

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

WRIT PETITION NO. 9611 OF 2018

Dr. Sadanand Shrinivas Deshpande
and others

.. Petitioners

Versus

The State of Maharashtra and others

.. Respondents

Mr. Kunal Kataria, Advocate i/by Mr. S. S. Jadhavar, Advocate for the
Petitioners.

Mr. S. G. Karlekar, AGP for Respondent Nos. 1 to 3.

Mr. C. V. Dharurkar, Advocate for Respondent No. 4.

Mr. Ajay S. Deshpande, Advocate for Respondent Nos. 5, 7, 8 and 16.

**WITH
WRIT PETITION NO. 9662 OF 2018**

Dr. Sunil Rauprao Adhau
and another

.. Petitioners

Versus

The State of Maharashtra and others

.. Respondents

Mr. Kunal Kataria, Advocate i/by Mr. S. S. Jadhavar, Advocate for the
Petitioners.

Mr. S. G. Karlekar, AGP for Respondent Nos. 1 to 3.

Mr. C. V. Dharurkar, Advocate for Respondent No. 4.

Mr. Ajay S. Deshpande, Advocate for Respondent Nos. 5, 7, 8 and 16.

**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

Date on which reserved for orders : 09th April, 2021.

Date on which order pronounced : 07th May, 2021.

ORDER (*PER S. V. GANGAPURWALA, J.*) :-

. The petitioners are working as Lecturers (Selection Grade). The petitioners applied for the post of Principal, Government Polytechnic College (Group – A). Their candidature is rejected. Aggrieved thereby, the petitioners filed Original Application No. 1116 of 2017 before the Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad. The Tribunal dismissed the original application under judgment and order dated 18.07.2018.

2. The gravamen of the petitioners contention appears to be that the experience acquired working on the post of Lecturer (Selection Grade) is equivalent to the experience of the person officiating as Head of Department interalia eligible to apply for the post of Principal, Government Polytechnic College (Group – A). The case of the respondents rests on the premise that the post of Lecturer (Selection Grade) is not equivalent to the post of Head of Department interalia person officiating as Lecturer (Selection Grade) is not eligible to apply for the post of Principal. The contention of the petitioners did not find favour with the Tribunal. The Tribunal dismissed the Original Application.

3. Mr. Kataria, learned counsel for the petitioners eruditely canvassed the submissions. The contour of the submissions is summed

up as under :

A. The All India Council for Technical Education (for short 'AICTE') notifications dated 30.12.1999 and 04.01.2016 list the academic and administrative responsibilities of the Lecturers (Selection Grade) in Polytechnic institutions. The said notifications very clearly suggest that the Lecturers (Selection Grade) also possess administrative responsibilities and, therefore, have experience in educational administration. The Tribunal has laid emphasis only on the question whether the post of Head of Department (HOD) and Lecturer (Selection Grade) are the same. In the present matter the controversy would be whether the administrative experience of the petitioners is equivalent to the post of Head of Department. The AICTE has clarified by letter dated 27.12.2017 that the term "administrative experience" and "educational administration" are synonymous for academicians. The AICTE pursuant to the query of this Court on 16.10.2019 clarified that there are only three designations of teachers in Polytechnic namely Lecturer, Head of Department and Workshop Superintendent. Since Lecturer (Selection Grade) and Head of Department both carry similar pay band and AGP of Rs. 9000/- . The service rendered by the Lecturers (Selection Grade) can be considered for his eligibility to the post of Principal, provided that he has the qualifications of the Head of

Department. In view of AICTE's clarification, the debate ought to end and ought to have been held that Lecturer (Selection Grade) are competent to be considered for the post of Principal. The Head of Department carry out administrative activities. Even the Lecturers (Selection Grade) carry out educational administrative activities and, therefore, ought to have held eligible for selection to the post of Principal.

B. It is emphatically contended that if there is a conflict between the provisions framed by AICTE and the State Government, the norms laid down by the AICTE would prevail. The learned counsel relies on the following judgments.

