

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10762 OF 2016

Dr. Ganesh Manikrao Agnihotri,
Age: 46 Years, Occu.: Service,
R/o.: C Ajintha Education Society's
Sant Dyaneshwar Mahavidyalay, Soygaon,
Dist.: Aurangabad .. **Petitioner**

Versus

1. The State of Maharashtra,
(Through its Secretary),
Higher and Technical Education
Department, Mantralaya, Mumbai – 400 032
2. The Director,
Higher Education,
MS Pune
3. The Joint Direcotr,
Higher Education,
Aurangabad Region,
Aurangabad
4. Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad,
Through its Director,
Board of College and University
Development, Aurangabad
5. Ajintha Education Society,
Through its President,
Shivaji Nagar, Garkheda Parisar,
Aurangabad .. **Respondents**

Miss Pradnya S. Talekar, Advocate i/b. Talekar and
Associates for the Petitioner.
Shri Rajendra S. Deshmukh, Special Council for

Respondent Nos. 1 to 3.

Shri S. G. Chapalgaonkar, Advocate for Respondent No. 4.

Shri Amol N. Kakde, Advocate for Respondent No. 5.

**CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

DATE : 12th July, 2018

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :

1. Rule. Rule made returnable forthwith. With the consent of learned counsel for respective parties taken up for final hearing.

2. Learned counsel for the petitioner, on instructions, of the petitioner withdraws averments made in para six of the rejoinder affidavit filed by the petitioner sworn on 24th June, 2018 (*Page 180*).

3. We have heard the learned counsel for the petitioner Miss Talekar and Mr. Deshmukh the learned special counsel for the respondent Nos. 1 to 3 and the learned counsel for the respondents.

4. The petitioner assails the order dated

05.08.20196 rejecting the proposal seeking the approval to the appointment of the petitioner as a 'Principal' of Dnyaneshwar Mahavidyalay, Soygaon, so also, seeks further directions for disbursement of salary.

5. The facts necessary for deciding the present petition can be summarised as follows -

I] The petitioner possesses qualification of B.Sc. in second division, M.Sc. in first division, B.Ed. in first division, M.Ed. in first division and Ph.D. with Physics.

II] The petitioner claims to be initially appointed as a full time lecturer with effect from 10th January, 1996 with Rajeev Gandhi Night College, Aurangabad. The petitioner worked in the said college up to the year - 2010. The said college is affiliated to the University. The University granted approval to the appointment of the petitioner.

III] Till the year – 2005 the Rajeev Gandhi Night College was a night college situated at Aurangabd and the petitioner was also working at Nath Valley School from the year – 1997 to 2004.

IV] The petitioner was appointed as a Principal of Vindhyachal Education Society's College, Sellgaon, Tal. Badnapur, Dist – Jalna with effect from 01.12.2010. The appointment of petitioner was approved by the Dr. Babasaheb Ambedkar Marathwada University. He worked in the said college up to 11.04.2011.

V] Thereafter, he worked as a Principal with Prabhakar Patil Education Society's College, Alibagh from 13.04.2011 to 15.07.2015. The approval to the appointment of the petitioner as a Principal with the said Prabhakar Patil Education Society's College is approved by the University of Mumbai.

VI] Subsequently, on 16.07.2015 the petitioner was appointed as a Principal with Ajintha Education Society's Sant Dnyaneshwar College, Soygaon, District – Aurangabad. The said appointment of the petitioner is also approved by Dr. Babasaheb Ambedkar Marathwada University on 17.02.2016.

VII] The petitioner claims to have been again appointed as a Principal on 22.09.2017 and the same is also approved by the University.

VIII] The Joint Director of Higher Education under the impugned communication did not accept the proposal on the count that he does not possess 15 years teaching experience holding the post of Associate Professor.

6. Miss Talekar, learned counsel for the petitioner submits that the petitioner was appointed as a Principal for the first time on

01.12.2010. The Government under its Resolution dated 22nd May, 2012, had granted relaxation to those who are appointed between the period 30th June, 2010 to 14th February, 2011, from possessing the experience as contemplated under Clause 4.2.0 of UGC regulation 2010. According to the learned counsel once the petitioner is appointed as a Principal and the appointment of the petitioner as a Principal is approved and the same is legal and proper as per the Government Resolution dated 22nd May, 2012, then subsequently if the petitioner is appointed as a Principal in any college after 14th February, 2011, then still the petitioner would not be required to comply with the qualification as is required in UGC regulation – 2010, as the petitioner has already worked as Principal during the period of relaxation. The learned counsel also refers to the Government Resolution dated 15th March, 2010, to buttress her submission. According to the learned counsel, the petitioner possesses teaching experience of more than 15

years i.e. from the year – 1996 to 2010 as a lecturer (Assistant Professor). The same was a sufficient requirement as per UGC Regulation – 1998.

