



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

WRIT PETITION NO.6735/2022

PETITIONERS:

1. Vidarbha Shikshan Prasarak Mandal,
Khamgaon, Regn. No.F-1/Buldhana,
Through its Secretary, C/o G.S. Science,
Arts and Commerce College, Khamgaon,
Tahsil Khamgaon, District Buldhana.
2. The Principal, G.S. Science, Arts and
Commerce College, Khamgaon, Tahsil
Khamgaon, District Buldhana.
3. Dr. Prithviraj s/o Pratapsingh Thakur,
Aged about 40 years, occu. : Service
R/o Chandmari, Khamgaon, Tahsil
Khamgaon, District Buldhana.

...Versus...

RESPONDENTS:

1. State of Maharashtra, Through its
Secretary, Department of Higher and
Technical Education, Mantralaya,
Mumbai – 32.
2. Additional Commissioner (Backward
Class Cell), Amravati Division, Amravati.
3. Registrar, Sant Gadge Baba Amravati
University, Amravati.
4. Director of Higher Education,
Central Building, Pune -1.
5. Joint Director of Higher Education,
Amravati Division, Amravati.

6. The State of Maharashtra
through its Secretary General
Administrative Department, Mantralaya,
Mumbai.

(Added respondent no.6 vide Court's
order dt. 9.12.22)

(Amendment as per Court's order dated
9/12/22 done)

Mr. Sunil Manohar, Senior Advocate a/b Mr. P.B. Patil, Advocate for petitioners
Mr. M.K. Pathan, AGP for respondent nos.1, 2 and 4 to 6
Mr. J.B. Kasat, Advocate for respondent no.3

**CORAM : AVINASH G. GHAROTE AND
URMILA JOSHI-PHALKE, JJ.**

Date of reserving the judgment : 08/09/2023

Date of pronouncing the judgment : 05/10/2023

J U D G M E N T: (PER : AVINASH G. GHAROTE, J.)

1. Heard Mr. Sunil Manohar, learned Senior Counsel, with Mr. P. B. Patil learned Counsel for the petitioner, Mr. M.K. Pathan, Assistant Government Pleader for the respondent nos.1, 2 and 4 to 6 and Mr. J. B. Kasat, learned Counsel for the respondent no.3. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsels for the parties.

2. The petition challenges the communication dated 19/08/2022 issued by the Assistant Commissioner (Backward Class Cell), Amravati Division, which is addressed to the respondent no.3/

University, whereby the appointment of the petitioner no.3, who is a physically disabled person, as a Lecturer in English with the petitioner no.1 in the year 2007 in a post reserved for Vimukta Jatis (A) Category has been held to be beyond the purview of the provisions of the Maharashtra State Public Services (Reservation For Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (for short, “Act of 2001”) and therefore in light of the provisions of Section 11 therein the appointment of the petitioner no.3 has been held to be beyond the relevant provisions of the said Act of 2001 and the respondent no.3 has been directed to take appropriate action and submit a report to the respondent no.2.

3. In response, the petitioners by the communication dated 07/09/2022 (pg.96), have stated that the Assistant Commissioner (Backward Class Cell) Amravati, had fixed the roster for the years 2011 and 2015, as per the staff justification. As per the roster the 5th post of English Lecturer was to be filled by a candidate belonging to Vimukta Jati (A), however, on account of non-availability of candidate the post was vacant. At the relevant

time, the only physically challenged candidate available was the petitioner no.3, on account of which, the petitioner no.3, was appointed considering the need of the students and the requirements of filling the backlog under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, “Persons with Disabilities Act, 1995”) and the directions of the High Court for filling such backlog, considering which, it was stated that the appointment of the petitioner was legal and proper.

4. By an interim order dated 09/12/2022, it was noted that after the above said communication dated 07/09/2022, the Assistant Commissioner (Backward Class Cell) had forwarded a proposal on 04/10/2022 to the Additional Secretary, General Administration Department, seeking guidance in the matter, as a result of which, the respondent no.6, was directed to take a decision on the said proposal.

5. By the communication dated 01/02/2023, it was intimated that the proposal dated 04/10/2022 forwarded by the Assistant Commissioner (Backward Class Cell) was rejected. The

petition has thereafter been amended to challenge to the communication dated 01/02/2023.

