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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5283 OF 2018

Miss Sadhana B. Bendbhar,  
Aged 34 years, Occupation :  
Service, Maharashtra Hsg. Board Colony  
M-40/1789, Yerwada, Pune, Pune – 411 006. ...Petitioner

..Versus..

1. State of Maharashtra,  
(Notice to be served upon Assistant  
Government Pleader, High Court, Mumbai).
2. The Deputy Director of Education,  
17, Dr.Ambedkar Road, Pune.
3. Smt.Nathibai Damodar Thakarsey  
University, Fort, Bombay – 400 001.
4. The Principal,  
S.N.D.T. Arts and Commerce College,  
For Women, Maharshi Karve Vidyavihar,  
Karve Road, Pune – 411 058.
5. Smt.Anuradha Raju Hegde,  
Aged Adult, Occupation : Not known  
Residing at : Audumbar Colony (B)  
Warje, Karvenagar, Pune – 411 058. ...Respondents

WITH  
WRIT PETITION NO.12005 OF 2019

Smt.Anuradha Raju Hegde,  
Aged 42 years, Indian Inhabitant,  
Residing at : Audumbar Colony (B)  
Warje, Karvenagar, Pune – 411 058. ...Petitioner

..Versus..

1. State of Maharashtra,  
Through Government Pleader,  
High Court, (A.S.) Bombay.
2. The Deputy Director of Education,  
17, Dr.Ambedkar Road,  
Pune – 411 001.
3. Smt.Nathibai Damodar Thakarsey  
University, Fort, Bombay – 400 001.
4. The Principal,  
S.N.D.T. Arts and Commerce College,  
For Women, Maharshi Karve Vidyavihar,  
Karve Road, Pune – 411 058.
5. Miss Sadhana Balasaheb Bendbhar,  
Aged 34 years, Occupation :  
Service, Maharashtra Hsg. Board  
Colony M-40/1789, Yerwada, Pune,  
Pune – 411 006. ...Respondents

Mr.Narendra V. Bandiwadekar with Mr.Vinayak Kumbhar and  
Mr.Navjyot Bandiwadekar i/b Mrs.Ashwini N. Bandiwadekar for the  
Petitioner in WP No.5283 of 2018.

Mr.Murlidhar L. Patil i/b Mr.Rupesh R. Lanjekar for the Petitioner in  
WP No.12005 of 2019 and for the Respondent No.5 in WP No.5283  
of 2018.

Mrs.P.J. Gavhane, AGP for the State – Respondent Nos.1 and 2 in  
WP No.5283 of 2018.

Mrs.Anjali N. Helekar for the Respondent No.3 in WP No.5283 of  
2018 and WP No.12005 of 2019.

Ms.Sadhana B.Bendbhar - Petitioner in WP No.5283 of 2018 is  
present.

**CORAM : R.D. DHANUKA &**  
**ABHAY AHUJA, JJ.**  
**DATE : 25TH OCTOBER, 2021.**

**(ORAL JUDGMENT (Per R.D. Dhanuka, J.) :-**

1. Rule in both the writ petitions. Learned counsel appearing for the respondents waive service. By consent of parties, both the writ petitions are heard finally.

2. Mr.Bandiwadekar, learned counsel for the petitioner on instructions from the petitioner, who is present in Court states that his client is still working on the post as Shikshan Sevak and having completed more than three years on the said post, is entitled to be considered as an Assistant Teacher with the pay scale applicable to the said post. Statement is accepted.

3. By Writ Petition No.5283 of 2018, the petitioner has impugned the order passed by the Deputy Director of Education dated 1<sup>st</sup> February, 2018 and the intimation given by the Principal to the petitioner. The petitioner also seeks declaration that the petitioner has been selected after following due procedure of law and is entitled to continue as Shikshan Sevak as per the appointment order issued to her after undergoing the selection process.

