

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

WRIT PETITION NO. 1841 OF 2013

WITH

CIVIL APPLICATION NO. 395 OF 2019

Sudhakar Shivaram Teke

Age: 48 years, Occu: Lecturer

R/o 'Siddhi' Sudarshan Nagar,

Gargoti, Tal: Bhudargad, Dist: Kolhapur

... Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai.
 2. Shri Mouni Vidyapeth, Murlidhar Nagar,
Gargoti, Tal: Bhudargad,
Dist: Kolhapur
Through its Director.
 3. Institute of Civil and Rural Engineering,
Gargoti, Dist: Kolhapur,
Through the Principal.
 4. Director of Technical Education,
3, Mahapalika Marg, Post Box No.1967,
Mumbai
 5. The Joint Director of Technical
Education, Regional Office, 412-E, Bahirat
Patil Chowk, Near Om Super Market,
Deep Bungalow Chowk, Model Colony,
Shivaji Nagar, Pune
- ... Respondents

**WITH
WRIT PETITION NO. 1896 OF 2012**

Prof. S. S. Rayamane
Gargoti, Taluka: Bhudargad,
District Kolhapur ... Petitioner
Versus

1. Principal,
Institute of Civil & Rural Engineering
Gargoti (Dist: Kolhapur)
2. Shri. Mouni Vidyapeeth,
Murlidhar Nagar, Gargoti,
Taluka: Budhargad,
District: Kolhapur
3. Director of Technical Education,
3, Mahapalika Marg,
Post Box No.1967,
Mumbai 400 001.
4. Joint Director,
Technical Education Regional Office,
412-E, Bahirat Patil Chowk,
Near Om Super Market, Deep Banglow Chowk,
Model Colony, Shivaji Nagar,
Pune – 411 016.
5. State of Maharashtra
Office of the Government Pleader,
Appellate Side, High Court, Mumbai ... Respondents

**WITH
WRIT PETITION NO. 5826 OF 2013**

Udaykumar Govindrao Gurlhosur
Age: 53 years, Occu-Professor
R/o. Gargoti, Tal. Bhudargad,
Dist. Kolhapur ... Petitioner
Versus

1. Principal,
Institute of Civil & Rural Engineering
Gargoti, Dist. Kolhapur
2. Shri Mouni Vidyapeth,
Murlidhar Nagar, Gargoti
Tal. Bhudargad, Dist. Kolhapur
3. Director of Technical Education
3 Mahapalika Marg, Post Box No.1967
Mumbai
4. Joint Director
Technical Education Regional Office
412-E, Bahirat Patil Chowk,
Near Om Super Market, Deep Bungalow
Chowk, Model Colony, Shivaji Nagar, Pune
5. State of Maharashtra
Through Higher & Technical Education
Department, Madam Cama Marg
Mantralaya Annex, Mumbai
6. Suresh Siddram raymane
Aged-Adult, Occu-Lecturer
R/o. ICRE, Gargoti,
Tal. Bhudargad, Dist.Kolhapur
7. Sudhakar Shivram Teke
Age-52 years, Occu-Lecturer
R/a.ICRE, Gargoti,
Tal. Bhudargad, Dist.Kolhapur ... Respondents

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Mr. N. V. Bandiwadekar i/b Mr. A. M. Adagule for the Petitioner in W.P. No.1841 of 2013 and for Respondent No.7 in W.P. No.5826 of 2013.

Mr. Ashwin V. Sakolkar for the Petitioner in W.P.No.1896 of 2012.

Mr. Rahul Walvekar for the Petitioner in W.P.No.5826 of 2013.

Mr. A.V. Anturkar, Senior Advocate a/w Mr. S.B. Kalel, AGP for the State.

Mr. Datta Pawar a/w Mr. Sanjay Kadam for R.No.3 in W.P.No.1841 of 2013.

Mr. Bhooshan Mandlik for Respondent No.2 in W.P.No.1841 of 2013 and for Respondent Nos. 1 & 2 in W.P.No.1896 of 2012 and W.P.No.5826 of 2013.

