

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10547 OF 2019

BANKAT SWAMI SHIKSHAN SANSTHA
KHADKI GHAT THROUGH ITSPRESIDENT
AND ANOTHER

...PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS

...RESPONDENTS

Mr. N.L. Jadhav, Advocate for Petitioners
Mrs. Geeta L. Deshpande, AGP for Respondents-State
Mr. V.D. Sapkal, Advocate for Respondent No. 4

AND

WRIT PETITION NO.10563 OF 2019

MACHINDRA NARAYAN GHARAT
AND ANOTHER

...PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS

...RESPONDENTS

Mr. S.S. Thombre, Advocate for Petitioners
Mr. S.G. Karlekar, AGP for Respondents-State
Mr. V.D. Sapkal, Advocate for Respondent No. 3

**CORAM : S.V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 26th AUGUST, 2019

ORAL ORDER:

1. The advertisement issued for filling in the post on clock hour basis is assailed.

2. Mr. S.S. Thombre, the learned Counsel for the petitioner in Writ Petition No. 10563/2019 submits that there are only 8 valid members of the Trust as has been held by the Deputy Charity Commissioner in his order. No further elections have been held as was observed by this Court in LPA No. 188/2009 under order dated 2nd August, 2014. Whereas, according to Mr. Jadhav, the learned Counsel for the petitioner in Writ Petition No. 10547/2019 after the order was passed by this Court in LPA No. 188/2019 dated 2nd August, 2014, the further proceedings were undertaken. The new members have been enrolled. The elections have been held and the change report proceedings are pending with the office of the Assistant Charity Commissioner, Beed.

3. According to the learned Counsel, once the change report proceedings are filed and pending, the trustees pursuant to the change assumed the office and are entitled to officiate.

4. It is also further submitted that the respondent No. 3, namely, Raosaheb Haribhau Bhosale claiming himself to be the Secretary is in fact now not valid member of the Trust as he retired from the service. According to the learned Counsel Mr. Thombre, the

University ought to have taken the process for appointing the persons and or the Assistant Charity Commissioner ought to have appointed fit persons to conduct the further process. Mr. S.S. Thombre, the learned Counsel submits that this respondent No. 3 has also given a pursis saying that no policy decision would be taken back.

5. Mr. Sapkal, the learned Counsel submits that undisputedly, Raosaheb Haribhau Bhosale was the Secretary of the Trust. The proceedings under section 41-D were initiated. They were suspended. This Court in LPA No. 188/2009 under order dated 2nd August, 2014 observed that the interim orders passed in the said LPA shall continue till proceedings under section 41-D are decided. Subsequently, the proceedings under section 41-D filed by the petitioners are dismissed and the said respondent continues to be the Trustee and Secretary. The advertisement has been issued to fill in the post on 'clock hour basis'. They are sanctioned posts. The learned Counsel submits that no further new member has been enrolled nor election has taken place.

6. The Institution i.e. Bankat Swami Shikshan Sanstha appears to be an educational institution. The trustees, it appears are more interested in exercising power rather than paying attention to the quality of the Education to be imparted. If the posts are vacant, it

is for the Joint Director of Higher Education and the University to grant permission to fill in the posts. If the posts remain vacant, it is the students who are going to suffer. As many as 16 posts are sought to be filled in on 'clock hour basis'. They appear to be the posts on grant in aid, meaning they are sanctioned posts.

7. The selection process has to be conducted by the duly constituted Selection Committee including the representative of the concerned University. The Joint Director of Higher Education and the University will have to confirm themselves about the adherence to the due procedure.

8. In the present matters, we would certainly not be deciding upon the right and the status of individuals. The Assistant Charity Commissioner and or the office of the Joint Charity Commissioner are competent to take decision on the said aspect as and when the parties approach them. The parties are at liberty to proceed before the Assistant Charity Commissioner and or the Joint Charity Commissioner as the case may be for effective orders therein.

9. It is submitted that the petitioners have also filed the Writ Petition against the order dismissing 41-D proceedings. It is for the parties who have approached this Court by filing Writ Petition challenging the order under section 41-D to take steps in the matter.

In fact, all these grounds could have been agitated in the said matter.

10. As per the amended section 22 of the Maharashtra Public Trust Act, if the change is submitted within 15 days, the Assistant Charity Commissioner is required to take decision upon it i.e. either provisionally accepting or rejecting the change. There is no impediment for the parties to move under proviso to sub section 2 of section 22 of the Maharashtra Public Trusts Act. So also, the said proviso mandates the Assistant Charity Commissioner to take decision accordingly.

11. It is only with a view that the cause of the student should not suffer and that the posts cannot be kept vacant in perpetuity and moreover, the posts that are sought to be filled in are only on 'clock hour basis' and not regular appointments, we refrain from stalling the said process.

12. It is made clear that this order shall not be construed as giving recognition to the status of any person as the Secretary and or the President. In the pending proceedings, parties may agitate about their rights.

13. It is also made clear that the University and or the Joint Director of Higher Education shall on its own merits, consider about

the recruitment process.

14. With these observations, the Writ Petitions are disposed of. No costs.

[ANIL S.KILOR]
JUDGE

[S.V.GANGAPURWALA]
JUDGE

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