- a. Mrs. Anala Pandit Vs. Director, Directorate of Technical Education & Ors. (2018) SCC OnLine Bom 463 – para 8, 9 and 11.*
- b. State of TN and Anr Vs. Adhiyaman Educational & Research Institute and Others (1995) 4 SCC 104 – para 12 and 41.*
- c. Parshvanath Charitable Trust and Ors. Vs AICTE & Ors (2013) 3 SCC 385 – para 24.*

C. In the present case, the advertisement issued by the Government of Maharashtra is not in conflict with AICTE notification. However, the respondents interpretation is without considering AICTE clarifications.

D. The M.P.S.C. as well as the Tribunal failed to consider the binding clarification issued by the AICTE while interpreting the advertisement. The whole attempt by the M.P.S.C. and the Tribunal was to find out sources of the definition of 'equivalent'. The AICTE notification dated 04.01.2016 itself laid down the equivalence in clarification No. 48 r/w clarification No. 62. The AICTE clarification dated 04.01.2016 and notification dated 05.03.2010 are statutory rules governing the advertisement in question. Once the statutory rules clearly lay down the principle that a Lecturer (Selection Grade) has experience in educational administration, is eligible to apply for the post of principal. The equivalence is created by deeming fiction in the statutory rules and the petitioners ought to have been held eligible for appointment to the post of Principal. Under clarification dated 04.01.2016 to the notification dated 05.03.2010, the AICTE has observed and held that at diploma level the workload of Head of Department and Lecturer (Selection Grade) is 14 hours per week. The respondents are erroneously contending that workload of Head of Department is 14 hours per week and Lecturer (Selection Grade) is 18 hours per week.

E. The petitioners possess the qualification for being appointed to the post of Principal as per the AICTE notification and the advertisement. The advertisement will have to be interpreted in

consonance with the AICTE notifications. On 27.02.2003 the Government of Maharashtra under the Government Resolution adopted the responsibilities listed in AICTE notification of 1999 and agreed that teachers in Polytechnic institution also perform administrative duties. The list of the administrative duties are enlisted in Appendix – C of the said Government Resolution.

F. It is further submitted that career advancement scheme also does not recognize the post of Head of Department to be superior to the post of Lecturer (Selection Grade) and the Head of Department is one of the Lecturer (Selection Grade) and effectively a first among equals. The Tribunal has failed to consider the relevant aspects in the matter in its correct perspective and impugned order deserves to be set aside. The petitioners be considered eligible for the post of Principal. The learned counsel further submits that it will not be necessary to dislodge the respondents selected as principals as there are vacant posts for accommodating the petitioners as Principal available.

4. Mr. Karlekar, the learned Assistant Government Pleader lucidly canvassed the following propositions.

I. As per the relevant recruitment rules and the Government Resolutions issued from time to time, the cadres in diploma level

institution comprises of Director / Principal and other two cadres are Lecturer and Head of Department. There is no separate cadre of Lecturer (Selection Grade) to which the petitioners belong and the posting of Lecturer (Selection Grade) is only to avoid stagnation and is a career advancement avenue and forms part of the approved cadre viz. Lecturer.

II. The post of Head of Department as per the recruitment rules dated 28.08.2008 was to be filled in by promotion on the basis of seniority amongst Lecturers working in Selection Grade scale and by nomination from amongst the candidates possessing seven years experience of industry or research with at least three years experience as a Lecturer in Polytechnic College and other criteria. As per the recruitment rules of 2012 notified vide notification dated 10.09.2012 the post of Head of Department is to be filled in by nomination.

