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WP-4245-2008

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4245 OF 2008

Ajay S/o. Harischandra Gite,

Age: 29 years, Occu: Nil,

R/o. Shivaji Chowk, Parali Vaijinath,

Tq. Parli (V), Dist. Beed.

...PETITIONER

VERSUS

- 1] **The President/Secretary,**
Jawahar Education Society's
Vaidyanath College of Arts,
Commerce & Science, Parali
Vaijinath, Tq. Parli Vaijinath,
Dist. Beed.
- 2] **The Principal,**
Vaidyanath College of Arts,
Commerce & Science, Parali
Vaijinath, Tq. Parli Vaijinath,
Dist. Beed.
- 3] **The Director,**
Board of College & University
Development, Dr. Babasaheb
Ambedkar Marathwada
University, Aurangabad.
- 4] **The Joint Director,**
High Education, Aurangabad
Region, Aurangabad.

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- 5] **The Registrar,**
Dr. Babasaheb Ambedkar
Marathwada University,
Aurangabad.
- 6] **Mr. Reddy Y. D.,**
Age: Major, Occu: Service,
R/o. Vidyanath College of Arts,
Commerce & Science, Parali
Vaijinath, Tq. Parli Vaijinath,
Dist. Beed.

...RESPONDENTS

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Mr. S. V. Mundhe, Advocate for the Petitioner.
Mr. P. L. Shahane, Advocate for Respondent No.1.
Mr. V. V. Bhavthankar, Advocate for Respondent No.2.
Mr. H. V. Patil, Advocate for Respondent No.6.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 19th SEPTEMBER 2025.
PRONOUNCED ON: 30th SEPTEMBER 2025.

ORDER :-

1. Heard Mr. Mundhe, the learned Advocate for the Petitioner, Mr. Shahane, the learned Advocate for Respondent No.1, Mr. Bhavthankar, the learned Advocate for Respondent No.2 and Mr. Patil, the learned Advocate for Respondent No.6. In spite of service, none appears for Respondent Nos. 3 to 5. The petition is, therefore, taken up for final disposal at the stage of admission by consent of the parties.

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2. The petitioner, in this petition, was appointed as a Lecturer in the College run by Respondent No.1-Educational Society. The respondent No.1 is the President/Secretary of Educational Society, the Respondent No.2 is the Principal, Respondent No.3 is the Director of Board of College & University Development, Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, Respondent No.4 is the Joint Director of Higher Education, Aurangabad Region, Aurangabad, Respondent no.5 is the Registrar of Dr. Babasaheb Ambedkar Marathwada University, Aurangabad and The Respondent No.6 is appointed as a lecturer, allegedly, in place of the petitioner.

3. The petitioner has approached this Court challenging Judgment and Order dated 26th March 2008, passed by the learned Presiding Officer, University & College Tribunal, dismissing his appeal bearing Appeal No.BAMU-14/2007, under Section 59 of the Maharashtra Universities Act, 1994. The College Tribunal confirmed order of termination of the petitioner dated 21st April 2007 issued by the respondent No.1 and refused to grant relief of reinstatement.

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4. The facts, as per the petition, are that the petitioner came to be appointed by respondent No.1 in the College on a clock hour basis in the year 2003. On 19th March 2003, an advertisement was issued to fill up the posts, including the post of lecturer for English Subject in the college. The post of lecturer for English Subject was reserved for OBC category candidate. Since no OBC candidate was available inspite of advertisement, the petitioner was appointed to the said post, though he does not belong to OBC category and belongs to N.T.(D) category. Till 2007, the respondent-Society could not get any OBC category candidate. Therefore, every year fresh advertisements were issued. Due to non-availability of an OBC category candidate, the petitioner was given appointments every year. By letter dated 21st April 2007, his services came to be terminated.

5. The petitioner challenged the order of termination by filing an appeal before the College Tribunal. It is mainly the case that he could not have been replaced by another ad-hoc employee. In the present case, the respondent No.6 is appointed on temporary basis, which is against

the basic law that no ad-hoc employee can be appointed by another ad-hoc candidate. He also relied upon Government Resolution dated 6th July 2007 to claim that he could have been appointed for two years. Subsequently, the appointment of respondent No.6 came to be approved by the University. He was not possessing qualification of NET/CET. It is the case that the said objection was raised on 11th March 2007 still Respondent No.6 came to be appointed. The Grievance Committee also did not consider the case of the petitioner. The learned Presiding Officer, College Tribunal, however, wrongly dismissed the appeal.

6. The learned Advocate Mr. Mundhe strenuously argued that the learned Presiding Officer failed to appreciate that the termination of the petitioner was illegal. The Grievance Committee also could not appreciate the case of the petitioner. The same is not appreciated even by the learned College Tribunal. He submits that, before the College Tribunal, there was no case of the management that the performance of the petitioner was not satisfactory. Though he was appointed on a temporary basis, his appointment is wrongly taken to be on contractual

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basis. The respondent No.6, who was not qualified, was appointed in place of the petitioner. The appointment of Respondent No.6 is thus totally illegal. The subsequent approval by the University to the appointment of Respondent No.6 is also illegal.

7. During the course of argument, the learned advocate pointed out the interim order passed by this Court that the appointment of respondent No.6 is subject to out-come of this writ petition. It is also argued that the circular dated 14th June 2006 of the University Grant Commission (UGC) is applicable even in the present case. He thus prays for allowing the writ petition.

