

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 2231 OF 2005

Bhagwat s/o. Murlidhar Patil,
Age 42 years, Occu. Service (t),
R/o. Badhe Complex, Varangaon,
Tq. Bhusawal, Dist. Jalgaon.

....Petitioner.

Versus

1. Jalgaon District Maratha Vidya
Prasarak Co-operative Samaj Ltd.,
Jalgaon.
(Through it's Secretary)
2. The Principal,
Shri. S.S. Patil Arts,
Shri. Bhausahab T.T. Salunke,
Commerce and Shri. G.R. Pandit,
Science College, Jalgaon.
3. The Principal,
Arts, Commerce and Science College,
Varangaon, Tq. Bhusawal, Dist. Jalgaon.
4. The North Maharashtra University
Jalgaon. (Through it's Registrar)
5. The Joint Director
Higher Education (Grants)
Jalgaon.
6. State of Maharashtra
Higher Education Department,
Mantralaya Mumbai,
Through it's Secretary

....Respondents.

Mr. B.R. Warma, Advocate for petitioner.

Mr. Y.B. Bolkar h/f. Mr. A.B. Girase, Advocate for respondent No. 4.

Mrs. D.S. Jape/Ansingkar, AGP for respondent No. 6/State.

WITH
WRIT PETITION NO. 4146 OF 2003
WITH
CIVIL APPLICATION NO. 9369 OF 2005

1. Jalgaon Zilha Maratha Vidya Prasarak
Cooperative Samaj Ltd., Jalgaon,
through its Honourary Secretary,
Shri. Tanaji Keshavrao Bhoite,
Age 50 years.
2. The Principal,
Shri. S.S. Patil Arts,
Shri. Bhausahab T.T. Salunke Commerce,
Shri. G.R. Pandit Science College,
Jalgaon.
Balasaheb Bhaskarrao Deshmukh,
Age 52 years, Occu. Service,
Resident of Jalgaon.

....Petitioner.

Versus

1. Bhagwat Murlidhar Patil,
Age 45 years, Occu. Service,
Residing at Badhe Complex,
Varangaon, Taluka Bhusaval,
District Jalgaon.
2. The Registrar,
North Maharashtra University,
Jalgaon.
3. The Joint Director,
Higher Education (Grants),
Jalgaon.

....Respondents.

Mr. R.H. Mewara, Advocate for petitioners.

Mr. B.R. Warma, Advocate for respondent No. 1.

Mr. Y.B. Bolkar h/f. Mr. R.B. Raghuwanshi, Advocate for respondent
No. 2.

Mr. D.S. Jape/Ansingkar, AGP for respondent No. 3.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : JANUARY 19, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) Writ Petition No. 2231/2005 is filed by the employee of respondent Nos. 1 and 2 to challenge the decision taken by respondent No. 4 University which was communicated by letter dated 21.7.2004. The University has refused to grant approval to the appointment of petitioner as Lecturer in Botany in the college of respondent Nos. 1 and 2. Further direction is claimed in the petition against the respondent No. 4 to see that permanent approval in favour of petitioner is granted as lecturer in Botany by holding that the petitioner was appointed on open and clear post and not against the reserved post. Prayer is made for quashing of the advertisement published by the respondent No. 1 dated 5.12.1992 by which the post which the petitioner was holding was again advertised. The petition was filed on 15.9.2004 and submissions are made that post was filled in accordance with the advertisement and it was for reserved category.

2) Writ Petition No. 4146/2003 is filed by the management, employer against the petitioner of the first proceeding Bhagwat Patil and others to challenge the decision given by the Presiding Officer of

University and College Tribunal, Aurangabad in Appeal No. 17/2000. By this decision, the Tribunal had set aside the order of termination and has given direction to reinstate Bhagwat Patil on aforesaid post. Direction was given to management to make proposal to the University for approval to the appointment of Bhagwat Patil on the post of Lecturer of Botany and direction was given to the University to take the decision within prescribed time.

3) The submissions made show that after the decision of the Tribunal, for some time the petitioner was allowed to work (for one and half months) and when the University rejected the proposal for giving approval to the appointment, he was again discontinued and since then he did not turn up to resume the duty.

4) The submissions made and the record show that the management has reserved some posts for teaching staff as per the reservation policy of the Government and the Government had given further direction in the year 1991 to see that 100% backlog is cleared before making other appointments.

