

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

901 WRIT PETITION NO.3763 OF 2016

- . Dr.Janka d/o Sangram Pandurne
Age: 44 years, Occu.: Service,
R/o.Behind Renuka Collection,
Main Road, Taluka: Mukhed,
District – Nanded. ..Petitioner

VERSUS

1. The State of Maharashtra
Through the Secretary,
Department of Higher Education,
Mantralaya, Mumbai.
2. Swami Ramanand Tirtha
Marathwada University,
through the Vice-Chancellor
District – Nanded.
3. The Director,
Academic (Approval) Section,
Swami Ramanand Tirtha
Marathwada University,
District – Nanded.
4. Virbhadra Education Society,
Through the Secretary,
Taluka: Mukhed, District – Nanded.
5. Virbhadra Education Society's
Mahatma Jyotiba Phule College,
Through the Principal,
Taluka: Mukhed, District – Nanded.
6. The Joint Director,
Higher Education, Nanded Division,
Nanded.

7. Shri Gunwant Madhavrao Patil
Hangargekar
Age: 50 years, Occu.: Agriculture &
Social Service,
Resident of: At Borban Parisar,
Vajirabad, Nanded.
8. Shri Shankar Madhavrao Basapure
Age: 68 years, Occu.: Pensioner,
Resident of: Shanti Nagar, Narsi Road,
Mukhed, Taluka: Mukhed,
District: Nanded. ..Respondents
(Respondent Nos.7 & 8
added as per the
order passed in C.A.
No.14154 of 2016
dated 6.3.2018)

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Advocate for Petitioner : Mr.R.S.Deshmukh
AGP for Respondent Nos.1 & 6 : Mr.S.S.Dande
Advocate for Respondent No.2 : Mr.V.P.Latange
Advocate for Respondent Nos.4 & 5 : Mr.V.D.Gunale
Advocate for Respondent Nos.7 & 8: Mr.M.S.Kulkarni

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**CORAM : R.M.BORDE AND
K.K.SONAWANE, JJ.**

DATE: 6th March, 2018

ORAL JUDGMENT:-

(Per: R.M. Borde, J.)

- 1) The petitioner is praying for issuance of Writ of Certiorari or any other appropriate Writ or order for quashment of order dated 29.2.2016

directing withdrawal of approval accorded earlier to the appointment of the petitioner, who is functioning as Assistant Professor on ad-hoc basis. The petitioner holds a Master's degree in Commerce acquired in 1993. He completed his B.Ed. Studies in 1996 and acquired M.Phil. qualification in the year 2008. The petitioner has been conferred with Ph.D. degree in the year 2014. The petitioner joined Virbhadra Education Society, Mukhed, as Instructor for 11th and 12th Standard students on clock hour basis in 1996 and discharged her duties during the year 1996 to 2000.

2) On 16.10.2000, an advertisement came to be published by respondent No.4, calling applications for appointment on the post of ad-hoc Lecturer on clock hour basis. The petitioner applied for the said post and was appointed on clock hour basis. It is the contention of the learned counsel for the petitioner that the appointment of petitioner

was against a clear vacant seat and in observance of due procedure prescribed under law.

3) Another letter of appointment has been issued in favour of the petitioner by the Institution on 20.6.2002, making her appointment w.e.f.20.6.2002 on temporary basis for a period of one academic year i.e. 2002-2003. It is recorded in the appointment order that the petitioner has been interviewed for the post by the Local Selection Committee constituted by local management.

4) The petitioner again appeared before an interviewing committee on 24.1.2003 pursuant to the advertisement issued on 4.12.2002. The petitioner came to be appointed as Lecturer in Commerce on clock hour basis w.e.f. 25.1.2003. Another letter of appointment appears to have been issued by the management in favour of petitioner on 1.7.2003, appointing her to the post of Lecturer on clock hour basis for a period between

1.7.2003 to 30.4.2004.

5) On 21.6.2004 another letter of appointment came to be issued by the management appointing the petitioner for temporary duration between 21.6.2004 to 30.6.2005. The petitioner was appointed for the aforesaid period as a Lecturer on clock hour basis by the Institution in pursuance of her selection by Local Selection Committee constituted by local management.

6) A Proposal was tendered, seeking approval to the appointment of the petitioner as a Lecturer on clock hour basis to the University and the Director, Board of College and University Development, accorded approval by the communication dated 5.1.2005. It was informed to the College that during the next academic year, appointment shall be made after issuing an advertisement and on making selection by the Selection Committee constituted by the University.

Inspite of the directives issued by the University, during the next academic year, by an order dated 25.6.2005, the petitioner again came to be appointed for a period from 25.6.2005 to 30.4.2006 as a Lecturer on clock hour basis. The procedure directed to be observed by the University was not followed by the Institution and the selection of the petitioner was made by the Local Selection Committee constituted by the local management.

7) The petitioner was again appointed on clock hour basis as a Lecturer for a period between 1.7.2006 to 30.4.2007 by the management of the College on recommendation of the Local Selection Committee. Similarly, an order has been issued by the management on 1.7.2007, appointing the petitioner as a Lecturer on clock hour basis for a period between 1.7.2007 to 30.4.2008. Inspite of issuance of order appointing the petitioner on clock hour basis during 2007-2008, the management

of the College issued one more letter of appointment on 1.11.2007 making appointment of the petitioner as a Lecturer in Commerce. Letter of appointment records that the petitioner has been appointed in response to the advertisement issued on 16.10.2000 and in furtherance of selection of the petitioner during the process of selection undertaken in the year 2000.