8. In support of his submission, he relied upon the judgments in the cases of *Benedicto Fernandes Vs. State of Goa*¹ and *Ashok Chandrashekar Rao Vs. University of Mumbai and Ors.*²

1 1995(2) Mh.L.J. 743

2 2005 (3) Mh.L.J. 788

9. Mr. Shahane, the learned Advocate for the Respondent No.1, vehemently opposed the petition. It is submitted that the post was reserved for a person belonging to OBC category, whereas the petitioner belongs to NT(D) category. The petitioner do not have vested rights to claim the post reserved for OBC category. It is only because of OBC candidate was not available, he was appointed on contractual basis. He had executed the bond to that effect. The learned College Tribunal rightly held that the appointment of the petitioner was purely on contractual basis. The Respondent No.6 is selected by a duly constituted Selection Committee, and therefore, the University has granted approval. The principle that ad-hoc appointee cannot be replaced by another ad-hoc appointee is not applicable in the present case. The Judgment in the case of *State of Haryana Vs. Piara Singh*³ is not applicable. The circular relied upon by the learned Advocate for the petitioner dated 6th July 2007 came later on and cannot be made applicable retrospectively. He ultimately submits that there is no perversity or illegality in the order passed by the learned Presiding

3 (1992) 4 SCC 118

Officer, College Tribunal and prays for dismissal of the writ petition.

10. Mr. Bhavthankar, the learned Advocate for Respondent No.2 adopted the argument of Mr. Shahane. He further submits that the petitioner was not a candidate selected by the Selection Committee and he thus cannot take any benefits.

11. Mr. Patil, the learned Advocate for respondent No.6, also opposed the petition. From the record, he submits that his first order is on clock hour basis, and thereafter, his appointments were continued on contract basis. The petitioner was terminated on completion of contract period. He was given the appointment only till an OBC candidate became available. He submits from affidavit-in-reply that now services of the Respondent No.6 are approved by the University and there is no question of allowing the petition. Respondent No.6 is qualified as per University Grant Commission circular dated 14th June 2006.

12. The facts not disputed in the petition are that the petitioner was never selected by a duly constituted Selection Committee. The

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advertisement issued was for a reserved candidate belonging to OBC category. The petitioner is a person belonging to NT(D) category. He was appointed by order dated 28th June 2003 on clock hour basis. On 11th September 2003, again an advertisement was issued. Since no person was available belonging to OBC category, the petitioner was appointed on 31st December 2003. Next year, again he came to be appointed on 8th March 2004, and thereafter, 14th June 2005. All these appointments clearly show that he was appointed on a contract basis on a fixed salary and till OBC candidate becomes available. No grievance is raised by the petitioner to his appointments. The termination order clearly shows that the contract was coming to an end on 21st April 2007, and therefore, he is terminated. While terminating, a notice pay was also paid to him. Thereafter, fresh advertisement was issued on 11th July 2007.

13. The State issued a letter dated 6th July 2007. It is clearly stated in clause (3) of the said letter that while giving re-appointment, past record of two years be seen, and the bond be obtained from such person. Before the Grievance Committee, the petitioner himself has stated that he

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belongs to N.T.(D) category. He is appointed to the post as no OBC candidate was available.

14. In the judgment in the case of *Benedicto Fernandes* (supra), this Court at Goa Bench held that the petitioner therein was appointed for six months on ad-hoc basis to the post of Lower Division Clerk. His services were terminated without assigning any reason on completion of the period of six months. The similarly situated other persons were, however, retained in place of the petitioner. Some other person was appointed on ad-hoc basis. In that view of the matter, it was held that the action of the Government was held to be arbitrary and in that view, the petitioner was allowed. So far as judgment in the case of *Ashok Chandrashekar Rao* (supra) is concerned, the petitioner therein was appointed as Reader in Mechanical Engineer in University Institute of Chemical Technology, Mumbai, against a reserved post. The post was advertised for six times, and still no candidate from reserved category could be made available. In that view, the said post was treated as de-

reserved and petitioner therein was regularized. He had made representations to the State to the de-reserve post and that was rejected. It is in that view, this Court at Principal Seat of Bombay had allowed the petition.

15. In the present case, it is seen that the petitioner was appointed purely on contract basis. The petitioner had even given the bond to that effect. It was clearly given to understand that the appointment is only till OBC candidates becomes available. This Court, therefore, finds that both the judgments discussed above are not applicable to the facts of the present case.

16. Coming to the impugned judgment, it is seen that the learned Presiding Officer has considered the order of appointment of the petitioner, wherein it is specifically stated that the appointment is on contract basis, and till the person belonging to OBC category is made available. Clause (3) of the Government Resolution dated 6th July 2007

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is also rightly considered.

17. So far as the contention of the petitioner in respect of notification by the University Grant Commission dated 14th June 2006 is concerned, it only speaks about the NET-CET qualification. The paragraph in Regularization, 2000, wherein this compulsory requirement for the appointment of lecturer is replaced by another clause. It is provided that when a candidate is having Ph.D in concerned subject, they are exempted from NET for PG level and UG level teaching and the case of candidates having an M.Phil degree, the degree is valid for exemption from UGC for UG level teaching only. This Court does not finds that the said notification is helpful to the petitioner.

18. This Court does not find any illegality or perversity in the order passed by the learned Presiding Officer of the College Tribunal and also does not find termination order to be illegal. This Court thus finds that there is no merit in the writ petition. The writ petition deserves to be dismissed. Hence, the following order:-

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ORDER

- (i) Writ Petition stands dismissed.
- (ii) No order as to costs.

[KISHORE C. SANT, J.]