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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 11066 OF 2014

Mr. Dhansing Dalsing Rajput
Age – 52 years, Occupation Nil,
R.o. 6, Nikunj Apartment, Patil Lane No.3,
College Road, Nashik.

... Petitioner.

V/s.

1. The State of Maharashtra
through the Secretary,
Higher & Technical Education Department,
Mantralaya, Mumbai – 400 032.
2. Savitribai Phule Pune University
through its Registrar,
Ganesh Khind, Pune – 411 007.
3. Krantiveer Vasantrao Narayanrao Naik
Shikshan Prasarak Sanstha, Nashik
At Canada Corner, Sharanpur Road,
Dongare Vidyarthi Vasatigriha Campus,
Nashik – 422 002,
Through its Chairman/Secretary.
4. K.V.N. Naik Shikshan Sanstha's
Arts, Commerce and Science College,
Canada Corner, Sharanpur Road,
Nashik – 422 002,
Through its Principal.

... Respondents.

Mr. N.V. Bandiwadekar i/b. Mr. Sagar Mane for the Petitioner.
Mr. M.V. Mali for Respondent 1.
Mr. Rajendra Anbhule for Respondent 2.
Mr. Sandip D. Shinde for Respondents 3 and 4.

*CORAM : S.C. Dharmadhikari and
Smt. Bharati H. Dangre, JJ.*

13th July, 2018.

Oral Judgment (Per S.C. Dharmadhikari, J.) :-

By this Writ Petition under Article 226 of the Constitution of India the Petitioner prays that the Resolution No. 288/250814 dated 25th August 2014 of the Management Council of the second Respondent be quashed and set aside and it be held that the Petitioner was entitled for an approval to his appointment as Physical Education Director in the fourth Respondent - College on full time basis with effect from 25th September 2001.

2. Further prayer is after this order is set aside, the second to fourth Respondents be directed to grant all consequential benefits and as applicable to the post together with arrears from the date of appointment, continuity of service, seniority, promotion if any, etc.

3. The Writ Petition was filed on 3rd November 2014 and after it was listed before a Division Bench of this Court on 16th December 2014, notice was issued to the Respondents.

4. On account of the fact that it is pending for a long time in this Court and we have adverted to the detailed pleadings and submissions of the Counsel, we deem it fit and proper to dispose of this Petition by this final order. Hence, Rule. The Respondents Counsel waive service. With their consent, Rule is made returnable forthwith.

5. On account of the slight dispute raised by the parties on facts we deem it fit and proper to take them from the order of the Grievance Redressal Committee set up by the University of Pune. The said recommendation of the Grievance Committee is to be found from pages 151 to 156 of the paper-book.

6. Though that is a report and in the nature of the recommendation, the facts can be culled out from the same.

7 The Petitioner approached this Grievance Committee by pointing out that he is working as a Physical Director in the Physical Education Department in the K.V. N. Naik Education Society's Arts, Commerce and Science College at Nashik.

8. It is an institution managed and administered by the K.V. N. Naik Education Society. The Petitioner was working as a Physical Director in Physical Education Department in the fourth

Respondent – College. That is a College entirely administered and managed by the third Respondent. There was an appointment order issued in favour of the Petitioner dated 23rd September 2001. The Petitioner was appointed as a Physical Director in Physical Education pursuant to his selection by the University Selection Committee constituted under Statute 415 of the Teacher's Statute. The Grievance Committee recommendations clearly say that the Petitioner was No.1 in the selection list and the post against which he was appointed and for which he was interviewed to is a full time open post. However, instead of giving a proper appointment order as a full time Physical Director, the Management appointed the Petitioner on Clock Hour Basis (CHB for short). There was no candidate fulfilling the qualification of National Eligibility Test (NET) / State Eligibility Test (SET) selected. The University questioned the third Respondent – Management as to how this appointment order is issued on Clock Hour Basis. The response of the Management is that it is a newly established college, there is paucity of funds. Though such a letter is given to the Petitioner, soon full time salary will be paid as per the applicable pay scales. The Petitioner was in need of the job hence he did not protest, but accepted the appointment.

9. The Petitioner has continued working as a Physical Director and when the Grievance Committee submitted its report on 23rd August 2012, the Petitioner had worked already for 11 years and

more. He was assigned the entire workload. A proposal was forwarded to the Second Respondent – University on 6th June 2002. The approval was not granted to the appointment of the Petitioner as he did not have the qualification of two years Master's Degree in the relevant subject. The Petitioner clarified that the Master's Degree in the Physical Education was earlier awarded pursuant to a one year training/teaching course and that degree was acquired in the year 1989. However, in the year 2003 the Petitioner also acquired the Master's Physical Education Degree of two years' duration. Pertinently, after the appointment of the Petitioner on the above post, no fresh advertisement was ever issued by the management at any time.

10. It is the management which forwarded the proposal of the Petitioner, seeking relaxation in the minimum qualification prescribed for the post of Physical Director, to the University of Pune and to the University Grants Commission (UGC). In that proposal the College – Management clearly mentioned the result for selection of the Petitioner and viz. that no NET/SET candidate appeared for the interview. The Petitioner completed his M.Phil in May 2008 and he is eligible for continuation as a Physical Director as per UGC norms.

