

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

WRIT PETITION NO.7377 OF 2014

1. Mrs. Jonnalagedda Megha Venkatesh,
Age : 43 years,
Occ. Service as Associate Professor,
r/o. 255, 'Padampriya',
Yeshovihar Nagari,
Wadi (Bk.), Nanded
 2. Mrs. Jaishri Mahesh Waghmare,
Age : 35 years,
Occ. Service as Associate Professor,
r/o. House No.51, Sonai Nagar,
Near Manik Nagar, Nanded
 3. Dr. Smt. Sushama Ganpatrao Kejgir,
Age : 49 years,
Occ. Service as Associate Professor,
r/o. 202, 'Vakratunda Apartment',
Vivek Nagar, Nanded
 4. Miss. Potgantwar Pranjala Dnyaneshwar,
Age : 30 years,
Occ. Service as Assistant Professor,
r/o. Rajsarathi Nagar, Near Bela Nagar,
Taroda (Bk.), Nanded
 5. Mrs. Rachna Sandeep Potpelwar,
Age : 29 years,
Occ. Service as Assistant Professor,
r/o. 1-12-923, 'Pandhari',
Hanuman Nagar, Near Tilak Nagar,
Nanded
- ..Petitioners

Vs.

1. The State of Maharashtra,
Through the Secretary,
Higher and Technical Education
Department, Mantralaya Annex,
Mumbai
2. The Director of Technical Education,
3, Mahapalika Marg, V.T.,
Mumbai
3. Shri Guru Gobind Singhji Institute
of Engineering and Technology,
Vishnupuri, Nanded
Through its Director ..Respondents

**WITH
CIVIL APPLICATION NO.10700 OF 2015
IN
WRIT PETITION NO.7377 OF 2014**

Pramod Champatrao Narwade ..Applicant

Vs.

Jonnalgedda Megha Venkatesh
and others ..Respondents

Mr.M.V.Ghatge, Advocate for applicant

Mr.Ajay Deshpande, Advocate for respondent nos.1 to 5

Mr.S.B.Joshi, AGP for respondent nos.6 and 7

Mr.K.M.Suryawanshi, Advocate for respondent no.8

AND

WRIT PETITION NO.7595 OF 2014

1. Gouravkumar Sudkar Malande,
Age : 32 years,
Occ. Service as Assistant Professor,
r/o. c/o. Dr. Sunil Vazarkar,
Rushi Apartment, Patnoorkar Nagar,
Nanded ..Petitioner

Vs.

1. The State of Maharashtra,
Through the Secretary,
Higher and Technical Education
Department, Mantralaya Annex,
Mumbai
2. The Director of Technical Education,
3, Mahapalika Marg, V.T.,
Mumbai
3. Shri Guru Gobind Singhji Institute
of Engineering and Technology,
Vishnupuri, Nanded
Through its Director ..Respondents

Mr.Ajay Deshpande, Advocate for petitioner

Mr.S.B.Joshi, AGP for respondent nos.1 and 2

Mr.K.M.Suryawanshi, Advocate for respondent no.3

**WITH
CIVIL APPLICATION NO.11863 OF 2015
IN
WRIT PETITION NO.7595 OF 2014**

Pramod Champatrao Narwade ..Applicant

Vs.

Gouravkumar Sudkar Malande ..Respondent

Mr.M.V.Ghatge, Advocate for applicant

Mr.Ajay Deshpande, Advocate for respondent no.1

Mr.S.B.Joshi, AGP for respondent nos.2 and 3

Mr.K.M.Suryawanshi, Advocate for respondent no.4

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.**

DATE : OCTOBER 30, 2018

ORAL JUDGMENT (PER S.V. GANGAPURWALA, J.) :-

Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final hearing.

2. The petitioners, pursuant to the advertisement published by respondent no.3, had

applied for the post of Assistant Professor/Lecturer. They were selected. Respondent no.3 issued appointment orders to the petitioners. A proposal was thereafter forwarded to the office of respondent no.2 - Director of Technical Education for approval. Respondent no.2 - Director of Technical Education granted approval to the appointments of the petitioners. Subsequently, on the basis of a complaint filed by the intervenor, the approval granted to the appointments of the petitioners came to be cancelled by the office of respondent no.2 - Director of Technical Education. The same is assailed in the present Writ Petitions.

