

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

Writ Petition No. 5220 of 2009

Suchita D/o Sharadbhai Kulkarni. .. **Petitioner.**

Versus

The State of Maharashtra & Others. .. **Respondents.**

Shri. H.A. Joshi, Advocate, for petitioner.

Shri. Y.G. Gujarati, Assistant Government Pleader, for
respondent Nos.1 and 2.

Shri. Pradeep Deshmukh, Advocate, for respondent No.3.

Shri. D.J. Choudhari, Advocate, for respondent No.4.

With

Writ Petition No. 7829 of 2009

Jalna Education Society, Jalna. .. **Petitioner.**

Versus

The State of Maharashtra & Others. .. **Respondents.**

Shri. Pradeep Deshmukh, Advocate, holding for Shri.
Darshan Kulkarni, Advocate, for petitioner.

Shri. Y.G. Gujarati, Assistant Government Pleader, for
respondent Nos.1 and 2.

Shri. D.J. Choudhari, Advocate, for respondent No.3.

With

Writ Petition No. 2803 of 2013

Dr. Jayshree Ramdas Waghunde
(Wadekar).

.. Petitioner.

Versus

The State of Maharashtra & Others. **.. Respondents.**

Shri. D.J. Choudhari, Advocate, for petitioner.

Shri. Y.G. Gujarati, Assistant Government Pleader, for
respondent Nos.1 and 2.

Shri. Pradeep Deshmukh, Advocate, for respondent Nos.3
to 5.

With

Writ Petition No. 3023 of 2013

Suchita D/o Sharadbhai Kulkarni.

.. Petitioner.

Versus

The State of Maharashtra & Others. **.. Respondents.**

Shri. Pradeep Deshmukh, Advocate, holding for Shri.
H.A. Joshi, Advocate, for petitioner.

Shri. Y.G. Gujarati, Assistant Government Pleader, for
respondent Nos.1 and 2.

Shri. D.J. Choudhari, Advocate, for respondent No.3.

With

Writ Petition No. 3131 of 2013

Jalna Education Society, Jalna. .. **Petitioner.**

Versus

The State of Maharashtra & Others. .. **Respondents.**

Shri. Pradeep Deshmukh, Advocate, holding for Shri. A.M. Awate, Advocate, for petitioner.

Shri. Y.G. Gujarati, Assistant Government Pleader, for respondent Nos.1 and 2.

Shri. D.J. Choudhari, Advocate, for respondent No.3.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date: 22 February 2018

ORDER (Per T.V. Nalawade, J):

1) All the petitions are filed under Articles 226 and 227 of the Constitution of India. Writ Petition No.5220/2009 and Writ Petition No.7829/2009 are filed to challenge the order dated 20-1-2009 made by the Deputy Director of Education, competent authority by which the approval to the appointment of Kumari Kulkarni, petitioner from Writ Petition No.5220/2009, as Junior

Lecturer is refused. Writ Petition No.7829/2009 is filed by the management against the same order. Writ Petition No.2803/2013 is filed by Smt. Waghunde for claiming direction to act upon the direction dated 5-1-2013 of the Deputy Director of Education to submit the proposal of Smt. Waghunde for approval. Writ Petition Nos. 3023 of 2013 and 3131/2013 are also filed by Kumari Kulkarni and the management respectively but they are against the subsequent order made by the authority on 5-1-2013 by which a direction is given to the management by the authority to see that Smt. Waghunde, petitioner from Writ Petition No.2803 of 2013 is appointed as Junior Lecturer on the same post. Both the sides are heard.

2) Smt. Waghunde was appointed as Lecturer in Hindi on Clock Hour Basis for the academic years 2004-05, 2005-06 and 2006-07 by the respondent college of Writ Petition No.2803/2013. It is her case that her appointment was made as per the procedure prescribed and so on that basis she was entitled to get regular post, full time post.

