

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1574 OF 2024

Ujwala Jadhav

....Petitioner

V/S

State of Maharashtra

through Principal Secretary

Higher and Technical

Education Department

....Respondent

Mr. Mihir Desai, Senior Advocate a/w Ms. Rishika Agarwal *for the Petitioner.*

Ms. P.H. Kantharia, Government Pleader with Ms. Jyoti Chavan, Addl. G.P., Mr. Vishal Thadani, Addl. G.P. and Mr. Prashant Kamble, AGP *for Respondent Nos.1 to 3/State.*

Mr. Rui Rodrigues *for Respondent No.4.*

CORAM : S.M. MODAK &
SANDEEP V. MARNE, JJ.

DATE : 23 MARCH 2026.

P.C.:

1. Rule. Rule is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petition is taken up for final hearing and disposal.

2. By this Petition filed under Article 226 of the Constitution of India, the Petitioner has challenged communication dated 2 March 2022 of Joint Director, Higher Education, Mumbai Division, Mumbai, rejecting the proposal for certification/regularization of pay fixation. The Joint Director has cited the reason of non-following of prescribed procedure

for interchanging of reservation at the time of effecting initial appointment of the Petitioner.

3. We have heard Mr. Desai, the learned Senior Advocate appearing for the Petitioner, Ms. Kantharia, the learned Government Pleader alongwith Ms. Chavan, the learned Additional Government Pleader appearing for Respondent Nos.1 to 3/State and Mr. Rodrigues, learned Advocate appearing for Respondent No.4-University of Mumbai. We have considered the submissions canvassed by the learned counsel appearing for parties and have perused the records of the case filed alongwith the Petition.

4. The Petitioner was working as a Lecturer in Gokhale College at Kolhapur since 1991. Respondent No.4-University invited applications for appointment on the post of Reader (Associate Professor) in September 2002 for filling of post reserved for ST category. Since University could not find suitable candidate from ST category, it decided to appoint the Petitioner, who belongs to SC category. Accordingly, Petitioner was appointed as Reader/Associate Professor vide order dated 21 March 2003. She continued in service as such upto 28 December 2016, on which date her appointment was continued on the lower post of Assistant Professor that too for a period of six months. Petitioner challenged order dated 28 December 2016 and sought reinstatement to the position of Associate Professor by filing Writ Petition No.2205 of 2017. The Petitioner was allowed by the Division Bench of this Court (Coram: B.R. Gavai and Bharati H. Dangre, JJ.) vide order dated 1 March

2018. The Division Bench took note of policy of the State Government which envisaged interchanging of reservation category in the event of non-availability of suitable candidate despite issuing repeated advertisements. This Court accordingly allowed the Petition and directed that the Petitioner is entitled to be regularized on the post of Associate Professor with effect from 21 March 2003. Paragraphs 5, 6, 7 and 11 of the order dated 1 March 2018 reads thus:

“5) We find that the Petition deserves to be allowed in view of the policy of the State Government itself. It is the policy of the State Government that if after issuance of repeated advertisements for a period of seven years a candidate for a particular category is not available, the post could be interchanged by a candidate belonging to another reserved category.

6) In the affidavit filed on behalf of Respondent University itself, it is stated that though advertisements were issued on several occasions, a candidate belonging to ST was not available. We find that in view of policy of State Government, the Petitioner having served for almost 14 years, is entitled to be regularized on the post on which she was initially appointed.

7) No reason has been given in the affidavit as to why the Petitioner's reversion was found necessary, after she has served for almost 14 years on the post of Associate Professor.

11) It is held and declared that, the Petitioner is entitled to be regularized on the post of Associate Professor with effect from 21st March 2003. Needless to state that all consequential benefits including continuity etc. would be available to the Petitioner.

5. After succeeding in Writ Petition No.2205 of 2017, it appears that the University carried out the exercise of pay fixation of the Petitioner and sent the proposal for approval to Joint Director, Higher Education, Mumbai Division, Mumbai, on 18 January 2022. The proposal is rejected by the Joint Director vide impugned order dated 2 March 2022 by observing as under:

"उपरोक्त संदर्भाधीन विषयाबाबत आपणास कळविण्यात येते की, डॉ. उज्वला अ. जाधव, सहयोगी प्राध्यापक यांच्या वेतननिश्चितीचा प्रस्ताव या कार्यालयास प्राप्त झाला आहे. सबब प्राप्त प्रस्तावानुसार विद्यापीठाने पद बिनराखीव करण्याबाबत

