



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5314 OF 2024

- | | | |
|--|---|------------------------------|
| 1) Pallavi Vijaykumar Shelke Patil, |] | |
| Age: 35 yrs, Occu: Lecturere, |] | |
| R/at: Advocate Vijaykumar Shelke, |] | |
| Bhagirathi Niwas, Thodga Road, |] | |
| Oppo. Ravindranath Tagore School, |] | |
| Ahmedpur, Dist. Latur. |] | |
| 2) Ganesh Chandrakant Falle, |] | |
| Age: 35 yrs, Occu: Executive Merchandising |] | |
| R/at: Ganeshnagar, Post- Mallewadi, |] | |
| Tal. Miraj, Dist. Sangli |] | |
| 3) Sunil Ramchandra Pakhandi, |] | |
| Age: 35 yrs, Occu: Service, |] | |
| R/at: Nandani Road, Jaysingnagar |] | |
| Jaysingpur, Tal. Shirol, Kolhapur-416101 |] | <u>...Petitioners</u> |

Versus

- | | | |
|---|---|--|
| 1) The Secretary, |] | |
| State of Maharashtra, |] | |
| Higher & Technical Education Department, |] | |
| R/at: Dalan No. 441, 4 th Floor, |] | |
| Mantralaya, Mumbai-32 |] | |
| 2) The Secretary, |] | |
| Maharashtra Public service Commission, |] | |
| R/at: Karyasan no. 5 th , 7 th & 8 th Floor, |] | |
| Cooperage, Mumbai-01 |] | |
| 3) The Director, |] | |
| Directorate of Technical Education, |] | |
| R/at: Maharashtra State, Mumbai-01, |] | |
| 4) The Chairman/ Member Secretary, |] | |
| All India Council for Technical Education, |] | |
| R/at: Nelson Mandela Marg, Vasant Kunj, |] | |

New Delhi-110070	]	
5) The Registrar,	]	
Shivaji university, Kolhapur.	]	
6) Textile and Engineering Institute,	]	
Dattajirao Kadam Technical Education	]	
Society, Ichalkaranji.	]	<u>...Respondents</u>

*Mr. Yuvraj Narvankar, Mr. Rahul Patil and Mr. Raufa Shaikh for the Petitioner.
Mr. V. M. Mali, AGP for the Respondent-State.
Mr. Digambar Jadhav i/b Mr. Ashwin Kapadnis for the Respondent No.4 (AICTE).*

**Coram : Sharmila U. Deshmukh &
Neeraj P. Dhote, JJ.**

Reserved on : August 20, 2026.

Pronounced on : August 28, 2026.

JUDGMENT : (Per Sharmila U Deshmukh J):

1. **Rule.** Rule made returnable forthwith and taken up for final disposal.
2. The present Petition impugns the judgment and order dated 5th February, 2024 passed by the Maharashtra Administrative Tribunal (for short, "**MAT**") rejecting Original Application No. 52 of 2019 (for short "**O.A**"). The O.A. was filed by the present petitioner challenging the declaration dated 5th July, 2018 issued by Maharashtra Public Service Commission (for short, "**MPSC**") terminating the process of selection initiated vide advertisement No. 85 of 2013 for the post of Lecturer in Dress Designing and Garment Manufacturing declaring that none of the candidate was found to be eligible in view of Government

communication dated 8th December, 2017 received by MPSC.

3. In the year 2013, MPSC issued advertisement for the post of lecturers in the course of Dress and Designing and Garment Manufacturing. The prescribed qualification was Bachelor's degree in engineering/ technology in the relevant branch with first class or equivalent degree. The advertisement was issued for filling up twenty one posts, out of which fifteen posts were advertised to fill the backlog, and out of remaining six posts, four posts were available for open category including one post of horizontal resolution for women. The advertisement specified that the equivalence would be considered in accordance with the Government Resolution (for short "**GR**") dated 6th May, 2013. The Petitioners possess the degree of "Bachelor of Textile Examination in the Branch of Fashion Technology". The degree course completed by the Petitioners is approved by All India Council for Technical Education (for short, "**AICTE**").