4. Writ Petition No.12005 of 2019 is filed by Smt.Anuradha R. Hegde (Respondent No.5 in Writ Petition No.5283 of 2018) *inter-alia* praying for an order and direction against the University to grant approval to the appointment of the petitioner as a full time Lecturer on permanent basis with effect from 4<sup>th</sup> June, 2016 with full back

wages and all other consequential benefits. She also seeks an order and direction against the respondent no.4 – College to appoint her as full time Lecturer on permanent basis with effect from June, 2016 with full back wages and all other consequent benefits. She also prayed that the appointment of the respondent no.5 (the petitioner in Writ Petition No.5283 of 2018) as a full time Lecturer on permanent basis in the subject of "Geography" is illegal, improper and against the provisions of law and be quashed and set aside.

5. By consent of all the parties, both the petitions were heard together and are being disposed by a common order. We shall deal with the facts in Writ Petition No.5283 of 2018.

6. The Management advertised the post meant for open category including the Junior College teachers in the subject of Geography with qualification of M.A. B.Ed. on 23<sup>rd</sup> March, 2016. In response to the said advertisement, the petitioner, the respondent no.5 (Petitioner in Writ Petition No.12005 of 2019) and other candidates applied for the said post.

7. The petitioner secured 83 marks out of 100 marks. Since the respondent no.5 was not qualified was not called for interview. The petitioner was called for interview. On 26<sup>th</sup> May, 2015, the Selection Committee Report came to be submitted by the University. On 30<sup>th</sup> June, 2015, the petitioner was appointed as Shikshan Sevak.

The petitioner submitted an undertaking to the College in requisite form.

8. It appears that the respondent no.5 who had also participated in the selection process and having failed in the selection process, filed a complaint to the National Commission for Scheduled Castes on 11<sup>th</sup> May, 2016. (hereinafter referred as the said National Commission.) The said National Commission granted hearing to the respondent no.5 and made a recommendation on 2<sup>nd</sup> November, 2016 to the Principal Secretary, Higher and Secondary Education, Government of Maharashtra directing the Principal Secretary, Higher and Secondary Education, Government of Maharashtra to review the case of the respondent no.5 herein in the light as per guidelines for the permanent vacancy of Full Time Lecturer post for the Geography subject so that the interest of Scheduled Castes employee could be protected. The National Commission also directed Action Taken Report to be submitted to the National Commission within one month by the Principal Secretary.

9. It appears that on the basis of the said recommendation / directive issued by the National Commission for the appointment of the respondent no.5 for the said post and to report compliance, the Deputy Director of Education passed an order refusing to grant approval to the appointment of the petitioner. The said letter and the

letter addressed by the Management is impugned in the Writ Petition No.5283 of 2018. The respondent no.5 also filed a separate writ petition *inter-alia* praying for grant of approval to the appointment of the respondent no.5 in the said college and also impugned the appointment of the petitioner.

10. Mr.Bandiwadekar, learned counsel for the petitioner in Writ Petition No.5283 of 2018 invited our attention to various documents annexed to both the writ petitions and would submit that pursuant to the advertisement issued by the college, the petitioner as well as the respondent no.5 had participated in the selection process. The respondent no.5 was not found suitable for the appointment to the said post on various grounds and thus was not called for interview. The petitioner had secured highest marks. He submits that the letter of appointment was issued in favour of the petitioner as per recommendation made by the Selection Committee received by the Management.

11. It is submitted that only after issuance of the appointment letter in favour of the petitioner, the respondent no.5 made a complaint to the National Commission. He submits that the petitioner was not a party to the said complaint filed before the National Commission nor was granted any hearing. It is submitted that in any event the National Commission has no jurisdiction to make any

recommendation or to issue any direction to the Deputy Director of Education to appoint the respondent no.5. He submits that in any event after the respondent no.5 having failed in the selection process, the Deputy Director of Education could not have refused to grant approval to the appointment of the petitioner and could not have pressurized the Management to appoint the respondent no.5.

12. Mrs.Gavhane, learned AGP for the State states that the respondent no.5 had filed a complaint before the National Commission alleging irregularity in the appointment of the petitioner and based on such complaint, the National Commission had made the recommendation to the Deputy Director of Education to appoint the respondent no.5 to the said post. When this Court enquired as to whether the Deputy Director of Education is bound by such recommendation and / direction from the National Commission to appoint the respondent no.5 or any other candidate, learned AGP could not point out any provision in that regard.