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**CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

RESERVED ON : 27th FEBRUARY, 2019

PRONOUNCED ON : 27th SEPTEMBER, 2019

JUDGMENT (PER M.S. KARNIK, J.)

Rule. Rule is made returnable forthwith by consent of the parties and heard finally.

2. These three Petitions can be disposed of by a common order. The facts in Writ Petition No. 1841 of 2013 would suffice the purpose of deciding the issue. Before dealing with Writ Petition No. 1841 of 2013 a brief reference to the challenge in Writ Petition No.1896 of 2012 filed by petitioner Prof. S. S. Rayamane and Writ Petition No.5826 of 2013 filed by petitioner Shri Udaykumar Govindrao Gurlhosur are stated for convenience.

3. In Writ Petition No. 1986 of 2012, the petitioner Prof. S.S. Rayamane prays that he be appointed as Head of Department ('HOD' for short) in the very same institute under the control of very same management. Writ Petition No. 5826 of 2013 filed by Shri Udaykumar Govindrao Gurlhosur challenges the communication dated 18th

February, 2013 by the third respondent i.e. The Director of Technical Education, be set aside and the two notifications dated 10th September, 2012 and a set of rules styled as “Principal, Head of Department”, Lecturer and Workshop Superintendent in Government Polytechnics and equivalent institutes (Recruitment) Rules, 2012 (hereinafter referred to as “the Rules of 2012” for short) be declared as *ultra vires* Articles 14 and 16 of the Constitution of India.

4. The challenge in all these Petitions is whether, the petitioners who are working as lecturers in respondent No.2 – a Private Polytechnic but receiving 100% grant-in-aid from the Government, are entitled to be absorbed as HOD upon the post of HOD falling vacant.

5. The facts of the case in Writ Petition No. 1841 of 2013 are as under :

The petitioner was appointed as a lecturer in Applied Mechanics Department under the reserved category i.e. O.B.C. with the respondent No.2 – Shri Mouni Vidyapeth on 26/11/1988. The said appointment was approved by respondent No.4. On the basis of Government Resolution dated 10/09/2001 the petitioner was declared as surplus. By letters dated 11/06/2007 and 12/06/2007, the petitioner informed respondent Nos. 3 and 4 that he is wrongly declared as surplus. He

pointed out that he is appointed in the reserved post and therefore he cannot be declared as surplus on the basis of Government Resolution dated 10/09/2001.

6. By letter dated 15/02/2011 addressed to respondent No.3, the petitioner informed that as he is declared surplus, he be absorbed in the post of HOD which became vacant. This in view of Schedule 3 of the Government Resolution dated 10/09/2001. The case of the petitioner is that as he is declared surplus, he is entitled to be absorbed as HOD as per the G.R. dated 10/09/2001. The senior most lecturer is designated as HOD and as the HOD is equivalent to the post of lecturer. The petitioner is drawing the same pay scale as HOD and the functions, duties of the lecturer and HOD is same.

7. This claim of the petitioner was rejected by respondent No.3 by letter dated 18/02/2011. According to respondent No.3, as the petitioner is declared surplus, he has to be absorbed in an equivalent post. The post of HOD is not equivalent to the post of Lecturer. Therefore, petitioner is not entitled to be appointed as HOD. Respondent No.3 also stated that the post of HOD would be filled in by way of promotion. He says that in future when the post of HOD is filled in by way of promotion, the petitioner can be absorbed in the post of

Lecturer which will become vacant after the eligible lecturer is appointed as HOD.

8. The petitioner made various representations on 07/03/2011 and thereafter again pointing out that he is entitled to be appointed as HOD on the basis of G.R. dated 10/09/2001. It is the petitioner's case that, even respondent No.5 by letter dated 31/03/2011 called for explanation from respondent No.3 regarding rejection of the petitioner's claim. He directed the respondent No.3 to submit report after considering all the aspects.

