

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8717 OF 2013

Suryaprakash Tarachand Banswal

.. **Petitioner**

Versus

The State of Maharashtra and others .. **Respondents**

Miss P. S. Talekar, Advocate for Petitioner.

Mr. S. G. Karlekar, A.G.P. for Respondents No. 1 and 2.

Mr. S. P. Shah, Advocate for Respondents No. 3 and 4.

Mr. V. Y. Patil, Advocate for Respondent No. 10.

Mr. A. V. Indrale Patil, Advocate for Respondent No. 12.

CORAM: S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.

<u>Reserved for orders on:</u>	<u>14.02.2019</u>
<u>Order pronounced on:</u>	<u>01.03.2019</u>

ORDER (Per S. V. Gangapurwala, J.):

1. Pursuant to the advertisement published by respondent no. 4 inviting applications for the three posts of Assistant Lecturer petitioner applied from the category of Scheduled Caste. The petitioner was not selected *inter alia* was not issued with the appointment order. Aggrieved

thereby the present writ petition is filed.

2. The petitioner initially has filed the writ petition claiming following reliefs -

“(A) To quash and set aside the appointments of the respondent no. 05, 06 and 07 by issuing a writ of mandamus / certiorari, orders, directions or any other appropriate writ, as the case may be;

(C) To direct the respondent no. 4 to prepare a final merit / select list after considering the performance of the candidate / s who appeared for interview on 12.10.2012 after applying the category wise reservation having regard to the roster issuing a writ of mandamus/certiorari, orders, directions or any other appropriate writ, as the case may be;

(E) To direct the respondent no. 4 to appoint the petitioner on the post of Assistant Lecturer from S.C. category by applying reservation meant for SC category candidates pursuant to advertisement dated 22.08.2012 by issuing a writ of mandamus / certiorari, orders, directions or any other appropriate writ, as the case may be;”

Thereafter the petitioner amended the memo of the writ petition and prayer clauses and added following prayers -

"F-1. To quash and set aside the appointment order dated 15.07.2015 (Exh. "12") by issuing writ of certiorarior any other writ, order or direction as case may be;

G. To direct the respondents to initiate enquiry against the respondent Nos. 3 and 4 and concerned authorities for the illegalities committed in making appointments in contravention to the reservation policy and non-maintenance of roster for nearly 55 years, pending hearing and final disposal of this petition;

H. To direct the respondents to institute offences against the respondent Nos. 3 and 4 and concerned authorities for the illegalities committed in making appointments in contravention to the reservation policy and non-maintenance of roster for nearly 55 years, by issuing writ of mandamus or any other writ, order or direction as case may be."

3. Miss Talekar, learned Advocate for the petitioner submits that the selection process was conducted by respondents no. 3 and 4 in a clandestine manner. After the interviews were held the result was not declared. The petitioner made

representation to respondent no. 4 contending that no select list was published by respondent no. 4. The information was sought by the petitioner, twice reminders were issued. The petitioner found one Mr. N. G. Humbe felicitating Mr. Ashok Nathu Tambatkar in the valedictory function organized on 31.10.2012. Mr. Humbe was one of the candidate who had appeared for the interview along with the petitioner. The petitioner again submitted representation and the reminders demanding the final select list of successful candidates, however, respondents no. 3 and 4 did not respond. Respondent no. 2, under letter dated 11.12.2012, directed respondent no. 4 to look into the grievance of the petitioner for supplying the necessary information. The petitioner also approached under the Right to Information Act, 2005. The Assistant Commissioner (Backward Class Cell), Aurangabad took stock of the grievance raised by the petitioner and directed respondent no. 2 to take necessary action and submit the

report. In pursuance to the application under the Right to Information Act, 2005 the Public Information Officer H.P.O. under its communication dated 27.02.2013 supplied a list of 76 postal letters delivered on 04.10.2012 along with booking reports and the list in respect of recipients of the postal letters dispatched on the said date. It is evident that except the petitioner no other candidate was called by respondent no. 4 for attending the interview scheduled on 12.10.2012. On 06.11.2012 news item was published in Daily Maharashtra Times wherein the fact of appointment of Mr. Ravindra Torwane as new Principal and the list of faculty members were shown in which name of Mr. N. G. Humbe was also shown. The learned Advocate submits that respondents no. 3 and 4 are under obligation to observe reservation policy. Out of eight posts four posts are required to be reserved for S.C. / S.T. / O.B.C. categories, however, not a single post of Assistant Lecturer from these categories is filled in. The petitioner

was the only eligible candidate belonging to S.C. category. The report prepared by the Inspector of Arts and Scriptures is manipulated document since the chart containing marks of evaluation and select list was neither published on the notice board of the College nor were supplied to the petitioner. There is no mention in the report dated 11.02.2013 that respondents no. 5 to 7 who are appointed had applied in pursuance of the advertisement and were called for interview. According to the learned Advocate, the appointments of respondents no. 5 to 7 are without sanction and in violation of doctrine of employment.