3) The management issued advertisement on 9-1-2007 for the post of Junior Lecturer in Hindi for 11th and 12th Standard Classes. It is the contention of Smt. Waghunde that though she was entitled to get this post, as already she was working on clock hour basis, she preferred to apply for the full time post in response to the advertisement. It is her case that she was interviewed and she was more meritorious candidate than respondent No.5, Kumari Kulkarni but the management proposed the name of Kumari Kulkarni for approval of her appointment to the authority. Smt. Waghunde took objection to this proposal and the proposal came to be rejected by the authority.

4) Even when the authority had refused to approve the proposal in respect of Kumari Kulkarni, the management allowed Kumari Kulkarni to work and so Smt. Waghunde filed Writ Petition No.5995/2009 for giving direction to the management to implement the order made by the authority on 17-11-2008. Then the management filed writ petition No.7829/2009 which is being decided today, to challenge the order made by the

authority on 17-11-2008. Kumari Kulkarni filed Writ petition No.5220/2009 to challenge this order. Writ Petition No.5995/2009 filed by Smt. Waghunde was disposed of by this Court with directions to the authority to hear Smt. Waghunde on her representation made for claiming the said post. In accordance with the order made in Writ Petition No.5995/2009 Smt. Waghunde appeared before the authority. She was heard and then the authority gave direction to the management to send the proposal of Smt. Waghunde for approval by holding that she was more meritorious candidate. Smt. Waghunde made representations to the management but the management did not respond to those representations and so she filed Writ Petition No.4774/2011. As there was such order dated 18-10-2010 the management filed Writ Petition No.6173/2011 for setting aside the order made on 18-10-2010. Writ Petition No.6173/2011 filed by the management was allowed and direction was given by this Court to the authority to hear all the sides on the representation made by Smt. Waghunde. After hearing all the sides, the authority again rejected the proposal for approval in respect of Kumari Kulkarni and directed the management

to submit proposal in respect of Smt. Waghunde. The authority referred to Government Resolution dated 15-2-2007 for holding that Smt. Waghunde was more meritorious candidate. This order dated 5-1-2013 was also not followed by the management and so Smt. Waghunde filed Writ Petition No.2803/2013.

5) It is the case of the management that the selection committee constituted for selection had unanimously recommended the name of Kumari Kulkarni as Lecturer in Hindi and so she was appointed on 5-5-2007 and the proposal was sent for approval of the appointment. The management has admitted that Smt. Waghunde had worked in Senior College and also in Junior College on clock hour basis and she had applied for both the post of Junior Lecturer and other post and she had participated in the selection process. It is contended that only because she is not selected by the committee she has made false allegations. It is contended that if there is a grievance with regard to such selection there is an authority created and ordinarily Civil Judge Senior Division (retired) is appointed to hear the grievances and

so Smt. Waghunde ought to have taken her grievance before the said authority. The other side, on this point, submitted that at the relevant time the authority was not appointed and so there was no question of approaching the authority and further the Deputy Director of Education is competent to hear such grievance as he is the authority who can give approval or refuse the approval considering the relevant circumstances.

6) It is the contention of the management that the authority cannot give direction to submit proposal in respect of other candidate like Smt. Waghunde and the jurisdiction is limited only to the extent of proposal made by the management. Only due to the order made by this Court as mentioned above in the writ petition filed by Smt. Waghunde, the authority considered the representation of Smt. Waghunde and the order was made against the management to submit proposal in respect of Smt. Waghunde.

7) It is not disputed that in response to the aforesaid advertisement 104 candidates had made

applications. Initially, the date was fixed for interview as 10-4-2007 but on that date the interviews were not taken and next date was given for the interview as 3-5-2007. 52 candidates appeared for the said interview. The committee short-listed 3 candidates and Kumari Kulkarni was ranked as number one amongst the three candidates. It is not disputed that immediately after giving of the appointment order to Kumari Kulkarni, Smt. Waghunde objected to the appointment and she approached the authority. The authority made enquiry into the matter. It considered the record of the selection committee and also made enquiry with the persons like the Principal.