9. Respondent No.2, by letter dated 18/04/2011 informed the petitioner that a committee has been constituted in respect of appointment to the post of HOD. The petitioner submitted his written say to the respondent No.2 and requested that he be appointed as HOD. On further enquiry, it is revealed that by an order dated 27/06/2011 passed by respondent No.5, the claim of the petitioner was rejected. Before he could challenge the order dated 27/06/2011, the petitioner was in receipt of order dated 01/02/2013 passed by the respondent No.4 declaring the petitioner surplus and transferring/absorbing him to K. J. Somaiya Polytechnic College, Vidhyavihar, Mumbai. In the present Petition, the order dated

01/02/2013 came to be stayed, with the result the petitioner continued in respondent No.2 institution. Thereafter this Petition was amended and petitioner placed on record subsequent events.

10. At this stage itself we will make a brief reference to the facts in connected Writ Petitions. Civil Writ Petition No. 1896 of 2012 filed by Prof. S.S. Rayamane. The petitioner Prof. Rayamane prayed that he be appointed as HOD in the very same institute under the control of the very same Management. The third Writ Petition i.e. Writ Petition No. 5826 of 2013 is filed by Shri Udaykumar Govindrao Gurlhosour. As indicated earlier, he prays that the communication dated 18th September, 2013 by the third respondent i.e. The Director of Technical Education, be set aside and the two notifications dated 10th September, 2012 and the rules of 2012 be declared as *ultra vires* Articles 14 and 16 of the Constitution of India. The petitioner was informed that on account of these rules, the post of HOD is not a promotional post and therefore, this post cannot be filled in by promotion. The Management's proposal to fill in post of HOD by promotion was not accepted.

11. During the pendency of the Petition, there was subsequent development, in as much as Mauni Vidyapeeth Gargoti as also the

Institute of Civil and Rural Engineering, Gargoti, Kolhapur, forwarded the proposal for absorbing the Petitioner (Shri Teke) as HOD dated 9th April, 2018 in writing. It pointed out that the post of “HOD” in “Applied Mechanics” is vacant. The Management of the Institute of Civil and Rural Engineering requested the Joint Director to allow it to absorb the petitioner (Shri Teke) in its services based on Shri Teke's application. On 16th March, 2018, the Management resolved that the petitioner can be absorbed and can also be assigned the position and status of HOD of Applied Mechanics in this Institute. However, as the written proposal which is backed by a resolution requires permission/approval from the Joint Director and hence, the Management sought such an approval/permission.

12. This Court vide its order dated 6th July, 2018 passed in this Petition directed the Joint Director of Technical Education, Government of Maharashtra to consider the proposal of the Management dated 9th April, 2018 and pass appropriate orders in accordance with law after giving opportunity to all concerned. It is clarified by this Court that the Director should treat the proposal forwarded on 9th April, 2018 by seeking permission for absorption as also the request of the Management to designate the petitioner in Writ Petition No. 1841 of 2013 as the HOD and pass appropriate orders in accordance with law.

This Court had further observed that the Director should not be influenced by any of the earlier orders passed by the said Directorate which are impugned in the Petitions and further that he should not be influenced by the stand taken by the State Government which is placed by way of affidavit in this Court.

13. By a decision of 4/8/2018 the Director of Technical Education, Maharashtra State, decided the proposal. According to him, the petitioner being a lecturer cannot claim parity with the post of HOD. The petitioner was denied the post of HOD in subject of Civil Engineering. The petitioner's request was rejected. Thereafter the Petition was further amended and the order dated 4/8/2018 passed by the Director is also challenged.

14. Thus, pursuant to the order passed by this Court, the Director of Technical Education by the impugned order dated 4/8/2018 has rejected the proposal of the Management for absorbing petitioner as HOD on the ground that the post of lecturer is not equivalent to that of HOD. He nevertheless observed that the pay scale is equivalent to the pay scale of HOD.

