
(1999) 08 BOM CK 0010

In the Bombay High Court

Case No : Writ Petns. No's. 3978 and 1391 of 1998 and 2328 and 2044 of 1999

Gramin Vikas Sanstha, Hinganghat

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 12-08-1999

Acts Referred:

Constitution of India, 1950 — Article 15(4), 16, 16(1), 16(4), 340

Citation : (1999) 08 BOM CK 0010

Hon'ble Judges : S.D. Gundewar, J;P.S. Patankar, J

Bench : Division Bench

Advocate : S.G. Aney, M.G. Bhangde, N.W. Sambre and Smt. N.P. Hardas, for the Appellant; Deopujari, A.G.P. B.G. Kulkarni, A.M. Badar, A.G.P., Smt. T.D. Khade, A.G.P., Smt. A.P. Shinde and Ms. T. Khan, for the Respondent

Judgement

P.S. Patankar, J.—Rule. Heard for final hearing forthwith by consent.

2. These petitions can be disposed of by this common judgment as the question involved is the same. A few facts.

3. Writ Petition No. 3978/1998 : The petitioner runs two Colleges. The first is R. S. Bidkar College at Hinganghat which was started in the year 1961. It has three faculties - Arts, Science and Commerce. It gets Government grant. The strength of the students exceeds 2,000. One Mr. D. N. Rao was the Principal of the said College. He retired on 30th June, 1996. Mr. S. D. Bidkar then came to be appointed as Officiating Principal.

4. The petitioner's second College is at Samudrapur, known as S.M.K. Zoting Patil Mahavidyalaya. It was started in the year 1990. Initially, it was having Arts and Commerce faculties and was not getting Government grant. It closed its Commerce faculty. Now there is only Arts faculty and it is getting Government grant from 1996-1997. The strength of the students is about 300. One Mr. S. S. Dhekre was officiating as Principal. He retired on 30th June. 1997 and another senior most professor is acting as Principal.

5. The petitioner received a letter dated 1st September, 1997 from the Nagpur University that the post of Principal for R. S. Bidkar College at Hinganghat should be advertised for a candidate belonging to backward class community and the post of Principal for S.M.K.. Zoting Patil Mahavidyalaya at Samudrapur for a candidate belonging to open category. The Officiating Principal Mr. S. D. Bidkar challenged it by filing Writ Petition No. 1391 of 1998 contending that isolated post of Principal of College cannot be reserved for a candidate belonging to backward class community.

6. The State Government, in view of the judgment of the Apex Court dated 17th April, 1998 (reported in Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others,), issued Government Resolution dated 21st September, 1998 to the effect that there can be no reservation in the case of isolated post. This was modifying the earlier Government Resolution dated 18th October, 1997. Further Government Resolution dated 28th September, 1998 was issued dropping the provision made in para 3 of Government Resolution dated 8th December, 1997, which dealt with reservation in Universities and Affiliated Colleges.

7. In view of the above, the petitioner sought permission from Nagpur University to advertise the post of Principal for R. S. Bidkar College for open category candidate by application dated 16th October, 1998. But so far it is not granted. Hence, this petition.

8. Writ Petition No. 2328/1999 : The petitioner runs three Colleges - (1) M. M. College of Science. It is having only Science faculty. (2) Smt. Binzani Mahila Mahavidyalaya. It is having only Arts faculty and it is meant for ladies. (3) Shri Binzani City College. It is having Arts and Commerce faculties. There is also facility of imparting some post graduate courses. In respect of Smt. Binzani Mahila Mahavidyalaya, in Writ Petition No. 1913 of 1993, the Division Bench of this Court by order dated 26th July, 1993 held that the post of Principal in that College is isolated post. It was so declared and the petitioner was permitted to fill it by open category.

9. The post of Principal of Shri Binzani City College fell vacant from 1st June, 1999. The petitioner sought permission from the Nagpur University to fill it by open category. But the University by letter dated 18th June, 1999 directed the petitioner to fill it from Scheduled Tribe category candidate. This is challenged here.

10. Writ Petition No. 2044/1999; The petitioner runs fifteen Colleges. They include one Pharmacy College and one Engineering College. Earlier, the University wrote a letter dated 17th October, 1995 informing the petitioner that which post of the Principal is to be reserved. This was challenged by the petitioner by filing Writ Petition No. 905 of 1996 and this Court directed the Nagpur University to resolve the said issue in the light of the contentions raised by the petitioner.

