

महाराष्ट्र शासन
शिक्षण सहसंचालक (उच्च शिक्षण)
१७ डॉ आंबेडकर रोड, पुणे विभाग, पुणे-१

फोन नं. ०२०-२६१२७८३३ Web: www.jdhepune.info

E_mail ID- jdhepune@gmail.com फॅक्स नं. ०२०-२६०५१६३२

जा.क्र.ससं/उशि/पुवि/१२०५१/१५/२०१६-१७ / १५२९

दिनांक २३.६.२०१६

प्रति,

१. कुलसचिव, सावित्रीबाई फुले पुणे विद्यापीठ, पुणे.
२. कुलसचिव, डेक्कन पदव्युत्तर संशोधन संस्था, पुणे.
३. कुलसचिव, गोखले अर्थशास्त्र व राज्यशास्त्र संस्था, पुणे.
४. कुलसचिव, टिळक महाराष्ट्र विद्यापीठ, पुणे.
५. प्राचार्य/प्राचार्या,

सर्व अशासकीय अनुदानित कला, वाणिज्य, विज्ञान,
शिक्षणशास्त्र व विधी महाविद्यालये,

पुणे / अहमदनगर / नाशिक.

विषय :- याचिका क्र.१२०५१/२०१५

महाराष्ट्र ऑल बहुजन टिचर्स असोसिएशन, औरंगाबाद
विरुद्ध

महाराष्ट्र शासन व इतर..

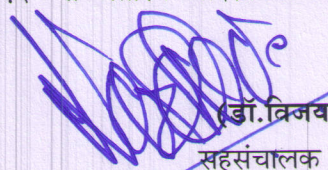
संदर्भ :- १. मा.संचालनालयाकडील पत्र क्र.युएनआय/२०१६/१२०५१/२०१५ औवि/विशि-१/६१७५
दि. १३.५.२०१६.

२. मा.उच्च न्यायालय, मुंबई खंडपीठ औरंगाबाद यांचे अंतरिम आदेश दि.२८.४.२०१६.

उपरोक्त विषयाच्या संदर्भित पत्रास अनुसरून आपणास कळविण्यात येते की, महाराष्ट्र ऑल बहुजन टिचर्स असोसिएशन, औरंगाबाद यांनी राज्यातील अकृषी विद्यापीठे/शासकीय महाविद्यालये/संस्था/अशासकीय अनुदानित/विनाअनुदानित महाविद्यालयातील शिक्षकीय पदांच्या आरक्षणाबाबत शासन निर्णय दि. २४.८.२०१५ अन्वये संवर्ग व विषयनिहाय आरक्षणाबाबत घेण्यात आलेल्या निर्णयाविरोधात मा.उच्च न्यायालय, मुंबई खंडपीठ, औरंगाबाद येथे याचिका क्र. १२०५१/२०१५ दाखल केलेली आहे.

सदर याचिकेमध्ये मा.उच्च न्यायालयाने दि. २८.४.२०१६ रोजी अंतरिम आदेश दिलेले आहेत.
(सुलभ संदर्भासाठी सदर निकालाची प्रत सोबत जोडली आहे.)

तरी मा.न्यायालयाच्या दि. २८.४.२०१६ च्या अंतरिम आदेशाप्रमाणे आरक्षणाबाबत पुढील योग्य ती कार्यवाही आपल्या स्तरावरून करावी.


(डॉ. विजय नारखेडे)
सहसंचालक (उच्च शिक्षण)
पुणे विभाग, पुणे १.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**WRIT PETITION NO. 12051 OF 2015
WITH CA/2814/2016 IN WP/12051/2015 WITH
CA/2813/2016 IN WP/12051/2015**

**MAHARASHTRA ALL BAHUJAN TEACHERS ASSOCIATION
THROUGH ITS GENERAL SECRETARY B.S.DO**

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Talekar S.B.

AGP for Respondent/State : Mr. S.B. Yawalkar

Advocate for Respondent no.2 : Mr. S.G.

Chapalgaonkar

Advocate for Respondent no.3 : Mr. A.R. Joshi

Advocate for Respondent no.4 : Mr. U.S. Malte

Advocate for Respondent no.8 : Mr. Dhananjay
Deshpande

...

CORAM : S.S. SHINDE & SANGITRAO S. PATIL, JJ.

Dated: April 28, 2016

...

PER COURT :-

Heard the learned counsel appearing for the petitioner. He submits that even if the respondents wish to make appointments subject-wise, the same should be done within the categories. He further submits that reservation has to be category-wise and subject-wise. He invites our attention to the various advertisements placed on record and

submits that the Respondents have advertised the posts only subject-wise and as a result the candidates from O.B.C., V.J.N.T., S.B.C., etc. are not getting reservation. Even from 50% reservation, the first preference is being given to the candidate from S.C. category and as a result of which the candidates from other categories are being deprived of the opportunity to participate in the selection process and getting appointed to the posts advertised.