11. Thus, the University has throughout found that though the Petitioner could have been appointed in a regular pay scale and

assigned full time duties was appointed on Clock Hour Basis. He was not given any increments, promotions, seniority and other consequential benefits like rise in the pay scale as per the recommendations of the various Pay Commissions.

12. The agony of the Petitioner did not end here at all. Though the proposal was forwarded for the approval to the Petitioner's appointment, it appears from the record that the Second Respondent – University refused the approval on 2nd August 2002. There was a Government Resolution issued on 18th October 2001 and it is common ground that the same was challenged by way of Writ Petitions before the Aurangabad Bench of this Court. The Bench at Aurangabad upheld the validity of the Resolution. A bunch of Petitions were filed even at the Principal Seat, but those were also disposed of on 18th April 2002. In view of the judgment of this Court, the Petitioner was entitled to full relief. That is because this Resolution clarified that the candidates who have been appointed between 19th September 1991 to 11th December 1999 shall not be terminated subject to their passing the NET/SET till December 2003.

13. As this Resolution cancelled the earlier Government Resolution dated 22nd December 1995 and protected teachers like the Petitioner by directing that their services should not be

terminated, it is in these circumstances, that the management forwarded the proposals of the Petitioner as also other similarly placed lecturers to the University. The Petitioner also relied upon a Notification of the UGC dated 14th June 2006. The Petitioner also relied upon a Division Bench Judgment delivered by the Nagpur Bench of this Court on 27th November 2008. Eventually, the UGC informed the Second Respondent – University that because the proposals which were forwarded to the UGC for exemption did not contain the information regarding the conditions mentioned in the UGC letter of 29th January 2009, the same be forwarded after compliance. Yet, no decision was communicated to the Petitioner by either the Second Respondent – University or the UGC. However, the fact remains that the UGC published a Notification amending its earlier Resolution. The amendment effected in the year 2009 clearly exempted those candidates who had passed M.Phil. Thus, those candidates who have already registered for M.Phil and could complete the same after 30th June 2009 stood exempted from the requirement of passing the NET/SET examination for undergraduate teaching. Since the Petitioner had passed the M.Phil in November 2008, he stood exempted by virtue of these amendments dated 14th June 2006 styled as 'second amendment' and the further amendment of 2009. In the circumstances, the Petitioner was aggrieved by the fact that he was orally informed by the management and the college that his services cannot be continued and a fresh

process will have to be initiated for selection and appointment. The Petitioner and other similarly placed lecturers submitted joint representation to the University. The University submitted to the UGC that for the post of Physical Education Director, the University Grants Commission has prescribed physical fitness test. For such a post, there is no requirement of passing a NET/SET. Hence, the UGC was requested to grant approval to those candidates who had cleared the physical fitness test and worked in the post of Physical Education Director subject to passing of NET. The Petitioner passed such a Physical Fitness Test conducted by the Degree College of Physical Education on 27th November 2009. Despite this, when the Petitioner and other candidates/lecturers did not find any response from the management but were continued to administer the oral threats of fresh appointment and purported termination, on 25th March 2010, a Writ Petition was filed in this Court by the Petitioner being Writ Petition No. 2641 of 2010. Similar Petitions were filed in this Court by the other aggrieved teachers.

14. The Government of Maharashtra filed an affidavit-in-reply. All the above statements and factual developments/events were placed on record. There was never any denial by the Management or the College. No affidavit in reply was filed. These Petitions were disposed of on 4th April 2012 and this Court held that the Petitioners are duly qualified. They can continue to function as

lecturers. Yet, if such reliefs are denied and they are not allowed to claim the benefits, this Court allowed such Petitioners to approach the Grievance Redressal Committee of the Second Respondent – University. The Petitioner, therefore, says that the order of 4th April 2012 gains finality and, in any event, none of the observations, findings and conclusions therein have been disputed by the contesting Respondents.

15. On 2nd May 2012 the Petitioner approached the Grievance Redressal Committee and with the above grievance. At this stage itself we clarify that the Grievance Redressal Committee had before it the contents of written application made by the Petitioner. It had also before it all the above factual statements and events culled out from the pleadings in the Writ Petition. That is how the Grievance Redressal Committee of the Second Respondent – University entertained the application of the Petitioner and called upon the management to file its reply. It also issued notice to all parties and made a detailed report for the purpose of enabling the Management Council of the second Respondent – University to take a decision. Thus, the Management Council 's meeting was convened, inter-alia, to consider this report of the Grievance Redressal Committee. Pertinently, the Management Council in the first instance accepted this report on 25th September 2012 and directed the Management and all concerned to comply with the

recommendation as contained in the report.

16. It is the Respondent Nos. 3 and 4 – Management and the College which were aggrieved by this decision of the second Respondent and approached this Court by filing Writ Petition No. 1194 of 2013. This Writ Petition raised a common grievance as was raised in other Writ Petitions and on 11th October 2013, the said Writ Petitions came to be disposed of by the following order :-

“1. Heard the learned Counsel for the Petitioners, learned Counsel for the first Respondent and the learned Counsel for the Second Respondent. The learned AGP represents the fourth Respondent. Rule. Learned Counsel for the first and second Respondents waive service. Learned AGP waives service for fourth Respondent. Service of notice to other Respondents is not necessary. Forthwith taken up for hearing.