6. Mr. Sunil Manohar, learned senior Counsel for the petitioners submits that since there were no candidates available at that time the petitioner no.3 came to be appointed. The roster also came to be approved by the respondent no.2, twice as indicated above. He, however, upon instructions also makes a statement that there was no intention on the part of the petitioners to do away with the filling up of the roster inasmuch as the petitioners have placed an affidavit on record dated 31/08/2023 undertaking to fill up the backlog of VJ(A) category by filling one additional post in that category and reducing one post from Open Category in the upcoming recruitment process. He, therefore, submits that the backlog created would be filled in, and in such circumstances, the services of the petitioner no.3 need to be protected. He also places reliance upon Section 6 (1) of the Act of 2001 to contend that carry forward of the reservation is permissible and since no candidate was available for the said post in VJ(A) Category what has been done and approved by the Backward Class Cell/respondent no. 2 cannot now be undone, more so, when there is an assurance given by the

petitioners that the backlog shall be taken care of. It is contended that because there was a ban for recruitment by the State, the posts pertaining to the Open Category should be filled in by the candidate of VJ(A) Category could not be advertised. The roster of the petitioner no.1/College was again approved on 18/07/2022 and the petitioner no.1 has been allowed to fill in 9 posts including 3 from Open Category. It is in this background, that the impugned communications have to be taken into consideration.

7. Mr. Pathan, learned Assistant Government Pleader while opposing the contention submits that for the duration 2007 to 2011 it was possible for the petitioners to have published an advertisement to fill in the backlog, however, the same having not been done, the action taken by the respondent no.2, as is indicted by the communication dated 19/08/2022 (pg. 93A) as affirmed by the State by order dated 01/02/2023 (pg. 100) stands justified.

8. It is not disputed that the post of full time Lecturer in English was reserved for VJ (A) candidate with the petitioner no.1/ Institution. In spite of the advertisement being published for second time on 26/09/2007 (pg. 79), since no candidate was available, the

petitioner no.3, who is a handicapped person, came to be selected to be appointed in that post.

9. A proposal for approval of the selection of the petitioner no.3 came to be forwarded to the respondent no.3, who, by the communication dated 28/12/2007 (pg. 82) accorded approval to such appointment. The roster of the petitioner/College thereafter sent to the respondent no.2 for approval, who, by the note dated 23/05/2011 (pg. 84) in view of the revised Staff Justification submitted by the petitioner no.1/Institution indicating that there were total 5 posts available and one was vacant directed that the reservation for VJ(A) be filled up.

10. The roster of the petitioner no.1/College was again verified and approved by the respondent no.2 on 31/12/2015 (pg. 89). The note below the table showing the roster indicted that upon a vacancy being created in the Open Category, turn by turn, the reservation in VJ (A) Category should be operated.

11. This would clearly indicate, that the respondent no. 2 while approving the roster at both the times in 2011 as well as in 2015, was aware of the appointment of the petitioner no.3, which was made as the candidate was not available in that category and

therefore considering this position had granted approval to the appointment of the petitioner no.3 on the condition that the seat in the Open Category becoming available the same should be then filled by VJ(A) candidate.

12. What is material is that the roster to be filled in, in terms of the reservation as mandated by the provisions of the Act, 2001. It is equally true that in terms of the provisions of the Persons with Disabilities Act, 1995, persons with disabilities have also to be accommodated in the reservations mandated for them.

13. In the present matter, it is an admitted position that at the relevant time, there was no candidate for the post reserved for VJ (A) Category in spite of advertisement twice, as indicated above and there was also the need to fill in the reservations for persons with disabilities, the petitioner no.3 came to be appointed. This appointment has twice been approved. The petitioner no.3, has rendered and is rendering services as a lecturer in English since then. In such circumstances, it becomes necessary to balance the mandate of both the Statutes. Terminating the petitioner no.3, at this stage would not serve any purpose at all, rather the same would cause loss only to the students as the process of recruitment, would again take

considerable time, leaving the students high and dry, without someone to teach them and so also the requirement to fill in the reservation for persons with disabilities under the Act of 1995, would continue to remain unfulfilled.

14. At the same time, since the petitioner nos.1 and 2, have submitted an undertaking in the affidavit dated 31/08/2023 (pg.127) to fill up the backlog post of VJ(A) by filling one additional post in that category and by reducing one post from Open Category in the upcoming recruitment process, in our considered opinion, this would balance the position.

15. We, therefore, deem it appropriate that considering the peculiar and special facts of the present case in which the petitioner no.3, is a person with disability and has rendered services for more than fifteen years, which was duly approved, and considering the undertaking given by the petitioners, as indicated above, of filling one additional post for VJ(A) Category by reducing one post from open category, in the forthcoming recruitment, the impugned communications are required to be quashed and set aside and are so done. As the petitioners have been permitted to fill up 9 vacancies, the undertaking of the petitioner nos.1 and 2, as given in the

affidavit dated 31/08/2023, shall become operative while filling these vacancies. The writ petition is according allowed in the above terms. Rule is made absolute in the aforesaid terms. No order as to costs.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)

Deshmukh