2. The learned counsel invites our attention to the Government Resolution dated 18th October, 1997 issued by the General Administration Department, Government of Maharashtra and submits that the said Government Resolution has never been challenged, on the contrary reliance is placed on the said Government Resolution in the impugned resolution dated 24th August, 2015 issued by the Higher and Technical Education Department, Government of Maharashtra. He invited our attention to clause (2) of the said Government Resolution. He further submits that the Government Resolution dated 22nd January, 2014 issued by the Higher and Technical Education

Department, Government of Maharashtra was challenged before the Bombay High Court bench at Nagpur in Writ Petition No. 1680 of 2014. It is submitted that relying upon the observations in the order dated 20th November, 2014, the State Government has withdrawn the Government Resolution dated 22nd January, 2014 and passed the impugned resolution. The learned counsel submits that the State Reservation Policy does not contemplate that there should be only subject-wise reservation and not subject-wise within the categories. He submits that the Respondent - State is bound to adhere to its reservation policy for appointments on various posts from S.C., S.T., O.B.C., V.J.N.T., S.B.C. and the said cannot be frustrated by advertising the posts only on the basis of subject-wise reservation.

3. Relying on the cases of **Dr. Suresh Chandra Verma and others V/s Chancellor, Nagpur University and others¹**, **R.K. Sabharwal and others V/s State of Punjab and others²** and **Post Graduate Institute of Medical Education and Research, Chandigarh Vs.**

1 1990(4)SCC55

2 1995(2)SCC 745

Faculty Association and others³, the learned counsel for the petitioners submits that the impugned Government Resolution is contrary to the exposition of law made in the aforementioned judgments of the Supreme Court. He submits that by way of interim relief, the impugned Government Resolution dated 24th August, 2015 issued by the Higher and Technical Education Department, Government of Maharashtra needs to be stayed. He further invites our attention to the pleadings in the Petition, grounds taken therein and submits that a number of colleges throughout the State of Maharashtra and also Universities have issued advertisements, and therefore, the impugned Government Resolution needs to be stayed.

4. On the other hand, the learned A.G.P. appearing for the Respondent/State submits that staying the Government Resolution will be granting final relief at the admission stage. He further submits that whenever the Government Resolution is issued, it has some presumptive value and such Government Resolution cannot be stayed by way of interim order. The learned Government

3 1998(4) SCC 1

Pleader placed reliance upon the judgments in the cases of (i) Suresh Chandra Verma (Dr.) and others V/s Chancellor, Nagpur University and others⁴, (ii) Suresh Chandra Verma V/s Chancellor, Nagpur University⁵, Chakradhar Paswan V/s State of Bihar⁶ (iii) State of Uttar Pradesh V/s Dr. Dina Nath Shukla and anr.⁷ (iv) judgment of the Andhra High Court in the case of A.P. Scheduled Castes Welfare.. V/s Govt. of A.P. and Ors⁸ and (v) unreported judgment in the case of Dr. Narendra Singh & others V/s State of U.P. and others of Allahabad High Court so also (vi) the judgment of the Bombay High Court bench at Nagpur in Writ Petition No. 1004 of 1989 in the case of Waman Govindrao Nakhale and others V/s Maharashtra Public Service Commission and others, decided on 28th September, 1990.

5. The learned counsel appearing for Respondent No.3 invites our attention to the ratio laid down in the case of State of Karnataka and others V/s K. Govindappa and

4 1988 Mh.L.J. 1097

5 1990(4) SCC 55

6 1988(2)SCC 214

7 1997(9) SCC 662

8 1998(5) ALD 57

another⁹ and submits that subject-wise reservation is permissible in view of the ratio laid down in the said judgment.

6. We have heard the learned counsel appearing for the petitioner, the learned A.G.P. appearing for the Respondent/State and the State Authorities, learned counsel appearing for respective respondents. Though all the respondents have been served, some of them have not caused appearance.

7. Upon hearing the learned counsel appearing for the petitioner and the learned counsel appearing for the respective respondents, we noticed that arguable questions/points are raised, hence the Petition deserves consideration. Hence, **Rule**. On Rule, respective counsel appearing for the respective parties waive service. So far as the respondents, who are not represented are concerned, liberty to the petitioner to serve them by private service/ notice and file the affidavit of service. Hadmast allowed.