15. Learned Counsel for petitioners submitted that the post of HOD is equivalent to the post of lecturer having the same pay scale. Learned Counsel for petitioners submits that as per Clause 14 of the Schedule 3 of GR dated 10/9/2001, as the post of lecturer is equivalent to HOD, it is the petitioners who ought to be absorbed in the vacant post. Learned Counsel would submit that no reasons are given by respondent No.4 for coming to the conclusion that the post of HOD is not equivalent to the post of lecturer. He would submit that as a matter of fact there is no such post of HOD but senior most lecturer is designated as HOD. According to him, nomenclature is not material as the duties performed by the HOD are the same as a lecturer. In any case, he would submit that even as per Clause 9 of the said GR, relevant condition is that pay scale of both the posts should be equal. The respondent No.4 despite having come to the conclusion that the pay scale of both the posts is one and the same, rejected the proposal without assigning any reasons. He would submit that without any basis it is observed that the posts are not equivalent. Shri Bandiwadekar invited our attention to the relevant provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as "the MEPS Act" for short). He would further submit that in the entire order there is no reference to the provisions of the MEPS Act and the Maharashtra Employees of Private

Schools (Conditions of Service) Rules, 1981 framed thereunder (hereinafter referred to as 'the Rules' for short).

16. Learned counsel for respondents on the other hand would invite our attention to the affidavit-in-replies filed setting out the stand of the respondents. It is submitted that the post of HOD is not equivalent to that of lecturer. It is the contention that though pay scales are similar but posts are not equivalent. It is submitted that the post of HOD is to be filled in by nomination. It is thus the stand of the respondent Nos. 4 and 5 that a lecturer cannot be absorbed as a HOD unless he is nominated for the post after undergoing proper selection process.

17. It is the submission of learned counsel for the respondents that the decision dated 4th August 2018 is based on the Rules of 2012. According to learned counsel, with regard to recruitment of faculty, all faculty position in any polytechnic whether Government or otherwise are required to be filled by nomination only. The claim of the petitioner to accommodate him on the post of HOD by promotions/absorption cannot be accepted. It is the contention of the respondents that the post of HOD can be higher cadre post than lecturer, the petitioner cannot be accommodated as HOD. Relying on the Notification issued by the

AICTE and the Rules of 2012 it is submitted that as the petitioner is working as lecturer, his claim to higher post of HOD without passing through prescribed mode of selection cannot be accepted.

18. Heard learned Counsel. Perused the Memo of the Petition and the annexures. We have gone through the affidavit-in-replies.

19. The question that arises for consideration in the present Petitions is whether, the petitioner upon being declared surplus lecturer is eligible to be absorbed in the vacant post of HOD. According to respondent Nos. 4 and 5, such an absorption is not possible as the post of HOD is not equivalent to that of lecturer. Nonetheless the impugned order records that the petitioner is in respect of the same pay scale as “HOD”.

20. The petitioner is working in the respondent No.2 - Institute which is an Engineering Polytechnic in the State of Maharashtra. The college is receiving aid from the State Government. The petitioner while working as a lecturer was declared surplus under the GR dated 10/9/2001. As per GR, the petitioner can be absorbed in an equivalent post if the vacancy exists. Now the petitioner contends that as post of HOD is vacant, he can be absorbed as HOD which is still a post of

lecturer having the same pay scale.

21. To decide this issue, it would be material to refer to some of the relevant statutory provisions governing the respondent Polytechnic. The MEPS Act was enacted to regulate recruitment and conditions of service of employees in certain Private Schools. Some of the relevant provisions are

“Director” defined by Section 2(6) means the Director of Education or the Director of Technical Education [or the Director of Vocational Education and Training] [or the Director of Art] as the case may be, appointed as such by the State Government ;

“Employee” defined by Section 2(7) means any member of the teaching and non-teaching staff of a recognised school [and includes Assistant Teacher (Probationary)];

“Existing private school” defined by Section 2(8) means a recognised private school which is in existence on the appointed date ;

“Head of a School” or “Head” defined by Section 2(9) means the person, by whatever name called, in charge of the academic and administrative duties and functions of a school conducted by any Management and recognised or deemed to be recognised under this Act, and includes a principal, vice-principal, head-master, head-mistress, assistant head-master, assistant head-mistress, or

superintendent thereof ;

