



Judgment

wp5890.23

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

WRIT PETITION No. 5890 OF 2023.

Dr.Ashish Dilip Tiple,
Aged 40 years, Occupation -
Service, permanent address – B-1/8
Savitri Bihar, Somalwada,
Wardha Road, Nagpur 440025.

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PETITIONER.

VERSUS

1.Rashtrasant Tukdoji Maharaj Nagpur
University, Nagpur through its
Registrar, Jamnalal Bajaj Administrative
Building Campus, Ambazari Road,
Nagpur 440033.

2.The Joint Director of Higher
Education, Nagpur Division, Old
Morris College Compound, Civil
Lines, Nagpur 440001.

3.Vidya Bharti Sansstha, Wardha,
through its President Dr.Rajesh
Ghanshyam Bhoyar, office at
Bachelor Road, Wardha 442001.

4.Dr.R.G Bhoyar Arts, Commerce
and Science College, Seloo, through its

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Principal, Near Grampanchayat Bhawan,
Bus Stand Road, Seloo,
District Wardha 442104.

5.The State of Maharashtra,
through its Secretary, Department
of Higher and Technical Education,
Mantralaya, Mumbai 400032.

6.Dharampeth M.P. Deo Memorial
Science College, through its Principal
Kasturba Layout, Sudam Nagar,
Nagpur 440033.

... **RESPONDENTS.**

Mr. A. Parchure, Advocate for the Petitioner.
Mr.S.A. Marathe, Advocate for Respondent No.1.
Mr. F.T. Mirza, Advocate for Respondent No.3.
Mr. N.R. Patil, A.G.P. for Respondent Nos.2 & 5.

CORAM : VINAY JOSHI AND
M.W.CHANDWANI, JJ.

DATE : AUGUST 02, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule made returnable forthwith, considering
the controversy involved and by consent of the learned Counsel

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appearing for the respective parties, the matter is taken up for final disposal.

2. The petitioner was appointed as an Assistant Professor in Zoology by following the due process of law in respondent no.4 College, which is run by respondent no.3 Management. Admittedly the college is fully government aided college. In pursuance of an advertisement issued by respondent no.1 University and respondent no.6 College, the petitioner has applied to the respondent no.3 Management for issuance of no objection certificate to apply and compete for the post of Associate Professor as advertised by respondent nos. 1 and 6, however, vide the impugned communication dated 01.09.2023, the Management / College has declined to grant no objection certificate to the petitioner.

3. On perusal of the impugned communication, it reveals that the resistance is on the ground that in case the petitioner leaves the service by virtue he being appointed in other college, then the said

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post would fall vacant. It is further contended that in case of the post falling vacant, as per the government policy it could not be filled. The Management further stated that at present there is no other full time professor to teach in the college, which is situated in rural area and for these reasons, the petitioner's urge has been declined.

4. The issue which arises before us is – Whether the Management/College can refuse to issue no objection certificate to an employee on the aforesaid ground ?

The learned Counsel appearing for the respondent Management fairly stated that the petitioner was excellent in his duties and he is an asset for the Management. He would submit that the institution is situated at rural area where hardly other teachers would opt to serve. Moreover, the petitioner desires to switch over to the advertised post, which is probably at Nagpur and would be convenient for him. We see no merit in these contentions, as it is the sweet choice of the petitioner as to where he would serve. We can understand that if the petitioner is facing some departmental action or

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there are any deficiencies, in that case only the Management can withhold for issuance of no objection certificate.

5. On legal touchstone, the learned Counsel for the Management would submit that the aspect of issuance of no objection certificate is an affair between the employer and employee and thus, writ Court cannot step into. In support of said contention he has relied on the decision of Supreme Court in case of **Director of Settlements, A.P and others .vrs. M.P. Apparao and another – [2002] 4 SCC 638** and **St.Mary's Education Society and another .vrs. Rajendra Prasad Bhargave and others – [2023] 4 SCC 498**. We have gone through these decision wherein the scope and ambit of High Courts jurisdiction under Article 226 of the Constitution of India has been explained. A writ of mandamus can be issued for enforcement of any of the rights contained in Part-III of the Constitution, or for any other purposes. Thus, the scope of writ jurisdiction is wide, of course it is to be exercised with certain constraints and limitation laid down by law.

6. On the other hand, the learned Counsel for the petitioner has relied on the decision of Orissa High Court in case of **Dr. Snehalata Mallick .vrs. State of Odisha and others - W.P.C) No.4242/2021 decided on 12.02.2021** to contend that in similar circumstances, the Orissa High Court took a view that depriving a teacher participating in the process of selection by not granting no objection certificate amounts to causing a death of a foetus before it sees the light of the day. The learned Counsel has also relied on the decision of Supreme Court in case of **Andi Mukta Sadguru Shree Muktajeevrs. V.R. Rudani and others – [1989] 2 SCC 691**, wherein it has been observed that if the Management of the college is doing public duty, a writ of mandamus would lie. The learned Counsel for the Management endeavored to distinguish these decisions on facts by contending that essentially in case at hand the dispute is of a private nature.

7. Admittedly the respondent Institution is a fully aided,

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controlled by the government, and thus, they are bound by the law, Rules and Regulations framed by the University as they are engaged in the activities of doing sovereign function under the supervision of the Government. In the circumstances, we are unable to agree with the submission that the aspect of issuance of no objection certificate is a private affair between the employer and employee. The action of the employer College has to be fair and non-arbitrary. The reason canvassed for withholding the no objection certificate is wholly unjustifiable, since a valuable right of the petitioner has been withheld by a government controlled college. Certainly this Court has jurisdiction to step in and invoke its writ jurisdiction.

8. The learned Counsel for the Management has also stated that there is internal grievance mechanism formed by the University, which is a statutory remedy for resolving the disputes of like nature. It is to be noted that since interviews are scheduled by respondent No.6 College after two days i.e. on 06.08.2024, we are not convinced by the submission of learned Counsel for respondent management in

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directing the petitioner to resort to the alternative remedy, which would be of no use. In view of above, we proceed to pass the following order.

ORDER

- [i] Writ Petition is allowed.
- [ii] The impugned communication dated 01.09.2023 issued by the respondent no.4 College is quashed and set aside. We direct the respondent to issue no objection certificate in favour of the petitioner by tomorrow i.e. 03.08.2024.
- [iii] Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

JUDGE