2. The challenge is to the order passed by the Management Council of the first Respondent University by which the recommendation of the Grievance Committee on the complaint made by the second Respondent has been accepted.

3. It is not in dispute that the Management Council has not heard the Petitioners and the second Respondent before taking the impugned decision. It is well settled law that the recommendations made by the Grievance Committee are not binding on the Management Council. The well settled law is that the Management Council must hear the concerned parties before taking decision on the recommendations of the Grievance Committee.

4. Accordingly, impugned decision of the Management Council dated 12th September 2012 on the basis of the complaint of the second Respondent is quashed and set aside only on the ground that the parties were not heard by the Management Council.

5. The Management Council shall give an opportunity of being heard to the second Respondent and shall take a fresh decision in accordance with law. The fresh decision shall be taken within a period of four months from today. All contentions on merits are kept open.

6. We make it clear that the impugned decision is set aside only on the ground that the necessary parties were not heard by the Management Council.

7. The Petitions are disposed of on above terms.

8. All concerned to act upon an authenticated copy of this order.”

17. In pursuance of the orders and directions of this Court, the Management Council of the Second Respondent – University issued notices to parties and extensively heard them. On 25th August 2014 the Management Council upheld the recommendation of the Grievance Redressal Committee qua other teachers/lecturers but the grievance of the present Petitioner is that the action in his case before the Management Council follows a report of a sub-committee appointed by it. The sub-committee of one Nandkumar Nikam gave a report which was adverse to the Petitioner. The Petitioner was

not forwarded a copy of this report as also the recommendation of the Management Council till 20th October 2014, on which date he made an application to the Vice Chancellor of the second Respondent – University. On that day, he was supplied with the copy of the Management Resolution dated 25th August 2014, but was never given a copy of the Nandkumar Nikam Committee Report.

18. Thus the grievance of the Petitioner in this Petition which was filed on 3rd November 2014 is that he is singled out for a discriminatory treatment. Secondly, though duly qualified, he has been denied the benefit including salary and promotions admissible to full time teachers and such gross acts of the management and the college are not only condoned by the University, but it has acted at the behest of these persons to deny the Petitioner all benefits.

19. An affidavit-in-reply has been filed to this Petition by the second Respondent. In that affidavit it is stated that the Petitioner before us has been throughout not possessing the required qualification. It is stated that he was appointed as a Director of Physical Education in the fourth Respondent – College on an open post on Clock Hour Basis as per the recommendation of the Selection Committee. At this stage itself if one goes to the impugned Management Council decision, it is evident that there is a

contradiction. The deponent of this affidavit, the Deputy Registrar of the University of Pune has, in terms, stated that the Petitioner was appointed on a open post on Clock Hour Basis. (See paragraphs 5 of this affidavit of the second Respondent running page 192-193). This affidavit is affirmed on 3rd July 2015.

20. Then what transpires is very curious.. There is an affidavit-in-reply filed on behalf of the second Respondent, but affirmed by one Girish Pundalik Bet. He says that he is an Assistant Registrar in the services of Pune University. He says that the Petitioner has suppressed the fact that after his appointment was made on purely Clock Hour Basis on 23rd September 2001, no qualified candidate appeared for the interview. His services were discontinued by Respondent No.3 – Management in 2002 and subsequently, one Mr. Rajendra Shirsat was appointed on the same post on 20th October 2002 and his appointment was also approved by the University. In 2004, Mr. Rajendra Shirsat resigned from his service and the Petitioner was again appointed by Respondent No.3 – Management on Clock Hour Basis. This appointment was without any advertisement nor was made through any Selection Committee.

21. These statements at pages 220-221 of the paper-book are to be found in the affidavit of the Assistant Registrar affirmed on 7th July 2016.

22. Pertinently, the Management Committee Resolution which is challenged before us does not say anything of this nature. It says that the Petitioner was not qualified to be appointed on 23rd September 2001. That qualification was acquired by him after the Selection Committee's decision. This qualification was acquired on 14th June 2003. The second reason assigned is that there were two sanctioned posts of the Director of Physical Education in the third Respondent – Management, fourth Respondent – College. It says that one post was open whereas the other post was reserved. The Petitioner was appointed against the reserved post. The open post had already been filled in. The Petitioner, not being a reserved category candidate, it had to be verified whether he could have been appointed against the reserved post. Besides these two reasons in the impugned Management Committee's order/decision, these affidavits purport to assign additional reasons. However, in assigning additional reasons as well, there is a contradiction. The first affidavit of the University filed by Mr. Sunil Surendra Atre, Deputy Registrar, in paragraph 5, contradicts the Management Committee by saying that the Petitioner was appointed on an open post on Clock Hour Basis as per the recommendations of the Selection Committee. Then it goes to further say that the Petitioner did not possess the required qualifications for the post of Director, Physical Education. That is why the Selection Committee in its report has specifically

recommended that his appointment be made on purely Clock Hour Basis taking into consideration the needs of the college. Therefore, the University refused approval to his appointment on 2nd October 2002. The approval was also refused because the Petitioner did not possess two years' Master Degree in the relevant subject. Then it very clearly says that this degree was acquired, but later on namely, on 14th June 2003. Thus, on the date of appointment the Petitioner did not possess the essential qualifications. However, Sunil Atre does not controvert any of the statements in the Petition nor the factual averments including leading to the order of this Court and the impugned final decision of the Management Council.

