

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

WRIT PETITION NO.1566 OF 2002

1. Peoples Education Society
Jamkhed, through its President,
2. Principal,
Jamkhed College,
Jamkhed. ... **Petitioners**

Versus

1. Dr. Ashok Namdeorao Mote,
Age – 38 years, Occu. Business,
R/o Pargaon (Mote), Tq. Washi,
District Osmanabad.
2. Registrar,
University of Poona,
Pune.
3. Joint Director,
Higher Education,
Central Building,
Pune. ... **Respondents**

WITH

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Central Building,
Pune.

... Respondents

...

Mr. S.V.Natu, Advocate for Petitioners.

Mr. Y.R.Barhate, Advocate for Respondent No.1.

Mr. V.P.Golewar h/f Mr. A.R.Joshi, Advocate for Respondent No.2.

Mr. S.P.Sonpawale, AGP for Respondent No.3.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 8th May, 2018.

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ORAL JUDGMENT :-

1. The petitioner/Management is aggrieved by the judgment and order of the College and University Tribunal, Pune dated 29/01/2002 by which, Appeal No. 33 of 2000 (P) filed by respondent No.1/appellant was allowed, and the appellant was declared to be a permanent employee and a full time lecturer in the services of the Management w.e.f.

25/08/1992. The petitioner was directed to reinstate him in service and pay arrears of back wages and allowances. The amount of Rs. 30,000/- deposited by the Management in Contempt Petition No. 210/1997 in this Court having been withdrawn by the appellant, was to be adjusted against the dues to be paid.

2. I have heard the strenuous submissions of the learned advocates for the petitioners, the original appellant, the University of Poona and the learned AGP on behalf of respondent No.3 Education Department. The learned advocate for the appellant has also placed the written notes of submissions on record dated 08/05/2018.

3. The undisputed factors in this case are as under :

(a) On 29/05/1992, an advertisement was published by the petitioners/Management in Daily 'Kesari'. One post of Zoology reserved for the 'SC category' had been advertised alongwith several other posts.

(b) The appellant, who belongs to the 'open category', had also applied for the said post, though it was reserved for

the 'SC category'.

(c) The appellant was issued with an appointment order dated 20/08/1992 and Clause 2 of the order specifically mentioned that he would work for the academic year of 1992-1993 till 20/04/1993 and his appointment was against the post reserved for the 'SC category'.

(d) A further advertisement was published on 04/07/1993 in Daily 'Kesari', Ahmednagar Edition indicating that one post of Zoology reserved for the 'SC category', was being advertised for the second time.

(e) Since no candidate was available, the appellant was once again continued by appointment order dated 13/10/1993 and he was taken into employment against the reserved category from 13/10/1993 till 30/04/1994.

(f) The third advertisement was published in Daily 'Kesari' on 24/05/1994 once again advertising the post of Zoology reserved for the 'SC category'. It was indicated that this was the third advertisement.

(g) As no candidate was available, the appellant was once again continued by appointment order dated 13/09/1994 indicating that he would be in employment from 13/10/1994

till 30/04/1995 against the 'SC category'.

(h) Thereafter, the Management once again advertised the post and inducted one Mr Ganesh Maloji Rajebhosale from the open category.

(i) The appellant, therefore, approached the University Tribunal in Appeal No. 54/1996 (P).

(j) By judgment dated 16/07/1996, the Tribunal concluded that the Government Resolution dated 05/12/1994 mandates that the post reserved for a category has to be advertised for atleast five years and if no candidate is available, it would then be advertised for the 6th year by interchanging the reservation with the next available reserved category. It was further held that if in the 6th year also, no candidate is available, then the steps would be taken to fill in the post from the 'open category' after the approval from the Government.

(k) The Tribunal, therefore, concluded that when a candidate was not available to be appointed on a post reserved for a particular category, the adhoc candidate appointed against the category would not be replaced by an adhoc candidate appointed against the reserved category and, therefore, the appeal was allowed and the appellant was

deemed to be in service for the academic year 1995-1996.

(l) As the Management found that the workload for the post of a lecturer in Zoology had fallen and there was no purpose of appointing any lecturer for the said subject, the Management did not fill in the said post for the academic year 1996-1997.

(m) The appellant claims to have entered into some correspondence with the Management and when he was not accommodated, he preferred Appeal No. 33/2000 (P) before the University Tribunal.

(n) By the judgment dated 29/01/2002 impugned in this petition, the Tribunal concluded that the appellant was in continuous service on account of the earlier judgment of the Tribunal and hence, whether workload is available or not, he is deemed to be in permanent service.

