

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**WRIT PETITION NO.6609 OF 2017**

1. Subhash S/o Ganapatrao Adewar,  
Aged about 55 years,  
Occ:Service, R/o M.I.D.C.  
Bypass, in front of Lords Hotel, M.R.  
Colany, Rukhmini Nagar,  
Amravati, Dist. Amravati.
2. Ramu S/o Ramesh Yeole,  
Aged about 30 years,  
Occ : Service,  
R/o At post Warkhed,  
post Kothedi, Tq. Barshitakli,  
Distt. Akola.
3. Umesh S/o Gunvanirao Deshmukh,  
Aged about 39 years, Occ:Business,  
R/o Balapur Road,  
Modi Nagar, Tq. Shegaon, Dist.  
Buldana. ... PETITIONERS

Versus

1. State of Maharashtra,  
Through its Secretary,  
Department of Higher and  
Technical Education,  
Mantralaya, Mumbai-32.
2. The Joint Director of Higher  
Education, Amravati Division,  
Amravati.
3. Sant Gadegababa Amravati  
University, Through its Vice  
Chancellor, Amravati.
4. Dr. Ajay S/o Prabhakar Deshmukh

Aged about 53 years, Occ. Presently working as a Registrar, Sant Gadgebaba Amravati University, Amravati

5. Smt. Sulbha W/o Vilas patil,  
Aged about 47 years, Occ. Presently working as Deputy Registrar, Sant Gadgebaba Amravati University, Amravati.
6. Dr. Dadarao S/o Ramji Chawhan,  
Aged about 44 years, Occ. Presently working as Deputy Registrar, Sant Gadgebaba Amravati University, Amravati.
7. Dr. Nitin S/o Ambadas Koli,  
Aged about 48 years, Occ. Presently working as Deputy Registrar, Sant Gadgebaba Amravati University, Amravati.
8. Shri Rahul S/o Marotrao Narwade,  
Aged about 38 years, Occ. Presently working as an Assistant Registrar, Sant Gadgebaba Amravati University, Amravati.
9. Dr. Virendra S/o Bhimrao Nimje,  
Aged about 41 years, Occ. Presently working as an Assistant Registrar, Sant Gadgebaba Amravati University, Amravati.
10. Smt. Meenal w/o Harshad Maldhure,  
Aged about 38 years, Occ. Presently working as an Assistant Registrar, Sant Gadgebaba Amravati University, Amravati.

RESPONDENTS

Shri S.P.Bhandarkar, Advocate for the petitioners.

Shri A.M.Deshpande, Additional Government Pleader for respondent nos.1 and 2.

Shri S.S.Ghate, Advocate for respondent no.3.

Shri B.G.Kulkarni, Advocate for respondent nos.5 to 10.

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**CORAM : R.K.DESHPANDE &  
VINAY JOSHI, JJ.**

**DATED : FEBRUARY 28, 2019**

**ORAL ORDER : (Per R.K.Deshpande, J.)**

In response to an advertisement dated 25.08.2016, respondent nos.5, 6 and 7 were appointed on the post of the Deputy Registrar; whereas respondent nos.8, 9 and 10 were appointed as Assistant Registrar in the respondent no.3-Sant Gadgebaba Amravati University. These appointments are approved by the Joint Director thereby making the salaries payable to these persons admissible to grants. Petitioner no.1-Subhash Ganpatrao Adewar was a candidate for selection and the appointment to the post of the Assistant Registrar reserved for N.T.(B) category in response to the said advertisement. Petitioner no.1 was not selected and the post is reserved for N.T. (B) category is lying vacant. Petitioner no.1 has filed Writ Petition No.5067/2017 before this Court, which has been

admitted for final hearing, challenging his selection. Petitioner no.2-Ramu S/o Ramesh Yeole claims to be the Assistant Professor working in the college affiliated to respondent no.3-University; whereas petitioner no.3-Umesh Gunvanirao Deshmukh claims to be Social Worker.

2. This petition is filed, invoking jurisdiction of this Court under Article 226 of the Constitution of India, claiming the relief of declaration that the entire selection process initiated by the respondent no.3-University in pursuance to the advertisement dated 25.08.2016 is illegal, arbitrary, invalid and not in accordance with law and, therefore, the selection and the appointment of the respondents on the posts of the Deputy Registrar and Assistant Registrar be quashed and set aside. The petition further claims the relief of constituting a Committee to inquire into the entire process of the recruitment and appointment of respondent nos. 5 to 10.