23. On the other hand, Mr. Bet files the later affidavit and purports to say that there was another candidate appointed in place of the Petitioner after he was terminated. However, he does not assign any reason as to why the appointment was not approved. He only says that because it was made on purely Clock Hour Basis, the services were discontinued. However, there is no record of any other candidate being appointed as is suggested in this affidavit.

24. What the Petitioner has done therefore is to deal with both these affidavits. There are two rejoinder affidavits filed by the Petitioner. Before pointing out the contents thereof we must also refer to an affidavit filed by the State Government and the State has

by this affidavit though purported to be in reply clearly stated that the issue is entirely for the University to decide. In paragraph 15 of this affidavit of the Government at page 225 it is stated that the grievance of the Petitioner is exclusively within the jurisdiction of the University. Till the Petitioner filed his two rejoinder affidavits, we had no response of the management. The College management files an affidavit-in-reply as late as on 21st December 2017. In this affidavit-in-reply it is aware that the Management Council has passed the impugned order/decision assigning two reasons. It curiously however in paragraphs 8 and 9 of this affidavit maintains that the Petitioner does not possess the requisite qualification and is in fact, ineligible for the post. It accuses the Petitioner of suppression of a material fact, namely, the appointment of one Shirsat on 19th May 2003 in place of the Petitioner and that he was functioning in the post till 2006. The Petitioner is not in service since 2002 and, therefore, no relief should be granted.

25. We have emphasized this aspect because though this management had an opportunity through its Advocate to inspect the record of this Petition, take note of the contents of the two affidavits in rejoinder filed by the Petitioner specifically denying the contentions and the stand of the University, still, the Management preferred to toe the line of the University and rather the University and the College Management acted in tandem; they were always

together in denying relief to the Petitioner. The Petitioner's first affidavit-in-rejoinder deals with the affidavit of Mr. Atre. In that, the Petitioner very clearly says that as far as the post is concerned, the qualification was he should pass atleast with 55% marks or equivalent grade Master's Degree Examination in the concerned subject. This advertisement did not state that the Master's Degree ought to be of two years duration. The Petitioner says that he applied for the post in response to an advertisement published by the College/Management (Respondent Nos. 3 and 4). He forwarded together with this application a copy of the mark list as also the degree certificate issued by Marathwada University declaring him as Passed M.P.Ed. Examination held in March 1989 in first division.

26. The Petitioner says when he joined the said position the Master' Degree was a course of one year duration. The duly constituted Selection Committee was aware of this educational qualification of the Petitioner and found him eligible and qualified and recommended him for appointment. The Petitioner was successful in the selection held by this duly constituted University Selection Committee. That is a statement made by the Petitioner relying upon Exhibits to the Writ Petition. The Selection Committee was not pleased to hold that the Petitioner is disqualified because the M.P.Ed. course that he passed was a one year duration. Hence, the Management Council was not justified in holding that

because of the two years' duration he was not qualified and eligible for appointment which was made in the year 2002. It is only after the appointment of the Petitioner that the duration of the M.P.Ed. Course was made two years. Hence, the Petitioner cannot be said to be disqualified. Apart from that, in paragraph 4, the Petitioner has made a very interesting statement. Paragraph 4 reads as under :-

“4. I say that it is only after my appointment made in the year 2002, that the M.P.Ed. Course of 2 years duration was started. Therefore, only on that ground, it cannot be held that at the time of my initial appointment, I was not qualified for the said post. The change in duration of the course cannot be made applicable retrospectively. It is also necessary to take into consideration on the basis of the very same M.P.Ed. Qualification of 1 year, I came to be appointed as Lecturer in Physical Education at Ransamrat Krida Mandal, Kallam, Dist. Osmanabad in the year 1990, and that appointment was duly approved by Dr. Babasaheb Ambedkar Marathwada University, Aurangabad vide order dated 31.7.1990 (page 187). Thereafter, by order dated 1.8.1994, I came to be appointed as Lecturer in Physical Education at K.B.H.S.S. Trust's College of Physical Education, Malegaon Camp (Nashik) (page 188) and this appointment was approved by the Respondent No.2 University vide order dated 27.6.2000 (page 189) and by order dated 28.12.2001 (page 190). Therefore, at this belated stage, it does not lie in the mouth of the Respondent No.2 to contend that since my M.P. Ed. Course was of 1 year duration, that I was not qualified to be appointed in the said post under the Respondent No.3 Management.”

