

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 5073 OF 2015**

Vineeta Kalke

...Petitioner

vs.

University of Mumbai & Ors.

...Respondents

....

Mr. Vishal Kanade, a/w. Mr. Monil Punjabi, i/b. Mr. Sanjay Gawde, for the
Petitioner.

Mr. Rui Rodrigues, for Respondent No.1.

Mr. R.P. Kadam, AGP/State-Respondent Nos. 4 to 6.

....

**CORAM: S.C. GUPTE &
MADHAV JAMDAR, JJ.**

DATE : 8 OCTOBER, 2020.

PC:-

. Heard learned Counsel for the parties. Rule. Rule taken up
for hearing forthwith by consent of Counsel.

2. This petition seeks a writ of mandamus directing Respondent
No.1 University to take steps for, and Respondent Nos. 4 to 6 State to
approve (along with letter/application of Respondent No.1), de-reservation
of the post of lecturer/professor in Mathematics in Respondent No.3
College occupied by the Petitioner. The Petitioner was appointed as a
lecturer of Mathematics on a temporary basis for the period between 21
January 1993 and 20 June 1993, against a seat reserved for backward class
candidate (scheduled caste), since candidate of the particular category was
not available at the relevant time. Respondent No.1 University approved

this appointment. Thereafter, services of the Petitioner, as a full time lecturer of Mathematics, were continued on yearly basis by the college. All these years of continuation were duly approved by the University. Between 1993 to 2005, the post of professor of Mathematics was advertised by Respondent No.3 College on more than six occasions. No candidate, however, was available from the reserved category applying for the position. The Petitioner's grievance in the petition is that all conditions required for de-reservation of the post have been complied with in her case. Whilst she has been holding the post from 1993, in spite of various advertisements, no candidate from reserved category was available for the post. Accordingly, it is her case that, in accordance with the applicable G.R., her post should be treated as de-reserved and, consequently, she should to be regularised. The Petitioner's case is that she was appointed in 1992, at which time, the applicable G.R. did not require sanction of the State Government for de-reservation. Under the new G.R. (G.R. dated 5 December 1994), she is entitled to be regularized upon de-reservation of the post, since no scheduled caste certificate was available for five years, during which she served Respondent No.3 College, and even in the sixth year, no reserved category candidate was available for the post held by her. The Respondents' grievance is that under the guise of lack of approval from Respondent No.1 University, Respondent No.2 College is likely to terminate her services and deny her all terminal benefits. The Petitioner, in the premises, seeks the writ of mandamus referred to above.

3. It is a matter of fact that the Petitioner's five employment years were complete in the year 1997-1998 and, in the year 1998, the Petitioner's post ought to be de-reserved as per original G.R. applicable, when her appointment was made. The State Government, however, appears to have

issued another G.R. in the meanwhile (G.R. dated 5 December 1994). It is now this G.R., which is applicable to the Petitioner. Under this G.R., if eligible candidates of reserved category are not available for five recruiting years, then in the sixth year, the posts are to be filled-up alternatively from the same reserved category or another reserved category and if no candidate from any of the reserved categories was available, then in the seventh year, the posts have to be de-reserved and filled-up from open category. The final authority to sanction this de-reservation was with the State Government, who had to approve of the same after receipt of a proposal in that behalf from the University. It is a matter of fact that advertisements were issued during the period of the Petitioner's employment for the years 1992-1993, 1993-1994, 1994-1995, 1995-1996, 1997-1998, 1999-2000, 2003-2004 and 2005-2006. This leaves a gap of a few years in between, but on the whole, there has been adequate or substantial compliance with the G.R. of 5 December 1994.

4. Mr. Kanade, learned Counsel for the Petitioner, relies on a judgment of this Court in **Meena Patil vs. SNDT College of Arts & C.B. College of Commerce and Economics Mumbai & Ors.**¹, where in a similar fact-situation, this court held that if there was a gap in the advertisements but the teacher had continued to work on the basis of proper qualifications from the date of his or her initial appointment, the teacher could not be said to be at fault, if the advertisement was not issued by the college in any particular year; the proposal of de-reservation, in the premises, should have been forwarded to the University, which, in turn, could have forwarded the same to the General Administration Department of the

¹ W.P.1211-2014, Coram: S.C. Dharmadhikari & Smt. Bharati H. Dangre, JJ, dated 7 June 2018

State, as stipulated in the G.R. This court, accordingly, allowed the teacher's case, observing that the teacher could not be made to suffer on account of inaction on the part of the college, since she was in continuous employment of the college for the requisite number of years. Similar view has been taken by this Court in **Arti G. Daptardar vs. University Grant Commission**². Mr. Rodrigues, for Respondent No.1 University and the learned AGP, for Respondent Nos. 4 to 6 State, are not in a position to contest the applicability of the law stated by our court in these two cases, to the case of the Petitioner herein.

5. On these facts and considering the law stated by our Court in the two cases above referred to, the Petitioner's grievance appears to be clearly justified. The Petitioner has continuously worked with Respondent No.2 College from 1 August 1992 till date. There have been at least eight advertisements during the years 1992-93 and 2005-06 calling for applications from reserved candidates for the post. It is not in dispute that no application was forthcoming from any such candidate for the post, during all these years, which are, in any event, over the requisite number of six years. Merely because for a particular in-between year no advertisement was issued by the Respondent College, the Petitioner cannot be denied the benefit of the G.R. of 5 December 1994.

6. Before we conclude our order, we must note that the Respondent University, in the case on hand, is not at any fault, since it did not have a proper and completed proposal from Respondent No.3 College, whereupon alone it could have approved and forwarded the de-reservation

² WP2274-2015, Coram: S.C. Dharmadhikari & Smt. Bharati H. Dangre, JJ, dated 20 June 2018.

proposal to the General Administration Department of the State. It was incumbent on the part of Respondent No.3 College not only to have issued the advertisement for the in-between year/s, but also to have forwarded a completed proposal for de-reservation to the University. The University, if it so thinks fit, may call for an explanation in this behalf from Respondent No.3 College. That would, though, be a matter between the college and the university; it would have no consequence so far as the Petitioner is concerned.

7. Accordingly, Rule is made absolute and the petition is allowed in terms of prayer clauses (a) to (c), which are quoted below:

- “(a) That this Hon’ble Court may be pleased to issue writ of mandamus or a writ in the nature of mandamus directing Respondent No.1 and Respondent Nos.4 to 6 to approve the said application dated 3 October 2014 of Respondent No.2, along with letter/application dated 10 January 2015 of Respondent No.1, for de-reservation of the post of lecturer/professor in Mathematics reserved for scheduled caste in the said college of Respondent No.3 in Alibag.
- (b) That the Hon’ble Court may be pleased to issue writ of mandamus or a writ in the nature of mandamus directing Respondent Nos. 1 and 4 to 6 to de-reserve the post of lecturer/professor in Mathematics reserved for scheduled caste in the said college of Respondent No.3 in Alibag.
- (c) That this Hon’ble Court may be pleased to issue writ of mandamus or a writ in the nature of mandamus directing Respondent Nos. 1

to 4 to regularize the appointment of the Petitioner to the post of lecturer in Mathematics in the said college of Respondent No.3 in Alibag w.e.f. her date of appointment since 1 August 1992 with all consequential benefits.”

8. The writ petition is disposed of accordingly. No order as to costs.

9. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(MADHAV JAMDAR, J.)

(S.C. GUPTE, J.)

Smita
Gonsalves

Digitally signed by
Smita Gonsalves
Date: 2020.10.13
11:40:23 +0530