



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

**WRIT PETITION NO. 5746 OF 2018
WITH
CIVIL APPLICATION NO.2297 OF 2024**

Dr. Nitin s/o Chudaman Jadhav,
Age: 40 years, Occu.: Service,
R/o. Flat No.204, Shivnayan Apartment,
Ahmednagar, Dist. Ahmednagar.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Department of Medical Education,
Mantralaya, Mumbai-32.
2. The Director of Ayurved,
Dr. Thadani Marg, Khanna Construction
House, Worli, Mumbai.
3. The Maharashtra University of Health
Sciences, Nashik,
Through its Registrar.
4. The Divisional Commissioner,
Nashik Division, Nashik
Through its Backward Class Cell.
5. Gangadhar Shastri Gune Ayurvedic
College, Ahmednagar,
Through its Principal.
6. Dr. Prerna M. Dighe @
Dr. Prerna S. Bafna,
Age : , Occu.: Service,
R/o : Flat No.4, Swastik Residency,
Bhavaninagar, Ahmednagar.
7. The Secretary,
Ayurved Shastra Seva Mandal,
Vishram Baug, Maliwada,
Ahmednagar.

.. Respondents

Senior Advocate Mr. V. D. Sapkal i/by Mr. Yuvraj S. Choudhari,
Advocate for the Petitioner.

Mr. P.S. Patil, Addl.GP for Respondent No.1 & 4/State.

Mr. S.V. Natu, Advocate for Respondent No.2.

Mr. A.S. Bayas, Advocate for Respondent No.3 (Absent)

Mr. A.D. Ostwal, Advocate for Respondent No.6.

**CORAM : MANGESH S. PATIL AND
SHAILESH P BRAHME, JJ.**

RESERVED ON : 19 JULY 2024

PRONOUNCED ON : 14 AUGUST 2024

JUDGMENT [Per Shailesh P. Brahme J.] :-

Rule. Rule is made returnable forthwith. Heard both the sides finally.

2. Petitioner who is a teacher of the respondent no.5/Private Ayurvedic College, is seeking directions to promote him to the post of Professor in the same college and consequentially praying for forwarding proposal to the respondents for grant of approval to it.

3. Petitioner is rendering services with the respondent no.5 as a lecturer in subject Kayachikitsa from 10.08.2006. He was given approval by the respondent no.3/University vide order dated 29.06.2012. He was appointed as Associate Professor vide

appointment order dated 07.11.2017. The post of Professor in the subject Kayachikitsa was vacant since 30.04.2015. He made applications on number of occasions to the respondent no.5/College for promoting him to the vacant post of Professor. As no steps were taken, he is constrained to approach this Court. The Professors and Associate Professors in Maharashtra Ayurvedic Service Group - A and Assistant Professors in Maharashtra Ayurvedic Service Group - B", in the Government Ayurvedic Colleges under the Directorate of Ayurved (Recruitment) Rules, 2013 (for the sake of brevity hereinafter referred to as the "Rules of 2013"), were promulgated by the Government of India. It provides that the post of Professor should be filled in by promotion or nomination in the ratio of 50:50. Though the petitioner is eligible, no steps have been taken to promote him to the post in question.

4. The petition was amended by adding newly appointed teacher as Respondent no.6. But there is no corresponding amendment to pleadings and prayer of petitioner.

5. Learned Senior Counsel Mr. V.D. Sapkal appearing for the petitioner submits that aided post of Professor should be filled in

by promotion as on the last occasion, it was filled in by direct recruitment/nomination. Despite fulfilling eligibility criteria, the petitioner has not been promoted to the post, deliberately. He would submit that respondent/College has misrepresented the authorities in stating that post would be filled in by direct recruitment. The appointment of respondent no.6 is patently illegal and therefore only temporary approvals are granted to her from time to time. He would submit that it would be misconception to treat the post as earmarked for physically handicapped person. He would vehemently submit that Rules of 2013 would govern the appointments.

6. It is further submitted that no permission or approval was given by the respondent no.2/Director to the respondent no.5/College to fill in the aided post of Professor in Kayachikitsa by direct recruitment. He would submit that the letter dated 13.02.2024 issued by the Principal of respondent no.5/College to the respondent no.2 would indicate that post in question was to be filled in by promotion. The appointment of the respondent no.6 is on unaided post and on temporary basis.

7. Learned AGP would rely on the affidavit-in-reply. He would

submit that post of Professor in Kayachikitsa was verified by the Divisional Commissioner, B.C. Cell and held to be post of nomination. According to him Government issued G.R. dated 28.07.2017 and 22.01.2018 laying down procedure for recruitment of teachers. The petitioner's claim that post in question is promotional one, is misconceived.

8. Learned Counsel for the respondent no.5 would oppose the petition by tendering across the bar affidavit-in-reply. He would submit that as per the letter dated 22.04.2016 issued by the Assistant Commissioner, Backward Classes Cell, the post was to be filled in by direct recruitment. The Joint Director instructed management vide letter dated 02.06.2016 to reserve a post for a handicapped person. The Post of Professor (Kayachikitsa) was filled in by direct recruitment, through handicapped category.