7. Mr. Deshmukh, learned Special Council for respondent nos. 1 to 3 submits that the edifice of the petitioner's case is based on wrong premise. The petitioner worked in a non aided college viz. Rajeev Gandhi Night Arts, Science and Commerce College without remuneration. The period the petitioner has worked in the said college cannot be considered as relevant and necessary experience considering the UGC Regulation of 2010. It also cannot be believed that during the same time the petitioner was working with Nath Valley School from the year – 1997 to 2004. The petitioner cannot be present at two places on one and the same time. The learned counsel further submits that at none of the occasions earlier the Joint Director of Higher Education was required to consider the case of the petitioner. The approval

was granted earlier by Dr. Babasaheb Ambedkar Marathwada University and the University of Mumbai, the same was at the University level. The earlier proposals were never forwarded to the Joint Director of Higher Education as the petitioner was working as a Principal of unaided colleges. The learned counsel further submits that as the petitioner does not possess the necessary qualification his appointment as a Principal in question certainly is against the norms set by UGC Regulation - 2010. The Joint Director of Higher Education was within his jurisdiction and powers to negate the claim of the petitioner. The learned counsel submits that, the services rendered by the petitioner in the college was on unaided post, the approval granted by the University was also illegal and the same would not enure to the benefit of the petitioner. No error has been committed by the Joint Director of Higher Education in passing the impugned order.

8. We have considered the submissions canvassed

by the learned counsel for respective parties.

9. The factual matrix is not much disputed and debated by the parties. The petitioner's appointment as a lecturer (Assistant Professor) with Rajeev Gandhi Night Arts, Science and Commerce college from 10.01.1996 being approved by the University up to the year – 2010 is a matter of record. The University has also not disputed the same. The petitioner, as such, possesses the teaching experience of almost 16 years. The appointment of the petitioner in the cadre of Principal for the first time was on 01.12.2010. If the UGC Regulation – 2010 are considered, certainly the petitioner did not possess the necessary experience as required under the UGC Regulation – 2010. However, the Government under its Resolution dated 22nd May, 2012, had granted relaxation from experience as contemplated under Clause 4.2.0 (iii) of UGC Regulation – 2010 for those who are appointed as Principal from 30th June, 2010 to 14th February, 2011. In view of the

said Government Resolution the requirement of experience as contemplated under the UGC Regulation - 1998 would be operative. The appointment of the petitioner as regular lecturer has been approved by the University from the year - 1996 to 2010. The same will have to be considered as an experience of a lecturer in recognised institution affiliated to the University and thereby possessing the necessary experience as required by UGC Regulation - 1998. It is because of the Government Resolution dated 22nd May, 2012, the petitioner's appointment as a Principal on 01.12.2010 would be saved. The petitioner, as such, is brought in the cadre of the "Principal" on 01.12.2010 i.e. the lucid period when the relaxation was operative and the said appointment of the petitioner is approved by the University. The second appointment of the Principal with the college affiliated to the University of Mumbai is also approved by the University of Mumbai and the instant appointment

of the petitioner as a Principal with the Ajintha Education Society's Sant Dnyaneshwar College, Soygaon and Rajeev Gandhi Night College, Aurangabad is also approved by the University. Once the petitioner is placed in the cadre of the Principal with the required experience in view of the Government Resolution dated 22nd May, 2012, then it would be no gain saying that the petitioner did not possess the necessary qualification.

10. The Government Resolution dated 15th March, 2012, may also come to the aid of the petitioner.

11. Considering the aforesaid, it will have to be held that the petitioner had entered the cadre of the Principal during the period of relaxation as provided by the Government Resolution dated 22nd May, 2012, and as such now it would not be open for the respondents to contend that the petitioner did not possess the necessary experience.

12. In the light of above, the impugned communication is quashed and set aside. The respondent – Joint Director of Higher Education shall re-consider the said proposal and take decision within six (6) weeks.

13. Rule accordingly made absolute in above terms. No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

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