

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1194 OF 2014

Hemlata Neminath Kole
residing at F-1, Sanjivani
Complex, Near Jyoti Gas,
Marathe Mill Road,
Miraj

.. Petitioner

Versus

- 1 Shivaji University
through its Registrar,
Vidyanagari, Kolhapur.
- 2 Shri Swami Vivekanant Shikshan
Samstha Through its Secretary,
Having its office at Vivekanand
College, 2130 E, Tarabai Park,
Kolhapur.
- 3 Vivekananda College, through its
Principal, Having office at
Vivekananda College, 2130E,
Tarabai Park, Kolhapur.
- 4 The Joint Director of Higher
and Technical Education,
Rajaram College Campus,
Vidyanagari, Kolhapur
- 5 State of Maharashtra
Through its Secretary,
Department of Higher and
Technical Education, Mantralaya,
Annexe, Mumbai 400032.

.. Respondents

...

Mr. Venkatesh Shastry for the petitioner.

Mr. S.B. Kalel, AGP for respondent nos.4 and 5.

Mr.Rajdeep Suresh Khadapkar for respondent no.1.

Ms.Pooja Joshi i/b Shrikrishna R. Ganbavle for respondent nos.2 and 3.

**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.**

RESERVED ON: 21st NOVEMBER 2018

PRONOUNCED ON : 30th NOVEMBER 2018

JUDGMENT (Per BHARATI H. DANGRE, J)

1 Heard by consent.

2 Rule. Rule returnable forthwith.

3 The petitioner, an Assistant Professor working in the Department of Home Science has invoked the writ jurisdiction of this Court, seeking a writ in the nature of mandamus directing the respondents to take steps to de-reserve the post occupied by her and treat her as 'On probation' from the date of her initial appointment and treat her to be confirmed on the post of Assistant Professor from July 1998. She has also sought conferment of consequential benefits flowing from her confirmation in the said post.

The facts giving rise to the filing of the present writ petition can be curled out in brief as follows :

The petitioner belongs to open category and possesses the qualification of M.A, B.Ed. The respondent no.2 Swami Vivekanand Shikshan Sanstha issued an advertisement on 20th June 1996 for filling up the post of lecturer in the subject of Home Sciences. The said institution was on 'Non-grant basis'. It is the case of the petitioner that pursuant to the said advertisement, she was selected and appointed on 22nd July 1996 on part time basis and in her appointment letter it is mentioned that she was appointed on a post reserved for Scheduled Caste. The said order of appointment is placed on record by the petitioner. It is the case of the petitioner that thereafter, the respondent nos.2 and 3 forwarded proposal on various occasions for securing a candidate belonging to the reserved category and such advertisements were published in the years 2001, 2005 and 2007. In the mean time, the petitioner was issued with appointment letters on year to year basis and sometimes for a shorter period. It is the specific case of the petitioner that though she was given appointment on

clock hour basis, she was always allotted workload of a full time teacher and a proposal was accordingly forwarded by the Management to the respondent no.1 University which was accompanied by a time- table of work load assigned to her. Accordingly, the University accorded approval to the appointment of the petitioner by order dated 1st December 2000. Further, it is the case of the petitioner that her services were also approved by the Joint Director's office and one such letter dated 27th April 2009 issued by the Joint Director has been placed on record. The grievance of the petitioner is that she preferred several representations to the Management and also to the Joint Director, seeking de-reservation of the post which she was holding but her attempts did not yield any result and though the Management had made various attempts to fill up the said post as per backlog and had sought approval for advertisement and appointment, no reserved category candidate was made available to fill in the said post. Resultantly, the petitioner continued on the said post from 1996 till date by virtue of appointment orders issued on yearly basis. At the time of filing of petition in January 2014, the

petitioner had put in more than 8 years of service and had rendered continuous service without any break and it is the specific case that full time workload was assigned to her.

4 This is the precise factual background in which the petitioner seeks a writ of mandamus from this Court for issuing directions to the respondent for de-reserving the post occupied by her and confirming her service as Assistant Professor in Home Science from July 1998 and to confer upon her all the consequential benefits flowing from her regular appointment as an Assistant Professor.

