

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.904/2019

Shashikant Pandurang Kamble Petitioner
Vs.
State of Maharashtra & Ors. Respondents

Mr. K. M. Lahorkar I/b. Mr. A. M. Adgule for the Petitioner
Mr. V. M. Mali, AGP for Respondent Nos.1 to 3
Mr. Prashant Bhavake for Respondent No.6

**CORAM: R.D.DHANUKA &
ABHAY AHUJA, JJ.**

DATED : OCTOBER 26, 2021

P.C.

1 The matter is placed on board for speaking to the minutes of order dated 22.10.2021, on the praecipe dated 25.10.2021 filed by the learned advocate for Respondent No.6.

2 The learned AGP has no objection, if the corrections, as suggested in the praecipe, are carried out. Hence, the order dated 22.10.2021 stands corrected accordingly. The praecipe stands disposed of.

3 After carrying out the corrections, the order dated 22.10.2021, reads thus:

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.904 OF 2019

Shashikant Pandurang Kamble)

Age : 34 years, Occu. Service,)
R/o. Sawant Colony, Gadhinglaj Road,)
A/p. Gargoti, Tal.Bhudargad, Dist. Kolhapur.) .. Petitioner

Versus

1. The State of Maharashtra)
through the Secretary,)
Higher and Technical Education Department)
Mantralay, Mumbai)
2. Director of Technical Education)
3, Mahapalika Marg, Post Box No.1967,)
Mumbai.)
3. The Joint Director of Technical Education)
Regional Office, 412-E, Bahirat Patil Chowk)
Near Om Super Market, Deep Bungalow)
Chowk, Model Colony, Shivaji Nagar, Pune.)
4. Shri Mouni Vidyapeth)
Through its Director)
Off: Murlidhar Nagar, Gargoti.)
Tal.Bhudargad, Dist. Kolhapur-416209.)
5. Institute of Civil and Rural Engineering)
Gargoti, Dist. Kolhapur-416209.)
Through the Principal)
6. Shri Pravin Prakash Vhangutte)
Age 38 years, Occu. Service,)

R/o. Panvatha Galli, Sarawade,)
Tal. Radhanagari, Dist. Kolhapur.) ..Respondents

Mr. Narendra V. Bandiwadekar i/by Mr.Abhijeet M. Adagul for the Petitioner.

Mr.Vikas M. Mali, AGP for the Respondent Nos.1 to 3.

Mr.Datta H. Pawar for the Respondent Nos.4 & 5.

Mr.Prashant Bhavake for the Respondent No.6.

CORAM : R.D. DHANUKA
R.I. CHAGLA, JJ.

RESERVED ON : 7th September 2021

PRONOUNCED ON : 22nd October 2021

Judgment :- (Per R.D. Dhanuka, J.)

. Rule. Mr.Mali, learned AGP for the respondent nos.1 to 3 waives service. Mr.Pawar, learned counsel for the respondent nos.4 & 5 waives service. Mr.Bhavake, learned counsel for the respondent no.6 waives service. By consent of parties, petition is heard finally. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari inter alia praying for quashing and setting aside the impugned order dated 22nd November 2018 passed by the respondent no.2 thereby granting approval to the appointment of the respondent no.6 as Lecturer in Chemistry in the respondent no.5 College. The petitioner seeks direction against the respondent nos.2 to 5 to appoint the petitioner in the said post of Lecturer in the respondent no.5-Institution.

3. The petitioner has passed Msc. (Analytical Chemistry) B.Ed. On 23rd February 2018, the respondent nos.4 & 5 issued an advertisement in the daily local newspaper for the appointment on the post of Lecturer in Chemistry. The petitioner applied for the said post of Lecture. On **4th June 2018**, Selection Committee prepared a report dated 4th June 2018 wherein the respondent no.6 was given first preference and the petitioner was given second preference. On 12th June 2018, the respondent no.5 submitted proposal dated 12th June 2018 to grant approval to the appointment of the respondent no.6. On 9th October 2018, the respondent no.2 by its letter dated 9th October 2018 informed the respondent no.1 that as per the Principal, Head of Department, Lecturer and Workshop Superintendent in Government Polytechnics and Equivalent Institutes (Recruitment) Rules, 2012 (for short “the said Recruitment Rules”), age limit for the post of lecturer is 35 years and they will not be in a position to grant approval to the proposal for appointment of the respondent no.6 since he was 38 years old.

