

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

954 WRIT PETITION NO. 5028 OF 2016

JYOTI HANMANTRAO BHOSALE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

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Mr. R. N. Dhorde, Senior Advocate i/b Mr. Vikram R. Dhorde, Advocates for the Petitioner.

Mrs. M. A. Deshpande, AGP for Respondent-State.

Mr. H. D. Deshmukh, Advocate for the Respondent Nos.6 and 7.

Mr. A. S. More, Advocate for Respondent No.5.

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**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

DATED : 12th OCTOBER, 2018.

PER COURT:-

1. The petitioner assails the letter dated 05.10.2015 issued by the respondent no.1 thereby rejecting the proposal submitted by respondent no.6-Management seeking permission to change the reservation for the post of Lecturer in the subject of Mathematics, so also seeks directions against respondent nos.4 and 5 to grant approval to the appointment of petitioner on the post of Lecturer in the subject of Mathematics from the academic year 2008-2009 and further pay salary of the petitioner till date with continuity in service and all consequential benefits. In alternate the petitioner seeks direction against the respondent

to absorb the petitioner in vacancy occurring on 31.07.2016 in the subject of Mathematics with continuity of service from the Open category.

2. Mr. Dhorde, learned senior counsel for the petitioner submits that pursuant to the advertisement dated 10.12.2004, the petitioner applied for the post in the Mathematics subject. The petitioner was interviewed by the duly constituted selection committee. The petitioner was selected and appointed on 01.03.2005. The University granted approval to the appointment of the petitioner from 01.03.2005 to 10.11.2006 under order 4/5.12.2006 and 09.07.2007. Initially the appointment of the petitioner was approved for the period of two years. Subsequently under order dated 09.07.2007, the petitioner was granted approval upto 10.11.2006. According to the learned senior counsel, the petitioner is continuously working since the date of her appointment with the respondent-Institution.

3. According to the learned senior counsel, the petitioner is possessing M.Phil qualification. The candidate possessing M.Phil qualification is exempted from NET for under graduate level teaching as per the notification dated 14.06.2006. According to the learned senior counsel, the respondent no.6 on or about 06.11.2008 issued order confirming the service of the petitioner from 11.11.2006. On 07.12.2008, the management

submitted proposal with respondent no.5-University for granting permanent approval to the appointment of the petitioner. On 20.07.2009, the respondent no.5-University rejected the approval on the ground that the appointment of the petitioner is against the post reserved for other backward class candidates. According to the learned senior counsel, management again submitted proposal and gave undertaking that the other vacancies would be filled in from OBC category. The University did not accede to the said request. The similar request was made by the college to the Director, Board of College and University Development (B.C.U.D.). The respondent nos.6 and 7 submitted proposal to the Special Cell of the University for changing roster. The University under communication dated 03.09.2010 informed that, if the post of Lecturer in Mathematics reserved for OBC is changed to Open category and post in other subject if reserved for OBC by submitting the proposal to the State Government and if it is approved, then the proposal of the petitioner who is fulfilling the educational qualification can be considered. The Director of the B.C.U.D recommended the proposal for interchanging the reservation. Again on 15.04.2015, the respondent no.6-Management issued advertisement to fill in the post of Lecturer in the subject of Mathematics. The petitioner assailed the same.

4. According to the learned senior counsel on or about 31.07.2016 one post of Lecturer in Mathematics for Open category became vacant because of the retirement of the person working on the said post. The learned senior counsel submits that since 2008 services of the petitioner are confirmed. The management was not getting the candidate from OBC category. Twice the advertisement was issued. In view of that, the service of the petitioner is required to be approved.

5. The learned senior counsel submits that the stand of the respondent that, as the petitioner does not possess NET he is not qualified, is incorrect. The petitioner is covered by the UGC regulation dated 14.06.2006, by which exemption is granted to complete NET qualification to the candidates holding M.Phil qualification.