11. The Nagpur University issued communication dated 5th May, 1998 directing the petitioner to reserve the posts of Principals in the following five Colleges :

S. No. Name of College Category

1. M.B. Patel Arts & Commerce College, Deori S.C.
2. N.J. Patel Arts & Commerce College, Mohadi ST.
3. M.B. Patel Arts & Commerce College, Salekasa V.J.(A)/N.T.(B)/ N.T.(C)/N.T.(D)
4. C.J. Patel Arts & Commerce College, Tirora O.B.C.
5. Smt. R. M. Patel Mahila M.V., Bhandara O.B.C.

The first College was started in 1990. It is having Arts and Commerce faculties. There are 284 students. The second College was started in 1992. It is having Arts and Commerce faculties. The students are 493. The third College was started in 1994. It is having Arts and Commerce faculties. There are 295 students. The fourth College was started in 1996. It is having Arts and Commerce faculties. There are 920 students. The fifth College is meant for ladies and there is only Arts faculty. There are 648 students. The petitioner represented against the said communication on 14th May, 1998 pointing out that it is violative of the judgment of the Apex Court that there can be no more than fifty per cent reservation, etc. But the University by letter dated 25th September, 1998 affirmed its earlier direction in view of Government Resolution dated 18th October, 1997. Hence, letters/orders dated 5th May, 1998 and 25th September, 1998 are challenged here.

12. It is first submitted by the learned counsel for the petitioners that all posts of Principals should be treated as isolated post and the impugned orders passed against the petitioners are contrary to the law laid down by the Apex Court. The circulars/letters dated 10th December, 1993 and 11th April, 1996 issued by the State Government are not applicable in the case of the -petitioners and in any case, they are invalid and unconstitutional being violative of Article 16 of the Constitution of India. It is further submitted that there can be no identity between two Colleges as requirements for a Principal vary from College to College. The educational qualifications, pay-scales, experience required and duties to be discharged vary. Alternatively, it is submitted that it may be possible to club the posts of Principals only in case of those Colleges run by an Institution where the faculties are the same. In the present cases, it is not so and hence, there can be no clubbing. As against this, reliance is placed on Government letters/circulars dated 10th December, 1993 and 11th April, 1996 and Government Resolutions dated 18th October, 1997 and 28th September, 1998 by the learned counsel for the University. It is submitted that even if one of the faculties in the Colleges is common, then, the posts of Principals in all those Colleges run by an institution can be clubbed together for finding out reservation. It is illustrated in the following manner : If one college is having Arts and Commerce faculties and the other is having Arts and Science faculties, then, as

Arts faculty is common, two can be clubbed together. It is submitted that if such an interpretation is not given, then, it will be practically impossible to have reservation and the assurance given under Articles 16(1) and 16(4) of the Constitution of India to Backward Class candidates would become hollow or empty in this case.

13. At the outset, we shall consider the purport of various Government Circulars/ Letters and Government Resolutions relied upon by the learned counsel. The first is the letter/circular dated 10th December, 1993. It is issued by the Additional Secretary, Higher and Technical Education and Employment Department, Maharashtra State. The first para thereof states : If an Institution runs more than one College and the posts of Principal of such Colleges are transferable, reservation will be applicable to such posts. In the second para, it is said that if the posts of Principal are not transferable, even then reservation is applicable in case one Institution is running more than one College and roster is applicable. However, now by filing an affidavit-in-reply, it is sought to be interpreted to mean that the post of Principal in the Colleges run by an institution having the same discipline, are to be treated as one unit and accordingly, the reservation policy and the roster point are to be applied. It seems that this contention is raised on the basis of clarification subsequently issued by letter/circular dated 11th April, 1996.

14. This letter/circular dated 11th April, 1996 is to the effect that if the Institution runs more than one College and if the subjects taught in these Colleges are similar, the principle of reservation will be applicable for the post of Principal in those Colleges. In the affidavit-in-reply filed on behalf of Nagpur University and its Vice-Chancellor, it is stated "....if a Society has more than one College and if those Colleges are imparting teaching in the same discipline, identical subjects, then, the post of Principal of such Colleges cannot be considered as single isolated post and they have to be clubbed as one unit and accordingly, the reservation roster has to be duly applied. In fact, the circular/ letter dated 11th April, 1996 makes mention to aided Arts, Science and Commerce Colleges and unaided Engineering, Medical, Ayurved, Management, Architecture, Law, Education, etc. Colleges, which are conducted by one institution, then, each College is to be treated as independent and the post of Principal as isolated one. In fact, the learned counsel for the respondent could not explain the reference to unaided Colleges as there are aided Law Colleges, etc. in the State. The learned counsel for the University has mainly relied upon this letter/circular in support of his argument and submitted that this requires interpretation.