4. On 25th April 2016, the respondent no.1 directed the respondent no.2 to take into consideration the Government Resolution dated **17th November 2018** and to decide the proposal of the respondent no.5 for the appointment of the respondent no.6. The petitioner filed this petition impugning the said order dated 22nd November 2018.

5. Mr.Bandiwadekar, learned counsel for the petitioner invited our attention to the said Recruitment Rules and more particularly Rule 5 and would submit that the appointment to the

post of Lecturer in Engineering, Pharmacy, Hotel Management and Catering Technology and Non-Engineering disciplines or Workshop Superintendent in Government Polytechnics and equivalent institutes shall be made by nomination from amongst the candidates who are not more than 35 year of age. He invited our attention to the advertisement issued by the respondent nos.4 & 5 on 23rd February 2018 and would submit that in the said advertisement, age of 38 years was prescribed for Open candidates and age of 43 years for all backward candidates is ex facie contrary to Rule 5 (a) of the said Recruitment Rules. The petitioner was qualified and was eligible for the said post. The petitioner belongs to open category. The respondent no.6 was about 38 years old on the date of application. The respondent no.6 thus was not eligible for applying for the said post and consequently could not have been appointed to the said post.

6. Learned counsel invited our attention to the Committee Report of the respondent nos.4 & 5 and would submit that in the said Committee Report, the name of the respondent no.6 was mentioned at serial no.1 whereas the name of the petitioner was mentioned at serial no.2 though the age of the respondent no.6 admittedly was of 38 years. He invited our attention to the letter dated 22nd August 2018 addressed by Local MLA Shri Chandradip S. Narake to the Learned Minister of State for Higher and Technical Education, State Government requesting to appoint the respondent no.6 by granting approval to the proposal submitted by the respondent no.6. He submits that the said MLA could not have interfered with the process of appointment by issuing direction contrary to the said Recruitment Rules and more particularly when

the respondent no.6 was not qualified to the said post.

7. It is submitted by the learned counsel that though the respondent no.2 informed the respondent no.1 vide letter dated 9th October 2018 that as per the said Recruitment Rules, the upper age limit for the post of lecturer was 35 years, they had granted approval to the advertisement wherein the upper age was mentioned as 38 years. He submits that the respondent no.2 had clearly stated that the said advertisement was in contravention of the said Recruitment Rules, 2012 and thus the **respondent no.2** will not be in a position to grant approval to the proposal submitted by the respondent no.5 for appointment of the respondent no.6.

8. It is submitted that the said decision taken by the **respondent no.2** was neither challenged by the respondent no.6 nor was cancelled by the respondent no.2. Further direction issued by the respondent no.1 to the respondent no.2 vide letter dated 17th November 2018 to take into consideration the Government Resolution dated 25th April 2016 and to decide the proposal of the respondent no.5 for approval to the appointment of the respondent no.6 was illegal and contrary to the earlier order dated 9th October 2018. The respondent no.6 was clearly age barred and was not qualified for the post of Lecturer in the respondent no.5 Institution being more than 35 years.

9. It is submitted that the respondent no.2 could not have acted upon the pressure and direction issued by the local MLA while considering the illegal appointment of the respondent no.6. It is submitted by the learned counsel that admittedly the said

Recruitment Rules and more particularly Rule 5 (a) providing the age of 35 years for appointment to the post of Lecturer has not been amended or modified so as to enhance the upper limit to 38 years. The appointment of the respondent no.6 who was 38 years old was ex facie illegal and contrary to Rule 5 (a) of the said Recruitment Rules.

10. Learned counsel for the petitioner invited our attention to the correspondence and the Government **Resolution** dated 25th April 2016 annexed at Exhibit ‘I’(Colly.) and would submit that the said direction issued by the **respondent no.1** is contrary to the said Recruitment Rules. He submits that the said Government Resolution dated 25th April 2016 issued by the General Administration Department (GAD) of the State of Maharashtra recommending the increase in age of the candidates for open category to 38 and to increase the age to 43 in case of backward candidates. He submits that by the said Government Resolution, the said Recruitment Rules could not have been amended which Resolution was in the nature of an Executive Order. Till such time, the said recruitment rules itself were amended, such rules only would be operative and not the said **Resolution** issued by GAD of State of Maharashtra.

11. It is submitted by the learned counsel that the Section Officer, Desk No.7, Higher and Technical Education Department also gave his opinion and agreed with the view taken by the respondent no.2 regarding the illegality done in the appointment of the respondent no.6. The said Section Officer asked to take the opinion of another Section Officer, Desk No.2 who was looking

after the matters of the recruitment. He invited our attention to the said opinion annexed at Exhibit 'B' to the Additional Affidavit filed by the petitioner.