The claim of the petitioner as set out in the writ petition is opposed by respondent nos.4 and 5 by filing an affidavit by the Joint Director of Higher Education, Kolhapur Region, Kolhapur. In the said affidavit, it has been asserted that the petitioner belongs to open category and she did not possess the requisite qualification for passing NET/SET examination as laid down by the University Grants Commission (UGC) and the appointment of the petitioner was purely on clock hour basis and it was effected through local selection

committee. It is categorically stated that the selection of the petitioner was not through regular selection committee as provided under the relevant statute of the Shivaji University and she was appointed purely on temporary basis against the post reserved for Scheduled Tribe candidate. It is also stated that the University granted approval of the petitioner as a part time lecturer only for a specified period and the office of the Joint Director, Higher Education in exercise of powers vested in terms of Government Resolution dated 17th May 1994 has granted remuneration admissible for part time lecturer i.e. on clock hour basis. In such circumstances, the relief sought by the petitioner is opposed. The respondent no.1 University through its counsel Shri Rajdeep S. Khadapkar and also Shri S.R. Ganbavle appearing for respondent nos.2 and 3 has also opposed the relief claimed by the petitioner.

5 With the assistance of the learned counsel for the parties, we have carefully examined the writ petition along with its annexures and also examined the judgment relied upon by the petitioner by this Court in Writ Petition No.689 of 2013 in

case of Rajmane Narasgaonda Balasaheb Vs. Shikshan Prasarak Sanstha, Kavathe Mahakal, Dist. Sangli & Ors delivered on 18th November 2013 to which one of us (Justice S.C. Dharmadhikari, J) was a party.

6 Perusal of the record reveals that the advertisement which was issued by the respondent no.3 College on 20.06.1996 invites applications for the post of Assistant Professor at the Senior College level and the subject of Home Sciences on Non-grant basis. The said advertisement mention that the candidate must possess the educational qualifications as per the norms of Shivaji University. Pursuant to the said advertisement, an appointment order is issued in favour of the petitioner on 22nd July 1996. The appointment order clearly sets out that the petitioner is appointed as part time Senior College Lecturer in the subject 'Home Science' in the scale of Rs.2200 - 4000 with effect from 22nd July 1996. The said appointment is made subject to approval by the Shivaji University and also mentions that the petitioner is appointed in the reserve post.

The petitioner herself has placed on record the advertisements which are published for the subsequent years i.e. 2001, 2005 and 2007, which clearly reflects that as far as Home Science is concerned, two posts came to be advertised of which one was meant for Scheduled Caste and other for Scheduled Tribe. It is not in dispute that the appointment of the petitioner was on a post which was reserved and the management issued advertisement to fill up the post on regular basis from the candidate for whom it was reserved.

7. The specific case of the respondent management, as can be reflected from various documents, is that the petitioner was appointed on clock hour basis and even the experience certificate issued in favour of the petitioner certifies that she was working as a clock hour basis lecturer in Home Science from the Academic Year 1996 to 2005. When at the insistence of the learned counsel for the petitioner, we have perused the time table so as to appreciate his submission that the petitioner was allotted the full workload, it can be seen that the workload of Home Science is shared by the petitioner along with one

Ms.M.A. Bhosale. The workload of Home Science was thus bifurcated between petitioner and said Smt.Bhosale who were allotted 22 lectures per week which cannot be said to be a full time workload available. The documents issued by the respondent College setting out the proposed workload of the senior teachers itself reflects that there was a bifurcation of workload in Home Science and in fact, one of the documents issued by the Principal of Vivekananda College, Kolhapur on 23rd July 2002 assigns the workload of 18 lectures to the petitioner. The said workload was on clock hour basis and the approval from the respondent no.1 University is not of any succour to the petitioner as her appointment is approved on 'As it is basis' for the academic session and which was on clock hour basis. Same is the case in respect of approval conferred by the Joint Director of Higher Education, Kolhapur Division. Hence, it is clear that the appointment of the petitioner was on a reserved post and she has merely rendered her services on part time basis on a fixed pay of Rs.5,000/-. Though her service is continuous from the date of her initial appointment, this cannot grant her a premium to covert her services from part

time into a regular appointment for several reasons, the foremost being the appointment was made on a post reserved for Scheduled Caste category and the selection of the petitioner was not through a duly constituted selection committee but her appointment was effected through the local selection committee since it was intended to be on a purely temporary basis. Further, the petitioner did not possess the requisite qualification of passing NET/SET as was the relevant criteria for being appointed on the post of Assistant Professor. Moreover, the appointment of the petitioner was on a fixed consolidated pay on clock hour basis which cannot be said to be a regular appointment and if the relief sought by the petitioner is granted, we would be granting a premium for effecting back-door appointment which are effected without following the due procedure. We are afraid, in the backdrop of the fact and when the petitioner's appointment suffers from several lacunae including the non-fulfilling of the eligibility criteria for being appointed as a lecturer in a full time capacity, we are not inclined to entertain the present petition filed by the petitioner.