15. Government Resolution dated 18th October, 1997 was issued by the State Government in view of the judgment of the Apex Court in the matter of R.K. Sabharwal and others Vs. State of Punjab and others, . The State Government has clarified that the roster is not to be applied to a vacancy, but it has to be applied to the total strength of the cadre posts. It states that if once the entire

reservation in the cadre is fulfilled, then, the vacant post, as and when becomes available, to be filled by a candidate belonging to that particular category for which the post is reserved or earmarked. Thus, if a post of open category becomes vacant, it has to be filled in by a candidate belonging to open category and if the post falls vacant in Scheduled Tribe category, then, by Scheduled Tribe category candidate, etc. The reservation and fixation of the roster point is at initial stage and thereafter there would be no change. It is further pointed out that those candidates belonging to backward class, who are appointed on merit basis, they should be considered from open quota and not from quota meant for backward class candidates. Para 2(8) thereof provided that whenever there is isolated post, then reservation may be made on rotational basis.

16. Government Resolution dated 21st September, 1998 came to be issued based on the judgment of the Apex Court in the matter of Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others, . Para 2(8) of the Government Resolution dated 18th October, 1997 came to be dropped and it was provided that there would be no reservation in case of isolated post. Further Government Resolution dated 28th September, 1998 was issued modifying Government Resolution dated 8th December, 1997 and clarifying Government Resolution dated 21st September, 1998. It provided that directions contained in para 3 of Government Resolution dated 8th December, 1997 dealing with reservation in case of Universities and Affiliated Colleges is dropped. Thus, the instructions regarding reservation in case of isolated post on rotational basis came to be dropped.

17. The learned counsel appearing for the parties have cited various judgments. We feel that it will be proper at the outset to quote the words from the judgment delivered by Mr. Justice P. B. Sawant in the nine-Judge Bench matter - Indra Sawhney vs. Union of India, 1992 Supp.(3) SCC 217 which read as under:

"508. In this connection, it is worth serious consideration whether reservation in the form of preference instead of exclusive quota should not be resorted to in the teaching profession in the interests of the backward classes themselves. Education is the source of advancement of the individual in all walks of life. The teaching profession, therefore, holds a key position in societal life. It is the quality of education received that determines and shapes the equipment and the competitive capacity of the individual, and lays the foundation for his career in life. It is, therefore, in the interests of all sections of the society-socially backward and forward and of the nation as a whole, that they aim at securing and ensuring the best of education. The student whether he belongs to the backward or forward class is also entitled to expect that he receives the best possible education that can be made available to him and correspondingly it is the duty and the obligation of the management of every educational institution to make sincere and diligent efforts to secure the services of the best available teaching talent. In the appointments of teachers, therefore, there should be no compromise on any ground. For as against the few who may get appointments as

teachers from the reserved quota, there will be over the years thousands of students belonging to the backward classes receiving education whose competitive capacity needs to be brought to the level of the forward classes. What is more, incompetent teaching would also affect the quality of education received by the students from the other sections of the society. However, whereas those coming from the advanced sections of the society can make up their loss in the quality of education received, by education at home or outside through private tuitions and tutorial classes, those coming from the backward classes would have no means for making up the loss. The teachers themselves must further command respect which they will do more when they do not come through any reserved quota. The indiscipline in the educational campus is not a little due to the incompetence of the teachers from whatever section they may come, forward or backward. It is, therefore, necessary that there should be no exclusive quota kept in the teaching occupation for any section at all. However, if the candidates belonging to both backward and forward classes are equal in merit, preference should be given to those belonging to the backward classes. For one thing, they must also have a "look into" the teaching profession as in other professions. Secondly, in this vital profession also, the talent, the social experience and the new approach and outlook of the members of the backward classes is very much necessary. That will enrich the profession and the national life. Thirdly, it will also help to meet the complaints of the alleged step-motherly treatment received by the students from the backward classes and of the lack of encouragement to them even when they are more meritorious. Hence, in the teaching profession, it is preference rather than reservation, which should be resorted to under Article 16(4) of the Constitution. A precaution, however, has to be taken to see that the selection body has a representation from the backward classes.