3. Initially, notice was issued by this Court on 09.10.2017. Thereafter, on 22.02.2019, we passed the

following order:

*“Put up this matter on 27.2.2019.*

*Shri Sharma, the learned counsel appearing for the petitioners, intends to satisfy this Court on the question of maintainability of this petition – either as the persons directly aggrieved or to institute the proceedings as the public Interest Litigation”.*

*We make it clear that if the petitioners fail to satisfy this Court, the petition will have to be dismissed with heavy costs for abuse of process of Court.”*

4. Accordingly, sufficient time was granted to the parties to address this Court, on the question of locus or to treat this petition as Public Interest Litigation, as claimed by the petitioners.

5. Shri Kulkarni, learned counsel appearing for the respondent nos.5 to 10-appointees, has relied upon the decision of the Apex Court in the case of *Dattaraj Nathuji Thaware Vs. State of Maharashtra and others : (2005) 1 SCC 590* and some other decisions, which have been followed by the Division Bench of this Court in case of *Vilas Krishnaji Ramteke Vs. State of Maharashtra and others* in Writ Petition No.741/2014 decided on 25.07.2014. It is urged that Public Interest Litigation in service matters cannot be entertained and petitioner no.1 has already filed Writ Petition No.5067/2017 challenging his rejection; whereas petitioner nos.2 and 3 have no concern with the selection and appointment, as they were not

participants in the process of the selection.

6. Shri Bhandarkar, learned counsel appearing for the petitioners, has relied upon the decisions of the Apex Court : (1) *State of Punjab Vs. Salil Sabhlok and others* : (2013) 5 SCC 1 (2) *Hari Bansh Lal Vs. Sahodar Prasad Mahto and others* : (2010) 9 SCC 655 (3) *Indian Banks' Association, Bombay and others Vs. Devkala Consultancy Service and others* : (2004) 11 SCC 1 (4) *S.P.Gupta Vs. Union of India* : 1981 (Supp) SCC 87, to urge that the Apex Court has made exception in the matter of challenge to the appointments and it is the consistent view taken that a declaration can be granted by the High Court under Article 226 of the Constitution of India and a writ of quo warranto can be issued to oppose the persons occupying the posts on the ground that they are not qualified to hold the posts or that their appointments are contrary to the statutory provisions.

7. In order to consider the challenge to the selection and appointments of respondent nos.5 to 10 on merits, we asked Shri Bhandarkar, the learned counsel, to point out to us an instance of an appointment of unqualified person in violation of the statutory provisions. He has taken us through the selection and appointment order of respondent no.5-Smt.Sulbha w/o Vilas Patil to the post of the Deputy Registrar in the University, pursuant to the advertisement in question. It is urged by him that the appointments are contrary to the ban on the

recruitment imposed and, more particularly, in violation of the instructions from the Finance Department reflected in the Government Resolution dated 02.06.2015. Reliance is also placed upon certain deficiencies pointed out on 06/07.10.2017 by the Higher Technical Education Department of the State Government. It is also urged that respondent no.5 was not possessing administrative experience of five years as contemplated in the advertisement and she was above maximum age-limit of 43 years (even granting relaxation as candidate belonging to backward class category) as she was more than 46 years on the date of selection and appointment to the post of the Deputy Registrar. Our attention is also invited to the scrutiny of her application by the Superintendent in the office of University making an endorsement that she does not possess an administrative experience and is overage for an appointment to the post.

8. With the assistance of the learned counsel appearing for the parties, we have examined the challenge to the selection and appointment of respondent no.5. No doubt, five years administrative experience was required and respondent no.5 has claimed that she has been working on the post of the Assistant Professor and the Head of the Department and in that capacity, she possesses experience of five years and eight months on the date of making an application dated 10.09.2016. In her application, she has stated that on the date of specified advertisement, she was aged forty-six years, nine months and four days. The scrutiny by the

Superintendent has been taken into consideration by the Registrar and the Vice Chancellor of the University and it is held that respondent no.5 was qualified, possessing requisite experience and in terms of Rule 3 (2) of the Standard Code, there was no age limit prescribed in service candidate and respondent no.5 was on the date of making an application working as Assistant Professor and the Head of the Department in the college affiliated to the University. We, therefore, do not find any substance in the challenge raised to the proceedings of the Selection Committee and the Authorities have ultimately held that respondent no.5 was not overage and that she possesses the requisite experience for the selection and appointment to the post of the Deputy Registrar.

9. There is no objection raised by the Joint Director of Higher Education, who releases salary grants to the respondent no.5. It is the specific stand taken in para 5 of the reply filed on affidavit. It is stated in para 5 of the reply of the Joint Director that after scrutiny of the proposal and after getting approval from the Finance Department, approval has been granted to all 21 appointments made by the University vide communication dated 24.10.2017. However, since this petition was pending, the approval is made subject to outcome of this petition. It is further statement made that the approval has also been granted to release the salary and it is undisputed position that the respondents are getting salary from the State Exchequer.