“Private School” defined by Section 2(20) means a recognised school established or administered by a Management, other than the Government or a local authority ;

“Recognised” defined by Section 2(21) means recognised by the Director, the Divisional Board or the State Board, or by any officer authorised by him or by any of such Boards ;

“Rules” defined by Section 2 (23) means the rules made by the State Government under this Act ;

“School” defined by Section 2 (24) means a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called including, technical, vocational or art institution or part of any such school, college or institution, which imparts general, technical, vocational, art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level ;

“State Board” defined by Section 2(25) means

(a) the Maharashtra State Board of Secondary and Higher Secondary Education established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965,

(b) the Board of Technical Examinations, Maharashtra State,

(c) the Maharashtra State Board of Vocational Examinations or

(d) the Art Examinations Committee ; and Section 2 (26) “Teacher” means a member of the teaching staff, and includes the Head of a school.

22. It can thus be seen that a Polytechnic is covered by the definition of “school” as defined in Section 2(24) of the MEPS Act. The petitioner being a lecturer is an employee within a meaning of Section 2 (7). The Polytechnic is recognized by the Director as per Section 2 (21). Further, in view of Section 2 (26), the petitioner being a lecturer is a member of the teaching staff.

23. Section 3 says that the provisions of this Act shall apply of all Private Schools in the State of Maharashtra, whether receiving a grant-in-aid from the State Government or not. Section 4 (1) empowers the State Government to make rules prescribing minimum qualification for recruitment (including its procedure), duties, pay, allowances, post-retirement and other benefits, and other conditions of service of employees of private schools and for reservation of adequate number of posts for members of backward classes.

24. Section 5 (1) prescribes for the obligation of the Management of private schools which shall, as soon as possible, fill in, in the manner prescribed every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy.

25. The MEPS Act or the Rules framed thereunder do not provide for the post of 'HOD'. It is however the submission of learned Counsel for respondent Nos. 4 and 5 that there is a central statute which is applicable in respect of the Engineering Polytechnic, i.e. All India Council of Technical Education (hereinafter referred to as "AICTE Act" for short). This in his submission, because Engineering Polytechnic is "Technical Education" within the meaning of Section 2(9) of the AICTE Act. It is the stand of the respondent Nos. 4 and 5 that 'the Rules of 2012' do not apply to the Private Aided Polytechnic but confusion is sought to be created as a result of the expression "equivalent institutes" found in Rule 4 of the 'Rules of 2012'.

26. It is the stand of learned Senior Counsel for respondent Nos. 4 and 5 that for the post of HOD, neither the MEPS Act nor 'rules of 2012' are attracted. It is further urged that by a communication dated 30th December, 1999, the AICTE informed all concerned that recommendations of AICTE regarding revised pay scales and service

conditions of technical education are applicable to the Diploma Level Technical Institutions falling under the purview of the ALL India Council for Technical Education. In that notification, qualifications and experience for the teaching posts in Diploma level technical institutions (Engineering/Technology Programmes) provides for the cadre of HOD prescribing the qualification and experience required. According to learned Senior Counsel, the said notification which has been issued by the Central authority under AICTE Act is binding on the State Government. It is further argued that the Notification and the Rules, which have been laid down by the AICTE which is established under the AICTE Act being a Central Act is binding by virtue of the 7th schedule of the Constitution of India on all states. In his submission, so far as State of Maharashtra is concerned, the field relating to promotion to the post of the HOD is not occupied either by the MEPS Act, nor it is occupied by the Rules of 2012, because these are applicable only in respect of the Government Polytechnic. According to him, since that field is not occupied by any enactment or by the Rules so far as State of Maharashtra is concerned, in respect of Private Aided Diploma level Schools, notification issued by the AICTE would be attracted.