4. The learned Advocate further submits that as per Circular dated 01.10.2008, Rule 9 (7) of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 is amended and reservation has been increased to 52%. The reservation for S.C. is stipulated as 13%. Respondent no. 4 since 55 years is not making

appointment in accordance with reservation policy. The appointments made in contravention of Government Resolution dated 05.11.2009 shall stand cancelled, as according to the said Government Resolution the reserved posts remaining vacant are to be filled in from amongst backward class candidates only. Respondent no. 4 has executed an affidavit dated 07.10.2013 on Rs. 100/- non-judicial stamp, thereby admitting that they have not at all maintained any roster and no enquiry is conducted regarding roster till date. Respondent no. 4 published an advertisement on 24.07.2013 in a newspaper having limited circulation in district Dhule calling for applications for the post of Assistant Teacher from S.C. (Female) category. The advertisement was published in Dhule district though the College is situated in Aurangabad. This reflects the malafide intention of respondent no. 4. In fact respondents no. 3 and 4 acted hand in glove to accommodate Mrs. Sarita Baburao Umbarkar / respondent no. 12 in stead of

petitioner. Respondent no. 4 again published an advertisement on 08.05.2015 for the post of Assistant Teacher, Scheduled Caste (Female) only having circulation in Dhule district and again respondent no. 12 came to be appointed on the same post under order dated 15.07.2015. The similar post could not have been reserved for horizontal reservation. The learned Advocate submits that entire process of publishing advertisement and conducting interview is sham.

5. Miss Talekar, learned Advocate further submits that respondent no. 4 never maintained roster as is clear from the report submitted by respondent no. 4 in the office of B.C. Cell. Pursuant to the report of respondent no. 4 the B.C. Cell, Aurangabad directed the Directorate of Arts, Mumbai to conduct an enquiry in respect of the illegalities committed by respondents no. 3 and 4 and take necessary action for contravention of provisions of Reservation Act, 2004 and Government Resolution dated 05.11.2009.

Respondents no. 3 and 4 acted hand in glove to deprive petitioner of his right to be selected for the post with an ulterior motive of securing appointment of respondent no. 12.

6. It is further submitted by the learned Advocate for the petitioner that respondents have filed false affidavit and have filed forged and fabricated documents. Respondents no. 5 to 7 have never worked in respondent no. 4 / College. Respondents no. 6 and 7 were studying in the Khandesh College Education Societies M. J. College for the academic year 2011-2012 and 2012-2013, could not have worked as Assistant Lecturers during that period with respondent no. 4. In fact, Mr. Ashok Nathu Tambatkar who retired as Principal on 31.10.2012 is the real paternal uncle of respondent no. 6. Respondent no. 5 had also crossed the upper age limit and was not eligible to be appointed. Respondent no. 9 who has selected respondents no. 5 to 7 had practiced fraud not only upon the University while seeking appointment

to the MFA course but also to the Sub Divisional Officer, Dhule who issued caste certificate in favour of respondent no. 9 as belonging to Kunbi O.B.C.

7. The learned Advocate further submits that the petitioner belongs to S.C. category and even assuming that post for which the petitioner applied was on non grant basis, if appointed, his appointment would have been converted to grant basis after the grant post of the same designation became vacant.

8. Miss Talekar, learned Advocate for the petitioner further submits that there cannot be any distinction between the permanent and temporary employee. The appointment was on permanent vacancy, only because the appointment is issued for every year the appointment cannot *ipso facto* become temporary. The learned Advocate relies on the judgment of the learned Single Judge of this Court in case of Matoshri Ramabai Ambedkar

Vidyarthi Vastigruh Trust and another Vs. Bharat D. Habir and another reported in 2009 (2) Mh.L.J. 121 and another judgment of the learned Single Judge of this Court in case of National Education Societys High School & Junior College Vs. Mrs. Lulomool Monachary reported in 1987 (2) Bom.C.R. 521. The learned Advocate further submits that the common roster is to be maintained and it cannot be said that the roster is maintained only for aided post and not for unaided post. The learned Advocate relies on the judgment of the learned Single Judge of this Court in case of Chitra Nitin Pendharkar Vs. Maharashtra Education Society and others reported in 2009 (3) Mh. L. J. 338 and in case of Bhagwan Shikshan Prasarak Mandal, Aurangabad and others Vs. Rajendra Hemraj Marathe and others reported in 2008 (4) Mh. L. J. 464. The advertisement is also required to notify the number of reserved post and the advertisement cannot be vague. The learned Advocate relies on the judgment of the Apex Court in case of

Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others reported in (1990) 4 SCC 55.