13. Mr.Patil, learned counsel for the respondent no.5 in Writ Petition No.5283 of 2018 and for the petitioner in Writ Petition No.12005 of 2019 also could not point out any provision which could be pressed into service by the National Commission to recommend or issue any such direction to the State Government or to the Deputy Director of Education to appoint the respondent no.5 on the ground

that she belonged to reserved caste.

14. A perusal of the record clearly indicates that the respondent no.5 also had responded to the advertisement issued by the Management and had participated in the selection process. She did not challenge the selection process though not called for interview. Instead of filing appropriate proceedings, she made a complaint to the National Commission. The National Commission took cognizance of such complaint made by the respondent no.5 and issued a direction to the State Government to intervene in the matter and to appoint the respondent no.5 to the said post. The petitioner was neither a party to the said proceedings before the National Commission nor was heard by the National Commission. In our view, at the first instance, the National Commission has no jurisdiction to issue any such directions to the State Government to appoint the respondent or any other candidate. The appointment procedure is prescribed in the Maharashtra Employees of Private Schools' (Conditions of Service) Rules (for short "MEPS Act"). The provisions of the MEPS Act nowhere empowers the National Commission to issue such direction.

15. It is curious to note that the Deputy Director of Education accepted the said directions issued by the National Commission without issuing any notice and granting an opportunity of hearing to

the petitioner in Writ Petition No.5283 of 2018 as binding order upon the Deputy Director of Education and to appoint the respondent no.5 to the said post overlooking the admitted position that after following requisite procedure, the petitioner was issued appointment letter. In our view, the directions issued by the National Commission itself is without jurisdiction and thus was not binding on the Deputy Director of Education.

16. The Hon'ble Supreme Court in case of **Collector, Bilaspur vs. Ajit P. Jogi & Ors, AIR 2012 SC 44** after construing Article 338 (5)(b) of the Constitution of India has held that power prescribed thereunder did not entitle the Commission to hold an enquiry in regard to the caste status of any of the individual, any document and record finding that his caste certificate is bogus or false. It is further held that the scope of duties of the National Commission under the provisions did not involve enquiry or adjudication in regard to the rights of the parties or caste status of the parties. 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. The National Commission has no right to adjudicate upon the rival claim of the employees by exercising powers under Article 338-A of the Constitution of India which power can be exercised only by the Authority or the Tribunal prescribed under the provisions of MEPS

Act and Rules framed thereunder.

17. In this view of the matter, on the basis of such direction issued by the National Commission, the Deputy Director of Education could not have appointed the respondent no.5 and could not have refused to grant approval to the appointment of the petitioner in this manner. The Management had already submitted the proposal to the State Government for granting approval to the appointment of the petitioner.

18. It is not the case of the respondent no.5 in Writ Petition No.5283 of 2018 that the petitioner was otherwise not qualified to the appointment on the said post. In our view, the entire exercise carried out at the instance of the respondent no.5 by the National Commission and consequently by the Deputy Director of Education is totally without jurisdiction. We accordingly pass the following order :-

- a). The Writ Petition No.5283 of 2018 is allowed in terms of paragraph 12(ii) and (iii). Rule is made absolute accordingly.
- b). The Writ Petition No.12205 of 2019 is dismissed. Rule is discharged.
- c). The Deputy Director of Education is directed to grant approval to the appointment of the petitioner to the post of Shikshan Sevak from the date of initial appointment within four weeks from today and to grant all consequential benefits including the payment

due to the petitioner from the date of appointment. The name of the petitioner shall be included in the Shalarth Pranali within two weeks from the date of granting approval, without fail.

d). Since the petitioner in Writ Petition No.5283 of 2018 has already completed three years of service as Shikshan Sevak, the Management shall submit further proposal to the Education Department, Deputy Direction of Education for appointment of the petitioner as an Assistant Teacher with the pay scale applicable to the Assistant Teacher within six weeks from today. If any such proposal is made by the Management to the Deputy Director of Education, the same shall be considered and granted by the Deputy Director of Education within eight weeks thereafter along with all consequential benefits.

e). All parties to act on the authenticated copy of this order.

**(ABHAY AHUJA, J.)**

**(R.D. DHANUKA, J.)**

VASANT  
ANANDRAO  
IDHOL

Digitally signed by  
VASANT  
ANANDRAO IDHOL  
Date: 2021.10.30  
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