4. On 7th January, 2015, MPSC published list of eligible candidates, and Petitioner No.1 was featured in the list of ineligible candidates. The Petitioner No.1 filed OA No. 25 of 2015 and the response of the Respondents was that the disqualification of Petitioner No. 1 was due to cut off marks, which in turn were based on the markings of ineligible candidates. MAT by its order dated 23rd January, 2015 directed Respondents to either restart the whole process or to consider

Petitioner No.1 as eligible candidate.

5. The Director of Technical Education constituted a three member committee to verify the correctness of equivalence accorded by GR dated 6th May, 2013, which submitted a report on 16th August, 2017 distinguishing the course completed by the Petitioners citing the issue of AICTE approval. The Director of Technical Education forwarded the report dated 16th August, 2017 to MPSC, which led to declaration dated 5th July, 2018 by MPSC expressing its inability to recommend any candidate for the post of lecturer in the course of DDGM.

6. Being aggrieved by the declaration dated 5th July, 2018, the Petitioner filed OA No. 52 of 2019 in MAT, which passed the impugned order dated 5th February, 2024. An additional affidavit has been filed by the Petitioners claiming that the vacancies existing on the date of advertisement is required to be considered and not the subsequently changed ratio by AICTE and accordingly, there are 18 vacancies.

7. The stand taken by the Respondent Nos. 1 and 3 in the reply affidavit in so far as GR dated 6th May, 2013 is concerned, is that the GR did not intend to grant automatic or blanket equivalence for recruitment purposes without further verification of the specific syllabus and course contents by subject experts. As there was request from MPSC, by letter dated 19th January, 2016, after the publication of advertisement, to verify the candidates equivalence qualification, a

three-member committee was constituted which submitted its detailed report on 16th August, 2017. The Committee observed that the degree courses completed by the Petitioners was in Textile Technology, whereas the requirement under the advertisement was Fashion Technology, and that the degrees could not be treated as equivalent to the prescribed qualification of Fashion Technology for the purpose of recruitment to the post of Lecturer in DDGM. The Affidavit further states that the staffing pattern in Government Polytechnics is determined based on the student-faculty ratio, which is revised periodically, resulting in reduction of total number of sanctioned posts across all disciplines. The Directorate of Technical Education re-evaluated the requirement and proposed that only twenty four lecturer's posts be retained as adequate for the existing student intake, and presently all twenty four posts are filled, leaving no vacancy in the cadre of lecturer. The GR of 11th February, 2025 finalized the revised staffing pattern.

8. There is an additional affidavit filed by the Joint Director in the Office of Technical Education, stating that as per AICTE notification dated 5th March, 2010, the revised service conditions for a Lecturer in polytechnic require persons with a B.E / B.Tech qualification in the appropriate branch / discipline. The Petitioner's degree, though mentions Fashion Technology, it is a bachelor's degree in Textile, and

therefore, the Petitioners are not eligible. It is stated that AICTE by circular dated 10th November, 2020 has clarified that it does not provide equivalence for qualification, which is left to the employer to decide for considering suitability for a particular post. It is further stated that as per the faculty to student ratio, all posts are filled and there is no vacancy to accommodate the Petitioners.

9. Mr. Narvankar, learned counsel for the Petitioners would submit that the advertisement issued in the year 2013 for the post of Lecturers for DDGCM prescribed the qualification of bachelor's degree in Technology or equivalent as per the GR dated 6th May, 2013. Pointing out to the certificates of the Petitioners, he would submit that the degree is Bachelor of Textiles in the branch of Fashion Technology, and therefore, meets the prescribed qualification. He would submit that though, the advertisement made a reference to the GR dated 6th May, 2013, the ineligibility of the Petitioners was considered on the basis of a report by a three-member committee dated 16th August, 2017, which sought to override the GR dated 6th May, 2013. He submits that without any subjective assessment of the Petitioner's curriculum, the three member committee has opined that the Petitioner's education is not sufficient for teaching DDGM course, and therefore, they are not qualified for appointment to the posts of lecturer in DDGM course. He would submit that the report is extremely cryptic and is not based on

any comparative assessment of the Petitioner's curriculum.