शासननिर्णय सामान्य प्रशासन विभाग, दिनांक ५ डिसेंबर १९९४ एखादया प्रवर्गामध्ये उमेदवार उपलब्ध न झाल्यास पुढील प्रमाणे तरतूद आहे. सरळसेवा भरतीसाठी अ) अनुसूचित जाती/अनुसूचित जमाती, विमुक्त जाती (अ) भटक्या जमाती (ब) भटक्या जमाती (क) भटक्या जमाती (ड) व इतर मागासवर्गीय (इ) या प्रवर्गाकरिता निर्धारित केलेल्या प्रमाणानुसार भरती करण्यासाठी त्या त्या प्रवर्गाचा उमेदवार उपलब्ध झाला नाही तर अशी ५ भरती वर्षापर्यन्त पदे रिक्त ठेवावी व या ५ भरती वर्षात त्या प्रवर्गाचा उमेदवार उपलब्ध करून घेण्याचे प्रयत्न करण्यात यावेत. असे प्रयत्न करूनही उमेदवार प्राप्त झाला नाहीतर ६ व्या वर्षी खाली उल्लेख केल्याप्रमाणे शासन निर्णय नमूद प्रवर्गाने अदलाबदलीने पदे भरण्यात यावीत. तसेच शासन निर्णय उच्च व तंत्र शिक्षण विभाग दिनांक १९ जानेवारी १९९५ नुसार सदर शासन निर्णय ५/१२/१९९४ अशासकीय महाविद्यालये व अकृषी विद्यापीठे यांना लागू करण्यात आलेला आहे. सदर प्रकरणी उपरोक्त शासन निर्णय नमूद तरतूदीनुसार कार्यवाही पूर्ण केलेली नसल्याचे दिसून येते, त्यामुळे त्यांची वेतननिश्चिती प्रमाणित करता येत नाही. सबब सदर प्रकरणी योग्य ती कार्यवाही आपल्या स्तरावरून करावी.”

6. Thus impugned order dated 2 March 2022 creates an anomalous situation where Division Bench of this Court has directed regularization of appointment of the Petitioner as Associate Professor with effect from 21 March 2003 but the pay fixation on the post of Associate Professor is rejected by the Joint Director.

7. It is contended on behalf of the Respondent/State that State Government was not party to Writ Petition No.2205 of 2017 and that therefore the order passed therein does not bind it. It is further contended that Government Resolution dated 5 December 1994 permits interchangeability of post only after attempts are made for five recruitment years to fill up the post through the reserved category. It is contended that the University had advertised the post only on three occasions and that the advertisements were also published erratically with delay of 4/5 years.

8. In our view, however, once this Court has directed regularization of appointment of the Petitioner as Associate Professor with effect from 21 March 2003, it is not open to the Joint Director to sit in appeal over the judgment of this Court and to ignore the same by recording a finding that provisions of Government Resolution dated 5 December 1994 were not followed at the time of initial appointment of the Petitioner. If the stand of the Respondent/State is accepted, the same would virtually mean nullifying the effect of order passed by this Court on 1 March 2018. Such a situation cannot be countenanced in law. The Division Bench was conscious of the instructions issued by the State Government relating to interchangeability of reservation. The Court has taken note of the fact that reservation can be interchanged if post remains unfilled for a period of seven years despite issuance of repeated advertisements. Even perusal of Government Resolution dated 5 December 1994 would indicate that the same does not contemplate issuance of 6/7 advertisements but it contemplates a situation where post reserved for particular category remains unfilled for six years despite issuance of repeated advertisements. In our view therefore, the attempt made by Joint Director to sit in appeal over decision of this Court in Writ Petition No.2205 of 2017 cannot be countenanced. Once the appointment is directed to be regularized with effect from 21 March 2003, the Joint Director cannot deny pay fixation by recording findings contrary to one recorded by this Court. Mere non-impleadment of the State Government in Writ Petition No.2205 of 2017 cannot be a reason for ignoring the order passed by this Court in the said Petition. It is not the case of the Respondent/State that the order in Writ Petition No.2205 of 2017 is an

outcome of fraud or collusion between Petitioner and University. After all University is also an instrumentality of State. It had opposed the Petition. However, this Court took note of instructions issued by State Government for interchangeability of reservation and allowed the Petition ignoring the opposition by the University. In such circumstances, State Government cannot proceed to ignore the order passed by the Division Bench on a specious plea that it was never impleaded in Writ Petition No.2205 of 2017.

9. We therefore find the impugned order dated 2 March 2022 as an attempt to overreach the order passed by this Court in Writ Petition No.2205 of 2017. Impugned order is thus unsustainable and liable to be set aside.

10. The Petition accordingly succeeds and we proceed to pass the following order:

- i) Impugned order dated 2 March 2022 is set aside.
- ii) Respondent No.3 (Joint Director of Higher Education, Mumbai Division, Mumbai) is directed to forthwith certify the pay fixation made by the University by issuing necessary communication to the University within outer limit of six weeks,
- iii) Upon receipt of certification from the office of Joint Director, Respondent-University shall proceed to pay arrears of pay and allowances to the Petitioner within further period of six weeks from the date of receipt of communication from the office

of the Joint Director.

11. Writ Petition is **allowed** in above terms. Rule is made absolute.

There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

(S.M. MODAK, J.)

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