There is no dispute that there can be no reservation in the case of isolated post of a Principal. But the question arises is when it can be treated as isolated post.

18. It is well established since *Sobhraj Odharmal Vs. State of Rajasthan*, - Judgment of the Constitution Bench) that reservation should and must be allowed to advance the prospects of weaker sections of the Society, but while doing so care should be taken not to deprive admission to higher educational standards to deserving and qualified candidates of other communities. Reservation should be within reasonable limits and should not exceed fifty per cent. In the case of *K.C. Vasanth Kumar and Another Vs. State of Karnataka*, , the Supreme Court, dealing with the extent of reservation under Articles 15(4) and 16(4) of the Constitution, observed :

"The State exists to serve its people. There are some services where expertise and skill are of the essence. For example, a hospital run by the State serves the ailing members of the public who need medical aid. Medical services directly affect and deal with the health and life of the populace. Professional expertise, born of knowledge and experience, of a high degree of technical knowledge and

operational skill is required of pilots and aviation engineers. The lives of citizens depend on such persons. There are other similar fields of governmental activity where professional, technological, scientific or other special skill is called for. In such services or posts under the Union or States, we think there can be no room for reservation of posts; merit alone must be the sole and decisive consideration for appointments.

19. The learned counsel for the petitioners first relied upon the case of Chakradhar Paswan Vs. State of Bihar and Ors, . In that case, State Directorate of Indigenous Medicines, Bihar, initially constituted three Class-I posts, (1) Director (Indigenous Medicines), (2) Deputy Director (Homeopathy), (3) Deputy Director (Unani) and fourth was added later on, i.e. Deputy Director of Ayurved. The post of Director was the highest. The Government grouped together all the four Class-I posts. It applied circular dated 8th November, 1975 by which State has prescribed 50 point roster to implement the policy of reservation. As the post of Director had been filled up treating it to be unreserved, the second post, i.e. Deputy Director (Homeopathy) was advertised for reserved candidate-Scheduled Caste and appointment was accordingly made. This was challenged by a candidate belonging to open category and the High Court struck down the advertisement. The Supreme Court upheld it. It was observed :

7-A. The argument of learned counsel for the appellant suffers from the infirmity that it overlooks that though the Directorate of Indigenous Medicines comprises of four posts, namely, that of the Director and three Deputy Directors, which are Class I posts, the posts of Director and Deputy Directors do not constitute one "cadre". They are members of the same Service but do not belong to the same cadre. According to the 50 point roster, if in a particular grade a single post falls vacant, it should, in the case of first vacancy, be considered as unreserved i.e. general and on the second occasion when a single post again falls vacant, the same must be treated as reserved. Admittedly, the post of Director is the highest post in the Directorate of Indigenous Medicines and is carried in the higher pay scale or grade of Rs. 2225-75-2675 while the posts of the Deputy Directors are carried in the pay scale or grade of Rs. 1900-75-2500.....The conclusion is irresistible that the posts of the Director and those of the Deputy Directors constitute different cadres of the Service. It is manifest that the post of the Director of Indigenous Medicines, which is the highest post in the Directorate carried on a higher grade or scale, could not possibly be equated with those of the Deputy Directors on a lower grade or scale.....

8. Another serious infirmity in the argument of the learned counsel for the appellant is that it overlooks the basic principle that if there is only one post in the cadre, there can be no reservation under Article 16(4) of the Constitution. The whole concept of reservation of application of the 50 point roster is that there are more than one post, and the reservation as laid down by this Court in M.R. Balaji and Others Vs. State of Mysore, can be up to 50%.....The Directorate is a paramedical service with Director as its head and the three Deputy Directors

belonging to three distinct and separate disciplines viz. Homeopathic, Unani and Ayurvedic under him. In the para-medical system the three posts of Deputy Directors pertain to three distinct systems and therefore each of them is an isolated post by itself.

9.....Professors in medical colleges are carried on the same grade or scale of pay but the posts of Professor of Cardiology, Professor of Surgery, Professor of Gynaecology pertain to particular disciplines and therefore each is an isolated post.