8 Reliance placed by the petitioner on the judgment in case of Rajmane Narasgonda Balasaheb Vs. Shikshan Prasarak Sanstha (supra) does not come to the rescue of the petitioner. In that case, the petitioner had applied for the post of lecturer in Physical Chemistry and he possessed a Masters Degree in Philosophy and was granted exemption from passing any other examination. Further more, though the post was reserved for Scheduled Tribe candidate, the petitioner was appointed by regularly constituted committee for selection. The Government expected the Management to comply with the procedural aspects of the Government Resolution dated 5th December 1994, which contemplated issuance of advertisement before de-reservation of the post. The Division Bench of this Court had observed in the said judgment that as long as the number of advertisement contemplated in terms of the Government policy have not been issued, the post held by a person like the petitioner is temporary and adhoc, may be for decades together and the petitioner cannot claim any right to such a post and that is how the management has been informed that the process of de-reservation of the post cannot be

sanctioned. When the petitioner approached this Court by taking note of the fact that the petitioner is fully qualified to hold the post of lecturer, it is because the Management did not issue the advertisement as contemplated by the policy, this Court arrived at a conclusion that beyond procedural aspects, the Government was not able to point out any serious breach or violation of the Government policy nor it was a case where there was no advertisement issued at all inviting applications from the reserved candidates. The Advertisement was issued for some academic years but the candidate was not available. In the backdrop of this fact, it was observed by the Division Bench that it would not go into the wider controversy and the larger issue because of the opinion expressed that the procedural lapses of matters and non-compliance cannot be elevated to such a level so as to vitiate the appointment made decades prior. The Court specifically observed that it was not a case that the petitioner did not fulfill the criteria of age, educational qualification and experience and if that was the case, probably no relief could have been granted in favour of the petitioner.

However, the facts of the said case are completely distinct where the petitioner was found by the Court to be fully eligible and qualified to occupy the post as a full time lecturer. As far as the present case is concerned, we have already recorded above the legal lacunae in the appointment of the petitioner, the foremost being the educational qualification.

This Court had an opportunity to deal with the similar issue in *Arti G. Daptardar Versus University Grants Commission* (Writ Petition No.2774 of 2015 dated 27th June 2018). By making reference to the policy of the State Government, benefit came to be conferred on the petitioner who came to be appointed as a lecturer in Statistics on a reserved post and since the petitioner was duly qualified and she was also granted an exemption from acquiring NET/SET qualification in view of the factum of appointment between 24/10/1992 to 03/04/2000, this Court has conferred the benefit of de-reservation of the said post on the petitioner. In the said case also, the petitioner was able to demonstrate that in spite of six advertisements, no candidate from the reserved

category was available and the petitioner who had rendered 22 years of service and was fully qualified in terms of educational qualification and experience came to be accommodated in the said post. The benefit came to be conferred on the petitioner in light of the policy of the State Government granting exemption from appearing for the NET/SET examination. It was noted that the petitioner was availing the full workload as a lecturer in Statistics in the respondent no.8 College since the date of her initial appointment with effect from 5th July 1993 and her appointment came to be approved as a Full time lecturer from time to time by the University. However, in the present case, we have noted that the petitioner never enjoyed the full time workload and was rather sharing the workload with another lecturer and her appointment order clearly reflected that she was appointed on clock hour basis and on a consolidated salary of Rs.5,000/-. In such circumstances, we are perfectly justified in not extending the benefits of de-regularization of the post on which the petitioner is appointed as we have done in case of ***Arti G. Daptardar Vs. University Grants Commission*** (supra).

9 For the aforesaid reasons, the writ petition cannot be entertained and deserves to be dismissed and is accordingly disposed off.

Rule discharged. No costs.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)