3. Mr.Deshpande, learned Counsel for the petitioners, submits that the petitioners possess the requisite qualification as per the advertisement. A note in the advertisement permits the candidates possessing the educational qualification and experience specified in A.I.C.T.E. norms (Appendix 'C') to apply. The petitioners possess the

qualification prescribed under the A.I.C.T.E. norms (Appendix 'C'). He submits that the due selection process was adhered to. The selection committee, after following the due selection process, selected the petitioners. Learned Counsel submits that the advertisement was forwarded by respondent no.3 to the office of respondent no.2 - Director of Technical Education. The Director of Technical Education approved the advertisement and thereafter only, the advertisement was published. Learned Counsel submits that the petitioners appointed to the post of Assistant Professor have acquired the qualification of Ph.D. within the period stipulated in A.I.C.T.E. norms (Appendix 'C'). Learned Counsel further submits that the executive instructions under Article 162 of the Constitution of India framed by the Higher and Technical Education Department itself states that the subjects/disciplines in which the recruitment is to be made shall be finalised by the Director in consultation with the Dean/Head of Department based

on the institutional needs from time to time and the same will be put up to the Board of Governance of the Institution for approval before inclusion in the recruitment announcement. It is further submitted by the learned Counsel that the Government Resolution dated 01.03.2008 merely provides that each autonomous institution shall adopt the rules with suitable modification, without following the norms made thereto. It was left open to to the autonomous body to adopt said the Government Resolution dated 01.03.2008. He submits that respondent no.3 is an autonomous body. It issued the advertisement with the prior approval of respondent no.2. The petitioners are working with respondent no.3 – Institution since 2009. The intervenor has no *locus standi* to agitate with regard to the qualification and appointments of the petitioners. In service jurisprudence, the question of public interest is not involved.

4. Mr.Suryawanshi, learned Counsel for respondent no.3, submits that respondent no.3 had got

the advertisement approved from respondent no.2 and thereafter, the advertisement was published. The petitioners possess the necessary qualification, as prescribed under the Note to the advertisement. They were found meritorious and were selected by the duly constituted selection committee. He submits that in the selection committee, one of the representatives of respondent no.2 – Director of Technical Education was also present. Approval has been granted to the appointments of the petitioners by respondent no.2.

5. Mr.Joshi, learned AGP, submits that the Government Resolution dated 01.03.2008 prescribes the qualifications for the post of Lecturer and the Assistant Professor. The petitioners were not possessing the qualification prescribed therein. As the petitioners were not possessing the basic and essential qualification as per the Government Resolution dated 01.03.2008, they were not eligible to be appointed as Lecturer/Assistant Professor. In view of that, the approval granted to their

appointments has been rightly cancelled by respondent no.2. The Government Resolution dated 01.03.2008 is required to be followed by the autonomous institution. The minimum prescribed norms cannot be deviated by respondent no.3, which is an autonomous institution. The approval erroneously granted to the petitioners has been rightly cancelled by respondent no.2. He submits that it is pursuant to the interim order passed by this Court only, the petitioners are continued in service.

6. Mr.Ghatge, learned Counsel for the intervenor, submits that the intervenor is Advocate by profession. After having found that the petitioners were not possessing the required qualification, he filed objection and brought the illegalities committed to the notice of the authorities concerned. He submits that in service matters, if any basic flaw appears, the intervenor can agitate. He relies on the judgment of the Apex Court in the case of **Raju Ramsingh Vasave Vs. Mahesh**

Deorao Bhivapurkar and ors., 2009(1)Mh.L.J. 1.

Learned Counsel submits that the intervenor has a right to bring to the notice of the authorities and this Court, if any illegality is committed. The appointments of the petitioners are in violation of the mandatory requirements, which have been brought on record by the intervenor and is rightly considered by the authorities. Learned Counsel, relying on the judgments of the Apex Court in the cases of **M.S. Jayraj Vs. Commissioner of Excise, Kerala and ors., AIR 2000 SC 3266, National Fertilizers Ltd. Vs. Somvir Singh, (2006)5 SCC 493, and Dr. Suresh Chandra Verma and ors. Vs. Chancellor, Nagpur University, 1990 AIR 2023,** submits that hearing is not contemplated while cancelling approval. He submits that the advertisement was not as per the rules and therefore, the petitioners cannot be said to have undergone a competitive selection process.

7. We have considered the submissions canvassed by learned Counsel for the parties. The Rules dated 05.09.2000 framed by the Higher and Technical Department under the proviso to Article 309 of the Constitution of India are placed before us. As per the said Rules, for the post of Assistant Professor to be appointed by nomination in Government Engineering College, the qualifications has been provided under Rule 6, relevant portion of which is as under :-

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.....
.....

