

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

926 WRIT PETITION NO.14255 OF 2019

- 1 Pravin Suresh Patil,
Age 36 yrs., Occ. Service,
R/o Taskheda, Tq. Amalner,
Dist. Jalgaon.
- 2 Balwant Laxman Borse,
Age 40 yrs., Occ. Service,
R/o Velode, Tq. Chopda, Dist. Jalgaon.
- 3 Prakash Dhanraj Sonawane,
Age 34 yrs., Occ. Service,
R/o Kavpimpri, Tq. Amalner, Dist. Jalgaon.

... **Petitioners**

... **Versus** ...

- 1 The State of Maharashtra,
Through its Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai.
- 2 The Director of Higher Education,
Maharashtra State, Pune.
- 3 The Joint Director of Higher Education,
Jalgaon Region, Jalgaon.
- 4 Kavayitri Bahinabai Chaudhari
North Maharashtra University, Jalgaon,
Through It's Registrar.
- 5 Jijau Bahuuddeshiya Society's
Kamalakka Patil Arts, Commerce
and Science College, Amalner,

Through It's Principal.

... **Respondents**

...

Mr. S.R. Barlinge, Advocate for petitioners

Mr. A.R. Kale, AGP for respondent Nos.1 to 3

Mr. Y.B. Bolkar, Advocate for respondent No.4

...

**CORAM : SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE : 13th OCTOBER, 2022

JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 Present petitioners by invoking the constitutional powers of this Court under Article 226 of the Constitution of India and in view of Section 79 (4) of the Maharashtra Universities Act, 1994 have prayed thus -

“By a writ of mandamus, or any other appropriate writ, or order or directions in the like nature, the respondent Nos.2 and 3 may kindly be directed to absorb the petitioners in some other college/s in the State of Maharashtra as per the availability of vacancies.”

3 The petitioners came to be appointed to the post of Lecturer in view of the fact that they have acquired post graduation and M.Phil. The M.Phil. qualification was acquired by them before the cut-off date i.e. 11.07.2009. The petitioner No.1 was selected for the post of Lecturer in Economics and was appointed on probation of two years on 14.07.2009. His appointment was approved by the university by order dated 21.06.2011 and 18.07.2016. The petitioner No.2 was appointed to the post of Lecturer in Political Science and came to be appointed on 14.07.2009. His appointment was approved by the university by same order. Same is the case with petitioner No.3, who was appointed as a Lecturer in Marathi and his appointment was approved by the university by order dated 24.02.2010 and 25.01.2011. It has been contended that the respondent No.5 college received affiliation from the university till academic year 2017-2018. However, on account of non availability of students, affiliation was not sought from the academic year 2018-2019. As a result of which, the petitioners without any employment from the academic year 2018-2019 found to be surplus and were not absorbed to any other college as the list is not maintained by the competent authority. In fact, the petitioners were not at fault, as the college did not seek affiliation from academic year 2018-2019. Hence, this petition to seek directions.

4 Heard learned Advocate Mr. S.R. Barlinge for the petitioners, learned AGP Mr. A.R. Kale for respondent Nos.1 to 3 and learned Advocate Mr. Y.B. Bolkar for respondent No.4.

5 It is not in dispute that the petitioners were appointed and their appointment was approved by the university for the initial appointment as well as after the completion of the probation. In his reply on behalf of respondent Nos.1 to 3 Dr. Satish M. Deshpande, working as Joint Director, Higher Education, Jalgaon Region, Jalgaon has stated that this Court in Writ Petition No.9055 of 2012 had directed the university to take decision in respect of the status of the petitioners and their claim for absorption. As per Section 105(9) of the Maharashtra Public Universities Act, 2016, the process of absorption of surplus teachers and other employees shall be applicable to only aided teachers and other employees. Therefore, the writ petition cannot be allowed.

6 It has been rightly pointed out by the learned Advocate for the petitioners that the Maharashtra Public Universities Act, 2016 and the Government Gazette appended came into force on 11.01.2017 will be having effect to those employers and other universities which would come into force after the said Act came into force, it cannot be retrospective. Prior to that we

will have to go by Section 79(4) of the Maharashtra Universities Act, 1994 as well as the service conditions, those were made applicable to the post of the petitioners. The petitioners have fulfilled the criteria and, therefore, the university had granted approval. Now, respondent Nos.1 to 3 cannot give a go-by to the rules those were then prevailing under the pretext of introduction of Maharashtra Public Universities Act, 2016. The Maharashtra Act of VI of 2017 to the Maharashtra Public Universities Act, 2016 appended along with the affidavit-in-reply would show that it was brought into force to provide for academic autonomy and excellence, adequate representation through democratic process, transformation, strengthening and regulating higher education and for matters connected therewith or incidental thereto. Section 105(9) of Maharashtra Act No.VI of 2017 provides thus -

“The management of any affiliated college shall before proceeding to fill in vacancies of aided teachers and other aided employees in accordance with the prescribed procedure shall ascertain from the Director of Higher Education whether there is any suitable person available on the list of aided surplus persons maintained by the Director of Higher Education for absorption in other colleges and in the event of such person being available, the management shall appoint that person in accordance with the direction issued by Director of Higher Education :

Provided that, this process of absorption of surplus teachers and other employees shall be applicable to only aided teachers and

aided other employees.”

This procedure, that has been contemplated, would definitely come into play after the Act came into force and it can be said that even if it is made applicable; yet, the petitioners, who are the surplus, will have to be accommodated in some of the colleges. The prayer of the petitioners is limited to that extent only. Under such circumstance, there is no hurdle in exercising the powers of this Court under Article 226 of the Constitution of India for issuing necessary directions as the respondent Nos.2 and 3 have not made any efforts to see whether the petitioners can be absorbed or not.

7 In view of the reasons stated above the respondent Nos.2 and 3 to take decision in respect of status of the petitioners and their claim for absorption as per the availability of vacancies in any other college/s in the State. The entire act be completed within a period of four months.

8 Rule made absolute in above terms. No order as to costs.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)