8. So far as the prayer for ad-interim

9 (2009) 1 SCC 1

relief/interim relief is concerned, all the Colleges/Universities/ Institutions, who have issued advertisements on the basis of the impugned Government Resolutions, are not the parties before this Court. Upon perusal of some of the advertisements, which are placed on record, it reveals that because of the subject-wise reservation, out of the total posts, in some cases, 50% posts are earmarked from the candidates from open category and other for S.C. category. This, prima facie, does not seem to be in consonance with the reservation policy. The learned Government Pleader is right in contending that granting blanket stay to the Government Resolution will amount to granting final relief at the admission stage. Therefore, by way of interim relief in respect of the Institutions/Colleges, who are the parties to this Petition, we direct that the selection process undertaken by them will be subject to outcome of this Petition.

9. The concerned Institutions/colleges/ University shall communicate to all the candidates, who have applied for the posts about the interim order passed by this Court. Those candidates, who have participated in

the selection process and where the selection process is not yet complete, need not be heard individually and it will be responsibility of the concerned University/ Institutions/Colleges who are party before this Court to inform them about interim order.

10. Liberty to the parties to mention for early hearing of this Petition after Summer vacation, 2016, however, subject to serving those respondents who are not represented today.

11. The parties to act upon an authenticated copy of this order.

(SANGITRAO S. PATIL, J.) (S.S. SHINDE, J.)

...

SGA

महाराष्ट्र शासन उच्च शिक्षण संचालनालय

मध्यवर्ती इमारत, महाराष्ट्र राज्य पुणे-४११००१

Web : www.dhepune.gov.in

E-Mail : vishi.dhepune@nic.in

फोन नं. ०२०/२६१२२११९, २६०५१५१२, २६१३०६२७, २६१२४६३९

फॅक्स नं. ०२०/२६१११५३

क्रमांक - क्र. युएनआय/२०१६/१२०५१/२०१५ औवि/विशि-१ / १९०५

दिनांक १२/०५/२०१६

प्रति,

11 3 MAY 2016

सर्व कुलसचिव,
अकृषि विद्यापीठे, महाराष्ट्र राज्य.

सर्व विभागीय सहसंचालक, (५७७)
उच्च शिक्षण, महाराष्ट्र राज्य.

विषय--- याचिका क्र. १२०५१ / २०१५

महाराष्ट्र ऑल बहुजन टिचर्स असोसिएशन, औरंगाबाद
विरुद्ध

महाराष्ट्र शासन व इतर

संदर्भ -- शासनाचे पत्र क्र. न्यायाप्र २०१६/प्र.क्र. २६३/१६/वि.शि.-१ दि. ०६.०५.२०१६

उपरोक्त संदर्भित पत्राकडे आपले लक्ष वेधण्यात येत आहे.

महाराष्ट्र ऑल बहुजन टिचर्स असोसिएशन, औरंगाबाद यांनी राज्यातील अकृषि विद्यापीठे / शासकीय महाविद्यालये / संस्था / अशासकीय अनुदानित / विनाअनुदानित महाविद्यालयातील शिक्षकिय पदांच्या आरक्षणाबाबत शासन निर्णय दि. २४ ऑगस्ट, २०१५ अन्वये सवर्ग व विषयनिहाय आरक्षणाबाबत घेण्यात आलेल्या निर्णयाविरोधात मा. उच्च न्यायालय मुंबई, खंडपीठ औरंगाबाद येथे याचिका क्र. १२०५१/२०१५ दाखल केली आहे.

सदर याचिकेमध्ये मा. उच्च न्यायालयाने दि. २८.०४.२०१६ रोजी पुढील प्रमाणे अंतरिम आदेश पारित केले आहेत. "Therefore, by the way of ad-interim relief in respect of the institutions/ colleges, who are the parties to this petition, we direct that the selection process undertaken by them will be subject to outcome of this petition.

The concerned Institutions / colleges/ University shall communicate to all the candidates, who have applied for the post about the interim order passed by this court. Those candidates, who have participated in the selection process and where the selection process is not yet complete, need not be heard individually and it will be responsibility of the concerned University/Institutions/Colleges who are party before this court to inform them about interim order."

तरी मा. न्यायालयाच्या दि. २८.०४.२०१६ च्या अंतरिम आदेशानुसार पुढील आवश्यक ती कार्यावाही करण्याबाबत आपणास कळविण्यात येत आहे. (सेवत बिलाची प्रत जोडली आहे)

श्री. अनपट/पोर/विनायक/५१७६
५१७६/५
२०१६

(डॉ. धनराज माने)

संचालक, (उच्च शिक्षण)

महाराष्ट्र राज्य, पुणे-१

प्रत : मा. श्री. हर्षवर्धन जाधव, अवर सचिव, उच्च व तंत्र शिक्षण विभाग मंत्रालय, विस्तार भवन, मुंबई-३२ यांस
माहितीस्तव सविनय सादर