20. The next reliance is placed by the learned counsel for the petitioner on the judgment in the case of *Indra Sawhney and others vs. Union of India and others*, 1992 Supp.(3) SCC 217. It is the judgment by nine-Judge Bench of the Supreme Court. The conclusions drawn by the majority, which are relevant for our purpose, are :

860. (I) Article 16(4) is not an exception to Article 16(1) . It is an instance of classification inherent in Article 16(1) . Article 16(4) is exhaustive of the subject of reservation in favour of backward classes, though it may not be exhaustive of the very concept of reservation. Reservations for other classes can be provided under Clause (1) of Article 16.

(2) The expression "backward class" in Article 16(4) takes in "Other Backward Classes, SCs, STs and may be some other backward classes as well. The accent in Article 16(4) is upon social backwardness and economic backwardness. Social backwardness leads to educational backwardness and economic backwardness. They are mutually contributory to each other and are intertwined with low occupations in the Indian society. A caste can be and quite often is a social class in India. Economic criterion cannot be the sole basis for determining the backward class of citizens contemplated by Article 16(4) . The weaker sections referred to in Article 46 do include SEBCs referred to in Article 340 and covered by Article 16(4) .

It was further held that the reservation may be vertical (SCs, STs, OBCs) or horizontal (Handicapped Women) and carry forward scheme for reservation can be provided.

21. The learned counsel for the petitioners next relied upon the case of *Bhide Girls Education Society vs. Education Officer, Zila Parishad, Nagpur and others*, 1993 (1) Mh.L.J. 305 (SC). In that case, the Society was running one Girl's High School and question arose whether post of Head Mistress is required to be filled in by a candidate belonging to reserved category. It has been held that as the post is a solitary post in the cadre, the roster and carry forward scheme underlying the reservation policy cannot be applied. This was relying upon the judgment in *Dr. Chakradhar Paswan 's case* (cited supra).

21 A. The learned counsel then relied upon the case of *Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and*

Others, . The question for decision before the Constitution Bench was whether in a single cadre post, reservation for the backward classes can be made directly or by applying rotation of roster point. The Apex Court considered the various judgments point delivered by it earlier and held as follows :

36. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with device of rotation of roster in a single-post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such post is kept out of bound to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society.

22. The learned counsel for the petitioners lastly relied upon the judgment of this Court in the case of Pramod Madhukarrao Padole and another vs. Chancellor, Nagpur University and others, 1991 Mh.L.J. 1487. On a difference between two learned Judges the matter was referred to the third Judge and this is the judgment of the learned third Judge. The learned third Judge was called upon to decide the following questions :

(1) Whether there can be reservation of posts in any of the three cadres of Professors, Readers and Lecturers, where there is a solitary post in a particular discipline.

(2) Whether the reservation to be made must be only with reference to the posts in the cadres, available in a particular discipline, subject only to the availability of more than one post.

(3) Whether grouping would be permissible only of the posts and appointments, if there be more than one in a particular discipline, or grouping can be done of the posts and appointment of a single post together with similar single posts in different disciplines.

The learned Judge mainly relied upon the judgment of the Apex Court in the matter of Dr. Chakradhar Paswan, (cited supra). It was held that cadre or unit, which should be subjected to the application of the rule of reservation, at least so far as the University is concerned, should be the department, subject or discipline. It was observed :

39. If it is held that the posts of Professors, Lecturers and Readers in each department formed three distinct cadres, there would be no difficulty in applying the reservation policy. Both the learned Judges (Deshpande and Wahane, JJ.) are agreed in the view that special qualifications required for holding a particular post do not, per se, make the post an isolated post or take it out of the cadre, for

the simple reason that, though several posts may require separate specializations, the qualification, responsibility and the pay-scales applicable to each of the specialized course would generally be the same, barring the specialization required. Therefore, the specialization, per se, would not take the post out of the cadre. I agree that it would not be proper to treat a specialized post as an isolated post on the ground that it requires a different specialization. All such posts would be part of a cadre and would be subject to reservation.

The learned third Judge answered the questions in the following manner:

46, (i) There cannot be reservation of posts in any of the three cadres of Professors, Readers and Lecturers, where there is a solitary post in a particular discipline.

(ii) Reservation must be made only with reference to the posts in the cadres, available in a particular discipline, subject only to the availability of more than one post.

