



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14522 OF 2023

Mokind s/o Bapurao Dahiphale,
Age: 40 years, Occu: Service as
Assistant Professor
R/o Sant Janabai Nagar,
Water Tank, Tq. Gangakhed,
District Parbhani.

... PETITIONER

V/s.

1. The State of Maharashtra
Through its Principal Secretary,
Higher & Technical Education Dept.
Mantralaya, Mumbai – 400 032.
2. Joint Director,
Higher Education, Nanded.
3. Swami Ramanand Teerth,
Marathwada University,
“Dnyanteerth” Vishnupuri,
Nanded – 431 606.
Through its Registrar.
4. Dnyanopasak Shikshan Mandal's
Dnyanopasak Arts, Commerce &
Science College, Parbhani,
Through its President.

... RESPONDENTS

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Mr. S.S. Thombre, *Advocate for the Petitioner*
Mr. P.K. Lakhotiya, AGP for Respondent-State
Mr. U.S. Malte, *Advocate for Respondent No.3*
Mr. P.S. Dighe, Advocate for Respondent No.4

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**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRADE, JJ.**

RESERVED ON : 5th January, 2024

PRONOUNCED ON : 10th January, 2024

JUDGMENT (Per: Y.G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
2. By the present petition, the Petitioner has impugned orders/letters dated 23rd August, 2023 and 26th September, 2023 issued by the Respondent No.3 - Swami Ramanand Teerth University, thereby refusing to grant approval to the appointment of the Petitioner on the post of Assistant Professor in English subject.
3. In nutshell, the Petitioner's grievance is that, he belongs to NT-D category. He possess all requisite educational and technical qualifications for appointment to the post of Assistant Professor. He cleared NET/SET examinations in first class and is having ample teaching experience in said subject. He also presented the Research Papers in various Seminars / Conference and Symposium. In pursuance to the permission granted by Respondent No.3 - University, the Respondent No.4 - Management issued an advertisement on 8th February, 2023 inviting applications from the eligible candidates for the post of Assistant Professors in various subjects. Accordingly,

the Petitioner submitted his candidature for the post of Assistant Professor in English subject. The Respondent No.4 - Management conducted interviews of various candidates on 11th June, 2023 for the advertised post. One candidate Shri Popat Devidas Patil from reserved category Nomadic Tribe "C" was enlisted at sr.no. 4 for the post of "English" and the Petitioner's name appeared in wait list at sr.no.7. However, the selected candidate Shri Popat Devidas Patil refused to join duty. Therefore, Respondent No.4 sought approval from the Respondent No.3 - University for selection of the Petitioner, who belongs to the next inter-changeable reserved category NT "D" and has secured 72.89% marks and was more meritorious than other candidates. However, on 23rd August, 2023, the Respondent No.3 - University issued the impugned communication informing that the subject post was reserved for NT-C category and in the General Merit List, the Candidate belongs to NT-C. Therefore, though the candidate figuring in the select list refused to resume duty, the appointment cannot be given to the Petitioner, who belongs to NT-D category and refused the proposal.

4. Adv. S.S. Thombre, the learned counsel appearing for the Petitioner submits that, on 5th September, 2023, the Respondent no. 4 - Management issued a communication to the Respondent No.3 - University with proper explanation and justifying the Petitioner's appointment that the Selected

candidate Shri Popat Devidas Patil from NT “C” refused to join the post. The name of another candidate Shri Amol Ashokrao Shrirame belonging to NT “C” category appearing at sr.no. 87 but in interview he secured 37.44% marks, which is less than 50% cut-off percentage. Therefore, as per the Government policy, the reserved post for NT “A” “B” “C” and “D” categories are interchangeable, if the candidate from either of four categories is not available or any one refused to join after the selection, however, the Respondent No. 4 illegally refused to grant approval for appointment of the Petitioner, which is contrary to sub-clause 4 to the 2nd proviso of Sec. 4 of 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. (In short Maharashtra Act No. VIII of 2004).

5. To buttress his case, the learned counsel for the Petitioner relied on orders passed by Coordinate Bench of this Court in (1) **W.P. No. 6393 of 2011** dated 13th March, 2012 - **Baban Pralhadrao Kadre Vs. The State of Maharashtra & Ors.**, and (2) **W.P. No. 6968 of 2006** dated 20th March, 2007, **Sanjay s/o Kondibarao Kolekar Vs, The State of Maharashtra & Ors.**, wherein it has been held that, interchangeability from NT “B” category and NT “D” category is not prohibited by law.

6. Refuting the submissions made on behalf of the Petitioner, the learned Counsel for the Respondent No. 3 Mr. Malte submits that, one post of Assistant Professor was advertised under reserved NT “C” for English subject, however, the candidate enlisted at sr.no.4 - Popat Ganpatrao Patil allegedly refused to join but there are other candidates belonging to NT “C” category. However, the Respondent No. 4 - Management intended to appoint the candidate other than NT “C” category. Since, no candidate from reserved NT “C” category is available in such circumstances, the Respondent No.4 can re-advertise the post and invite applications from said category by giving opportunity to the candidates from said category. The reserved post for NT “C” category is not changeable, therefore, the Respondent No.4 passed the impugned order and declined to accord approval. Hence, he prayed for dismissal of the petition.

