

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.4768 OF 2020
WITH
CIVIL APPLICATION NO.4514 OF 2021**

Dr. Milind B. Ubale
Age : 59 years, Occu. : Professor,
Flat No.301, Samarth Nagar,
Near Varad Ganesh Mandir,
Aurangabad.
C/o. Vasantrya Naik College,
Aurangabad.

Petitioner...

Versus

1. State of Maharashtra,
Through Addl. Chief Secretary,
Department of Higher & Technical Education,
Mantralaya, Mumbai 32.
2. The Director,
Directorate of Higher Education, Pune,
Pune 411 011.
3. The office of Joint Director,
Higher Education, Aurangabad.
4. Vinayakrao Patil Shikshan Prasarak Mandal
Aurangabad.
Through its Chairman.
5. Dr. Babasaheb Ambedkar Marathwada University
Aurangabad
Through the Registrar.

Respondents...

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Ms. R.R. Barhate, Advocate for the Petitioner.
Mr. S.B. Yawalkar, AGP for Respondent Nos.1 to 3.
Mr. S.G. Chapalgaonkar, Advocate for Respondent No.4.
Mr. S.S. Thombre, Advocate for Respondent No.5.

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**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

DATED : 02nd JULY, 2021

ORAL JUDGEMENT (PER RAVINDRA V. GHUGE, J):-

1. Rule. Rule made returnable forthwith and, by consent of the parties, taken up for final hearing.

2. We have considered the strenuous contentions of the learned advocates for the petitioner, respondent nos.4 and 5 and the learned AGP on behalf of respondent nos.1, 2 and 3.

3. The petitioner has put-forth prayer clauses (A), (B), (C) and (D) as under:

“A. The Hon’ble Court be pleased to issue writ of mandamus or any other appropriate writ, Order or direction of like nature, to direct the Respondents to conduct the interview for the post of Principal advertised on 28/01/2020 of Respondent no.4 V.P.S.P.M.S. Arts, Commerce and Science College, Kannad, before 30th June, 2020;

B. In the alternative and if and only if, for any reason, the prayer Cl.(A) cannot be granted, in that event, the Hon’ble Court be pleased issue writ of mandamus or any other appropriate writ, Order or direction of like nature, to direct the Respondents to conduct the interview for the advertised post of Principal of Respondent no.4 V.P.S.P.M.S. Arts, Commerce and Science College, Kannad, at the earliest possible and in any event within a period of six weeks from the date of Order, and petitioner be declared as eligible and direction be given to the Respondents to permit petitioner to attend interview and consider his candidature for post of Principal;

C. To declare the petitioner to be treated as continuing notionally in service beyond 30/06/2020, without pay, only for the purpose of eligibility for participating in the interview being held pursuant to advertisement dated 09/02/2020, for said post of Principal, and consequential directions based on such declaration be also issued;

D. The entire period of lockdown from 24/03/2020 upto 30/06/2020, should be taken into consideration while determining the date of retirement i.e. 30/06/2020 in the context of eligibility of petitioner to participate in the interview, as and when held, pursuant to the advertisement dated 09/02/2020 for the post of Principal and necessary directions to extend the eligibility of Petitioner by said period, may kindly be issued;"

4. In the light of the strenuous submissions of the learned advocates for the petitioner, respondent no.4 and respondent no.5 and the learned AGP on behalf of respondent nos.1, 2 and 3, there is no dispute on the following issues :-

- a) An advertisement was published by respondent no.4 Institution on 28.01.2020, pursuant to the approval accorded by respondent no.5 University, for filling in the post of Principal in the Vinayakrao Patil Shikshan Prasarak Mandal, Arts, Commerce and Science College, Kannad affiliated to respondent no.5 University.
- (b) The petitioner was in employment as a professor of chemistry with the Vasant Rao Naik College since 04.09.1991. He is a researcher. He is a Ph.D holder and 12 of his students have been awarded Ph.D and 6 of his students are awarded M.Phil.
- (c) The petitioner has 28 years of teaching experience and 150 research papers to his credit.
- (d) The petitioner superannuated on 30.06.2020 at the age of 60 years.
- (e) The superannuation age of the Principal is 65 years.
- (f) Pursuant to the advertisement dated 28.01.2020, respondent no.5

University nominated its nominee on the selection committee in accordance with the Maharashtra Public Universities Act, 2016.