8) In the reply-affidavit filed for the authority it is contended that there is a Government Circular dated 15-2-2007 which prescribes the procedure for considering the merit, for ranking the candidates. It is the contention of the respondent-authority that as per the procedure given and the guidelines given, Smt. Waghunde had secured more marks and so she ought to have been appointed on the post. Though this contention is made for the authority, the aforesaid circumstances show that in all 52 candidates

had appeared for the interview and the name of Smt. Waghunde was not there amongst the three candidates selected by the selection committee. It is clear that if the procedure was not followed, it was not followed in respect of all the 52 candidates. Only because Smt. Waghunde made complaint and this Court had given directions to consider the representation of Smt. Waghunde, it cannot be said that only her entitlement can be considered by the authority or by this Court. It will be doing injustice to other 50 candidates. It appears that during pendency of the present matter this Court had asked as to whether there is one more post available on which Smt. Waghunde can be appointed. Upon that, the authority had informed that on the basis of workload and due to increase of one division one more post is admissible. In reply to this contention of the authority, the management has filed affidavit to contend that no such post is available and no appointment can be given to Smt. Waghunde. In any case, even if one more post is available, due to the aforesaid circumstances it cannot be said that only Smt. Waghunde can be considered for the said post.

9) There is record of inquiry made by the Deputy Director of Education. The record shows that the selection committee had asked questions during oral interview. Some members of the selection committee gave Stars for giving marks and some members gave gradation like "A", "B", "C". This marking system, ranking system was considered by the authority.

10) The Deputy Director of Education compared few cases from the record produced by the management. The Principal was present for giving the particulars in respect of the record and enquiry was made with him. Enquiry was made as to on what basis four stars were given to Kumari Kulkarni, selected candidate and upon that it was informed that first star was given for educational qualification, second star was given for experience of 4 years and third star was given on presentation on the subject. The members of the committee who had adopted the same marking system had given no star to the candidate who was having experience of 7 years.

11) The authority considered ranking given by other members, who had given grading like "A", "B", "C". To one candidate Sawade for experience of 5 years grading was given as B++. For candidate Manoj Kulkarni for experience of 2 years and 4 months grading was given as A. Similarly to candidate Smt. Shaikh for experience of 2 years and 6 months grading was given as B++. When query was made to the Principal in this regard the Principal informed that this grading was done on the basis of competency, experience and presentation.

12) On the basis of the aforesaid record, the Deputy Director of Education formed opinion that there was no uniformity in assessing the candidates and the procedure adopted for giving marks or ranking was not proper. Due to this, the performance of one candidate on the basis of aforesaid procedure adopted by different members, could not have been compared with other. The Deputy Director of Education formed opinion that due to these things it was not possible to presume that competent candidates were selected. The Deputy Director observed that due to such procedure adopted there were many complaints

received and he had formed opinion that the selection was not made as per the performance and competency. By giving these reasons the Deputy Director of Education refused to give approval to the appointment of Kumari Kulkarni.

13) In the subsequent decision taken by the Deputy Director of Education he considered Government Notification dated 15-2-2007. In the said Government Notification the Government had given procedure for giving marks for making assessment of such candidates. The selected candidate, Kumari Kulkarni had secured 56.75% marks in M.A. and Smt. Waghunde had secured 60% marks in M.A. Kumari Kulkarni had secured 60.9% in B.Ed. when Smt. Waghunde had secured 70.7% marks in B.Ed. As per the procedure given by the Government Notification Smt. Waghunde was entitled to get 480 marks for performance in M.A. and she was entitled to get 707 marks on the basis of performance in B.Ed. On the other hand, Kumari Kulkarni was entitled to get only 454 marks for M.A. and she was entitled to get 609 marks for the performance in B.Ed. examination. On the basis of this

procedure, the Deputy Director held that Smt. Waghunde was more meritorious candidate than Kumari Kulkarni. The record shows that the interviews were taken on 2-5-2007 and the Government Resolution was issued by the State Government on 15-2-2007. In view of these circumstances, the selection committee, the school committee was expected to follow the procedure given by the State Government but it was not followed. The learned counsel for Kumari Kulkarni and the management submitted that no such procedure was mentioned in the advertisement and so the procedure followed by the selection committee needs to be accepted. This submission is not at all acceptable. When advertisement is published everybody needs to go with presumption that the procedure given by authority, Government for selection of candidates will be followed. Thus, apparently Smt. Waghunde was more meritorious candidate than Kumari Kulkarni and further she was already working with the management for more than 3 years though on clock hour basis. She was also selected by the same management. Aforesaid record shows that fairness was not shown by the selection committee. On the basis of the

record inference is very easy that there was favouritism in favour of Kumari Kulkarni. Same learned counsel has argued for the management and Kumari Kulkarni and this circumstance also shows that the management wanted to select only Kumari Kulkarni and that is why the management has kept on supporting her till this date.

