

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

WRIT PETITION NO.2055 OF 1999

Gautam S. Mehta & Anr.

...Petitioners

vs.

State of Maharashtra and Ors.

...Respondents

Mr. Kunal R. Kumbhar i/b Sunanda R. Kumbhar for the petitioners.

Mr. G. W. Mattos, AGP for the Respondent/State.

**CORAM : B. P. DHARMADHIKARI,
ACTING CHIEF JUSTICE &
N. R. BORKAR, J.**

DATE : 9/3/2020.

PC.:

. Learned counsel for the petitioners sought adjournment as the senior advocate incharge of the matter is not available. As the matter is old we have rejected his request.

2. As the request was rejected, without prejudice to the said request and on request of this Court, learned advocate has assisted the Court for understanding the controversy. We have perused papers and heard learned AGP.

3. Petitioners are legal practitioners appearing in proceedings under the Maharashtra Public Trusts Act 1950 in the Court of Assistant Charity Commissioner, Deputy Charity Commissioner or Joint Charity Commissioner. Effort is to demonstrate that the provisions for appointment of persons without any legal background/experience on said post is unconstitutional.

4. The other prayer is to declare Government Resolution dated 27/11/1997 as ultra vires the Constitution of India.

5. We do not delve more into facts since the Division Bench then has on 1/10/1999 passed a long order. It found that there was no case made out to examine challenge to constitutionality of sections 4 and 5 of the 1950 Act. However, in relation to other prayers, Division Bench by reasoned order found that during pendency of writ petition Joint Charity Commissioner, Deputy Charity Commissioner and Assistant Charity Commissioner who are on deputation would be transferred and posted by Charity Commissioner in the manner as was being done prior to issuance of said Government Resolution.

6. It is not in dispute that accordingly very same procedure is being followed.

7. In this situation, we find that the present petition can conveniently be disposed of by making Rule absolute in terms of order dated 1/10/1999.

8. Learned Counsel however has submitted that the latter judgment of Hon'ble Apex Court in the case of ***State of Gujarat and Ors. Vs. Utility Users Welfare Association and Others: 2018 (6) SCC 21*** warrants appointment of persons with law degree and experience as the presiding officer. We are inclined to keep the said contention open.

9. If today there are any officers who do not have such background and therefore their continuation on any of the above post violates the law, we grant petitioners leave to approach again with such

grievance.

10. Learned AGP submits that in the meanwhile procedure for transfer may also have undergone some change. No such change is pointed out to this Court, however if such change in any way violates the rights of the petitioners in any manner, petitioners can bring it to the notice of this Court in appropriate jurisdiction.

11. Thus, with this liberty and above observation, we partly allow the petition and dispose it of.

(N. R. BORKAR, J.)

(ACTING CHIEF JUSTICE)