III. The Lecturer (Selection Grade) is a feeder cadre for considering a candidate for appointment as Head of Department in Polytechnic College. The petitioners had also applied pursuant to the advertisement for filling up post of Head of Department. Some of the petitioners were also selected. The petitioners participated in the process for appointment to the post of Head of Department. It also clearly establishes that petitioners have presented themselves for appointment

to the post of Head of Department and as such, acceded to the fact that Head of Department forms a separate cadre. Therefore, the experience as a Lecturer (Selection Grade) cannot be termed as an experience equivalent to the experience of officiating as a Head of Department. The workload amongst the Head of Department and Lecturer (Selection Grade) also defers. The workload of Head of Department is 14 hours a week and for Lecturer (Selection Grade) it is 18 hours a week. The pay scale also defers. The pay scale of Lecturer (Selection Grade) is Rs. 15,600 – 39,100/- with Grade Pay of Rs. 8000/- for first three years and thereafter they get pay scale of Rs. 37,400 – 67,000/- with Grade Pay of Rs. 9000/- after completion of three years. Whereas, Head of Department from the date of their appointment are placed in the pay scale of Rs. 37,400 – 67,000/- with Grade Pay of Rs. 9000/- and on completion of three years they are entitled for Grade Pay of Rs. 10,000/- . Even otherwise, pay scale cannot be a criteria to consider equivalence.

IV. The reliance placed by the petitioners on Government Resolution dated 27.02.2003 and claiming the responsibilities enumerated therein as an experience akin to experience of educational administration and further reliance on Note 62 in the clarification issued by AICTE also cannot be considered for the simple reason that those job

responsibilities are carried out by all the Lecturers. Therefore, if, the same is to be accepted, then the Lecturer irrespective of whether they are officiating as Lecturer (Selection Grade) would have to be considered eligible for the post of Principal and the requirement of experience of Head of Department would be rendered redundant.

5. Mr. Deshpande, learned counsel for the respondent Nos. 5, 7, 8 and 16 supports the contentions of the learned A.G.P.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. The diapason of the lis is interpretation of clause 4.3 (b) of the advertisement. Clause 4.3 of the advertisement prescribes the qualification for the post of Principal. The same reads thus :

4.3 शैक्षणिक अर्हता व अनुभव :-

(A) Bachelor's degree and Master's degree of appropriate branch in Engineering / Technology with First Class or equivalent either at Bachelor's or Master's level.

OR

(B) Bachelor's degree and Master's degree of appropriate branch in Engineering / Technology with First Class or equivalent either at Bachelor's or Master's level And Ph.D. or equivalent in appropriate discipline in Engineering/ Technology.

AND

(C) Minimum of 10 years relevant experience in teaching /

research / industry out of which at least 3 years shall be at the level of Head of Department or equivalent.

Note (1) - In case of Architecture, professional practice of 10 years as certified by the Council of Architecture shall also be considered valid.

Note (2) a. Equivalence for Ph.D. is based on publication of 5 international journal papers, each journal having a cumulative impact index of not less than 2.0, with incumbent as the main Author and all 5 publications being in the authors area or specialization.

b. In case of research experience, good academic record and books / research paper publications / IPR / patents record shall be required as deemed fit by the expert members of the Selection Committee.

c. If the experience in industry is considered, the same shall be at managerial level equivalent to head of the department with active participation record in designing, planning, executing, analyzing, quality control, innovating, training, technical books / research paper publications / IPR / patents / etc. as deemed fit by the expert members of the Selection Committee.

d. For the post of Principal flair for management and leadership is essential as deemed fit by the expert members of the Selection Committee.

8. Perusal of the advertisement, 10 years relevant experience may be in teaching or research or industry. Out of that, three years shall be at the level of Head of Department or equivalent to the position of Head of Department. Perusing clause 4.3 (C) it would appear that if a

person possesses qualification as detailed in clause 4.3 (A) or (B) then, a person possessing 10 years relevant experience in teaching at the level of Head of Department or equivalent or 10 years experience in research at the level of Head of Department or equivalent or 10 years experience in industry at the level of Head of Department or equivalent is eligible to apply. The post of Principal can be occupied by a person from stream of teaching or research or industry. Note 2 (b) of the clause 4.3 prescribes the criteria for research and in case of person from industry the officiation at managerial level is equivalent to Head of Department.