9. It is further contended that the advertisement was got approved from the University. By following due procedure of law, respondent no.6 was appointed vide letter dated 03.06.2015 which was approved initially for one year only. Thereafter also she was appointed and was granted approval. Lastly, the approval was for two years with effect from 24.01.2024. The

Joint Director, Pune was informed regarding appointment of respondent no.6.

10. The respondent no.6 would oppose the petition by filing affidavit-in-reply. Her case is that she is a woman and having 53% disability. She possesses requisite certificates. She was appointed to the post in question by nomination by following due procedure of law. There was recommendation of the Selection Committee to her appointment. The appointment was approved by the respondent/University. It is vehemently contended that post in question was to be filled in by nomination and not by way of promotion in view of sanction of roster vide order dated 22.04.2016. Learned Counsel would submit that petitioner was not eligible as he was promoted to the post of Associate Professor on 07.11.2017. He did not participate in the direct recruitment process.

11. Learned Counsel would submit that the management had solicited permission vide letter dated 07.12.2015 to fill in post of Professor by nomination. He would also refer to interim orders passed by the High Court in Writ Petition No.9662/2017 filed by Kisan Vidya Prasarak Sanstha. As the appointments of the

respondent no.6 have been approved by the University, the same cannot be doubted. It is further contended that no prayer has been made by the petitioner to challenge appointment of the respondent no.6.

12. He would rely upon the decision of the Supreme Court in the matter of **Brahmo Samaj Education Society & Ors vs State Of West Bengal & Ors.**, AIR 2004 SC 3358. It is further submitted that the respondent/University formulated promotion rules, 2007 and as per Rule -4, when a candidate for promotion is not available in the College, the post can be filled in by direct recruitment. Therefore, management resorted to the procedure of direct recruitment. Lastly he would pray to dismiss the petition.

13. We have considered the rival submissions of the parties. Petitioner was appointed in the respondent no.5/College as a Lecturer from 10.08.2006. He was promoted to the post of Associate Professor for the subject Kayachikitsa on 07.11.2017. The post of Professor fell vacant due to the superannuation of Mr. P.S. Pawar on 30.04.2015. The respondent no.6 was directly recruited to the post of Professor (Kayachikitsa) vide order dated

03.07.2015. She was given further appointment vide order dated 25.04.2017. Her appointment was approved on a temporary basis on couple of occasions. Last such approval was of 09.02.2024 with effect from 24.01.2024.

14. Petitioner and respondent no.6 stake rival claim to the post of Professor in Kayachikitsa. The controversy pertains to mode of appointment to the post in question. There is no dispute that Mr. P.S. Pawar, who superannuated on 30.04.2015, was appointed to the post of Professor by way of nomination. We have to take into account relevant rules to determine as to the mode of filling in the post in question.

15. The petitioner refers to rules of 2013. Relevant rules are as follows :

Rule 3. Appointment to the post of Professor in the Maharashtra Ayurvedic Service, Group 'A', in the Government Ayurvedic College in the Directorate shall be made either, _

(a) by promotion of a suitable person on the basis of strict selection with due regards to seniority from amongst the person holding the post of Associate Professor having not less than five years regular service in the post;

Provided that, Associate Professor in Sanskrit or Sanskrit Samhita Siddhanta who do not possess qualification prescribed for appointment by nomination under clause (b) (ii) of this rule, will not be eligible for promotion on the post of Professor in Ayurveda Subject.

OR

(b) by nomination from amongst the candidates, who, _

(i) are not more than fifty years of age :

Provided that, the age limit may be relaxed by five years in case of candidates who are already in the service of Government; and

(ii) Possess qualification mentioned in Parts A, A-1, B or C in the Scheduled appended to the

Maharashtra Medical Practitioner's Act, 1961 (Mah.XXVIII of 1961) or an equivalent time, under the Central Council of Indian Medicine Act, 1970 (48 of 1970) and possess post-graduate degree in concerned subject of Ayurveda, obtained from Recognized Institute :

(iii) possess total teaching experience of ten years in the concerned Ayurvedic subject out of which there should be five years teaching experience as Associate Professor in the concerned Ayurvedic subject from Recognized Institution;

(iv) possess adequate knowledge of English, Marathi, Sanskrit and Hindi language.

Provided that, preference may be given to those candidates whose original research paper been published in indexed journals on National level or books in Ayurvedic recognized by Central Council of Indian Medicine.

Rule 7. Appointment to the posts mentioned in rule 3 and 4 by promotion and nomination shall be made in the ratio of 50:50.