27. Then the Petitioner says in paragraph 5 of this rejoinder that he was appointed on Clock Hour Basis, not because he was not possessing any educational qualification, but because he did not comply with the requirement of passing NET/SET. It is on that basis that the selection of the Petitioner is on Clock Hour Basis. Then the Petitioner says that he passed M.P.Ed. Course in June 2003 and he also passed his M.Phil. in July 2008 and Ph.D. in 2014. He refers to a Circular No. 139 of 1995 issued by the second Respondent – University laying down the qualifications for appointment to the post of Physical Education Director. The requirement is to possess a Master's Degree in physical education (minimum 55% marks). The said circular also does not lay down that the Master's Degree should be of two years duration. Exhibit B to the rejoinder is a copy of the circular and then there is a further letter of 24th August 2000. In paragraph 5, relying upon this letter, further interesting facts have been revealed. Paragraph 5 reads thus :-

“5. It is further necessary to consider that by letter dated 24.8.2000, a copy of which is hereto annexed and marked as Exhibit-C, the Respondent No.2 University has nominated me as an Expert on the Selection Committee as a V.C. Nominee to select a Principal of the College run by Pravara Rural Education Society, Pravara Nagar, Dist. Ahmednagar. Similarly, by letter dated 23.10.2000, a copy of which is hereto annexed

and marked as Exhibit-D, I came to be appointed as V.C. Nominee on the Selection Committee of Sahakarmaharshi Bhausaheb Santuji Thorat College of Arts, Science and Commerce, Sangamner. I say that if I was not qualified as claimed by the Respondent No.2 University, then it is surprising on what basis the very same University appointed me as a V.C. Nominee on the Selection Committee.”

28. It is in these circumstances, that in the first round the Management Council accepted the recommendations of the Grievance Committee. It endorsed all these recommendations and also the factual assertions of the Petitioner. It found no contravening documents produced by Respondent Nos. 3 and 4. Hence, the Management Council did not find the Petitioner unfit or unqualified.

29. Then the Petitioner says that one Nandkumar Nikam was appointed by the Management Council of the University in the second round and after the matter was sent back to it pursuant to the order of this Court. It is in this paragraph 7 that the Petitioner raises the issue of a further delegation by the Management Council though not authorized to do so. This affidavit further says that before the Management Council, on both occasions the Management of the College / Educational Institution never argued that the Petitioner is ineligible or was not qualified. Further it did not dispute the reasons assigned by the Selection Committee for making of appointment on

Clock Hour Basis. The College Management never disputed the position that those who have not cleared the NET/SET also are eligible and qualified provided they fall within the purview of UGC Circular and Guidelines.

30. This explanation is given to question the first reason in the impugned decision of the Management Council. In so far as second reason is concerned that also according to the Petitioner, is unsustainable. He says that there are two posts available with the Respondent Nos. 3 and 4. He belongs to open category and came to be appointed in the year 2001. Subsequently, one Mr. A.V. Kedar belonging to S.C. Category came to be appointed in the second post. Thus two candidates were appointed. One belonging to Open Category and other belonging to S.C. Category. Hence, it cannot be said that at the time of the Petitioner's appointment, the post was reserved for S.C. Category and, therefore, his appointment is illegal. The Petitioner invites the attention of the Court to the Roster. At Item No.7 dated 15th April 2010 it is stated that the post vacant was for Open Category and in that post Mr. A.V. Kedar from S.C. Category was appointed. This is also factually incorrect according to the Petitioner because the appointment of Mr. Kedar was made in the year 2006-07. On the other hand, at Item No.8 dated 23rd May 2011, the Roster says that there was one vacant post for S.C. Category and in that post, the Petitioner is appointed. This is also factually incorrect because the Petitioner's appointment is in 2001.

31. Thus, the Petitioner is pointing out that if he is appointed on 23rd September 2001, then, there was only one sanctioned post and that was in-capable of being reserved. The reservation was possible only when more than one post was sanctioned and that is later than the Petitioner's appointment and on page 178, the Petitioner points out that in the year 2002, there were two posts sanctioned out of which one was reserved for Scheduled Tribe and one for Open. That is how throughout in 2003, 2004, 2005, 2006, these posts which were reserved for a Scheduled Caste were not filled in and only Mr. Shirsat, who is stated to be an Open Category candidate, who was in service holding the open post. The other remained vacant. It is only when Mr. Kedar was appointed that the reserved post of Scheduled Caste was filled in, the post of Open Category was not filled in and remained unfilled. The Petitioner has explained in this affidavit-in-rejoinder that this information culled out by the Management Council from the operation of the Roster does not in any manner assist the Respondents 3 and 4. It is only a convenient portion of the information provided to the Management Council which is being relied upon. The Respondent Nos.3 and 4 kept back from the Court the other information in relation to the Petitioner's selection and appointment. It says at page 178 itself that the Petitioner was interviewed on 23rd September 2001 by the University Selection

Committee for appointment to an open post. It is in these circumstances that the Petitioner says that his appointment was recommended on Clock Hour Basis, though the post was a full time post. It is stated that because the Petitioner was not fulfilling the educational qualifications that he should be given an appointment on Clock Hour Basis. This is the information provided by the Respondent Nos. 3 and 4 through the Management Council and the Management Council says that on 23rd September 2001, the Petitioner did not acquire the necessary educational qualifications, but he acquired them on 14th June 2003. Thereafter, it proceeds to hold that the Petitioner is an Open Category candidate, but appointed against a reserved post and, therefore, his appointment cannot be approved.

32. The Petitioner says that this is a flip-flop on the part of the University and it could not have taken assistance of the Roster in order to come to this conclusion.