(2) by nomination from amongst the candidates who,-

(a) unless already in the service of the Government are not more than forty years of age; and

(b) possess,-

(i) bachelor's degree in first class in the appropriate field of Engineering, followed by Master's Degree at least in

Second Class in the relevant branch of Engineering or Technology as specified in Schedule "A"; or

Master's degree in first class in the appropriate field of Engineering preceded by the Bachelor's degree at least in Second Class in the relevant field of Engineering or Technology as specified in Schedule "A"; and

(ii) Minimum five years experience in teaching as a lecturer in an Engineering College or in Industry or research in a group 'A' post in Government or an equivalent post in any other organisation, gained after acquiring Bachelor's degree in Engineering or Technology:

Provided that, the age limit may be relaxed by Government on the recommendation of the Commission in favour of candidates having exceptional qualifications, or experience or both:

Provided further that, preference may be given to candidates having Ph.D. in Engineering or Technology."

Rule 8 of these Rules are as under :-

8. Appointment to the post of Lecturer, Workshop Superintendent (Lecturer level), Instrument Engineer or System Analyst in Government Engineering College in any of the discipline as specified in Schedule "A" shall be made by nomination from amongst candidates who,-

(a) unless already in the service of the Government are not more than thirty-five years of age; and

(b) possess,-

(i) Bachelor's degree in the first class in the appropriate field of Engineering or Technology as specified in Schedule "A"; or

Master's degree in first class in the relevant branch of Engineering preceded by Bachelor's degree at least in Second Class in the appropriate field of Engineering or Technology as specified in Schedule "A":

Provided that, the age limit may be relaxed by Government on the recommendation of the Commission in favour of candidates having exceptional qualification, or experience or both."

8. The executive instructions issued under the Government Resolution dated 01.03.2008 under Article 162 of the Constitution of India, provides for different qualifications for the same post. The State has powers to frame the policy and prescribe for the minimum qualification by resorting to its executive powers under Article 162 of the Constitution of India. However, the qualification so framed, should not be contrary or overriding statutory Rules.

9. The advertisement prescribes the following qualification for the post of Assistant Professor :-

2) QUALIFICATION

The candidates applying for the posts should have the following educational

qualifications and experience as specified in G.R. No.:Sewapra 2007/(10/07)/TE-6, dated 1st March 2008 of Higher and Technical Education Department, Government of Maharashtra, Mumbai.

Essential

i) Ph.D. Degree or equivalent work preceded by UG/PG engineering degree in first class or equivalent in the concerned engineering / technology discipline from a government approved institution with consistently good academic record.

ii) Teaching / Research / Industrial experience in the relevant discipline for a minimum of 5 years after acquiring Bachelor's Degree.

iii) Good publications record in refereed scientific / professional journals.

Desirable

- i) Proven record of guiding UG/PG students and team work.
- ii) Participation in professional society activities.

*NOTE : THE CANDIDATES WHO SATISFY THE EDUCATIONAL QUALIFICATIONS AND EXPERIENCE CRITERIA AS SPECIFIED IN A.I.C.T.E. NORMS (**APPENDIX-C** ENCLOSED) FOR THE POSTS OF ASSISTANT PROFESSOR CAN ALSO APPLY.*

10. The advertisement prescribes the following qualification for the post of Lecturer :-

3) QUALIFICATION

The candidates applying for the posts should have the following educational qualifications and experience as specified in G.R. No.:Sewapra 2007/(10/07)/TE-6, dated 1st March 2008 of Higher and Technical Education Department, Government of Maharashtra, Mumbai.

Essential

i) Masters Degree preceded by Bachelor's Degree in the relevant branch as mentioned in **Appendix B** with first class at both the levels and consistently good academic record in the previous years.

Desirable

i) Ph.D. Degree in the concerned engineering / technology discipline / subject.

ii) Teaching / research / industrial experience in the relevant discipline.

iii) Publications record in referred scientific / professional journals.

*NOTE : THE CANDIDATES WHO SATISFY THE EDUCATIONAL QUALIFICATIONS AND EXPERIENCE CRITERIA AS SPECIFIED IN A.I.C.T.E. NORMS (**APPENDIX-C** ENCLOSED) FOR THE POSTS OF LECTURER CAN ALSO APPLY.*

11. The Note appearing in the above advertisement in the clause of qualification is in the nature of enabling clause. It states that the candidates, who satisfy the educational qualification and experience criteria, as specified in A.I.C.T.E. norms (Appendix 'C') for the posts of Assistant Professor, can also apply. It is not disputed by respondent no.2 that the petitioners possess the qualification as specified by A.I.C.T.E. norms (Appendix 'C'). The A.I.C.T.E. norms (Appendix 'C') reads thus:-

Cadre	Qualifications and Experience	Qualifications and Experience for candidates from industry and profession
Lecturer	First Class Bachelor's Degree in the appropriate Branch of Engineering / Technology [No minimum experience required] OR First Class Master's Degree in the appropriate branch of Engineering [Engg]/ Technology [Tech] [No minimum experience required]	First Class Bachelor's Degree in the appropriate Branch of Engineering / Technology [No minimum experience required] OR First Class Master's Degree in the appropriate branch of Engineering [Engg]/ Technology [Tech] [No minimum experience required]