27. The Notification provides for a cadre structure which reads thus :

“for such diploma level institution, there shall be one post of the Director/Principal. In addition each departments shall have one post of the Head of Department. The other cadres, shall be as given in table No.3.1.” (Emphasis supplied)

28. It is therefore emphasised that as per Clause 6 of the notification, recruitment to all Cadre Posts shall be strictly based on merit, by open selection through open advertisement, and at national level. It is thus the case of respondent Nos.4 and 5 that there is no provision for seeking promotion to the post of HOD in the State of Maharashtra. It is further the stand that though the petitioner claims to be entitled for absorption by virtue of provisions of Rule 25A and 26 of the MEPS Rules, the said rules do not apply for absorption in higher post. It allows absorption in the same post which he was holding.

29. The issue whether the provisions of MEPS Act and MEPS Rules are applicable to employees working in private aided polytechnic colleges like the respondents polytechnic being institutions imparting technical education is no more *res-integra*. The Apex Court in the case of **Pramod v/s. State of Maharashtra and others** reported in (2016) 14 SCC 505 has held that the provisions of MEPS Act and MEPS Rules are applicable to employees working in polytechnic colleges which being

institutions imparting technical education stand covered by the term 'School' as defined under Section 2(24) of the MEPS Act. The Apex Court further examined the said Rules of 2012 and Their Lordships found themselves in agreement with the views expressed by this Court that these Rules of 2012 will not apply to private aided polytechnic such as the respondent's polytechnic. In fact the Apex Court has gone further to observe that this Court has erred in law in holding 'that the mode of appointment by promotion under Rule 3(3) of the MEPS Rules cannot be applied to a polytechnic although it is a school because there is no separate qualification prescribed for a polytechnic in sub-rule(1) of Rule 3'. The Apex Court thus has held that there is no other Statutory Act or Rule which takes away the force of Rule 3(3) of the MEPS Rules which requires the management of the polytechnic, which is covered by the definition of the 'School' under the MEPS Act, to fill up the post of the Head of Institution, i.e., the Principal by appointing the senior most member of the teaching staff in accordance with the guidelines laid down in Schedule 'F' from amongst the teachers employed in the school.

30. The decision of the Apex Court in **Pramod's** case (*supra*) would squarely apply in the present fact situation also. In our opinion

as the MEPS Act and the Rules framed thereunder applies to the respondents' polytechnic, the question of appointing the Head of Department in the manner prescribed by the Rules of 2012 or as per the Notification of AICTE does not arise. The respondent's polytechnic is a private aided institute and hence as per the decision of the Apex Court in **Pramod's** case (*supra*), the Rules of 2012 as well as Notification of the AICTE can have no application to the respondents' polytechnic. Further it is nobody's case that the petitioners do not fulfill the educational qualifications for the post of HOD. In any case the entire controversy will have to be appreciated from the point of view that there exists no post of HOD in respect of private polytechnic prescribed under the MEPS Act and the Rules framed thereunder. The question therefore of applicability of the Notification issued by the AICTE will not arise.

31. We find that respondent No.4 has rejected the proposal of the Management only on the ground that the post of HOD is not equivalent to that of a lecturer. It is only on the basis of a notification issued by AICTE that a stand is taken that HOD being a cadre post, an appointment has to be made strictly in conformity with the notification issued by AICTE. The Engineering Polytechnic where petitioner is

working as a lecturer is governed by the provisions of the MEPS Act and the rules framed thereunder. The MEPS rules do not provide for the post of HOD. GR dated 10th September, 2001 provides that the surplus teacher/lecturer can be absorbed in an equivalent vacant post. It is not in dispute the petitioner is getting the same pay scale as HOD. The MEPS Act and the Rules framed thereunder do not prescribe/provide for the post of HOD. In fact as per own showing of the respondents, a lecturer after completing requisite years of service is eligible for the same pay scale as HOD.

32. The Director of Technical Education has not given any reasons why the post HOD is not equivalent to that of a lecturer. No doubt it is for the Petitioner to establish that lecturer and HOD perform same duties, functions and it is only the nomenclature which differentiates the two positions. There is nothing to indicate that HOD performs duties different from a lecturer. In fact, and as indicated earlier, there is no such post of HOD prescribed under the MEPS Act and the Rules framed thereunder. So far as Respondent No.2 Polytechnic is concerned, the same is 'school' within the definition of Section 2 (24) of the MEPS Act. No procedure is prescribed in the said MEPS Act and the Rules framed thereunder for appointment as HOD as the post of HOD itself is not provided in the schedule of teaching staff.