7. It is not in dispute that the Petitioner is in possession of all requisite and technical qualifications for appointment to the post of Assistant Professor. The Petitioner also cleared NET/SET examinations and is having ample teaching experience to teach English subject. On 08.02.2023, the Respondent No.4 - Management issued an advertisement and invited applications from the eligible candidates for appointment to the post of Assistant Professors for various subjects. The Petitioner who is from reserved

category Nomadic Tribe “C” submitted his candidature for the post of Assistant Professor in English subject. Accordingly, the Respondent No.4 - Management constituted selection committee and conducted interviews of various candidates on 11th June, 2023. It is not out of place to mention here that one candidate namely Shri Popat Devidas Patil was selected from reserved category Nomadic Tribe “C” and enlisted at sr.no. 4 for the post of “English” subject and name of the Petitioner appeared at sr.no.7. The Respondents have fairly admitted that the selected candidate Shri Popat Devidas Patil refused to join the duty. Therefore, the Respondent No.4 - Management issued a communication dated 15th June, 2023 for seeking approval from the Respondent No.3 - University for grant of approval to selection of the Petitioner. However, Respondent No.3 issued the impugned communication informing that the subject post was reserved for NT-C category and in the General Merit List, other two candidates from NT-C are appearing. Therefore, bypassing the reservation of NT “C” category, no appointment order can be issued to the Petitioner.

8. It needless to say that the Selection Committee duly conducted interviews of all the candidates and maintained the marks-sheet recording the marks scored by all the candidates. The extract of marks-sheet from various NT categories as appearing in merit in list, is as under:-

Sr. No.	Name of Candidates	Category	Subject	Marks obtained %
4	Patil Poat Devidas	NT-C	English	83.89
7	Mokind Bapurao Dahiphale	NT-D	English	72.89
15	Syeda Tarrannum Syed Gani	NT-B	Urdu	58.67
46	Khandu Dnyandev Warade	NT-C	Chemistry	46.25
59	Dattatrya Ashruba Chadar	NT-C	Chemistry	44.63
66	Sangale Gitanjali Bharatrao	NT-D	English	42.22
85	Vijay Ashok Hemade	NT-D	English	38.33
87	Amol Ashokrao Shrirame	NT-C	English	37.44

9. On perusal of the merit list of the all candidates, it appears that the candidate at sr.no. 4 from NT-C category scored 83.89 % marks, but he refused to join the duty. The candidates appearing at sr.no. 15, 46 and 59 are being nominated for different subject than English. The other candidates at sr. nos. 66, 85 and 87 are from NT D & C categories for English Subject, but they scored 42.22%, 38.33% and 37.44%, which is less than the cut-off percentage. As per the Governing Terms And Conditions of Services of Teachers Working in University Schools, University Departments, Conducted Colleges and University Institutions [Framed under Section 72(10) r/w Section 71 (20) of the Maharashtra Public Universities Act, 2016], minimum marks of 50% is required to be scored. Sub-section 5 of Section 10 provides that the candidate having average score of at least 50 % shall only be considered as eligible for selection in the order of merit. In the case in hand, the Petitioner scored 72.89%. Therefore, he is at 2nd number in merit of NT category. Since the candidate at sr. no. 1 from NT-C category refused to join, therefore, the Respondent No.4 -

Management intended to appoint the Petitioner from NT-D category and issued communication dated 5th September, 2023 to the Respondent No.3 seeking approval with proper explanation and justifying the Petitioner's appointment.

10. Sub-clause 4 to the 2nd proviso of Section 4 of the Maharashtra State Public Services (Reservation For Scheduled Castes, Scheduled Tribes, De0notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (In short Maharashtra Act No. VIII of 2004), provides that in all posts at the divisional level or district level, the percentage of reservation occurring in a recruitment year in such categories of Group-C and Group-D posts as may be notified by the Government in this behalf, has to be maintained at such divisional or district level only. However, said enactment does not prohibit inter-changeability from NT-C to NT-D, if the candidate from NT- C is not available.

11. Vide order dated dated 13th March, 2012 passed in **W.P. No. 6393 of 2011, Baban Pralhadrao Kadre Vs. The State of Maharashtra & Ors.**, the Coordinate Bench of this Court [**Coram: B.R. Gavai (as His Lordship then was) and Sunil P. Deshmuk, JJ.**] observed as under:

“1. The petitioner challenges the selection of respondent no.5. It is the contention of the petitioner that respondent no. 5 had never applied for the post of Assistant Professor in Sociology, which was reserved for NT-B category. He further submitted that respondent no. 5 does not belong to NT-B category, but belong to NT-D category.

2. The perusal of the report of the selection committee, which also includes the Government nominee, Vice Chancellor's nominees and subject experts, who are independent persons, would reveal that in the selection process respondent no.5 has secured much more marks as compared to the petitioner. It is also not in dispute that an inter-changeability from NT-B category and NT-D category is not prohibited by law."

12. In an another order dated 20th March, 2007 passed in W.P. No. 6968 of 2006, **Sanjay s/o Kondibharao Kolekar Vs. The State of Maharashtra & Ors.**, the Coordinate Bench of this court [**Coram: Naresh H. Patil (as His Lordship then was) and R.M. Borde, JJ.**] held that, as per Government Resolution the post reserved for NT-A, B, C, D categories are interchangeable.

13. Therefore, considering the facts of the present case as well as the settled law that post reserved for NT-A, B, C, D categories are interchangeable, hence, refusal to grant approval for appointment of the Petitioner by the Respondent No.3 - University under impugned orders dated 23rd August, 2023 and 26th September, 2023 is contrary to Sub-clause 4 to the 2nd proviso of Section 4 of the Maharashtra Act No. VIII of 2004 as well as Government Resolution.

14. Hence, **the Writ Petition is allowed.** The impugned orders / letters dated 23.08.2023 and 26.09.2023 are hereby quashed and set aside. The Respondent No.3 - University is hereby directed to grant approval to the

selection of the Petitioner for the post of Assistant Professor in English Subject, within 15 days from today.

15. Accordingly, the Rule is made absolute in above terms. Parties to bear their own costs.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]