9. The petitioners herein are Lecturers (Selection Grade) and they claim equivalence of possessing experience of the persons functioning at the level of Head of Department. The Maharashtra Administrative Tribunal negated the contention of the petitioners.

10. Under the service jurisprudence the true attribution for equivalence are the nature and responsibilities of the duties attached to the two posts and also its status. Mere pay scale of two posts would not be a determinative factor.

11. The petitioners' case rests on the premise that the job responsibilities of the Lecturer (Selection Grade) and Head of

Department is similar. Their pay scales are also similar. The petitioners have relied upon the Appendix – C of the Government Resolution issued by the Government of Maharashtra dated 27.02.2003 to substantiate the contention of similarity of job responsibilities between Lecturer (Selection Grade) and Head of Department. The same reads thus :-

APPENDIX – C
JOB RESPONSIBILITIES OF TEACHER
(Diploma Level Technical Institutions)

Academic	RES and Consultancy	Administration	Extension
1	2	3	4
Teaching Diploma & Post-diploma courses including lecturers, laboratory & tutorials	R & D work on Industrial problems & projects	Assisting in Institution/ Department Administration planning & its implementation	Assisting in Extension services to the industry
Students assessment & evaluation including Examination work of the State Board of Technical Educational	Publication of Technical papers	Organizing R & D Work in industrial Problems & Projects	Contributing to Community Activities
Planning and implementation of Instruction in Laboratory	Promotion of Industry institution collaboration & industry oriented R & D	Academic & Administrative Management of Institution	Public relations & interaction with community.
Developing resource	Organizing &	Preparation of	Providing non

material and curricula.	Coordinating Consultancy services	project proposals for funding	Formal/distance Mode of Education for benefit of community
Design & Developing of laboratory instructions	Providing testing /Repaid services	Development Administration & Management of institutional facilities	Promotion of Entrepreneurship and job creation
Participation in the Co-curricular and Extracurricular Activities		Providing academic And administrative Leadership	Dissemination of Knowledge
Student guidance & counseling & helping their character development		Monitoring & Evaluation of academic Activities in the institution	Technical support to socially relevant projects
Innovation in Technician education & Evaluation		Participation in policy and system planning at State Regional & National Level for development of technical education	
Providing leadership in teaching Diploma & Post Graduate Diploma courses		Assisting in resource mobilization for the institution	
Promoting & coordinating continuing Education Activities		Maintaining Accountability, Developing, updating and maintaining MIS	
Self development through Up-gradation of, knowledge and skills		To conduct performance appraisal	

12. The job responsibilities of the Head of Department as detailed and relied by the respondents are as under :-

Responsibilities :-

1. Head of Department is answerable to the Principal of the Polytechnic for all academic and administrative/personnel activities of the department.
2. Academic and administrative management of the department.
3. Assessing the requirements of the material, financial and human resources for effective implementation of prescribed curricula of program offered by the department.
4. Planning, scheduling, coordinating and monitoring the curriculum implementation pertaining to the department.
5. Responsible authority to perform academic, personnel and security functions and to maintain necessary records (like DSR) of the departmental assets in stipulated formats.
6. To act as facilitator for the departmental faculty in laboratory development, laboratory set-up, and laboratory maintenance.
7. Provide motivation & guidance to faculty and other staff in the department.
8. Participate, motivate, guide & facilitate professional development through continuing education, testing and consultancy & research.
9. Identify and organize faculty and supporting staff development programs.
10. To act as authority for coordinating and conducting examinations / test examinations.
11. Maintaining students attendance record submitted by the lecturers and students evaluation record.
12. Development and implementation of short term and long term plan for department development and quality improvement.
13. Preparation of timetable and mobilization of teaching-learning resources.
14. Provide guidance & counseling and other student services at department level.
15. Plan, organize and facilitate industry visits and expert lectures.