12. Learned counsel for the petitioner invited our attention to the affidavit-in-reply filed by the respondent nos.4 & 5 and more particularly paragraph 8 and would submit that the respondent nos.4 & 5 have made a false statement in the said affidavit that the respondent nos.4 & 5 had sent a copy of the advertisement and proposal for approval to the respondent no.2 through the respondent no.3 in which the age limit was mentioned as 38 years. The respondent no.3 forwarded the said advertisement and the respondent no.2 gave approval to the said advertisement which is a letter in which the age limit was mentioned as 38 years. He submits that the respondent nos.4 & 5 deliberately did not annex the said approval letter in the affidavit-in-reply. He submits that in the said affidavit, State Government has relied upon the Government Resolution dated 25th April 2016 issued by GAD enhancing the age limit from 35 years to 38 years for open category candidates and from 38 years to 43 years for reserved category candidates respectively. Such Government Resolution which was issued by executive instructions under Article 309 of the Constitution of India cannot be issued contrary to the statutory rules.

13. Learned counsel for the petitioner distinguished the judgment of the Hon'ble Supreme Court in the case of ***Pramod Vs. State of Maharashtra, (2016) 14 SCC 505*** relied upon by the respondent no.6 in the affidavit-in-reply. He invited our attention

to paragraphs 11 and 12 of the said judgment and would submit that the judgment has to be read in the facts of that case and would not apply in the facts of this case. Question before the Hon'ble Supreme Court in the said judgment was as to which rules apply to the promotion.

14. Learned counsel placed reliance on Rule 7 of MEPS Rules and would submit that MEPS Rules do not apply for all the purposes. He tenders a copy of the Government Resolution dated 11th September 2019 and would submit that pay scale is decided by AICTE for polytechnic institution. In so far as the judgment of this Court in case of ***Sudhakar Shivaram Teke Vs. The State of Maharashtra & Ors.*** in Writ Petition No.1841 of 2013 and other companion matters delivered on 27th September 2019 is concerned, it is submitted that the said judgment is stayed by the Hon'ble Supreme Court.

15. Learned counsel for the respondent nos. 4 & 5 invited our attention to the averments made in the affidavit-in-reply filed by his client and would submit that in the meeting held on 4th June 2018, representatives of Technical Education Department was present. There is no suppression on the part of the respondent nos.4 & 5 management at any point of time as sought to be canvassed by the petitioner.

16. Mr.Bhavake, learned counsel for the respondent no.6 submits that the respondent no.6 was having requisite qualification for the said post of Lecturer in Chemistry. He was working as Lecturer in Chemistry at respondent no.5-Institute from 2004 to

2008 on clock hour/ad-hoc unaided post and from 2008 as a full time permanent Lecturer on unaided post. He submits that in view of the Government Resolution dated 25th April 2016, the upper age limit was also mentioned of 38 years for open category and accordingly in the said advertisement, the upper limit is mentioned as 38 years in the draft advertisement.

17. It is submitted by the learned counsel that the advertisement for the said post of Lecturer in Chemistry was published on 23rd February 2018. In response to the said advertisement, the petitioner has also applied for the said post and the name of the petitioner was shown at serial no.2 in the report submitted by the Committee. He invited our attention to the impugned order dated 22nd November 2018 appointing the respondent no.6 as Lecturer in Chemistry.

18. In so far as the opinion of the Section Officer of the State Government stating that the upper age limit for the post of Lecturer in Chemistry was 35 years and could not be considered as 38 years was a personal opinion and was not binding on the State Government.

19. It is submitted by the learned counsel that in any event, the said Recruitment Rules were not at all applicable to the private polytechnic Institution. He relied upon the judgment of the Hon'ble Supreme Court in case of **Promod Vs. State of Maharashtra (supra)** and in particular paragraph 12 in support of this submission. He relied upon the judgment of this Court delivered on 8th January 2018 **in Writ Petition No.2745 of 2014 filed by**

Javed Akhtar Vs. Directorate of Technical Education & Ors. and other companion matter and would submit that this Court in the said judgment had followed the judgment of the Hon'ble Supreme Court in case of ***Pramod Vs. State of Maharashtra (supra)*** and accepted the argument that the ***Recruitment Rules, 2012*** was not applicable to the private polytechnic institutions.