- (g) Paragraph-B of the advertisement clearly indicates that the appointment to the post of Principal would be a tenure appointment for a period of 5 years from the date of appointment or upto the candidate reaching/attaining the age of superannuation, whichever is earlier.
- (h) The ban on recruitment which was introduced by the State Government after the selection committee was formalized, has now been lifted and there is no prohibition for respondent no.4 to proceed with the temporarily suspended selection process on the basis of the advertisement dated 28.01.2020.
- (i) On a query raised by respondent no.4 with respondent no.5 as to the steps to be taken pursuant to the lifting of the ban, respondent no.5 University has advised respondent no.4 to opt for a fresh advertisement since one candidate who was a member of the selection committee, has retired.

5. Shri Thombre submits that the university advised respondent no.4 to publish a fresh advertisements so that more candidates could be attracted and if such applications are received, all the candidates could be considered. Shri Chapalgaonkar submits that being an educational institution affiliated to the respondent no.5 University, they are willing to proceed from the stage at which the selection process was suspended, in as much as, they can also proceed, under the advice of the university, by publishing a fresh advertisement.

6. We find from the advertisement dated 28.01.2020 that

though the petitioner has superannuated from his service as professor of chemistry in a college, during the ban period, he would still be eligible as the advertisement, based on the UGC norms, clearly suggests that the appointment to the said post would be a tenure appointment for 5 years and if a candidate who is selected and appointed attains the age of superannuation prior to completion of 5 years, he would retire at the stroke of his superannuation. This indicates that the petitioner is eligible for the post of Principal even today pursuant to his retirement as a professor.

7. We are of the view that as the selection process was temporarily stalled on account of the ban introduced by the State Government, in view of the National Lockdown owing to the Covid-19 pandemic, respondent no.4 had to suspend the selection process, *albeit* for a temporary period till the ban lasted. As the ban has been lifted, the selection process has to proceed, from the stage of its suspension. There is no dispute that the interviews with regard to the applicants to the post of Principal were scheduled on 24.03.2020 and around 08.00 p.m on 23.03.2020, a national lockdown was declared and the interviews had to be postponed.

8. We do not find that this case involves an element of an illegal or a faulty advertisement or that the procedure laid down in law has been violated while advertising the post of Principal. It is purely under fortuitous circumstances that the interviews scheduled on 24.03.2020 had to be postponed as a national lockdown was declared on the eve of the interviews. Now that the ban is lifted, the selection process has to proceed further from the stage at which it was postponed.

9. We are informed that the nominee of the Joint Director Higher Education, Aurangabad on the selection committee, namely Mr. Gupta, has retired and, therefore, would not be in a position to continue to be a part of the committee. This does not create any impediment in the path of the selection process since respondent no.3 submits that it can appoint its nominee as per the procedure laid down, within two weeks from respondent no.4 submitting a requisition letter. Shri Chapalgaonkar submits that respondent no.4 would send such a request letter to respondent no.3 within one week.

10. In view of the above, this petition is partly allowed with the following directions:

- a) Respondent no.4 shall submit a request letter to respondent no.3, seeking nomination of its representative on the selection committee, on or before the 12th day of July 2021. Copy of the said letter be submitted to respondent no.5 University in the same period.
- b) Respondent no.3 shall nominate a qualified person as member of the selection committee and inform respondent nos.2, 4 and 5. Such nomination shall be made on or before 20.07.2021.
- c) Pursuant to the above, the interviews of all candidates who have applied pursuant to the advertisement dated 28.01.2020, shall be conducted expeditiously and preferably within the period upto 30.09.2021.
- d) In the event any member of the selection committee nominated by respondent no.5 has retired thereby not being eligible to continue in the selection committee, respondent no.4 would accordingly

(7)

intimate respondent no.5 and request for such nomination, on or before 12.07.2021. Respondent no.5 would nominate the concerned members on or before 20.07.2021.

11. Rule is made partly absolute in the above terms.
12. Pending civil application does not survive and stands disposed off.

(S.G. MEHARE. J)

(RAVINDRA V. GHUGE, J)