16. To plan and implement the activities to take care of hygiene, safety and house keeping in the department.
17. Take teaching load prescribed as per the norms issued time to time by State Government.
18. Evaluate the performance of the faculty and supporting staff.
19. Create, maintain and motivate cordial relations and team spirit in the team working under him/her & provide impartial opportunities for contribution to faculty & staff.
20. Promote, guide, facilitate and participate in professional activities through interaction with industries, consultancy, testing, continuing education and trainings, industry sponsored projects, entrepreneurship development.
21. Assist Principal in institute level activities.
22. Keep abreast of the newer knowledge, skills and technology through self-up-gradation and dissemination of knowledge through articles, books, journals and seminars etc.
23. Self development through qualification improvement, experience enrichment, professional activities and interactions with professional bodies.
24. Participate in non-formal mode of education for benefit of society/Community.
25. Certify and recommend the vouchers/bills of department/related expenditures for further processing.
26. To plan and implement the activities to take care of hygiene, safety and house keeping in the institute.
27. To develop and maintain inter departmental relation for effective working in the institute.
28. Motivator and facilitator for carrying co-curricula and extra curricular activities for developing overall personality of students.

13. Perusing the job responsibilities of Head of Department and the Lecturer (Selection Grade), it cannot be said that they are similar. The Head of Department is in-charge of the academic and administrative

management of the department. He acts as facilitator for the departmental faculty in laboratory development, laboratory set-up and laboratory maintenance. He has to maintain the students attendance record submitted by the lecturers and students evaluation record. It is the Head of Department who evaluates the performance of the faculty and supporting staff. The Head of Department has to assist the Principal in institute level activities. Some of the duties of the Lecturer (Selection Grade) and the Head of Department would be overlapping. The evaluation of the lecturers performance is made by the Head of Department. As per Government Resolution dated 25.03.1997 the Reporting Officer for the Lecturers, Lecturers in Senior & Selection Scale is the HOD and Reviewing Officer is the Head of Organisation, whereas, Reporting Officer for HOD is the Principal. As per the Government Resolution dated 25.03.1997 the Head of Department is an administrative head in so far as his department is concerned.

14. As per the Government Resolution dated 27.02.2003 only two cadres are recognized. Level 1 is a cadre of Lecturer and level 2 is the cadre of Head of Department. The status of the Lecturer (Selection Grade) and Head of Department is also distinct. The Lecturer (Selection Grade) is answerable to the Head of Department. Clause 7 of the Government Resolution dated 27.02.2003 prescribes the cadres.

The same is as under :-

7. Cadre Structure :

(A) For each diploma level institution there shall be one post Director / Principal. In addition each Department shall have one post of

Head of Department if there are more than one department in the Institute. The other cadres shall be as under :-

<u>Level</u>	<u>Cadre</u>
I	Lecturer
II	Head of Department

(B) The required total strength of teachers in the institution including Heads of Departments will be determined by the staff/student ratio as per A.I.C.T.E. norms or as per actual workload of Institutes whichever is less.

(C) In addition to the cadre structure mentioned in sub-para (A) above the career Advancement Scheme shall provide for the following teaching positions but within the overall sanctioned strength of each Department:

- i) Lecturer (senior scale)
- ii) Lecturer (Selection Grade)

15. The Principals are in pay band of Rs. 37,400–67,000 with AGP of Rs. 10,000/- + special allowance of Rs. 2000/- per month.

16. As per the AICTE notification dated 05.03.2010 the Lecturer (Selection Grade) after completing three years of teaching with AGP of Rs. 8000/- is eligible to move to the pay band of Rs. 37,400–67,000

with AGP of Rs. 9000/-. The person officiating as a Head of Department is directly placed in the pay band of Rs. 37,400–67,000 with AGP of Rs. 9000/-. The Head of Department completing three years of service in the AGP of Rs. 9000/- and possessing Ph.D. qualification in the relevant discipline is eligible to be placed in pay band of Rs. 37,400-67,000 with AGP of Rs. 10,000/-.