20. Learned counsel for the respondent no.6 placed reliance on Rule 9(4) of MEPS Rules and would submit that the said Rule though provides the minimum age of 18 years, it does not provide for any upper age limit. He relied upon the definition of "school" under Section 2(24) of the MEPS Act and would submit that "school" includes technical, vocational or art institution. He submits that the upper age limit is provided only for primary school and not the technical institution. In support of this submission, learned counsel placed reliance on the judgment of this Court delivered on 27th September 2019 in case of ***St. Isabel's High School Vs. The Education Inspector & Anr.*** and more particularly in paragraphs 2, 8, 12, 13 and 26 in support of the submission that there is no upper age limit for technical institution.

21. It is submitted by the learned counsel that since there is no upper age limit prescribed under MEPS Rules, the upper age limit can be prescribed by the Government Resolution. The upper limit of 38 years prescribed by the Government Resolution thus cannot be considered contrary to any of the provisions of MEPS Act or Rules applicable to the private Technical Institution and is thus not illegal. The said Government Resolution prescribing the age of 38 years is thus binding. He relied upon the judgment of the

Hon'ble Supreme Court in case of ***Ashok Kumar and Anr. Vs. State of Bihar & Ors., (2017) 4 SCC 357*** and would submit that though in the advertisement issued by the respondent nos. 4 & 5, the upper age limit was mentioned as 38 years, the fact remains that the upper age limit prescribed in the advertisement issued by the respondent nos.4 & 5 was 38 years. The petitioner had never raised any objection at any point of time before applying for the said post in response to the said advertisement and all throughout participated in the selection process. It is submitted that the petitioner having participated in the selection process and not having been successful in getting the appointment to the said post of Lecturer in Chemistry cannot be allowed to challenge the selection process subsequently.

22. Mr.Mali, learned AGP for the State relied upon the affidavit-in-reply filed by the respondent nos.1 to 3 before this Court. He also produces the original documents and would submit that the advertisement approved by the Director of Technical Education for the said post of Lecturer in Chemistry for open category was 35 years. He submits that on 17th November 2018, the Acting Officer of State of Maharashtra had issued a directives to Director, Directorate of Technical Education, State of Maharashtra to follow the Government Resolution dated 25th April 2016 thereby increasing the age limit from 35 years to 38 years.

23. Mr.Bandiwadekar, learned counsel for the petitioner in his rejoinder arguments submits that the entry in Government service was not in respect of service in school or technical

education. He distinguished the order passed by this Court in case of ***St. Isabel's High School Vs. The Education Inspector & Anr. (supra)*** and would submit that in the said judgment, Government Resolution was issued by the school education department. In this case, Government Resolution is issued by the GAD, State of Maharashtra.

24. It is submitted by the learned counsel that if according to the respondent no.6, Rule 9(4) of MEPS Rules does not provide for any upper age limit why the respondent nos.4 & 5 provided the upper age limit of 38 years in the advertisement and by the Government in the Government Resolution. He submits that due to such upper age limit of 38 years provided, other candidates above age of 38 years were deprived of the said appointment to the post of Lecturer in Chemistry. He invited our attention to the Committee report and would submit that another candidate whose age was above 38 years was held ineligible. He submits that due to intervention of local MLA and due to such pressure on the respondent no.1, the entire decision making process was illegal. The petitioner thus though participated in the selection process is entitled to challenge the selection process even now. He relied upon the judgment of this Court in case of ***Gautam Jaideo Sarkar Vs. The State of Maharashtra in Writ Petition No.56 of 2019*** and would submit that if the rules already prescribes particular qualification, State Government cannot by issuing the Government Resolution prescribe or amend the qualification in the statutory rules.

25. Mr. Bhavake, learned counsel for the respondent no.6

distinguished the judgment in case of ***Gautam Jaideo Sarkar (supra)*** and would submit that GAD can issue a Government Resolution which has to be followed by all the departments including Polytechnic Higher Education Department.

REASONS AND CONCLUSIONS :-

26. The short question that arises for consideration of this Court is whether the Principal, Head of Department, Lecturer and Workshop Superintendent in the Government Polytechnics and Equivalent Institutes (Recruitment) Rules, 2012 applies to the private polytechnic Institution or not. It is not in dispute that the respondent no.5 is a private polytechnic institute. In the affidavit-in-reply filed by the respondent no.6, it is contended that the respondent no.5 is a Private Aided Polytechnic Institute run by the respondent no.4 management. There is no affidavit-in-rejoinder filed by the petitioner.