8) The Director, Board of College and University Development, by an order dated 25.3.2009 accorded provisional approval to the appointment of the petitioner.

9) The respondent Nos.7 and 8 - interveners objected to the decision of the Director according approval to the appointment of petitioner, and after holding appropriate enquiry, the Director, Board of College and University Development, was pleased to recall the order according approval to the appointment of the petitioner. It is recorded

in the order impugned in this petition that the appointment of the petitioner is not in observance of the relevant regulations. A reference is also made to the enquiry conducted by Dr.B.C.Barik Enquiry Committee and the report dated 7.11.2010 submitted to the University. The Enquiry Committee, in its' report has recorded the finding that the selection of the petitioner by the Selection Committee on 18.6.2001 is questionable. The Selection Committee did not find a single eligible candidate during conduct of the interview. It is also recorded that there was no sufficient workload available for accommodating the petitioner.

10) Another Enquiry Committee under the Chairmanship of Principal, Dr.V.N.Ingole have reported that the administration of the College does not function in a transparent manner. Taking note of the report, the State Government had issued a show cause notice to the College on

22.3.2009. Although, the petitioner herein was not in employment during 2004-2005 and 2005-2006, the Principal of the College has shown her to be in continuous employment in the record maintained by the College.

11) There was another Enquiry Committee constituted to consider the issue of appointment of the petitioner and the second Enquiry Committee has also tendered its' report on 7.10.2015. It is recorded in the second Enquiry Report that the petitioner appears to have been appointed by issuing letter of appointment on 1.11.2007 in pursuance to the advertisement issued by the College in the Newspaper on 16.10.2000. The Institution is expected to issue letter of appointment within six months from the date of advertisement, however, in the instant matter, the letter of appointment has been issued after lapse of about seven years from the date of advertisement. It is also recorded in the report

that on 4.12.2002 after issuing an advertisement, the petitioner has been issued letter of appointment on 25.1.2003 on clock hour basis. On both the letters of appointment, there is no outward number of the College recorded. It is also recorded in the report that the employee accommodated on clock hour basis shall also have to fulfill the qualification requirement prescribed for appointment as full time Lecturer. In the instant matter, the petitioner appears to have been appointed without observing the prescribed procedure for appointing a Lecturer.

12) We have heard arguments of the learned counsel for the petitioner, learned AGP for the State Government and learned counsel for the interveners.

13) It does appear that the petitioner did not fulfill the qualification requirement at the time of initial entry in service and even until

issuance of letter of appointment in the year 2007. Admittedly, while issuing letter of appointment in the year 2007, the prescribed procedure for making appointment was not observed. The Selection Committee approved by the University consisting representative of the University has not conducted the selection process and the petitioner's name has not been recommended by the duly constituted Selection Committee.

14) The most surprising feature of the appointment of the petitioner in the year 2007 is that letter of appointment has been issued to her in furtherance of the advertisement issued on 16.10.2000. It is mind-boggling as to how the management could appoint the petitioner as a Lecturer after lapse of seven years from the date of issuance of advertisement. The management flouted all the procedural norms mandated by the University for making appointment of Lecturer. The management has acted in the manner as if the

educational Institution is their private property. Infact the Director, Board of College and University Development, ought not to have approved the appointment of petitioner at the initial stage. It has not been reported that either the State Government or the University has taken any action against the management of the College for continuing with all the illegalities during the prolonged period of more than 15 years.

15) The University Grants Commission has formulated regulations prescribing qualification, norms for making appointment of the Lecturers in the affiliated Colleges. The norms, prescribed by the University Grants Commission which is a creation of the Statute, are binding on all the affiliated Colleges and the Universities. The qualification required for making appointment to the post of Lecturer in affiliated Colleges has been prescribed as below:-

"A candidate shall have a good academic record with atleast 55% of the

marks or, an equivalent grade of B in the 7 point scale with latter grades O,A,B,C,D,E and F at the Master's degree level, in the relevant subject from an Indian University, or an equivalent degree from a foreign University.

Besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for lecturers conducted by the UGC, CSIR or similar test accredited by the UGC.

Note:- NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidate who have completed M.Phil. degree or have submitted Ph.D. thesis in the concerned subject up to 31st December, 1993, are exempted from appearing in the NET examination."

16) In the instant matter, while making initial appointment of the petitioner in the year 2000 as a Lecturer on clock hour basis or in the year 2007 as a Lecturer on ad-hoc basis, the petitioner did not fulfill requisite qualification norms. The

petitioner acquired M.Phil. degree in 2008 and was awarded Ph.D. in the year 2014. The appointment of the petitioner made in 2007 has been earlier approved by the Director, Board of College and University Development, which has later-on been recalled. While making appointment of the petitioner in the year 2007, admittedly, she did not fulfill the requisite qualification norms.

17) In view of the facts disclosed as above, the decision taken by the Director, Board of College and University Development of withdrawing the approval to the appointment of the petitioner cannot be said to be erroneous or illegal. Infact, the Director ought not to have initially approved the appointment of the petitioner. Atleast at a belated stage, he has corrected the mistake.

18) In view of above, no interference is called for. The petition is devoid of merits, hence stands rejected summarily.

19) It would be open for the University and State Government to take appropriate penal action against the affiliated College for the lapse committed by the College.

(K.K.SONAWANE)
JUDGE

(R.M.BORDE)
JUDGE