5) It is the contention of the management that the post on which the appointment was given to Bhagwat Patil in the year 1992 was reserved for Scheduled Caste and applications were invited for

that post. Copy of the advertisement published by the management is produced on record. It is not disputed that every time when the petitioner was appointed on this post, the appointment was approved only for the period of few months or one year by the University. As per the statues of the University when appointment is of temporary nature, the local committee, the committee constituted by the management has the power to make such appointment. Only when there is appointment on permanent post, the committee as provided in statue which includes a nominee of the University takes interview and makes the selection. The correspondence of the Government and the University show that the Government had prevented the management from making appointments against reserved post of open candidates and procedure was given in G.R. dated 5.12.1994. If the candidate from reserved category was not available and the candidate from open candidate was to be appointed, as per the procedure given, continuously for five years advertisement was to be issued for filling the reserved post and after that first attempt was to be made to see that candidate from other reserved category was appointed and only after seven years, if candidate of any reserved category had not become available, it was open to the management to fill candidate from open category. Prior to that, it was necessary to make proposal to Government department and permission of the Government was necessary for

filling such posts. Admittedly, no such procedure was followed in the present matter.

6) The decision given by the University and College Tribunal shows that the Tribunal considered only eligibility conditions for the post. The Tribunal admitted in para No. 15 that the post was advertised for scheduled caste candidate, but the Tribunal held that he was appointed duly by local selection committee and every time he has faced interview for getting that post. It was also brought to the notice of the Tribunal that no fresh advertisement was published as per the aforesaid procedure given by the Government. The Tribunal has observed that in view of the need of college if candidate from reserved category is not available, present petitioner could have been appointed even against the post which was meant for reserved category.

7) The University is not expected to give approval to the appointment when necessary procedure was not followed by the management. Admittedly, the procedure was not followed by the management for giving appointment to the petitioner which could have been of temporary nature as post was made for reserved category. The University would give approval to the appointment only when the procedure is followed by the management. Thus, the

Tribunal has committed error in setting aside the order of termination which followed due to the refusal of approval by University. The submissions made show that subsequently candidate from reserved category became available and such candidate came to be appointed. Even the order of Tribunal could not have given right to the petitioner to get appointment as against the permanent post as there was no such direction. Thus, nothing survives in the proceeding which is filed by the employee. For the same reasons, the decision given by the Tribunal needs to be set aside.

8) The learned counsel for the petitioner placed reliance on observations made by this Court in the case reported as **1992 (Supp. 2) Bom. C.R. 17 [Pramod Madhukarrao Padole & Anr. Vs. Chancellor, Nagpur University & Ors.]**. Those observations were made with regard to the solitary, isolated post. It is observed that the rule permits grouping of isolated posts only if they are within the same department. In the case, this Court found that employment notices were vitiated as the posts were shown to be reserved when they could not have been reserved. The facts of the reported case show that employment notice was issued in 1984. The things changed after that due to aforesaid Government Resolutions issued by the Government. The learned counsel for the petitioner placed reliance on some observations made by this Court in **Writ**

Petition No. 3803/1998 [Rajendra Raghunath Attarde Vs. Khandesh College Education Society Jalgaon and Ors.] decided on 15.12.2008. Those facts were also different and the advertisement was issued in the year 1989. In view of the facts of the present matter, this Court holds that the observations made by the learned Single Judge in the said decision can be of no use in the present matter. Same can be said in respect of some observations made by this Court in **Writ Petition No. 2653/1996 [Rajani w/o. Vishram Patil Vs. North Maharashtra University, Jalgaon and Anr.] decided on 2.1.2.2004.** In the case, duly constituted selection committee had made the appointments and there was no record to show that the appointments were made against reserved posts. There was no record to show the posts of reserved category was given to open category candidate. In view of the facts of the case, decision was given in favour of the employee. Thus, these observations are also of no use to the petitioner in the present matter.

9) The learned counsel for the respondents placed reliance on some observations made by this Court in the case reported as **2015 (1) Mh.L.J. 782 [Navjeevan Shikshan Sanstha, Bhishnur and Anr. Vs. Chandrashekhar Anandraoji Rewatkar]**. Though the observations are with regard to the provisions of Maharashtra

Employees of Private Schools (Conditions of Service) Regulation Act, 1977 for making appointments, the procedure which is laid down for making appointments in educational institutions need to be followed. In the result, Writ Petition No. 2231/2005 stands dismissed. Writ Petition No. 4146/2003 is allowed. The decision given by the Tribunal is set aside. Civil applications, if any, are disposed of.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/