27. The Hon'ble Supreme Court in the case of ***Promod Vs. State of Maharashtra (supra)*** has considered the same Recruitment Rules and has held that those Rules will not apply to private aided polytechnic such as the respondent's polytechnic. As a result there is no other Statutory Act or Rule to take away the force of Rule 3(3) of the MEPS Rules which requires the management of the polytechnic, which is covered by the definition of the 'School' under the MEPS Act. In our view, the principles laid down by the Hon'ble Supreme Court in the said judgment would apply to the facts of this case. We are respectfully bound by the said judgment.

28. Division bench of this Court in the case of ***Sudhakar Shivaram Teke Vs. The State of Maharashtra & Ors. (supra)*** after adverting to the judgment of the Hon'ble Supreme Court in the case of ***Promod Vs. State of Maharashtra (supra)*** and after considering the said Recruitment Rules has held that the said Recruitment Rules can have no application to a private polytechnic institute. The said judgment applies to the facts of this case. We do not propose to take a different view in the matter.

29. Learned counsel for the petitioner strongly placed reliance on the said Recruitment Rules and more particularly Rule 5(a) in support of the submission that the post of Lecturer in Chemistry advertised by the respondent no.5 prescribing the age for open candidate as 38 years was contrary to Rule 5(a) and thus the entire selection process culminated into the appointment of the respondent no.6 who was more than 35 years at the time of advertisement is vitiated. Since this Court is of the view that the said Recruitment Rules, 2012 were not at all applicable to the respondent no.5 institute being a private polytechnic institute, the reliance placed by the petitioner on the said Recruitment Rules, 2012 is misplaced.

30. Learned counsel for the petitioner also vehemently urged before this Court that the respondent nos.1 to 3 had approved the said advertisement showing the upper age limit of 35 years for the said post of Lecturer in Chemistry and thus at the first instance, the respondent no.5 could not have issued advertisement showing the prescribed age for the said post as 38

years. Reliance is also placed by the learned counsel on the correspondence exchanged between the respondent no.2 and the respondent no.1 and more particularly letter dated 9th October 2018 stating that since the age limit for the post of Lecturer under the said Recruitment Rules was 35 years, and the respondent no.6 being 38 years old, they will not be in a position to grant approval to the proposal for appointment of the respondent no.6.

31. In our view, the said opinion of the respondent no.2 in the letter dated 9th October 2018 was based on the said Recruitment Rules and more particularly Rule 5(a) which was not applicable to a private polytechnic institute. The said communication to the effect that the respondent no.2 would not be in a position to grant approval to the proposal for appointment of the respondent no.6 on that ground is of no significance. Be that as it may, the said communication is in the nature of personal opinion of the respondent no.2 which is even otherwise not binding on the parties.

32. The Hon'ble Supreme Court in the case of ***Ashok Kumar and Anr. Vs. State of Bihar & Ors. (supra)*** has held that person who consciously takes part in selection process cannot thereafter turn around and challenge method of selection and its outcome. In our view, the said judgment squarely applies to the facts of this case. We are respectfully bound by the said judgment. It is not disputed by the petitioner that the respondent no.6 was qualified for the said post of Lecturer in Chemistry and belongs to open category. The petitioner did not raise any objection in respect of the said advertisement issued by the respondent no.5 showing

the prescribed age for the said post of Lecturer in Chemistry as 38 years old for open candidates.

33. The petitioner voluntarily and unconditionally participated in the said selection process commenced by issuance of the said advertisement and culminated into the letter of appointment issued in favour of the respondent no.6. In the report submitted by the respondent nos.1 to 3, the name of the respondent no.6 was reflected at serial no.1 whereas the name of the petitioner was reflected at serial no.2. In our view, the petitioner having participated in the selection process without raising any objection to the said advertisement and even thereafter till the date of appointment of the respondent no.6 cannot be allowed to challenge the said selection process after having been not selected by the respondent nos.1 to 3 on the said post of Lecturer in Chemistry.

34. Division bench of this Court in unreported judgment dated 8th January 2018 in case of ***Javed Akhtar Vs. Directorate of Technical Education & Ors. (supra)*** after adverting to the judgment of the Hon'ble Supreme Court in the case of ***Promod Vs. State of Maharashtra (supra)*** has held that the said Recruitment Rules are not applicable to private polytechnic institution. The said judgment applies to the facts of this case. We do not propose to take different view in the matter.