(iii) Grouping would be permissible only of the posts and appointments, if there be more than one in a particular discipline. Grouping cannot be done of the posts and appointment of a single post together with similar single post in different disciplines.

24. The learned counsel appearing for the respondents first relied upon the judgment of the Apex Court in the case of Arati Ray Choudhary Vs. Union of India (UOI) and Others, . In that case, South Eastern Railway (Government of India Undertaking) was running two Higher Secondary Schools for Girls, one at Adra and other at Kharagpur. In 1966, the post of Head Mistress became vacant at Adra. It was filled in by a candidate belonging to open category. In January, 1969, the post of Head of Kharagpur School became vacant. It was filled in by candidate belonging to Scheduled Caste candidate treating it as reserved. This was challenged. Broadly, the carry forward rule in the reservation policy was for interpretation before the Constitution Bench of the Supreme Court. The Railway Board prepared roster in 1964 by which 12.5% of the vacancies were reserved for Scheduled Castes and 15% for Scheduled Tribes. It was also mentioned that if there would be only a single vacancy then it should be treated as unreserved and if on account of that a reserved vacancy in the roster was to be treated as unreserved then the reservation would be carried forward to the subsequent two recruitment years. Thus, there was question of applicability of roster point in the context of plurality of posts in a cadre and in that context, the rotation of roster was upheld by the Court. It was held that when there was a vacancy at Adra, according to Model Roster, such vacancy was reserved point and, therefore, the other vacancy was unreserved vacancy. But there being only one vacancy in that particular year of recruitment in 1966, such vacancy had to be treated as unreserved and the appointment was given to the open category candidate. Therefore, it had to be compensated by carry forward reservation in two subsequent recruitment years and when the vacancy in Kharagpur School arose

with effect from 31st December, 1968, the reserved candidate was entitled for appointment.

25. The learned counsel for the respondents next relied upon the case of Union of India and Another Vs. Madhav Gajanan Chaubal and Another, . We are not dealing with it as it has been specifically overruled by the Constitution Bench of the Apex Court in the case of Post Graduate Institute of Medical Education (cited supra).

26. The learned counsel for the respondents then relied upon R.K. Sabharwal and others Vs. State of Punjab and others, . Again, this was a case dealt with by the Constitution Bench of the Apex Court. It was held that reservation as per the roster for the purpose of promotion could be held consistent with Article 16(1) of the Constitution. However, it proceeded on the footing that the reservation in the roster can operate provided there is plurality of posts in a cadre. It was held that cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form cadre-strength. The concept of "vacancy" has no relevance in operating the percentage of reservation. Roster indicating reserved post required by Government instructions to be implemented in the form of running account from year to year. Roster is operative till all the roster points in a cadre are filled and quota prescribed is achieved and not thereafter. Subsequent vacancies have to be filled in from the categories in which the post belongs in the roster, albeit, in case of non-availability of a reserved candidate at the roster point, that point can be carried forward. In that case, contest was amongst the Punjab Service of Engineers (Class I) in the Irrigation Department.

27. In view of the law laid down and the Government Circulars/Resolutions, we have to consider in which cases the post of Principal can be said to be isolated one when there are more than one Colleges run by an Institution. The learned counsel for the petitioners pointed out that the requirements for the post vary. The pay scale depends upon the strength of the students in a College. It is also pointed out that the experience, which is required, varies depending upon the strength of the students. It is also pointed out that the educational qualifications and the duties to be performed differ. It is also pointed out that in case of Women's College, a lady principal is ordinarily required to be appointed. It is submitted that considering all this, it is necessary to treat the post of Principal in each College as isolated one unless there is total identity in two Colleges run by an Institution and the Principal can be transferred from one College to the other.

28. However, it is not possible to accept that because of some difference or variation in the requirement of experience or the pay scale, which is based upon the strength of the students, the post of Principal can be treated as isolated post. Even some difference in the duties or the responsibilities or the qualifications would not make a post isolated one. We are conscious of the fact that no hard