It is thus clear that the senior most lecturer is only designated as 'HOD' in as much as even a lecturer is eligible to get pay scale of HOD upon completion of requisite number of years of service.

33. In our opinion, unless there exists a specific post of HOD in the MEPS Act and the Rules framed thereunder, the post of HOD has to be regarded as equivalent to lecturer as even according to respondent Nos. 4 and 5 the lecturer on completion of requisite years of service is entitled to discharge duties as HOD. The respondent No.4 failed to consider that the question of equivalence between the post of 'HOD' and 'lecturer' would arise only if there is a separate post of HOD provided by the 'MEPS Act or Rules' prescribing the mode of selection, qualifications, etc. As there is no post of HOD, question of equivalence does not arise. A mere nomenclature as HOD does not mean that it is a separate post. It is just that a lecturer is designated as HOD and this nomenclature by itself does not in any manner indicate that there is a separate post of HOD which is required to be filled in only by nomination. In this context, we may make a profitable reference to the decision of the Apex Court in the case of **State of Madhya Pradesh and another v/s. Pramod Bhartiya and others** reported in (1993) 1 SCC 539. Paragraph 2 of the said decision reads thus :-

“2. In Randhir Singh, Chinnappa Reddy, J. Speaking for the

Bench of three learned Judges said:

“We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for courts but we must hasten to say that, where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the power, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same...

Construing Articles 14 and 16 in the light of the Preamble and Article 39(d), we are of the view that the principle 'equal pay for equal work' is deducible from those Articles and may be properly applied to case of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.”

It is therefore apparent that mere nomenclature as HOD will not disentitle the petitioner to claim absorption as HOD if otherwise the lecturer and HOD are performing similar functions and the powers, functions and duties do not vary. A lecturer is only designated as HOD

upon completion of requisite years of services as a lecturer. The lecturer on completion of requisite years of service is entitled to the same pay as HOD.

34. The proposal of the Management should have been considered in the context that the HOD discharges the same work and functions as a lecturer. In fact, the Management also forwarded the proposal saying that there is a post of HOD vacant on which the petitioner could be absorbed.

35. The State has taken a stand that the Rules of 2012 are applicable only in respect of the Government Polytechnics and to equivalent institutions. According to respondent No.4 these Rules of 2012 will not apply to Private Aided Polytechnics. It is therefore clear that no statutory provisions are enacted by the State of Maharashtra for appointments to be made in respect of the Private Polytechnics which receive grant-in-aid from the Government. On their own showing respondent No.4 and 5 submit that the field relating to the Private Aided Diploma level Schools is not occupied by any enactment or by the Rules so far as State of Maharashtra is concerned. It is therefore the stand that the notification issued by the AICTE would be attracted. In our opinion, the notification issued by AICTE cannot override the

provisions of the MEPS Act and the Rules framed thereunder which are squarely applicable to the respondent institution.

36. Clause (10) of the Schedule (3) of the GR dated 10th September, 2001 provides that if any vacancy is created of any post and if a surplus candidate in equivalent post to that post is available, then firstly such a candidate has to be absorbed in such a vacancy instead of filling the said post by promotion or by direct nomination.

37. In this view of the matter, we are of the opinion that the petitioner in Writ Petition No. 1841/2013, Sudhakar Shivaram Teke is eligible for absorption as HOD.

38. The impugned orders are therefore quashed and set aside.

39. Respondent No.4 is directed to issue appropriate orders granting approval to the absorption of the petitioner (Shri Teke) in the post of HOD.

40. The Writ Petitions are allowed in the above terms. Rule is made absolute with no order as to costs.

41. In view of the disposal of the Writ Petition No.1841 of 2013, nothing survives for consideration in the Civil Application No. 395 of 2019. The Civil Application is disposed of.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)

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