10. He submits that novel method was invented by the Respondents of constituting a committee to consider the equivalence. He would further submit that the Petitioners are teaching the same DDGM course on a clock-hour basis and points out to the temporary appointment orders. He would further submit that the notification dated 28th April, 2017 by AICTE specifically states that the relevant qualifying degrees should be notified at the time of the advertisement of the post. He would further point out that the notification provides for the major discipline of technology to the Textile Engineering with a corresponding course including Fashion Technology and the relevant nomenclature of undergraduate degree engineering/technology. He would further submit that as per the approval process by the AICTE, the approval is granted for the program of Engineering and Technology with the course of Fashion Technology. He draws support from the decision of the Hon'ble Apex Court in the case of ***N. T. Devin Katti v. Karnataka Public Service Commission***¹, which directs that in event there is no vacancy, the State Government to create supernumerary post for appointment against those post. He submits that assuming that there are no vacancies, a direction can be given to create a supernumerary post for appointment of Petitioners, who are qualified to the said appointment.

¹ (1990) 3 SCC 157

11. *Per contra*, learned AGP would submit that the GR dated 6th May, 2013 is part of the advertisement, and it provides that in the course of DDGM, the equivalent degree is DDGM or Apparel Manufacturing, and Design or Garment Manufacturing or Fashion Technology. He submits that the Petitioner is not possessing degree in Fashion Technology, but is holding Bachelor of Textile degree. He submits that considering the course required to be taught, the requirement was of a degree in Fashion Technology. He would submit that even if the report of the committee is ignored, the Petitioners even otherwise, do not qualify as they do not hold a degree in Fashion Technology. He would further submit that the Hon'ble Apex Court in Civil Appeal No. 4597 of 2019 has held that the essential qualifications for appointment to a post are for the employer to decide, and the Court cannot lay down conditions of eligibility, much less can it delve into the issue with regard to desirable qualification being at par with the essential eligibility by interpretative rewriting of the advertisement.

12. He submits that the position that exists today is that there is no vacancy to accommodate the Petitioners, and due to rearrangement of posts, the sanctioned posts as per previous norms of AICTE have become excess, and the process to transfer the lecturers working on the excess post is underway. He submits that the reliance on the advertisement given by the principals of two Government Polytechnics

to teach on clock-hour basis is stopgap arrangement to carry out teaching work till the regular **facilities** are not transferred to the Polytechnic. He submits that no case has been made out for interference.

13. We have given our thoughtful consideration to the submissions canvassed and have perused the record.

14. The Petition raises a challenge to the order of MAT, which scrutinised the GR dated 6th May, 2013, and in particular the equivalence and agreed with the findings of the committee that the Petitioners do not possess the required equivalence. The advertisement was issued in the year 2013 for filling up the post of Lecturers in the course of Dress Designing and Garment Manufacturing (DDGM) amongst others. The total number of posts notified for DDGM were 21 in number out of which 15 posts were advertised to fill the backlog and out of balance 6 posts, 4 posts were available in open category including one horizontal reservation for woman.

15. The advertisement came to be terminated by MPSC vide declaration dated 5th July, 2018 on the ground that no qualified candidate was available and hence no recommendation could be made. The reply Affidavit of Respondent Nos.1 and 3 assumes significance and states about the position of vacancies having undergone a change with passage of time. The Affidavit sets out the staffing pattern which is

determined based on the student-faculty ratio prescribed by the AICTE from time to time. For the year 2016 onwards, the student-faculty ratio is determined at 1:25. Resultantly, for the DDGM course, only 24 Lecturer's posts are retained as adequate for the existing student intake. It is stated that all posts are presently filled, leaving no vacancy. The affidavit sets out the comparative position in paragraph 5.5 as under:

Year/ Pattern	Student Faculty ratio	Sanctioned Posts	Posts filled	Vacant Posts	Remarks
2004 Pattern	1:15	42	24	18	Earlier pattern superseded
2025	1:25	24	24	Nil	Approved by GR 11.02.2025