33. This affidavit-in-rejoinder then clarifies in the subsequent paragraphs that the Petitioner was qualified and could have never being displaced. The fact that Mr. Kedar had been appointed in the year 2006-07 and prior thereto the Management claimed that it appointed one Mr. Shirsat, but there is no record provided by the appointment of Mr. Shirsat as is evident from the

affidavit of Mr. Atre, the Deputy Registrar, then, all the more, according to the Petitioner, this Petition deserves to succeed.

34. Pertinently, in the affidavit-in-reply which has been filed by Respondent Nos.3 and 4, there is no reference to any of these statements made in the two affidavits of the University nor we find any corroborative material therefrom. There is total silence maintained by Respondent Nos.3 and 4 on the reasons which are now placed before this Court in the affidavit-in-reply by the University for disapproving the Petitioner's appointment. Thus, other than two reasons assigned by the University, the Petitioner's appointment is challenged on the ground that he was appointed on a Clock Hour Basis and he has also suppressed the fact that he was dismissed in the year 2002 and on 19th May 2003, Mr. Shirsat been appointed after selection and he was functioning till 2006. It is claimed that the Petitioner is not in service since 2002.

35. It is on the above materials that we have heard Mr. Bandiwadekar appearing for the Petitioner. Mr. Bandiwadekar argued that both reasons assigned by the Management Council are erroneous and unsustainable. If this was the position, then the Management Council could not have made a favourable order in its first round. The Management Council has, on 25th September 2012, communicated to the Petitioner that the recommendations of the Grievance Redressal Committee in connection with the Petitioner's

Complaint No. 63 of 2012 are accepted and the Respondent Nos.3 and 4 should implement the same (See page 157).

36. Mr. Bandiwadekar submits that the subsequent order of this Court does not set aside the conclusions in the Management Council's order on merits. That order of the Management Council has been set aside only because the Management – Respondent Nos. 3 and 4 to this Petition made a grievance that it was not heard by the Management Council. That is how in paragraphs 4 and 6 of the order of the Division Bench the Management Council was directed to hear the Petitioner and make an order again. Beyond that, Mr. Bandiwadekar submits that nothing can be read in the order of this Court nor the record. The other document to which our attention has been invited by Mr. Bandiwadekar is at page 163 of the paper-book. It says that on 10th October 2014 because the Petitioner's appointment was not approved that the Petitioner stands relieved from services with effect from 11th October 2014. Mr. Bandiwadekar submits that this pre-supposes that the Petitioner was in service. If he was not in service, then, there was no question of forwarding such a letter and in relation to a terminated or dismissed employee though the Respondent Nos.3 and 4 claimed to have dismissed him in the year 2002 itself. Mr. Bandiwadekar submits that the Management's stand exposes it fully for not only it rests its case on its dismissal of the Petitioner, but goes ahead and says that some

other candidate is appointed in place of the Petitioner. That, according to Mr. Bandiwadekar, is not borne-out by the record. In fact the same record, as was presented to the Management Council while making the impugned order, was presented when it made the initial favourable recommendation. In that regard our attention is invited to page 178 of the paper-book by Mr. Bandiwadekar.

37. He has also submitted that if this was the position, then, it is evident that the Petitioner has been treated in a discriminatory manner and his case was distinguished from that of all other teachers only at the instance of the Management namely Respondent Nos. 3 and 4. Such an act of the University at the behest of the Management is therefore, condemnable according to Mr. Bandiwadekar. He also invites our attention to the contradiction in the statements of the deponents namely the Deputy Registrar and the Assistant Registrar of the University. For all these reasons he would submit that the Writ Petition be allowed.

38. This Writ Petition is essentially contested by the University. The University's Advocate was supported by the Management namely Respondent Nos. 3 and 4. Both Mr. Anbhule and Mr. Shinde arguing for the respective clients would submit that the report of the Grievance Redressal Committee was rightly rejected by the Management Council. There is a justification for the same and both reasons assigned by the Management Council are germane

and cannot be said to be vitiated as contended before us. It is in these circumstances they submitted that the Petition be dismissed.

39. After giving our anxious consideration to the rival contentions we find that the Petitioner was duly appointed and at the time of his appointment if the position as appearing from the Roster is taken into consideration, then, there was only one post in the Department of Physical Education. If there was one post and the Roster or the Reservation Policy operated later on, then, it is evident from the record that the Petitioner came to be appointed on Clock Hour Basis, not because he came to be appointed against reserved post, but because he allegedly did not possess the requisite qualification. However, when the Petitioner approached the Grievance Redressal Cell of the University by making a written complaint, copy of which is at page 93 of the paper-book, the averments in each of the paragraphs and sub-paragraphs of this complaint have not been disputed. All that the Respondent Nos. 3 and 4 before us, the Management and the College, urged and by admitting that the Petitioner was initially appointed as a Director for Physical Education since 2001. It admits that the interview was conducted on 23rd September 2001 by the duly constituted University Selection Committee. The advertisement clearly says that the required qualification as shown in the advertisement is 55% marks and equivalent grade of Master's Degree in concerned subject

and the candidate should have passed NET/SET. This showed that the condition of NET/SET is compulsory.