6. The learned senior counsel submits that the University has granted approval to the other similarly situated candidates possessing M.Phil qualification and not possessing NET qualification. The learned senior counsel submits that considering the long service rendered by the petitioner, the case deserves to be considered.

7. The learned A.G.P. submits that if the petitioner is to be considered for subsequent vacancy arisen in the year 2016, then as per the

Government Resolution dated 08.09.2010, the qualification of the NET/SET is compulsory. It is further submitted by the learned A.G.P. that the petitioner is working as against the post reserved for the OBC category. The Government has rejected the proposal for de-reservation of the post in subject of Mathematics. In view of the Government Resolution dated 25.08.2005 the service of the petitioner cannot be regularized unless the appointment is made on regular basis. According to the learned A.G.P, the appointment of the petitioner being against the reserved post, no approval can be granted nor his service can be considered for regularization.

8. We have considered the submissions canvassed by the learned counsel for the respective parties.

9. The factual matrix as narrated above is not debated and disputed. It appears that the post on which the petitioner is appointed initially in the year 2004 was meant for OBC candidate. It also appears that the pursuant to the advertisement dated 10.12.2004, the petitioner applied. The petitioner was selected by the duly constituted selection committee and the appointment order was issued. Of course the appointment was as against the post reserved for OBC candidates. It also cannot be lost sight that since year 2004, the petitioner is working continuously with the

respondent-Institution and the temporary approval is also granted to the petitioner in the year 2005-2007.

10. As far as possessing NET/SET qualification as a mandatory qualification is concerned, it may not apply in view of the third amendment dated 11.07.2009 of the UGC. The petitioner possesses the M.Phil qualification in May-2007 that is before the cut off date. In view of the Government Resolution dated 08.09.2010 issued by the State Government, more particularly, clause 8 (ii) the candidates who have been given exemption by the UGC are to be considered for exemption from NET/SET. The Notification dated 14.06.2006 of the UGC provides that the persons possessing M.Phil qualification are exempted from possessing NET/SET. Of course, such candidates may not be entitled for benefit of CAS in view of the judgment of the Special Bench of this Court in Writ Petition No.2082 of 2013 decided on 23rd December 2015.

11. For the first time the advertisement was issued in the year 2004. If for a five year the candidates are not received for reserved post, then other candidates can be appointed. Of course the post have to be first filled in from the candidates of other reserved category.

12. The post has not become vacant in the year 2016. Now since year 2016 one post for Mathematics is available for Open category candidate. If we

consider lapse of five year from the year 2004, then in the year 2009, the post would be available for other candidates, if the candidate from OBC is not available. It appears that the management has issued advertisement twice and not for five times.

13. Considering the fact that the petitioner has been appointed by following due selection process, petitioner possesses the necessary qualification and the petitioner is continuously working on the said post and the entry of the petitioner is not a back door entry, we are inclined to consider the case of the petitioner for being considered as a regular employer since the year 2009. However, the petitioner certainly will not be entitled to actual emolument till this date. It is also not the case of the respondent that the post was not available except it was reserved for OBC category candidates.

14. In light of the above, we direct the respondent to consider the case of the petitioner as a Lecturer in the subject of Mathematics from the year 2009, though the petitioner may have been appointed in the year 2004 and his services were temporarily approved. The services of the petitioner prior to 2009 shall not be considered for any purpose.

15. Though, we have directed that his services to be considered from the year 2009, the petitioner will not be entitled for actual difference in the

salary. However, the period from 2009 shall be considered for the purpose of continuity in service and for further purposes. The petitioner will be entitled for actual salary as a regular employee from the date of this order. The service of the petitioner be approved accordingly. Now the candidate to be filled in by the management shall be from the OBC category.

16. Writ Petition accordingly partly allowed.
No costs.

(S. M. GAVHANE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/October-18

Devendra
Nandkumar
Kale

Digitally signed
by Devendra
Nandkumar Kale
Date: 2018.10.19
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