the post held by the Petitioner, as the Petitioner has been working on part time basis. On behalf of Respondent Nos.1 and 2 it is specifically stated that even as on today the Petitioner cannot be considered for the full time lecturer as only one post could be accommodated for full time workload and one person is already working on full time basis in Respondent No.5 college. Even otherwise the Petitioner has been appointed from open category. The post for full time lecturer in Hindi subject is for reserved category. Admittedly in the year 1995 itself, one B.N. Patil has been already appointed on the said reserved post.

15. As observed earlier, after considering all the relevant facts and relevant Government

Resolutions, the Government of Maharashtra has passed the impugned order dated 21st July, 2006 and therefore in exercise of the writ jurisdiction the same cannot be interfered with. In the facts of the case, the other prayers made by the Petitioner deserves no consideration. However, in the peculiar facts of this case, we direct Respondent Nos.4 and 5 that, as and when the work load would be available, the priority be given to the Petitioner. With these observations, the Writ Petition stands disposed of.

[K.K. SONAWANE, J.]

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[S.S. SHINDE, J.]