10. On the question of locus of the petitioners, we would like to quote paragraphs 16 and 20 of the Apex Court decision in *Dattaraj Nathuji Thaware* cited supra as under:

“16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors.* (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

20. It is disturbing feature which needs immediate

*remedial measure by the Bar Councils and the Bar Association to see that the process of law is not abused and polluted by its member. It is high time that the Bar Councils and the Bar Associations ensure that no member of the Bar becomes party as petitioner or in aiding and/or abetting files frivolous petitions carrying the attractive brand name of "Public Interest Litigation". That will be keeping in line with the high traditions of the Bar. No one should be permitted to bring disgrace to the noble profession. We would have imposed exemplary cost in this regard but taking note of the fact that the High Court had already imposed costs of Rs.25,000/-, we do not propose to impose any further cost."*

11. We have, no doubt, that this consistent view is taken by the Apex Court and this decision has been followed by the Division Bench in Writ Petition No.741/2014. Paragraphs 26 and 27 are also relevant and the same are also reproduced below:

*"26.The question that would be required to be considered is as to whether when on one hand the public interest litigation is barred to a litigant who has not directly interested in the litigation, can be permitted to object to a selection made by a validly constituted committee and that too of the rank of the Vice Chancellors. We are at pains to say that there is a growing tendency at the behest of busy bodies to make complaints to various authorities regarding the issues to which they are unconcerned with. No doubt that in the matter of public employment, the purity has to be maintained. However, the issue, whether in a case where no fraud or no favouratism is attributed, can a busy body who has no interest in the lis can be permitted to make the complaints to the authorities regarding a selection made by a validly constituted committee and that too by the rank of Hon'ble Vice Chancellor, needs to be considered.*

*27. We find that if this is to be permitted, it will be leading to nothing else, but opening a pandora's box and permitting the busy bodies to*

*interfere with various issues including the selection processes with which they are not concerned at all. We find that though this is slightly away from the issue, a note of this serious issue, which has come to our notice quite often, needs to be mentioned as a caution.”*

12. We have no doubt in our mind that Public Interest Litigation in the matter of selection and appointment of individual candidate is not at all maintainable. Petitioner no.1, in the present case, is a person, who is aggrieved by his non-selection. He has, therefore, filed Writ Petition No.5067/2017 in which, Rule has been granted. We do not find any propriety and justification on the part of petitioner no.1 to file the present petition. He has acquiesced with the process of selection and appointment of the Deputy Registrar and the Assistant Registrar and having not been selected to the post, we have doubt as to entertaining this petition to complain that the procedure for selection and appointment was not followed. So far as petitioner nos.2 and 3 are concerned, both are not directly aggrieved and they have nothing to do with the process of selection and appointment. We fail to understand how these two petitioners can act as *pro bono publico*, at whose instance the present petition can be treated as Public Interest Litigation. We, therefore, find that the petitioners lack *bonafides* in prosecuting the present writ petition and it is nothing but an abuse of process of the Court.

13. Coming to the decision cited by Shri Bhandarkar, learned counsel for the petitioners, we have no doubt in our mind that the

principles laid down therein cannot be applied in respect of the present petitioners. In all the decisions cited, the Court was dealing with issuance of writ of quo warranto to a person, who is a public servant or occupying the constitutional position. None of the respondents, in our view, hold the public office in their appointments as Deputy Registrar or Assistant Registrar of the University nor do they occupy any such constitutional position.

14. In the decision of the Apex Court in Hari Bansh Lal (cited supra), the Apex Court has held in para 20, which is reproduced below:

*“In State of Mysore V.Syed Mahmood : AIR 1968 SC 1113, it was held that suitability or otherwise, the appointing authority is the best person and the court cannot issue a positive writ without giving the authority/Government opportunity in the first instance to consider his/her claim for promotion. The same view has been reiterated in Statesman (P) Ltd. v. H.R.Deb : AIR 1968 SC 1495”.*

It is held that the question of suitability or otherwise of the candidate for selection and appointment to the post, the appointed authorities is the best person and the Court cannot issue a positive writ without authority or Government authority.

15. In view of the above, we hold that the petitioners have no locus to institute the present petition either as a person aggrieved or as *pro bono publico*. The petition is, therefore, dismissed with costs of Rs.50,000/- to be deposited by each of the petitioner in this Court within

a period of two weeks from today. Put up this matter after two weeks to see the compliance. After deposit of such amount, the Court will pass necessary orders in respect of its appropriation.

16. At this stage, the learned counsel for the petitioners requests four weeks time to deposit the amount of costs. However, we do not find any reason to grant such time.

17. Put up this matter to see compliance on 14.03.2019.

**JUDGE**

**JUDGE**

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