35. Learned Single Judge of this Court in the case of ***St. Isabel's High School Vs. The Education Inspector & Anr. (supra)*** has construed the provisions of the MEPS Rules and more

particularly Rule 9(4)(b) and has held that under the said Rules, no maximum age limit was prescribed in respect of employees in any school other than primary school. This Court accordingly held that the State can exercise the rule making power under Section 16 of the said MEPS Act and in fact has framed the MEPS Rules for carrying out the purposes of the Act. The State while issuing the Government Resolution has not tinkered with the minimum age prescribed by the Rules. As the rules are silent on the prescription of maximum age limit for non teaching employees, the Government Resolution provides for a maximum age limit in pursuance to the policy prescribing revised structure and norms being a condition for grant of approval, it cannot be said that the Government Resolution is contrary to the Act or the Rules. In our view, the principles of law laid down by the learned Single Judge of this Court in the case of ***St. Isabel's High School Vs. The Education Inspector & Anr. (supra)*** applies to the facts of this case. We do not propose to take different view in the matter.

36. A perusal of Section 2(24) of the MEPS Act and Rules clearly indicates that polytechnic is covered by the definition of “school” as defined in Section 2(24) of the MEPS Act. The appointment of the respondent no.6 to the post of Lecturer as an employee was within the meaning of Section 2(7) of the said MEPS Act. Section 3 of the said MEPS Act clearly provides that the provisions of the said Act shall apply to all Private Schools in the State of Maharashtra, whether receiving a grant-in-aid from the State Government. In our view, since there is no maximum age limit prescribed under the provisions of MEPS Act read with Rules, such maximum age limit can be provided by

issuance of the Government Resolution by the State Government.

37. In this case, by exercising such powers, GAD of the State of Maharashtra issued Government Resolution dated 25th April 2016 prescribing the maximum age limit of 38 years for open category candidates. The petitioner has not impugned the validity of the said Government Resolution dated 25th April 2016 in this petition. Be that as it may, the said Government Resolution dated 25th April 2016 is not contrary to the provisions of MEPS Act read with Rules and was thus binding on the respondent nos.4, 5 and also on the petitioner and the respondent no.6. There is no substance in the submission made by the learned counsel for the petitioner that by prescribing the maximum age limit under the Government Resolution dated 25th April 2016, other candidates who were above the age of 38 years were deprived of making an application for the said post of Lecturer in Chemistry.

38. Learned counsel for the petitioner did not dispute that except the petitioner herein, no other candidates have impugned the said selection process or the order of the respondent no.5 appointing the respondent no.6 to the said post of Lecturer in Chemistry. The petitioner thus cannot be allowed to urge that other candidates were also affected by the impugned order passed by the respondent no.5 appointing the respondent no.6 to the said post.

39. In so far as the reliance placed by the learned counsel for the petitioner on the Government Resolution dated 11th September 2019 is concerned, the said Government Resolution is

not applicable to the parties to this petition. The respondent no.6 was already appointed much prior to issuance of the said Government Resolution. The said Government Resolution does not apply with retrospective effect. We have thus not gone into the validity of the Government Resolution. Reliance thus placed on the Government Resolution is even otherwise misplaced.

40. In so far as the judgment of Nagpur bench of this Court in the case of ***Gautam Jaideo Sarkar (supra)*** is concerned, this Court in the said judgment considered the provisions of Section 274 (2) of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 and Recruitment Rules of Zilla Parishad framed under the said Act. The said judgment does not apply even remotely to the facts of this case.

41. In so far as the reliance placed by the learned counsel for the petitioner on the documents forming part of the original files produced by the learned AGP and more particularly the documents relating to the approval to the advertisement granted by the respondent nos.1 to 3 prescribing the maximum age limit of appointment as 38 years is concerned, in our view, the said sanction granted by the respondent nos.1 to 3 for upper limit of age at 35 years itself was incorrect and is of no significance in view of the fact that the said Recruitment Rules are not at all applicable to private polytechnic institution. Reliance placed by the learned counsel for the petitioner on the said letter of approval to the advertisement is thus misplaced.

42. In our view, there is no substance in any of the

submission made by the learned counsel for the petitioner. The petition is totally devoid of merit.

43. We accordingly pass the following order :-

- (i) Writ Petition No.904 of 2019 is dismissed. Rule is discharged.
- (ii) Office is directed to return the original files relating to the appointment of the respondent no.6 to the learned AGP.
- (ii) There shall be no order as to costs.
- (iii) Parties to act on the authenticated copy of this order.

ABHAY AHUJA, J.

R.D. DHANUKA, J.