

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

WRIT PETITION NO. 2619 OF 2019

Ravindra D. Hiremath

... Petitioner

Versus

Kolhapur District Chemists Association's
Institute of Pharmacy and Ors.

... Respondents

Mr. S. S. Patwardhan i/by Mr. B. R. Mandlik for the Petitioner.

Mr. Prashant Bhavake for the Respondent No.1.

Mr. N. C. Walimbe, AGP for the Respondent No.4 for the State-Respondent.

Mr. Swapnil S. Jadhav h/f A. A. Joshi for the Respondent No.2-AICTE.

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

DATE : 1st SEPTEMBER, 2021.

P.C. :-

. Mr. Patwardhan, learned counsel for the petitioner seeks liberty to delete the respondent no.3 on the ground that though the petitioner has prayed for reliefs in terms of prayer clause (a) against the all the respondents, the petitioner is seeking appointment to the post of Principal in the respondent no.1-college. Leave to amend is granted to delete the respondent no.3. Amendment to be carried out forthwith. Re-verification is dispensed with.

2. Rule. Learned counsel waives service for respondent nos. 1, 2 and 4.

3. By consent of parties, petition is heard finally.
4. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks an order and direction against the respondents to appoint the petitioner on the post of Principal in the respondent no.1-college in pursuance of advertisement dated 23rd May, 2017.
5. There was a vacancy for the post of Principal in respondent no.1-college. The respondent no.1-college accordingly issued an advertisement in Daily Sakal. The petitioner applied for the said post. On 5th August, 2018, the respondent no.1-college vide email dated 5th August, 2017 informed the petitioner about his ineligibility for the post of Principal and invited the petitioner's comments, if any. Being aggrieved by the said communication, the petitioner filed a Writ Petition bearing No. 9368 of 2017 on 4th August, 2017 in this Court. This Court passed an order in the said writ petition, granting an interim relief in terms of prayer clause (c) of the said writ petition thereby directing the respondent no.1 to allow the petitioner to appear for the screening test for appointment to the post of Principal in the respondent no.1-college in pursuance of its advertisement dated 23rd May, 2017. Pursuant to the said order, the petitioner was allowed to appear for the screening test. The petitioner secured 90 marks out of 100 marks in the said screening test.
6. On 19th June, 2018, this Court admitted the said Writ Petition bearing No. 9368 of 2017 and modified the said interim order dated

18th August, 2017 to the extent that the respondent no.1-Institute may start process of selection and appointment to the post of Principal in the respondent no.1-College in pursuance of the advertisement dated 23rd May, 2017 and directed to complete the said process in accordance with law. It was made clear that the order of appointment as may be issued shall be subject to final outcome of the said writ petition. This Court further directed that in the appointment order as may be issued, it shall be made clear that appointment would be governed by the decision as may be taken by this Court in the said writ petition. By the said order, this Court permitted the petitioner to participate in the selection process. It was however made clear that in case the petitioner would be appointed on the said post, he shall not be entitled to claim any equity on the basis of the said interim order.

7. This Court while granting interim relief on 18th August, 2017, had taken note of the fact that the issue whether AICTE regulations would prevail over the Pharmacy Council of India regulations or not, was pending before the Hon'ble Supreme Court.

8. Pursuant to the said order dated 19th June, 2018, the AICTE started the selection process by constituting Selection Committee for recruitment of the Principal. The petitioner participated in the said selection process. The petitioner secured 125 marks out of 150 marks as is apparent from the evaluation report submitted by the Interview Committee. KDCA'S Institute of Pharmacy on 25th September, 2018 however recommended to the Deputy Director, Divisional Office of Technical Education, Pune, the name of Dr. Mohite Popat Babanrao

and two other names on the waiting list. Though, the petitioner had secured 125 marks out of 150 marks, in the evaluation report of the Interview Committee, it was mentioned in the remarks column that the petitioner was not eligible for the post of Principal on the ground that before the last date of receipt of application form i.e. 14th June, 2017 the petitioner did not have Ph.D degree in engineering. Being aggrieved by the said communication, the petitioner preferred this writ petition for various reliefs.

9. Mr. Patwardhan, learned counsel for the petitioner invited our attention to the interim orders passed by this Court in the Writ Petition No. 9368 of 2017 and the marks obtained by the petitioner in the screening test. He submits that the petitioner was allowed to participate in the selection process pursuant to the order dated 19th June, 2018. In the said selection process also the petitioner secured the highest marks i.e. 125 marks out of 150 marks. Insofar as the reasons recorded in the said evaluation report of the Interview Committee that the petitioner was not eligible since he did not possess Ph.D degree on the date of application is concerned, learned counsel invited our attention to the regulations framed by the AICTE i.e. All India Council for Technical Education (Pay Scales, Service Conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions (Diploma) Regulations, 2010.