and fast test can be laid down for deciding whether a post is isolated or not. In our opinion, broadly where the Principal in one College can effectively and properly act in the other, then those posts can be clubbed together or grouped together. It can be treated as falling in one cadre. It is clear that the reservation is in respect of posts comprised in a cadre and not in relation to vacancies. If an employee can work effectively and properly in the post held by the other, then, all those posts can be clubbed or grouped together. They can be treated as forming one cadre. In Dr. Chakradhar Paswan's case cited supra, all the three posts of Deputy Directors were separate. The first was for Homeopathy, the second for Unani and the third for Ayurved. One could not have acted and discharged duties in the other as disciplines varied. The qualifications, knowledge, etc. required to man those posts would differ. Similarly, the Professor in Cardiology cannot work in the post of Professor in Gynaecology. Further, minimum qualifications or experience required for the posts of Professor and lecturer may not be the same. Hence, grouping or clubbing of posts of Professor and Lecturer may not be possible. If the posts are overall comparable in nature, then, they can be clubbed together. No doubt, all those, who vie for the post, have to satisfy the minimum requirements regarding experience, qualifications, etc. Further, take the case where there is only Arts faculty and there is another College having Arts and Science faculties, the needs and requirements of the two Colleges vary. It may not be possible for a Principal working in one College to act effectively and properly in the other and in the result, the students and cause of education would suffer. The Principal is not a mere manager, but a multifaceted personality. He is a Manager, Teacher, etc. The responsibilities on him are very onerous. Any wrong step taken by him may cause long term and irreversible harm or bad effects on the staff members and the students in the College. Apart from the fact that rule may provide that in a Women's College there should be lady principal, it is desirable to have such a Principal. The requirements of a such College are obviously different and it may not be possible for a gentleman to act effectively and properly in that College. There may be College calling for special requirements such as for handicapped persons. It would be necessary to treat such a post as isolated. Therefore, it is necessary to see that the positions or posts are comparable broadly.

29. No doubt, at the same time, the cause of teachers belonging to backward class should not suffer as it is the avowed object of the Constitution in general and Article 16 in particular to bring them forward - socially and educationally. It is necessary to balance the competing interests of education and backward classes. In our opinion, in the present case, this can best be done by grouping the posts of Principals in case broadly the faculties in the two Colleges run by an Institution are the same. There may be some minor differences, such as subjects taught or addition of a post-graduate course in one College. But that would not make difference. If the faculty/faculties in two Colleges run by an Institution is/are the same, then, there may not be any difficulty for a Principal working in one College to work effectively and properly in the other. But this may not be so in

case the faculties vary or only one or some of them are common with the other. We feel that the Government Circular/Letter dated 11th April, 1996 requires to be interpreted in the above manner. Hence, we reject the interpretation sought to be put by the learned counsel for the University on the said Letter/Circular to mean that if one of the faculties is common in two Colleges, then, the posts of Principals in those Colleges can be grouped or clubbed. Similarly, we reject the contention of the learned counsel for the petitioners that all posts of Principals are necessarily isolated. We hold that all those posts of Principals in the Colleges run by an Institution can be clubbed or grouped where faculties run in two colleges are broadly the same.

30. Hence, we pass the following order :

Writ Petition No. 3978 of 1998 and Writ Petition No. 1391 of 1998 (1) The posts of Principals in two Colleges run by the petitioner cannot be grouped together. They are to be treated as isolated posts.

(2) Respondent No, 1 to permit the petitioner to advertise the post of Principal for R. S. Bidkar College at Hinganghat for open category as also of its S.M.K. Zoting Mahavidyalaya, Samudrapur.

(3) The Letter dated 1st July, 1997 is set aside.

Writ Petition No. 2328 of 1999

(1) The posts of Principals in the Colleges run by the petitioner cannot be grouped together. They are to be treated as isolated posts.

(2) The letter dated 18th June, 1999 issued by the Nagpur University is set aside.

(3) The Nagpur University to permit the petitioner to fill the post of Principal in Shri Binzani City College from open category candidate.

Writ Petition No. 2044 of 1999

(1) The posts of Principals in the first four Colleges, viz. (1) M. B. Patel Arts and Commerce College, Deori, (2) N.J. Patel Arts and Commerce College, Mohadi, (3) M. B. Patel Arts and Commerce College, Salekasa and (4) C.J. Patel Arts and Commerce College, Tirora can be clubbed together and the petitioner can be directed to have reservation.

(2) The Nagpur University to consider the position in the light of the observations made in this judgment and reconsider and give fresh directions to the petitioner regarding filling of the posts of Principals. However, the letters dated 5th May, 1998 and 25th September, 1998 issued by the Nagpur University are set aside.

Rule made absolute accordingly in the above terms. No order as to costs.