17. It thus would appear from the above that a Lecturer (Selection Grade) at the most is eligible for AGP of Rs. 9000/-. Whereas, the Head of Department from the day one of his officiation is placed in AGP of Rs. 9000/-. Upon completion of three years, he is eligible to be placed in AGP of Rs. 10,000/-. Under the advertisement, for a person to be eligible to apply for the post of Principal the candidate should have worked at least three years at the level of Head of Department or equivalent. The Head of Department after three years is placed in AGP of Rs. 10,000/-. Whereas, Lecturer (Selection Grade) can move upto maximum to the AGP of Rs. 9000/-.

18. The petitioners are harping on the clarification dated 04.01.2016. The AICTE has clarified that a faculty of Engineering and Technology with minimum 10 years relevant experience in teaching / research out of which three years in the same grade i.e. Rs. 9000/- at par with Head of Department is eligible for the post of Principal in

Polytechnic, provided the person also has an administrative experience of at least three years and under column No. 62 it is clarified that experience in education administration for the purpose of appointment of Principal / Director in Technical Institution can be considered.

19. The AICTE notification dated 04.01.2016 is only clarification of the notification dated 05.03.2010.

20. It would also appear that upto the year 2012 the post of Lecturer (Selection Grade) was a feeder cadre for the post of Head of Department when the post of Head of Department is filled in by promotion. It is only under the notification dated 10.09.2012 the posts of Head of Department are filled in by nomination. It is also fact that some of the petitioners had appeared for the selection of Head of Department and had failed in getting selected.

21. The process of placing a Lecturer in senior scale or selection grade is not a promotion. The person remains the Lecturer. Only because his qualification and experience he is given a higher scale. It is only a placement in the pay scale of a selection grade. The job responsibilities of the Lecturer, Lecturer (Selection Grade) and Head of Department are quite different and are commensurate to their nomenclature. The Head of Department is an academic post, but it has

to perform the administrative job of the department. If the job responsibilities as are seen, then even other lecturers would be performing the similar job responsibilities as that of a Lecturer (Selection Grade). The job responsibilities of Lecturers relied by the petitioners irrespective of their placement in a senior scale or in a selection grade is the same.

22. The reliance is placed by the petitioners in a case of ***Dr. Bhabeshwar Tongbram Vs. Shri Rajkumar Nando Singh and others*** of the High Court of Manipur at Imphal. In the said case the administrative experience was three years. Educational administration was considered to be sufficient experience.

23. The judgment in a case of ***Mrs. Anala Pandit*** (supra) of the Division Bench of this Court at the Principal Seat at Bombay is on altogether different facts. The eligibility criteria for the post of Lecturer was a subject matter of consideration. The approval to her appointment was rejected on the ground that the petitioners' basic qualification of B.Sc. was not in the subject concerned, however, possessed the Ph.D. and the Post Graduate degree in the concerned subject. It is in that context, this Court held that the petitioner therein was eligible. The judgment in a case of ***State of Tamilnadu and Anr.*** (supra) lays down that the State Acts cannot lay down standards and requirements higher

than those prescribed by the Central Act for Technical institutions. The inconsistent provisions of the State Act were declared void. The judgment in a case of *Parshvanath Charitable Trust and Ors.* (supra) relied by the petitioners is on the similar lines. In the present case, the matter in issue is completely different as discussed supra. The experience as contemplated under Clause 4.3 (C) of the advertisement of a Lecturer (Selection Grade) cannot be held to be equivalent with that of Head of Department.

24. The conspectus of the aforesaid discussion leads us to conclude that the Tribunal has not committed any error in negating the contention of the petitioners.

25. Writ petitions, as such, are dismissed. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.