10. Learned counsel also invited our attention to the qualification required for the Head of Department for the subject Pharmacy, the candidate was not required to obtain any Ph.D degree in engineering.

He submits that even otherwise, the petitioner was qualified, in view of the petitioner's holding the qualification for the post of Head of Department which qualification was also for Pharmacy. He submits that for the Head of Department for the subject Pharmacy, there was no qualification prescribed for holding Ph.D in engineering.

11. It is submitted that in any event the issue which was pending before the Hon'ble Supreme Court when the interim order came to be passed by this Court has been decided by the Hon'ble Supreme Court by judgment dated 5th March, 2020 in Transfer Petitions (Civil) Nos. 87-101 of 2014 in case of ***The Pharmacy Council of India v/s. Dr. S.K. Toshniwal Education Trusts Vidarbha Institute of Pharmacy and Ors.*** He submits that the Hon'ble Supreme Court has already held in the said judgment that the field of Pharmacy Education and more particularly so far as recognition of degrees and diplomas of Pharmacy Education is concerned, the Pharmacy Act, 1948 shall prevail. The norms and regulations set by the PCI and other specified authorities under the Pharmacy Act would have to be followed by the concerned institution imparting education for degrees and diplomas in Pharmacy, including the norms and Regulations with respect to increase and/or decrease in intake capacity of the students. It is held that the decisions of the PCI shall only be followed by the institutions imparting degrees in diplomas in Pharmacy. It is submitted that the qualification thus prescribed in the Regulations framed by the AICTE would not apply for the post of Principal in the subject Pharmacy.

12. Learned counsel invited our attention to the Regulations

separately framed by the Pharmacy Council of India vide notification dated 11th November, 2014 i.e. 'Minimum qualification for teachers in Pharmacy institutions Regulations 2014' and more particularly the table prescribed in the qualifications and other mandatory requirements for the post of Principal in the diploma course for the subject Pharmacy. He submits that the petitioner possess the qualification prescribed in the table appended to the said regulations framed by the Pharmacy Council of India.

13. Mr. Bhavake, learned counsel for the respondent no.1 supports the case of the petitioner and also relied upon the judgment of the Hon'ble Supreme Court in case of ***The Pharmacy Council of India*** (supra) and would submit that in view of the Hon'ble Supreme Court holding that the provisions of Pharmacy Act would apply and not AICTE, the Authority rejecting the application made by the petitioner for the said post on the ground that the petitioner did not possess the Ph.D in engineering is *ex-facie* perverse.

14. Learned counsel for the AICTE does not counter the arguments canvased by Mr. Patwardhan, learned counsel for the petitioner and Mr.Bhavake, learned counsel for the respondent no.1.

15. We have perused the affidavit-in-reply dated 11th July, 2019 filed by the respondent no.4. In our view, the stand taken by the respondent no.4 in the said affidavit is contrary to the view taken by the Hon'ble Supreme Court in case of ***The Pharmacy Council of India*** (supra).

16. The view taken by the Hon'ble Supreme Court in case of ***The Pharmacy Council of India*** (supra) applies to the facts of this case. We are respectfully bound by the said judgment. The rejection of the application of the petitioner on the ground that the petitioner did not possess the Ph.D in engineering and is thus not eligible as per AICTE Regulations is contrary to the view taken by the Hon'ble Supreme Court. Since the regulations framed by the AICTE insofar as it was pressed in service for rejection of the application for appointment of Principal for the Pharmacy is contrary to the judgment of Hon'ble Supreme Court, hence, deserves to be set aside.

17. We accordingly pass the following order :-

- (i) The rejection of the application as reflected in the evaluation report by the Interview Committee in the remarks column is quashed and set aside.
- (ii) The Regulations framed by the Pharmacy Council of India annexed at page 48 would apply for the appointment of various posts described therein including the post of Principal/Director/Head of Institute/Head of Department in the subject Pharmacy.
- (iii) The respondent no.1 is directed to consider the claim of the petitioner for the post of Principal in line with the observations made by this Court in the earlier paragraphs of this judgment and if the petitioner satisfies the qualification prescribed in table for the diploma course at page 49, the petitioner shall be appointed to the said post within four weeks from today.

- (iv) If the petitioner is appointed by the respondent no.1 to the said post, the proposal that would be sent by the respondent no.1 in respect of such appointment to the respondent no.4 shall be considered by the respondent no.4 and shall pass an appropriate order thereon within four weeks thereafter and to grant approval to such appointment and shall communicate the order that would be passed to the petitioner as well as the respondent no.1 within one week from the date of passing of the order.
- (v) Writ Petition is allowed in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.

[R. I. CHAGLA, J.]

[R. D. DHANUKA, J.]