Assistant Professor	Ph.D. degree with first class Degree at Bachelor's OR Master level in the appropriate branch of Engineering / Technology, with 3 years' experience in Teaching / Industry / Research at the level of Lecturer or equivalent OR First Class Degree at Master's level in the appropriate branch of Engg./Tech. with 5 years' of experience in Teaching / Industry / Research at the level of Lecturer or equivalent. Such candidates will be required to obtain Ph.D. degree within a period of 7 years, from the date of appointment as Assistant Professor	Candidates from Industry / Profession with First Class Bachelor's Degree / First Class Master's Degree in the appropriate branch of Engineering / Technology and Professional work which is significant and can be recognized as equivalent to Ph.D. degree, and with 5 years Industrial / Professional experience.
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12. The A.I.C.T.E. norms (Appendix 'C') provides that for the post of Lecturer, a candidate possessing first class bachelor's degree in appropriate branch of engineering / technology, or first class Master's Degree in the appropriate branch of Engineering /

technology would be eligible to apply. Similarly, for the post of Assistant Professor, the qualification is first class degree at Bachelor's or Master level degree in the appropriate branch of Engineering / Technology, with 3 years' experience in Teaching / Industry / Research at the level of Lecturer or equivalent; or First Class Degree at Master's level in the appropriate branch of Engineering / Technology with 5 years' of experience in Teaching / Industry / Research at the level of Lecturer or equivalent. However, such candidate will be required to obtain Ph.D. degree within a period of 7 years from the date of appointment. The petitioners herein were selected and appointed on the post of Assistant Professor and Lecturers as they were possessing the qualification mentioned in A.I.C.T.E norms (Appendix-C). Considering their qualification, approval was granted to their appointments by the office of respondent no.2. It is only upon the complaint of the intervenor, the office of respondent no.2 has

cancelled the approval on the ground that the petitioners were not possessing the qualification as provided under the advertisement and the executive instructions dated 01.03.2008.

13. The petitioners were appointed on the said post in the year 2009 considering the qualification stipulated in the note to the advertisement. Their appointments were approved by the office of respondent no.2 in June, 2010 and for the first time, abruptly, in the year 2014, the approval accorded to the appointments of the petitioners came to be cancelled. The advertisement was published by respondent no.3 only after the approval of respondent no.2. After the due selection process and on being interviewed by the duly constituted selection committee, the petitioners were selected and appointed on the said post. They worked for five years and thereafter, their approval was cancelled. Pursuant to the interim order passed by this Court, they were continued in service till date. The

qualification possessed by the petitioners was in tune with the qualification prescribed by A.I.C.T.E. norms (Appendix 'C') and also the note to the advertisement. After rendering five years of service, it would not be open for respondent no.2, now to come up with the case that the petitioners were not possessing the prescribed qualification and more particularly, when respondent no.2 had approved the advertisement and a representative of respondent no.2 was one of the members of the selection committee.

14. It is submitted that within a period of seven years from the date of appointment of the petitioners as Assistant Professor, except one, they have completed Ph.D. within stipulated time and they possess the qualification of Ph.D. also. Considering these aspects, it will not be open for respondent no.2 to cancel the approval granted to the appointments of the petitioners prior to seven years. Of course, as per the note to the advertisement for

the post of Assistant Professor, if the petitioners did not acquire the qualification of Ph.D., it was open for respondent no.2 to take the necessary steps. The petitioners had undergone the due selection process and were selected on the basis of their merit. They worked on the said posts for more than five years. It is nobody's case that in the selection process, more meritorious and qualified candidates than the petitioners were available. In our view, therefore, the impugned order would not be in consonance with the principles of fair play, justice, equity and good conscious.

15. As we have heard the intervenor, it is not necessary for us to discuss about the locus standi of the intervenor.

16. In the light of the foregoing discussion, the impugned order cancelling approval to the appointments of the petitioners is quashed and set aside. The respondents shall continue the approval

to the appointments of the petitioners as Lecturers and Assistant Professors, as the case may be. In case the petitioners, who were appointed as Assistant Professor and failed to complete Ph.D. within the stipulated period of seven years, then respondent no.2 can take appropriate steps as against the said petitioners.

17. The Writ Petitions are accordingly disposed of. Rule is made absolute accordingly. No costs.

18. Civil Applications for intervention stand disposed of.

[R.G. AVACHAT, J.]

[S.V. GANGAPURWALA, J.]

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