

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8825 OF 2015

Kokan Gyanpeeth .. Petitioner
Versus
The State of Maharashtra through its
Secretary and ors .. Respondents

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Mr.M.V.Joglekar with Mr.Rahul D. Oak for the petitioner.
Mr.B.V.Samant AGP for respondent nos.1 to 3.
Mr.P.M.Palshikar for respondent no.4.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.

DATED : 11th JUNE 2018

P.C:-

1 After this petition was heard for some time and posted for passing final orders today, on instructions Mr.B.V.Samant, learned AGP states that the concerned respondents i.e. respondent nos.1 to 3 shall issue a 'No Objection Certificate' to the petitioner by applying the Government Resolution dated 23rd September 2016.

Tilak

2 Only on this statement of Mr.Samant which is accepted as an undertaking to this Court particularly that the 'No Objection Certificate' will be issued within one week from today, we refrain from deciding any wider or larger question. The larger question or controversy is kept open for decision in an appropriate case. Since this Government Resolution redresses the pending grievance of the petitioner, the petitioner also does not desire to seek any relief other than the one granted above.

3 We accept the statements of Shri Samant as undertaking to the Court and dispose of this Writ Petition in terms thereof. The contentions of both sides on the wider issue are kept open.

4 This matter is one more instance where we have seen that the institutions and management invariably appoint open category candidates on temporary basis on or against reserved posts. The only pre-condition for such appointment,

which otherwise is not objected, is that for seven consecutive years, the managements have to insert an advertisement in two widely circulated newspapers, one of which is in vernacular, inviting applications from the eligible candidates belonging to either Schedule Caste or Schedule Tribe or Other Backward Classes, depending on the category for which the post is reserved. The Management often takes a stand that such advertisements were inserted but no application was received for filling up the reserved posts or were inadvertently not inserted and the Department of higher and technical education and the Universities routinely accept this explanation without ever bothering to doubt it. The general perception is that the post need not remain vacant or should not lapse. Resultantly, the temporary appointee continues in service till his retirement monthly salary and perquisites meant for a full time/permanent employee. The managements also are benefitted because even if they pay this amount initially from their pocket, they are reimbursed. The Government is saddled not only with one time payment, but very often a continuing monetary liability in the form of terminal and pensionary benefits and even to families

of these employees. All this is because the requisite Government Departments lack coordination. Resultantly, only a lip service or sympathy is shown to the backward classes and sections of the society who are awaiting the fruits of reservation or the policy in relation thereto.

5 We repeatedly gave a suggestion to the respondents and particularly to the Department of Higher and Technical Education, Government of Maharashtra that it is high time that this mode of implementing the beneficial and welfare measures be altered and re-visiting it would be worthwhile. There could be several ways to ensure that deserving reserved candidates do not suffer for lack of information or lack of knowledge about any advertisement or a secret or clandestine process of recruitment. We are repeatedly informed in several cases that no reserved category candidate is available for teaching subjects like mathematics, statistics, physics, chemistry etc. as these subjects are difficult and often not opted or chosen by such candidates. Sometimes, we are also informed that language teachers are not available in reserved category. All this results

in the post meant for them not being occupied by them. Either the reservation policy is being implemented in a faulty manner and by ear-marking or reserving posts to which it is not expected of a reserved category candidate to qualify or to apply or the managements do not insert the requisite advertisement in widely circulated newspapers nor are they displaying the same on their web-sites, nor is the Department of higher and technical education ensuring that such advertisements are displayed on the web-site of the Directorate and equally on the web-site of the University concerned. Secondly, neither the Commissioners working for the welfare and benefit of the Schedule Caste, Schedule Tribe and Other Backward Class in Maharashtra i.e. departments such as the Department of social welfare, Department of Tribal Development, Minority Development etc. ensure that the managements mandatorily approach them before filling up these posts and in case there is any difficulty or problem in compliance of such mandatory precondition, it is these Commissionerates will assist the management by providing suitable and eligible candidates for the post from any pending list/waiting list of such reserved

category candidates. If instead of issuing the Government Resolution, compelling publication of advertisement in newspapers, the Government through the Department of Higher and Technical Education insists or compels the management to approach it or these Commissionerates and obtain their remarks or approvals or 'No objections' in the event the category of persons for whom the post is reserved are not available, the benefit is not going to reach the person for whom it is meant and the policy will remain on paper. Let therefore, the Government consider this modification to its policy for we are nobody to frame a policy for the Government. We hope and trust that the Principal Secretary of the Department, Higher and Technical Education, Government of Maharashtra in consultation with the Department of Law and Judiciary of the State as also the other departments and the Commissioners evolve a fresh policy so that before any recruitment process is concluded and particularly for the post of teachers, the management would be compelled to approach these Commissionerates and departments and obtain their prior approval before appointing an open category candidate. In the

event the departments concerned grant the approval or NOC, then with the appointment of an open category candidate, there will be a deemed de-reservation of the post. No further process of de-reservation should then be necessary. That may not be an ideal modification or change but when from 1994 nothing fruitful has been achieved by the current policy, then this change or modification definitely requires a consideration. We hope and trust that with this order, some light will be thrown hereafter.

6 Let this matter be placed after eight weeks only for reporting compliance.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)