9. Mr. Shah, learned Advocate for respondents no. 3 and 4 submits that respondents runs three courses in the College they are -

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i] *Foundation Course* – A student can persuade this course after passing 10th. The duration of this course is only one year. The college can admit 15 students for this course.

ii] *Art Teacher Diploma (ATD)* – A student can persuade this course after passing 12th. Duration of this course is of two years. The college can admit in all 50 students for this course.

iii] *Government Diploma in Arts (GD Art)* – A student can persuade this course after passing foundation course. The duration of this course is four years. The college can admit 15 students for the first year and thus, the maximum number of students for all the four years could be 60 students."

The college received grant in aid for first two courses. The sanctioned posts of Teacher and Assistant Teacher at the college are only four. The appointments are made as per roster. In the

third course i.e. GD Arts college generally appoints one teacher for every 15 students going by the Thumb Rule. There are no sanctioned posts for this course. The Association does not receive grant in aid for said course. The salary for the teachers to be appointed for said course is paid by the Association from its own funds. The advertisement, pursuant to which the petitioner had applied for appointment of teacher is for non grant post of GD Arts course and that too was a temporary appointment. Respondents no. 5 to 7 whose appointments are challenged were working with the respondent / college since long time. Pursuant to the advertisement in question, nine applications were received, present respondents 5 to 7 had applied. All the nine applicants appeared for the written test, practical and interview and the appointment pursuant to the advertisement dated 15.10.2012 is made only for academic year 2012 – 2013. In the academic year 2013 – 2014 Mr. Humbe is not continued, though,

appointment order was issued to him. He worked till September – 2013. Thereafter one Mr. Yadav, was appointed for academic year 2013 – 2014 under order dated 30.09.2013. The learned counsel submits that the petitioner had applied under the Right to Information Act, 2005. The petitioner is informed that available information is kept ready and the petitioner was requested to pay Rs. 500/- for providing the information under letter dated 22.12.2012. The said letter was dispatched by registered post on 24.12.2012. Again under letter dated 15.01.2013, the petitioner was informed that available information is ready and would be provided on payment of charges of Rs. 500/-. This letter was sent by registered post. The letter is received by the petitioner on 18.01.2013. It is false on the part of the petitioner to suggest that petitioner only appeared for the interview.

10. The learned Assistant Government Pleader submits that the Foundation and ATD diploma course of the respondent institution are on aided basis

and Drawing and Printing diploma course is on unaided basis. Common roster cannot be maintained for aided and unaided courses. Aided courses commenced in Respondent no. 4 / college in the year 1960 – 1961, whereas unaided courses have commenced from 1997 – 1998. There is no sanction for staff approval of unaided courses in respondent no. 4 / college nor for any other unaided colleges running under respondents no. 1 and 2. The staff approval for unaided courses in respondent no. 4 / college is not sanctioned by respondent no. 2. The Government Resolution dated 20.07.2009 is not applicable to aided and unaided courses of Arts colleges / institutions running under the Directorate of Arts due to which common roster for unaided and aided courses is not possible. The learned A.G.P. further submits that it is not possible to maintain common roster of aided and unaided course running under Directorate of Arts. No policy exist of giving sanction for appointments on unaided course in Arts colleges /

institutions running under Directorate of Arts and the appointment of employees is done at the institution level. It is further submitted that the appointment of teaching and non-teaching staff is made by the Arts institution as per Government Resolution dated 14.08.1968 and 07.12.1974. As per Notification dated 30.11.2016 it is mandatory for institutes engaged in programs of applied Arts and Craft to have prior approval of AICTE. The Directorate of Arts under Circular dated 14.08.2017 has informed all Arts institutions to take approval of AICTE. The AICTE has prescribed faculty cadre and qualification, pay scale, service conditions and qualifications for the teachers and other academic staff in Technical Institutions (Diploma) Regulations, 2010. The unaided and permanently unaided course do not receive any kind of financial aid from the Government, therefore, roster is not maintained for recruitment in respect of unaided / permanently unaided courses in Arts institutions.

Under Rule no. 70 of the Maharashtra State Recognised Art Institutions Aid Code there is provision for inspection of Art institutions. Accordingly, inspection of Art institutions is conducted every year and if the Art institution does not abide by the conditions of the Code; Rule 11 of the Code provides for cancellation of approval. For supervision and inspection of Art institutions the respondents have formed independent office of Inspector, Drawing and Craft as well as Divisional Offices of Assistant Inspector, Drawing and Craft are formed at Aurangabad and Nagpur. These offices on yearly basis conduct inspection of Art institutes and submit report to the Director of Arts. For aided, unaided and permanently unaided courses common examination is conducted and thereafter results are declared.

