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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1456 OF 2003

1. Anala Aniruddha Pandit
residing at E-3, Prashant CHSL,
Senapati Bapat Marg, Mahim,
Mumbai 400 016.

2. S. Venkatesan
residing at A-19, Roopchand Apartments,
Kapurbavawdi, Thane (W) 400 601.

..Petitioners

vs.

1. Veermata Jijabai Technological Institute
through its Principal and Secretary,
Matunga, Mumbai 400 019.

2. University of Mumbai,
through its Registrar,
D.N. Road, Fort, Mumbai 400 023.

3. The Director,
Directorate of Technical Education,
Mumbai Region, Elphinstone Technical
School, Mahapalika Marg, Mumbai 400 001.

4. State of Maharashtra
through its Department of Higher &
Technical Education, Mantralaya
Annexe, Mumbai 400 032.

..Respondents

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Mr. Mihir Desai, Senior Counsel for petitioners.

Ms. Akanksha Helaskar i/b. A.M. Kulkarni for respondent No.1 – VJTI.

Mr. Rui Rodrigues for respondent No.2. - University

Mr. A.A. Kumbhakoni, Advocate General a/w. Ms. Geeta Shashtri, Addl. G.P. & Mr. Kedar Dighe, A.G.P. for State for respondent Nos. 3 and 4.

Mr. Vinod Joshi a/w. Ms. Lata Patne for the Accountant General (A&E)-I.

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

RESERVED ON : 21st FEBRUARY, 2019

PRONOUNCED ON : 8th NOVEMBER, 2019

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

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

2. The petitioners by this Petition filed under Article 226 of the Constitution of India challenge the advertisement issued by the respondent No.1 with a further direction to respondent No.1 not to advertise more than 50% posts in any cadre/department as reserved in any given year.

3. The petitioners were employed with respondent No.1 – Institute as lecturers. The petitioner No.1 is qualified M.Sc. Physics with specialisation in Electronics and M.S.Electrical Engineering from the University of Louisville, U.S.A. In August, 1995, petitioner No.1 joined respondent No.1 as a visiting faculty in the Department of Computer Technology. From October, 1996 onwards the petitioner No.1 was given semester-wise contracts on a consolidated honorarium which in the year 2000 was Rs.10,000/- per month. Thus from 1995 onwards, the petitioner No.1 has been in continuous employment with respondent No.1 – Institute.

4. In April, 1999 respondent No.1 issued an advertisement and petitioner No.1 applied for the post of lecturer in computer applications. She was selected by a duly constituted selection committee and appointed by an appointment order dated 13th March, 2000 as lecturer in computer application. She was shown to have been temporarily appointed against a reserved post. She was issued a termination

order dated 14/3/2001. She was issued a re-appointment order on 15/3/2001 again for a period of 1 year. Thereafter, she was again appointed on 22/3/2002 for a period of 11 months. On 3/3/2003, she was given a fresh appointment order for a period of 3 months.

5. In so far as petitioner No.2 is concerned, he joined the services of respondent No.1 – Institute on contract basis in January, 1999 as a lecturer in computer technology department. He was selected by a duly constituted selection committee and appointed on a regular time scale of pay as lecturer in computer applications. On 28/2/2003 he was appointed for a period of 3 months.

6. Respondent No.1 in March, 2003 advertised for various posts including that of lecturers. 100 percent posts were shown to have been reserved and this was the only advertisement issued in the academic year. While issuing advertisement of the two posts of lecturers in computer application one was shown to be reserved for S.C. and other for

S.T. candidates. Thus, the posts on which the petitioners were working were advertised for the reserved category.

7. The challenge in this Petition is that in the light of the decision of the Hon'ble Supreme Court in the case of **Indra Sawheny** it was impermissible for the respondents to have advertised all posts as reserved. According to the petitioners, all 14 posts advertised are shown to be meant for the reserved category candidates.

8. It is material to note that petitioner No.1 had filed Writ Petition No. 215 of 2017 in this Court challenging the orders dated 5/11/2012 and 26/7/2016 passed by respondent No.1 whereby respondent No.1 refused to grant approval to the appointment of the petitioner as Assistant Professor. This Court made a reference to the Notice of Motion No. 339 of 2003 filed in this Petition where an order came to be passed on 12/8/2003 that the petitioners should be continued in the posts they are holding and should not be replaced by another candidate of ad-hoc nature. In this Petition by an order dated 4/2/2009 in

Notice of Motion No. 20 of 2005 this Court has observed that petitioner No.1 should be continued till disposal of the Petition.

9. As petitioner No.1's approval was rejected vide order dated 7/11/2012 on the ground that petitioner No.1 did not possess the requisite qualifications, Writ Petition No. 251 of 2017 was filed by her in this Court. This Court allowed the Petition and directed respondent No.1 to grant approval to the appointment of petitioner No.1 which was made from 7/1/2008 pursuant to the recommendations of the selection committee dated 18/12/2007. Thus the petitioner who was initially appointed as against the post meant for reserved category was later continued in the open category post during the pendency of this Petition.

10. In a connected Writ Petition No. 966 of 2003 we have already considered the submissions advanced by learned Senior Counsel for the petitioners and as identical submissions are made in the present Petition, the present Petition also can be disposed of on the same terms as Writ Petition No. 966 of 2003.

11. Having regard to the facts stated herein above, we find that the issue involved in this Petition is similar to the one that arises in Writ Petition No. 966 of 2003. In this light of the matter, for the reasons stated in Writ Petition No. 966 of 2003 even this Petition deserves to be allowed on the same terms.

12. Writ Petition is accordingly allowed in the same terms as Writ Petition No. 966 of 2003.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)

Diksha
Rane

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signed by
Diksha Rane
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