

Mrs.Satwant Balse	}	Petitioner
versus		
The Principal, V.G.Vaze College	}	
and Ors.	}	Respondents

Mr.G.P.Date-Administrative Officer, Higher Education, Mumbai Region present.

DATE :- MARCH 7, 2019

1. Having heard both sides and perusing the record, we are of the view that the issue raised in this case is fully answered by a series of judgments and orders of this court. These judgments have been compiled, the last one that is rendered is in the case of *Arti G. Daptardar vs. University Grants Commission and Ors.* (Writ Petition No. 2774 of 2015) decided on 20th June, 2018. That

judgment was delivered by a Bench presided over by one of us (S.C.Dharmadhikari, J.). In that, we have referred all prior decisions. The judgment pronounced on 20th June, 2018 deals with precise controversy.

2. This court has already ruled that there are certain matters over which a teacher appointed against a reserved seat has no control. He is granted appointments year after year as there is a rule to advertise such post, until such teacher is not available but with a rider that such advertisements have to be inserted five(5) times. On the sixth occasion it has to be advertised for interchangeability. The post has to be advertised because candidate from reserved category is not available to fill in the post which is reserved for such category. That teacher was not available to teach a subject or for appointment on the post and when five advertisements were inserted and every year, the University endorsed such advertisements, then, we do not see any justification for the stand of the Higher Education Department and the State of Maharashtra refusing to de-reserve the post. The proposal in that behalf could not have been returned back or faulted with. Once the management forwarded its proposal through the University, there is an endorsement of the University on the said proposal and which certifies that these

advertisements were indeed published and once they were published, but there was no application received from a reserved category candidate, then, the law laid down is that such posts have to be de-reserved. They have to be de-reserved, the appointments made on the said posts from inception and of a person like the petitioner have to be regularised. All breaks would be declared as notional and benefit of continuity, therefore, has to be extended.

3. We extend similar benefits and declare that the petitioner's appointment to the post in question is legal and valid from inception. The yearly termination orders do not bring about any disruption or interruption in her service, much less a break. If at all there is any break in service, it is entirely notional. The petitioner, therefore, shall be granted the benefit of continuity of service, seniority and if available, promotion or benefits under the career advancement scheme or the like. In the event any pension benefit is available, then, on her superannuation, the same shall be extended to the petitioner provided he complies with all the requirements as prescribed in the pension scheme, including rendering qualifying service for obtaining such pensionary benefits.

4. The writ petition is allowed in the above terms. There would be no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)