

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3020 OF 2021

Ravindra Gokul Chaudhari and ors.

... Petitioners

Versus

State of Maharashtra, through
Secretary, Tribal Development Department and
ors.

... Respondents

WITH

WRIT PETITION NO. 2561 OF 2020

Vijay Ambarrao Patil and ors.

... Petitioners

Versus

The Commissioner,
Adivasi Vikas, Nashik, and ors.

... Respondents

Mr. Mihir Desai, Senior Advocate i/b. Rishika Agarwal for the
Petitioners in WP/3020/2021.

Mr. Pratik B. Rahade for the Petitioners in WP/2561/2020.

Ms. Nisha Mehra, AGP for Respondent No.1 in WP/2561/2020.

Mr. K. S. Thorat, 'B' Panel counsel in WP/2561/2020.

**CORAM : NITIN JAMDAR AND
 M.M. SATHAYE , JJ.**

DATE : 27 MARCH 2024.

P.C. :

1. Petitioners in both the Petitions are working in the Junior
Colleges established in the tribal areas of the Maharashtra. It is their

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grievance that though the State of Maharashtra has set up various Colleges in the tribal areas to give better education to the students from these areas, and having recruited teachers working in the Junior Colleges, no rules and regulations are framed for deciding the seniority and promotion in services. Petitioners state that they have made representation since the year 2017 to the Tribal Development Department of the State for framing Rules and regulations, however, no cognizance has been taken.

2. In Writ Petition No.2561 of 2020, Petitioners have sought a direction to formulate Rules and Regulations to deal with the service conditions, seniority and promotions of the Petitioners and such other teachers as are employed with Tribal Development Department within a time bound manner.

3. In Writ Petition No.3020 of 2021, the Petitioners have sought promotion to the post of Head Master in Ashram Schools to which Junior Colleges are attached and to make a combined seniority list and implementation of recruitment rules. However, in absence of Rules or policies to determine the seniority and promotion, these reliefs could not be granted. Therefore, the Petitioners in Writ Petition No.3020 of 2021 are seeking directions to the State Government for framing policies / Rules regarding seniority and promotion.

4. As the averments made in these Petitions would show that

since the year 1999 when the Junior Colleges have been set up in tribal areas and it is almost more than twenty years, even the basic Rules for framing seniority and promotion have not been finalized. We are informed that not only no Rules are framed for Junior Colleges, even the Rules framed in some other institutions have also not been applied as a stop-gap arrangement till the final Rules are framed.

5. Taking note of this position, various orders have been passed from time to time. First order dated 26 November 2020 in Writ Petition No.2561 of 2020 which reads thus:

“1. Learned Counsel appearing for the Petitioners states that the Petitioners have been working for the period of more than 18 years on the post of teachers. The Respondents till date have not framed any rules and regulations for the promotion of teachers and other staff working in the Junior College and other service conditions under the control of the Respondents.

2. Learned Counsel for the Petitioners invited our attention to the minutes of the meeting at page 57 of the Writ Petition and would submit that though the draft rules were to be produced by the concerned department by 15.03.2017, till date no such rules are produced or framed.

3. Learned AGP seeks time to file affidavit-in-reply and to place on record the steps taken by the concerned department pursuant to the minutes of said meeting at page 57 of the Writ Petition and shall inform this Court as to when these rules will be finalized at the earliest. Such affidavit-in-reply shall be filed within two weeks.

It is made clear that no further extension would be granted.

4. Place the matter on board for admission on 15.12.2020.

5. This order will be digitally signed by the Private Secretary of this Court. Associate of this Court is permitted to forward the parties copy of this order by e-mail. All concerned to act on digitally signed copy of this order.”

6. Thereafter, on 4 February 2021 in Writ Petition No.2561 of 2020, the following order came to be passed :-

“Despite this Court having made it clear that no more time would be granted to the Respondent-State to file its reply, no reply is forthcoming. Only by way of indulgence, we grant further time of two weeks. We make it clear that no further accommodation would be granted to the Respondent-State. Stand over to 18 February 2021.”

7. In Writ Petition No.2561 of 2020, on 23 March 2021, further time was granted subject to costs. Again time was granted to file an additional reply on 26 August 2021, 17 December 2021 and 1 August 2022. Reply Affidavit was filed on 13 September 2022 by the Deputy Secretary, Tribal Development Department, Mantralaya in which paragraph 8 reads thus :

“8) I respectfully say and submit that this Department has initiated the process of framing

recruitment rules and in process of administrative sanctions as a result the respondent needs at least 6 months period to complete the procedure.”

8. We also note that in the further affidavit filed by the Deputy Secretary, Tribal Development Department, dated 13 September 2022, the Deputy Secretary has sought 6 months' time. Even those 6 months' time, is long over and there is no progress.

9. Reply Affidavit dated 17 February 2022 was filed in Writ Petition No.3020 of 2021 by the Assistant Commissioner, in the office of the Additional Commissioner, Tribal Development, Thane, in which Paragraphs 6, 7 and 8 read as under:-

“6) I say and submit that the Respondent No.1 by order dt.5.02.2021 has constituted a committee comprising of 6 members who are entrusted the task of classification of services under the Tribal Development Department within the jurisdiction of the Commissioner, Tribal Development Maharashtra State Nasik, Commissioner Tribal Research and Training Institute Pune and to modify / prepare recruitment rules for the various posts in the Tribal Development services. The above facts brought to the notice of this Hon'ble Court vide affidavit filed by present Respondent dt. 13/09/2021. However on 17.12.2021 this Hon'ble Court has passed an order with the direction to file additional affidavit in reply regarding the current status of formation of the rules by the committee.

7) I say and submit that, the present Respondent communicated the same to the Respondent no.1 vide letter dt. 29/12 2021 and sought information regarding

the current status of a committee comprising of 6 members who are entrusted the task of classification of services under the Tribal Development Department within the jurisdiction of the Commissioner, Tribal Development Maharashtra State Nasik, Commissioner Tribal Research and Training Institute Pune and to modify / prepare recruitment rules for the various posts in the Tribal in the Tribal Development Department. The copy of letter dt. 29/12/2021 is annexed herewith and marked as EXHIBIY-R-1.

8) I say and submit that, on 21.01.2022, Respondent No.2 has submitted report in respect of objections received from the objectors. It is submitted that in the next 15 days, the Recruitment Rules for these post will be submitted to the General Administration Department, Law and Judiciary Department etc for approval.”

10. Even after this reply dated 17 February 2022, till date Rules and regulations have not been finalized and published. The position shows negligence and apathy. The State will have to frame Rules / regulations governing the seniority and promotion of the teachers working in the Junior Colleges set up in tribal areas by the Tribal Development Department and there is no reason why it is not so done for last 20 years. If the finalisation of the Rules is taking time, then at least as a stop-gap measure, the Rules applicable to the Junior Colleges attached to other Departments such as Education Department could have been adopted. The absence of Rules has caused prejudice to the employees of the said Junior Colleges apart

from administrative difficulties to determine the seniority on which further career prospects are based. Even the reply affidavit does not state that the Rules are not necessary.

11. This position cannot continue. Time mandate need to be placed on the Respondents to finalise the Rules and regulations for determining the seniority and promotion of the employees of the Junior Colleges attached to the Tribal Development Department, which they have failed to do so.

12. We direct the State Government through Tribal Development Department to finalise Rules and regulations for the purpose of determining the seniority to the post of Principal on the junior Colleges as prayed for within six months from today. We place the responsibility on the Secretary, Tribal Development Department, State of Maharashtra to ensure that this order is complied with.

13. Both the Writ Petitions are accordingly disposed of.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)