4. Learned advocate for the appellant has strongly canvassed that the Education Department should have dereserved the post for the open category and the appellant could have been regularized in employment. The plea of less workload put forth by the Management was not acceptable. By

placing reliance upon his extensive written notes of submissions, the learned advocate submits that the impugned judgment is neither perverse nor erroneous.

5. By order dated 12/07/2000 passed by this Court, this petition was admitted and the impugned judgment was stayed. It is undisputed that the appellant is out of employment from 1997, for the past about 21 years.

6. It requires no debate that the various Government Resolutions referred to by the Tribunal indicate that a post reserved for a backward category has to be filled in. Despite advertisements and efforts of the Management, the said post is not filled in, and therefore, a candidate, who is otherwise eligible from any other category, can be appointed against the reserved category. Such appointment can be continued for a maximum period of 5 academic years until the suitable candidate for the reserved category is available. After the 5th academic year, the post can be interchanged to the next reserved category depending on the reservation roster. Even then if no candidate is available, the Management can move

the Department of Education and get the post dereserved effectively for the 7th academic year. The candidate continuously in employment against the category as like the appellant herein, can then be confirmed in employment.

7. Record reveals that after the 5th year, the petitioner Management did not appoint any teacher to the post of Zoology as it had very little strength of students. The said post was kept vacant from the Academic years 1997 till 1999. When some workload was available, a candidate by name Anil Haribhau Kamble belonging to the 'SC category' was initially appointed on clock hour basis for the academic year 1999 -2000. It can, therefore, be taken that the said candidate from the reserved category was available. Mr. Kamble was continued on clock hour basis on account of less workload by the Management till the academic year 2003-2004. Thereafter he was inducted as a full time lecturer in Zoology on the post reserved for the 'SC category' from 2004. His appointment was confirmed and granted approval by the erstwhile University of Pune w.e.f. 12/08/2008 by order dated 13/04/2011.

8. In the above backdrop, the record clearly indicates that there was no advertisement in the 5th academic year. The post was not filled in as the petitioner had no workload. The factum of the vacant post is established.

9. In the above fact situation, the contentious issue is as to whether, the impugned judgment of the Tribunal dated 29/01/2002 can be sustained as it is based upon the erroneous impression carried by the Tribunal that the earlier judgment of the Tribunal conferred the status of permanency on the appellant and he stands deemed permanent in service.

10. The judgment of the Tribunal dated 16/07/1996 in Appeal No. 54/1996 (P) indicates that the Tribunal faulted the Management for having inducted a fresh person against the post reserved for the 'SC category' by excluding the appellant who was an adhoc appointee. The Tribunal rightly concluded that an adhoc appointee cannot be replaced by making an adhoc appointment when the post is reserved for a particular backward category. It rightly concluded that if no candidate was available for the SC category in the 4th academic year, the

appellant deserved to be continued as he is an adhoc appointee. The said judgment does not in any manner conclude that the appellant was deemed permanent. The Management was never directed to grant regularization. The impugned judgment of the Tribunal concluding that the earlier judgment of the Tribunal granted permanency to the appellant is, therefore, unsustainable.

11. During the litigation between the parties, the appellant had preferred Contempt Petition No. 210/1997 before this Court seeking implementation of the earlier judgment of the Tribunal dated 16/07/1996. An amount of Rs.30,000/- was deposited by the Management towards arrears of salary, in this Court which the appellant has already withdrawn.

12. The learned advocate for the appellant submits on instructions, that though he has worked for the academic years 1992 to 1997 for the periods mentioned in his appointment orders, he has not been paid his monthly salary with allowances. The learned advocate for the Management

submits that this contention may not be sustainable as the Management was receiving salary grants and the salary of the appellant for the period of actual working must have been paid to him.

13. For the reasons recorded hereinabove, this petition succeeds and is allowed. The impugned judgment of the School Tribunal dated 29/01/2002 is quashed and set aside and Appeal No. 33/2000 filed by the appellant stands dismissed.

14. It is further made clear that the appellant would be at liberty to make a proper representation to the petitioner Management within eight weeks from today, stating the details of his unpaid monthly salary for the work, he has actually performed. The Management would consider the said representation and would forward the salary bills to the appropriate Department of Education within four weeks after receiving the representation, for making the payment of the unpaid salary to the appellant.

15. Needless to state, if all salaries are paid and

keeping in view that Rs. 30,000/- has been withdrawn by the appellant from this Court towards unpaid salaries, the Management would inform the appellant in writing as to whether all salaries are paid. In the event of any grievance on this count, the appellant would be at liberty to seek redressal of his grievances by resorting to appropriate proceedings, as would be permissible in law.

16. Rule is made absolute accordingly.

(RAVINDRA V. GHUGE, J.)

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