14) The post is receiving grant-in-aid. The 'State' has the power to lay down qualifications and also the procedure for selection of teaching and non teaching staff. The selection cannot be left at the whims of the management as the purpose behind prescribing the qualification and the procedure gets defeated. The purpose behind laying down the qualification and the procedure is to see that best candidate is selected and the standard of education, which is expected, is achieved.

15) The aforesaid circumstances show that the authority came to the conclusion that Smt. Waghunde is more meritorious than Kumari Kulkarni. That does not mean that no other meritorious candidate was available and other candidate was not more meritorious than Smt.

Waghunde. It is true that there is no law compelling the management to give appointment on permanent basis to a person appointed on clock hour basis. Ordinarily, the procedure prescribed by statute like Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 and the rules framed thereunder is followed when there is appointment on permanent post but such procedure is not followed for appointment on clock hour basis. There is no specific case that appointment on clock hour basis was made after publishing advertisement and after following the procedure laid down in the aforesaid statute. As the post is receiving grant-in-aid and as there is procedure prescribed, all the eligible candidates were entitled to appear for interview and they have a right to be considered in the process. It can be said that there was no proper consideration of the candidates who had appeared for interview and there was favouritism. In view of these circumstances this Court holds that the authority has not committed any error in refusing approval to the appointment of Kumari Kulkarni. Learned counsel for the management submitted that the authority has no

jurisdiction to give direction to submit proposal in respect of particular candidate. He placed reliance on the observations made by this Court in the case reported as **1991(1) ALL MR 452 (Shailaja Ashokrao Walge vs. The State of Maharashtra)** decided on 7-12-1998. In view of the procedure given in the Regulations it can be said that in the present matter the authority is not entitled to give direction to make proposal in respect of particular candidate who is not selected by selection committee. However, the authority has the jurisdiction to refuse the proposal. The case cited supra was on different point. In the present matter, the authority has taken decision and has informed that the appointment of Kumari Kulkarni cannot be approved. Reliance is placed by State on some observation made by this Court in **Writ Petition No.4845/2014 (Laxmichhaya v. State of Maharashtra)**. This case was on altogether different point and that point is not at all involved in the present matter. This Court holds that jurisdiction of the authority of consideration of the proposal made for approval includes the consideration of criteria adopted for selection and also to ascertain as to whether there was fairness and

transparency in the procedure. Further, this Court has the power under writ jurisdiction to ascertain as to whether in a case like present one, proper procedure was followed. This Court holds that proper procedure was not followed and the appointment made on the basis of the procedure followed could not have been approved by the authority.

16) The learned counsel for the management submitted that since the date of appointment Kumari Kulkarni has been working with the college and this circumstance may be considered. This circumstance cannot be considered for the reasons already given. She knew as to how she got appointment. Person who indulges in mal-practice for getting appointment cannot say that she has got vested right in the post. The circumstance that same counsel represented the management and Kumari Kulkarni is sufficient to infer that right from beginning the management had decided to see that Kumari Kulkarni is appointed. Thus, nothing can be done in favour of Kumari Kulkarni due to the circumstance that she was appointed and she kept on working for those years. Fortunately the Government is not releasing the

grants. If the management has paid the salary it needs to bear the burden in respect of that salary. Another submission was made by both the sides and it was submitted that for fresh advertisement these two ladies need to be given an opportunity irrespective of their age etc. This submission is also not acceptable. Fresh advertisement will be controlled by the present policy of the 'State' about eligibility conditions. In the result, all the petitions stand dismissed.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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