



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12396 OF 2024

Marathwada Legal and General Education
Society, Aurangabad

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Mr. A.S. Deshpande, Advocate for petitioner
Mr. D.R. Korade, A.G.P. for respondent nos. 1 to 3
Mr. S.S. Tope, Advocate for reservation no.4

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CORAM : R.G. AVACHAT AND
SANDIPKUMAR C. MORE, JJ.
DATE : 07th MAY, 2025

PER COURT :

1. This petition, under Article 226 of the Constitution of India is filed mainly for the following reliefs :-

- “(B) Para No.11(5) of the G.R. dated 5.3.2011, filed at Exh.‘F’, be declared to be ultra vires the Constitution of India;*
- (C) The respondents and more particularly the respondent No.1 may kindly be directed to sanction the proposal for extension of age of retirement of the Principal of M.P. Law College, Chh. Sambhajinagar, from 62 years to 65 years by quashing and setting aside the impugned communication dated 11.10.2024 at Exh. ‘A’;*
- (D) The respondents may kindly be directed, sequel to quashing of the impugned communication of R-1 dated 11.10.2024 at Exh.‘A’ to release the salary of the Principal, M.P. Law College, Chh. Sambhajinagar from 1.10.2023 till he attains the age of 65 years.”*

2. The petitioner before us is an educational institute which runs a law college, "Manikchand Pahade Law College". The Principal of the said law college attained the age of superannuation on 30th September, 2023. The petitioner institute was expected to seek permission of the Joint Director of Higher Education for undertaking a process for recruitment of successor in office of the Principal. Accordingly, the petitioner - institute took some steps, those are as under :-

On 25th January, 2022 a proposal seeking permission to publish an advertisement was made to Respondent No.4 - University. Since there was no response from the university, again a proposal was submitted on 09th January, 2023. Respondent No.4 - University in turn asked the petitioner - institute to secure No Objection Certificate (NOC) from Backward Class Cell (B.C.Cell). Since reservation and roster was not applicable to the petitioner's college, it filed Writ Petition, no. 3108 of 2023 on 27th February, 2023. Division Bench of this Court allowed the said writ petition on 07th August, 2023, *inter alia* holding that (a) colleges run by petitioner are not governed by reservation policy and the provisions of Maharashtra Education Institution (Reservation in Teachers' Cadre) Act, 2021; (b) respondent were directed to process the proposal of petitioner for approving advertisement and granting permission to recruit the posts of Principal by following due process of law, as early as possible, and in any case, within two weeks from today (7.8.2023).

3. On the very next day of the decision in the above referred writ petition, the petitioner - institute again submitted a representation seeking permission to publish an advertisement for filling-up the post of principal. Respondent No.4 – university, vide communication dated 28th August, 2023 granted NOC. It was addressed to Respondent No.3 - Joint Director of Higher Education. On the very day the petitioner requested the Joint Director to provide it with log-in ID since the proposal was accepted online only. Respondent No.3 - Joint Director provided the log-in ID after six weeks. Meaning thereby he sat on the said proposal for more than five weeks. As such, the delay was caused in processing the matter further. In the meanwhile, the government had challenged the decision passed in writ petition, no. 3108 of 2023. The government was, however unsuccessful in its attempt.

4. Thereafter, since the petitioner - institute wanted to extend the service period of the Principal by three more years, i.e. upto the Principal attaining the age of sixty-five years, Respondent No.4 - University constituted the Performance Review Committee in terms of Government Resolution dated 05th March, 2011 and 23rd November, 2011 after three months. Fortunately, the said committee recommended for granting the Principal extension by three more years. Respondent No.1, however did not accord approval for the proposal of the petitioner - institute for granting the Principal

extension of three years, pointing out three deficiencies. It was the communication dated 06th September, 2024 received by the petitioner on 18th of the very month. The petitioner - institute claimed to have complied with all the deficiencies pointed out and submitted necessary documents. In spite of the same, on 11th October, 2024 Respondent No.1 turned down the proposal allegedly assigning no reason.

5. An affidavit-in-reply has been filed by Respondent No.1 contending that the incumbent Principal could hold the post for not more than ten years. It has also been averred that the petitioner – institute, before submitting the proposal for extension of retirement age, has not published two advertisement for filling up the post of Principal after the completion of the age of sixty-one years of the incumbent. Also the proposal for increasing the retirement age must be submitted to the University six months in advance. However, the said proposal was submitted only five days before the retirement of the concerned Principal.

6. Learned counsel for the respondent strongly opposed the petition and urged for dismissal of the same.

7. We have considered the submission advanced. Learned counsel for the petitioner - institute informs us that out of forty aided colleges, thirty-five colleges did not have regular Principals. He meant to say that no suitable

candidate is available to officiate the post of Principal. He would further submit that the aforesaid chronology of events could indicate the honest efforts made by the petitioner - institute, first to seek permission for filling-up the post of Principal and then to seek extension for the present incumbent.

8. It has been informed that the concerned Principal, inspite of having attained the age of superannuation, has been allowed to officiate or continue to hold the post and his salary is being borne by the management.

9. The aforesaid chronology of events indicate that Respondent No.4 - University had granted NOC for extension of services of the Principal by next three years, post his attaining the age of sixty-two years, but could not be materialised for want of government nod. Now, the state of affairs are in limbo. In the peculiar facts and circumstances of this case, we are inclined to pass the following order :-

- (I) We direct the respondents to grant the incumbent Principal extension of his services by one year next after the date of his superannuation. The further period of his continuation in service shall be financially borne by the petitioner - institute.
- (II) The petitioner - institute shall make fresh proposal to Respondent No.3 - Joint Director, Higher Education for

filling-up the post of the Principal. Respondent No.3 shall grant permission within two months from the date of receipt of such proposal and in any case the successor in office of the present Principal shall be selected and appointed, if found suitable, within six months from the date of uploading of this order. In our view, in any case the present incumbent shall demit the office six months after the petitioner - institute gets copy of this order.

(III) The services that have been rendered and would be rendered by the Principal upon attaining the age of sixty-two years shall be counted for his pensionary benefits, approval to that effect shall be granted by the concerned respondent.

(IV) Writ petition stands disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

(R.G. AVACHAT, J.)

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