16. It is clear from Rule No.3 that appointment to the post of Professor would be made either by promotion or by nomination and the ratio is to be maintained as 50:50. Earlier, respondent/University also floated rules 2007 for the promotion of the teachers in the private aided and unaided colleges. It's clause no.1(c) also stipulates ratio of 50:50 for appointment to the post of Professor, either by promotion or nomination. We have not been pointed out any other statutory provision, Rule or policy to provide anything contrary to the rules of 2013 or 2007. If the earlier appointment of Mr.P.S. Pawar was by nomination then by way of rotation, the mode of appointment should have been by promotion only.

17. The above referred position is fortified by correspondence

made by respondent/College to the Joint Director of Ayush on 17.01.2024, showing vacant post of Professor for Kayachikitsa was to be filled in by promotion and further communication to the Director of Ayush dated 13.02.2024 on the same line.

18. The respondent/Management sought permission for recruitment to the post of Professor by nomination vide correspondence 07.12.2015. However, there is no material on record to show that such permission was ever expressly given by the respondent nos. 2 to 4. No prior permission was given by the respondent nos.2 to 4 appointing a candidate to the post of Professor by nomination.

19. The respondents have relied upon verification dated 07.04.2016 conducted by the Assistant Commissioner, Backward Classes Cell which was communicated vide 22.04.2016. At serial no.10 post of Professor (Kayachikitsa) is mentioned and it is also mentioned that direct recruitment 100%. There is nothing in the communication to indicate that the post of Professor in Kayachikitsa was instructed to be filled in by nomination. The mode of filling in post of Professor is prescribed by Rules of 2013 read with Rules of 2007 issued by the respondent/University. It

would not be within the power of the Assistant Commissioner Backward Classes Cell to prescribe mode of appointment. He is empowered to verify the roster, backlog if any and policy of reservation. Therefore, we are of the considered view that the communication dated 22.04.2016 cannot be construed as any permission or instruction issued by Backward Classes Cell to the respondent/Management to fill in the post of Professor by nomination. We do not approve submission advanced by the respondents in this behalf.

20. The respondent no.6 was appointed as a Professor initially by order dated 03.06.2015 and by further orders. Though her appointments were approved by the respondent/University, the approvals were temporary in nature and for particular period. The respondent no.6 did not challenge the temporary approval. Her case was that the post was to be filled in by nomination and her selection was in accordance with law. Then, there was no reason to grant approval to her appointments temporarily.

21. Though pendency of the writ petition no. 9662/2017 filed by Kisan Vidya Prasarak Sanstha and the interim orders passed therein are cited as a reason for not regularizing the appointment

of the respondent no.6, those were not the orders in rem. Those interim orders were applicable to the parties to the petition and not to the parties before us. There was no blanket prohibition for any other Ayurved Colleges in the State of Maharashtra for undertaking process for appointment to the post of Professor.

22. The respondent/Management undertook impermissible mode for filling in post of Professor. As on the last occasion, Mr. P.S. Pawar was appointed by nomination this time, it was the turn of promotion. The petitioner, therefore, rightly not participated in the recruitment process. Though there is recommendation of the Selection Committee in favour of the respondent no.6, the mode undertaken for the recruitment to the post of Professor was bad in law. The respondent no.6 was not given permanent approval.

23. We have examined the eligibility criteria for the post of Professor. According to Rules besides educational qualification, experience of 10 years as a lecturer or experience of five years as an Associate Professor would be good enough for the post in question. Considering petitioner's initial appointment as a lecturer from 10.08.2006, he was holding requisite experience

and eligible to claim the post of Professor. The respondent/ Management should have promoted and forwarded the proposal of the petitioner to the competent authority, seeking approval for the promotion. Due to the appointment of respondent no.6, petitioner is denied promotional post which is arbitrary and capricious.

24. Learned Counsel for the respondent no.6 refers to decision rendered by the Supreme Court in the matter of Brahmo Samaj Education Society (supra). There cannot be any quarrel about the ratio laid down therein. But the private management could not have trammelled right to appoint candidate to the post in question. The right of the management to appoint a candidate to a particular post is regulated by the Rules and the norms. In the present matter, we have recorded that there is violation of the norms in treating the post in question as directly recruitable post in stead of promotional one. The judgment is not applicable to the case in hand.

25. The petitioner did not amend the prayer clause despite impleading respondent no.6. No prayer is made to challenge the appointment of respondent no.6. But we have found that the

appointment of respondent no.6 is bad in law. The post in question cannot be said to be occupied. Despite that, there is no prayer challenging appointment of respondent no.6, there is no impediment for us to grant relief to the petitioner under Article 226 of the Constitution of India. We, therefore, pass following order :

ORDER

- (i) The respondent no.5 shall treat post of Professor (Kayachikitsa) as promotional post for the present rotation and promote the petitioner to the post.
- (ii) The respondent no.5 shall forward the proposal for grant of approval to the promotion of the petitioner to the respondent no.2 and 3.
- (iii) The proposal shall be decided within a period of four weeks.
- (iv) The Civil Application is disposed of.
- (v) Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE

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