40. Then it refers to the rejection of approval to the Petitioner's appointment by the University on 2nd October 2002. We fail to understand as to how the Respondent Nos. 3 and 4 sought approval to the Petitioner's appointment from the University when it is now claimed that he was not appointed on 23rd September 2001 at all. If this was the position, then, today no argument to the contrary can be accepted. Then it is stated that the Petitioner's services were discontinued and subsequently Mr. Shirsat was appointed on 20th October 2002 and his appointment was approved by the Pune University by letter dated 29th May 2003. Though the affidavit-in-reply filed by the Management on 21st December 2017 claims that Mr. Shirsat continued till 2006, in reply to the Petitioner's complaint before the Pune University Grievance Committee, the Management of the College stated that Mr. Shirsat resigned from the service in the year 2004. It then says that the Petitioner was again appointed without an advertisement, but his appointment is throughout on Clock Hour Basis or purely temporary and, therefore, he has no right to challenge the alleged dismissal. Then the College Management says that the Petitioner is working without any approval from the University since 2004 onwards and he was continued by the Management only on Clock Hour Basis. The said position is

substantiated by the record and the Petitioner was receiving a fixed salary of Rs.3000/- since the beginning and the same was accepted by the Petitioner and, therefore, there is no question of giving him the salary as per the 5th and 6th Pay Commission. Then, the Writ Petition No. 2641 of 2010 is mentioned and it is also stated that there was an order passed on 4th April 2012 in that Petition. Pertinently, the exemption from passing of NET/SET by virtue of UGC Regulations, College – Management is not referred before the Grievance Committee Cell by the College Management to urge that the Petitioner's service is not as a permanent lecturer. He is working as a temporary lecturer on Clock Hour Basis without any approval from the University and obtaining the fixed salary.

41. Mr. Anbhule and Mr. Shinde argued before us that the Petitioner is not appointed as an Open Category candidate and there was no vacancy in the open post. If the post was reserved and against such a post the open candidate like the Petitioner cannot be appointed, then, we do not see how in the written statement of the college and the Management there is no reference to the Roster, there is no reference to this alleged patent illegality but throughout it is mentioned that the Petitioner was working on a Clock Hour Basis. It is in these circumstances that we are unable to accept the arguments of both the University as also Respondent Nos.3 and 4. There is substance in the argument of Mr. Bandiwadekar. The

Respondent Nos. 3 and 4 are deposing contrary to their own record before this Court so as to deny the legitimate and true claim to the Petitioner. If the Petitioner was forced to accept a paltry sum, though there was a workload of a full time post, his appointment was made on Clock Hour Basis would not militate against the stand of the Petitioner, but would reflect poorly on the working of the University and that of the Respondent Nos.3 and 4. The University has gone to the extent of supporting the Respondent Nos.3 and 4, though it on two prior occasions, faulted its approach. It is evident that the Pune University has, in the earlier round accepted the recommendations of the Management Council on identical record. We do not see how in the second or fresh round could the University have contradicted the same record. It is in these circumstances that we find that the report of the Grievance Redressal Committee which is dated 23rd August 2012, was placed before the Management Council and the Management Council at its meeting held on 12th September 2012, rightly accepted the same. It communicated to the Respondent Nos. 3 and 4 that these recommendations having been approved now, the order of the Management Council should be implemented within two months from the date of its communication to the College Management. It is at that stage that the College Management decided to challenge the Management Council's decision and filed the Writ Petition in this Court. In all it filed six Writ Petitions, all of which were disposed of by a common order on

11th October 2013. There is nothing in the record of the College or that of the University which would enable us to uphold this later order/decision of the Management Council. More so, where the contradictions / omissions are clear from the affidavit filed in reply to the Petition. Pertinently, there is no denial of the fact that this Petitioner came to be nominated as an expert on a Selection Committee as a Vice Chancellor's Nominee to select a Principal of the Pravara Rural Education Society, Pravara Nagar, District Ahmednagar. He was also appointed as a Vice Chancellor's Nominee on the Selection Committee of Sahakarmaharshi Bhausahab Santuji Thorat College of Arts, Science and Commerce, Sangamner. If he was not qualified and did not possess even the Master's Degree, then, it is unbelievable that such a person would have been chosen as a Vice Chancellor's Nominee.

42. It is in the above glaring facts and circumstances that we cannot uphold the decision of the Management Council impugned in the Writ Petition and proceed to quash and set aside the same. We are of the firm opinion that a eligible and qualified teacher has been ill-treated by the Educational Institution and its management. That was a deliberate and intentional act. If the Petitioner's appointment is against a sanctioned vacant post, he was appointed post his selection by a university approved Selection Committee after the post was duly advertised, then, the appointment is made in

accordance with law. There was no impediment in approving the same. It should have been approved atleast after the Petitioner improved his qualifications. He was deliberately not assigned a permanent status but the Petitioner's name was still shown in the category of a temporary employee. When there was enough workload and he was assigned full-time duties, there was no justification then to show his appointment on Clock Hour Basis. This was done intentionally to justify his abrupt termination. The College and its management were aware that the termination of a employee holding full time post cannot be brought about except by a process known to and permitted by law. Yet, that was done so that the Petitioner cannot claim the protection of law. However, that is not the law and a label or nomenclature devised by the management and thereafter applied to the appointment is not conclusive much less decisive. If in the garb of such label a permanent employee is firstly exploited and then harassed only because he claims statutory protection and benefits such as full seniority, continuity in service, seniority and promotion etc. then, such unjust, illegal, act of the College Management could not have been endorsed by a statutory Authority like the University. Precisely, this has happened in the instant case. Instead of assisting the Petitioner the University in collusion with the College perpetuated the patently illegal and unsustainable acts. The Petitioner is a victim and not party to or beneficiary of the illegality. He accepted lesser salary and was forced

to surrender his benefits. He forgoes them not by choice but because of coercion.