11. We have considered the submissions canvassed by the learned counsel for respective parties.

12. The advertisement relied by the petitioner dated 22.08.2012 states that the applications are invited to fill in the unaided posts. It is clear that the appointment that was said to be made pursuant to the advertisement in question was on unaided basis. It is submitted that the appointment to be given pursuant to the advertisement was for one year only. The said period has lapsed. It is also contention that thereafter subsequently advertisements were issued and respondents were selected for a particular period. The fresh selection process were conducted in the subsequent year and the candidates are appointed pursuant to the fresh selection process. In the said selection process, the petitioner did not participate. In view of above, the relief claimed by the petitioner that petitioner is required to be appointed cannot be considered. The post for which the advertisement was issued and the petitioner had applied was not a sanctioned post. If the post is not sanctioned post permanent

approval on such post would not be made.

13. After considering the earlier reply of respondents no. 1 and 2, we had raised certain queries under order dated 10.09.2018 and 05.12.2018. In the order dated 05.12.2018, we had observed thus -

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03. The affidavit is filed by Assistant Inspector in the office of Drawing and Craft, Divisional office, Aurangabad. In the said affidavit a bold statement is made that, there is no sanction for staff approval for unaided course in the respondent no. 4 / college. It is further stated in the affidavit that appointment of employees in unaided course is done by the Art College / institutions at their level and the deponent has not given sanction for such appointments of unaided course. No unaided course in Arts colleges / institutions running under the Directorate of Arts is given sanction till date and no such policy is in existence. The affidavit further states that the appointments of employees for unaided courses is done by the Arts College / institutions at their own level and since no sanction is given to the unaided course, it will not be proper to take action on one institution.

04. Reading the affidavit, it appears that, the respondent authorities desire to convey that they do not have any control over the unaided course.

05. The unaided institutions also give the

same degree / certificate as is given by the institutions running aided course. If the affidavit of respondent Nos. 1 and 2 is accepted that would mean that the institutions running aided course will have to comply with all the requirements under the law and the institutions running unaided courses will be given free hand, even with regard to appointments of employees irrespective of their merit. The respondent Nos. 1 and 2 cannot be casual in filing such affidavit. Education is a serious subject, which cannot be dealt with in a casual manner by the respondent Nos. 1 and 2."

After the aforesaid order is passed additional affidavit is filed by the Dean, Government College of Arts and Design, Aurangabad on behalf of respondents no. 1 and 2. In the said affidavit details are given, and it is accepted that Art institutions in the State of Maharashtra are covered as per the provisions of Rules and Regulations of Maharashtra State Recognized Art Institutions Aid Code. On compliance of the terms and conditions enumerated in Rule 1 to 5 of the Code approval to start the course and the maximum student intake capacity for that course is given by the Director of Arts. The Government Resolution dated 14.08.1968 and the Code prescribes the

pattern of posts of teachers i.e. one teacher for fifteen students per course. Under Government Resolution dated 07.12.1974, the number of non teaching staff required is mentioned. According to the said Government Resolution the appointments are made. It appears that now it has been made mandatory for the Art institutions to get the approval of AICTE as per Notification dated 30.11.2016. AICTE has prescribed faculty cadre and qualification vide All India Council for Technical Education, pay scale, service conditions and qualifications for the teachers and other academic staff of Technical Institutions (Diploma) Regulations, 2010.

14. It also has been clarified that the provisions of the Maharashtra State Public Services [Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes] Act, 2001 are applicable to the institution which is funded

and / or aided by the Government. As such, for unaided course roster is not maintained. Moreover, it is stated on affidavit that the unaided posts are not sanctioned. Roster cannot be directed to be maintained for non sanctioned post. Reference is given to the judgment of the Apex Court in case of **Ashok Kumar Thakur Vs. Union of India** reported in **(2008) 6 SCC 1**. It is also clarified that unaided / permanently unaided courses for Art institutions admit students as per sanctioned intake capacity and as per the admitted students the posts of teaching / non teaching staff are filled by the Art institutions. Rule 70 of the Code also prescribes inspection of Art institutions and is conducted every year and if, Art institution is not abiding by the conditions of the Code, then under Rule 11 of the Code provision is made for cancellation of the approval.

15. It also appears from the affidavit filed that for supervision and inspection of Art institutions

the respondents have formed independent office of Inspector, Drawing and Craft and yearly inspections are conducted of the Art institutions and reports are submitted to the Director of Arts.

16. It appears that there is control of Director of Arts. They are required to abide and adhered to all these Regulations. In view of the affidavit filed, we have not find it necessary to issue further directions in the matter.

17. Writ Petition, as such, stands disposed of.
No costs.

[A. M. DHAVAL, J.] [S. V. GANGAPURWALA, J.]

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