

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.3775 of 2014

1. Mulibai Charkha Shikshan Prasarak Mandal,
Washim,
through its President,
Shri Haribhau Nathobaji Kshirsagar,
Aged about 75 years,
R/o Washim,
Tah. & Distt. Washim.
2. Smt. Sawitribai Phule Kanya Kanishtha
Mahavidyalaya,
Washim (MCVC), Risod Road,
Lakhala, Distt. Washim.
3. Ku. Sarika D/o Lunkaran Sharma,
Aged about 36 years,
Occu.: Service,
R/o Chandak Layout, Lakhala,
Washim, Tah. & Distt. Washim.

... Petitioners

Versus

1. State of Maharashtra,
through its Secretary,
Ministry of Vocational and Training
Department,
Mantralaya,
Mumbai-32.
2. Director of Vocational Education
and Training,
3, Mahapalika Marg,
P.B. No.10036,
Mumbai-400 001.
3. Joint Director of Vocational Education
and Training,
Morshi Road,
Amravati.

4. District Vocational and Training Officer,
Girls ITI College Premises,
Akot Stand, Akola.

... Respondents

Shri R.L. Khapre, Senior Advocate, for Petitioners.

Shri K.L. Dharmadhikari, Assistant Government Pleader for Respondents.

CORAM : SUNIL B. SHUKRE & G.A. SANAP, JJ.

DATE : 16th SEPTEMBER, 2022

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

1. Heard Shri R.L. Khapre, learned Senior Advocate for the petitioners; and Shri K.L. Dharmadhikari, learned Assistant Government Pleader for the respondents.

2. The only ground on which the approval to the appointment of petitioner No.3 as Lecturer in English in petitioner No.2-College, which conducts MCVC Course, has been rejected on the ground that the appointment could not have been made without applying the rule of reservation, as is mandated by the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001, particularly under Section 3 of the said Act.

3. This issue has been dealt with in previous rounds of litigations and finally the matter was left to the discretion of respondent No.3-Joint Director of Vocational Education and Training, who was directed

to take a decision after granting hearing to the petitioners and applying his mind to the applicable law. The issue was reconsidered by the Joint Director of Vocational Education and Training and ultimately he came to the conclusion that since there were more than one post in the cadre of Lecturer, the post of Lecturer in English could not be treated as single and isolated post and, therefore, he found that the rule of reservation as per Section 3 of the aforesaid Act was applicable to the appointment of petitioner No.3 and the said rule having not been followed, it was further decided that the appointment of petitioner No.3 could not have been approved by the Government.

4. Section 3 of the said Act lays down that the Act shall apply to all appointments made in public services and posts except to the appointments made in categories (a), (b) (c) and (d) prescribed in the said Section. Category (d) is of the post which is single (isolated) in any cadre or grade. So, the question is whether the post of Lecturer in English could be treated as single (isolated) post in the cadre of Lecturer. The answer to this question has already been given by prescribing the test of inter-changeability of posts in different disciplines in the same cadre, in the case of *State of Karnataka and others Vs. K. Govindappa and another*¹. The Apex Court held that in the cadre of Lecturers, single and isolated posts in respect of different disciplines can exist as a separate cadre. It further held that in order

to apply the rule of reservation within a cadre, there has to be plurality of posts. It also observed that since there is no scope of inter-changeability of posts in the different disciplines, each single post in a particular discipline has to be treated as a single post for the purpose of reservation within the meaning of Article 16(4) of the Constitution. It further held that isolated and separate posts can exist within a cadre and in case of such a post, if there was only one post, the same could not be set apart for a reserved candidate.

5. In the present case, it is not the case of the State Government that the posts of Lecturer in English, Lecturer in Marathi, Lecturer in Crop Science, etc., are inter-changeable. It is also not the case of the State Government that a Lecturer appointed for teaching English can also teach the subjects of Crop Science or Marathi or any other subject, and the Lecturer appointed for teaching other subjects can also teach the subject of English. Thus, there is no inter-changeability of posts nor is there any duality of posts. That means, even though, broadly speaking, cadre of Lecturer is one within the same cadre of Lecturer, there can exist single and isolated post within the cadre, such as the post of Lecturer in English. This is the position of law settled by the Apex Court in *K. Govindappa's* case (supra). We find from the impugned order dated 26-3-2014 that this law has not been applied at all to the case of the petitioners and the result is erroneous,

warranting interference by this Court in the matter.

6. In the result, we are inclined to allow the petition and accordingly, it is allowed in terms of prayer clauses (1), (2) and (3), which read as under :

“(1) Quash and set aside the clarification issued by Respondent no.1 dated 20/12/2013 by further declaring that any isolated post in any cadre cannot be reserved by respondents in view of provisions of Section 3 of The Maharashtra State Public Services Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Bakward Category and Other Backward Classes Act, 2001;

(2) This Hon’ble Court further be pleased to quash and set aside order dated 26/3/2014 and further be pleased to grant approval to the appointment of petitioner from the date of her appointment i.e. w.e.f. 30/6/2010;

(3) This Hon’ble Court further be pleased to direct respondents to pay salary to the petitioner from 12/6/2006 to 29/6/2010 as full-time temporary teacher since petitioner has worked for the said period on full-time basis.”

7. We also direct the respondents to consider the request of petitioner No.3 to pay her salary in accordance with the Seventh Pay Commission’s Recommendations and by applying the Defined

Contribution Pension Scheme (DCPS), in accordance with law.

8. Rule is made absolute in above terms. No costs.

9. With the aforesaid direction, Civil Application (CAW) No.2038 of 2022 filed in this petition also stands disposed of.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

Lanjewar