43. Before granting consequential relief, we must dispose of the contention of Mr. Shinde relying upon a judgment of the Hon'ble Supreme Court in the case of *Pragati Mahila Samaj and Anr. V/s. Arun Laxman Zurmure and Ors.* reported in (2016) 9 SCC 255.

44. Pertinently in this decision the Management challenged the order of the Bombay High Court Bench at Nagpur by alleging that the second Appellant before it is a Girls College and run by Appellant No.1 – Registered Trust/Society. It published an advertisement inviting application for the post of lecturers. The first Respondent was selected and given appointment for the post of lecturer in Geography as part-time lecturer vide appointment order dated 20th July 1996. It was a temporary appointment for a fixed period viz. 1st August 1996 to 30th April 1997 and it came to an end by efflux of time. Then it inserted another advertisement for the Academic Year 1997-98 and appointment order was issued to the first Respondent as a part time lecturer on 21st July 1997. This was again a temporary appointment upto 30th April 1998. On 21st March 1998, the University appointed Respondent No.1 as a part time lecturer. He claimed to be appointed as a full time lecturer and

he also made a complaint to the Grievance Committee. By order dated 31st March 1998 he was terminated with effect from 30th April 1998. That order of termination was challenged, but the Appeal of the First Respondent was dismissed by the School Tribunal holding that it was not a regular, but purely ad-hoc and temporary appointment for a fixed term.

45. He filed a Writ Petition and which was partly allowed on 16th December 2008 by the High Court. The order of termination by the Management as also dismissal of his Appeal by the Tribunal, were set aside. An order of reinstatement, but without back-wages followed.

46. This order of the learned Single Judge of this Court was challenged in Letters Patent Appeal. The Letters Patent Appeal was disposed of by an order of remand and for deciding the Writ Petition afresh on merits. However, the Writ Petition was first dismissed in default, restored but again dismissed in default. A third application for restoration resulted in the impugned order allowing that Writ Petition. This Court held that the advertisement nowhere stated that the appointment is temporary. Since it was made on the basis of selection and interview, this Court termed that appointment as permanent. Hence, the order of reinstatement was passed, but without any back wages. This order was challenged in the Hon'ble

Supreme Court. The contentions of both sides were noted. The Court found that the provisions of the Act namely Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 would go to show that a employee, who was appointed for a fixed term, his services were brought to an end by the act of management in passing a termination order. That termination order in a similar case was initially set aside but that order of setting aside the termination was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court while allowing the Writ Petition of *Hindustan Education Society v/s. Sk. Kaleem Sk. Gulam Nabi* reported in *(1997) 5 SCC 152* in identical terms held that if the initial appointment is on temporary basis, then, it cannot be given the status of a permanent or fixed appointment. That was because for making permanent or fixed appointment, provisions of Section 5 have to be followed. If the appointment was temporary and for a fixed period which could be brought to an end by efflux of time, then, it is not an appointment in terms of Section 5(1) and (2) of the MEPS Act. Thus, finding parity with the case of Hindustan Education Society, the Writ Petition of *Pragati Mahila Samaj* was also allowed. That was completely on the basis of a typical factual position. We do not see how Mr. Shinde derives any support from this judgment of the Hon'ble Supreme Court and applies it to distinct facts. Here, none has been faulted for the appointment of the Petitioner. None has said that it was not by a duly constituted

committee. It was held that it was made on Clock Hour Basis, not because there was no workload or the post was not full time, but because the Petitioner lacked the qualifications and acquired them later. This is not a case where the procedure prescribed by law was not followed and therefore, on purely stop-gap or temporary basis, the appointment was made. The nomenclature given by the management to the appointment is not determinative, and the appointment cannot be then held to be temporary/stop-gap or ad-hoc measure. That is not found in the instant case. The reasons assigned for not approving the Petitioner's appointment by the Management Council and before us are entirely different and have no nexus with *Pragati Mahila Samaj's* case. While we allow the Writ Petition and make the Rule absolute in terms of prayer clauses (b), (c) and (d), we direct that as a consequence, the Petitioner shall be treated as a full time or permanent employee with effect from 14th June 2003. Based on that, all benefits including continuity in service, pension, seniority, etc. shall be admissible to the Petitioner.

47. In the process of continued litigation, the Petitioner has been deprived of his legitimate dues. It is not the fault of the Petitioner that he was kept away from his legitimate emoluments and benefits as per law. We strongly deprecate and condemn the stand of Respondent No.2 – University in not only acting at the behest of Respondent Nos. 3 and 4 in this case, but denying to the Petitioner his lawful dues. As a consequence, we impose costs of Rs.1.00 lakh to

be paid by the Respondent No.2 – University which can be recovered from Respondent Nos.3 and 4. Our order and directions shall be implemented within a period of four weeks from today.

(Smt. Bharati H. Dangre, J.)

(S.C.Dharmadhikari, J.)