16. By the advertisement of 2013, 21 posts were advertised out of which 15 were to fill the backlog. By virtue of reduction in staffing pattern, the sanctioned posts of lecturers have been reduced to 24, which as per the earlier staffing pattern of 2004, were 42. To meet the reduction in sanctioned posts, Mr. Narvankar would contend that the he vacancies existing as on the date of advertisement are required to be considered. The position of law states that the vacancies must be filled up on the basis of law which exists as on the date consideration takes place. In *State of Odisha v. Sreepati Ranjan Dash*², the Hon'ble Apex Court noted the decision of *State of HP v. Raj Kumar*³ which had held in

² 2026 SCC OnLine SC 879.

³ (2023) 3 SCC 773,

paragraph 83 as under:

"82. A review of the fifteen cases that have distinguished *Rangaiah* [*Y.V. Rangaiah v. J. Sreenivasa Rao*, (1983) 3 SCC 284 : 1983 SCC (L&S) 382] would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in *Rangaiah*. The findings in these judgments, that have a direct bearing on the proposition formulated by *Rangaiah* are as under:

82.1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, *Rangaiah* case must be understood in the context of the rules involved therein. [*Deepak Agarwal v. State of U.P.*, (2011) 6 SCC 725, para 26; *Union of India v. Krishna Kumar*, (2019) 4 SCC 319, para 10].

82.2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existing rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates. [*Deepak Agarwal v. State of U.P., Union of India v. Krishna Kumar*].

82.3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire *any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government*. [*K. Ramulu v. S. Suryaprakash Rao*, (1997) 3 SCC 59, paras 12 & 13; *Shyama Charan Dash v. State of Orissa*, (2003) 4 SCC 218, para 9; *State of Punjab v. Arun Kumar Aggarwal*, (2007) 10 SCC 402, para 38; *Deepak Agarwal v. State of U.P.*, (2011) 6 SCC 725, para 28]. There is no obligation for the Government to make appointments as per the old Rules in the event of restructuring of the cadre is intended for efficient working of the unit. [*G. Venkateshwara Rao v. Union of India*, (1999) 8 SCC 455, para 4]. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14. [*Rajasthan Public Service Commission v. Chanan Ram*, (1998) 4 SCC 202, para 15; *K. Ramulu v. S. Suryaprakash Rao*, (1997) 3 SCC 59, para 15].

82.4. The principle in *Rangaiah* need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately. [*Delhi Judicial Services Assn. v. Delhi High Court*, (2001) 5 SCC 145, para 5].

82.5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases [*Deepak Agarwal v. State of U.P.*, (2011) 6 SCC 725, para 25].

83. The above-referred observations made in the fifteen decisions

that have distinguished *Rangaiah* case demonstrate that the wide principle enunciated therein is substantially watered-down. Almost all the decisions that distinguished *Rangaiah* hold that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that existed on the date when they arose. This only implies that decision in *Rangaiah* is confined to the facts of that case.

84. The decision in *Deepak Agarwal v. State of U.P.* is a complete departure from the principle in *Rangaiah* inasmuch as the Court has held that a candidate has a right to be considered in the light of the *existing rule*. That is the *rule in force* on the date the consideration takes place. This enunciation is followed in many subsequent decisions including that of *Union of India v. Krishna Kumar* [*Union of India v. Krishna Kumar*, (2019) 4 SCC 319]. In fact, in *Krishna Kumar* Court held that there is only a "right to be considered for promotion *in accordance with rules which prevail on the date on which consideration for promotion takes place*".

85. The consistent findings in these fifteen decisions that *Rangaiah* case must be seen in the context of its own facts, coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date on which they arose, compels us to conclude that the decision in *Rangaiah* is impliedly overruled. However, as there is no declaration of law to this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold:

85.1. The statement in *Y.V. Rangaiah* that, "*the vacancies which occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules*", does not reflect the correct proposition of law governing services under the Union and the States under Part XIV of the Constitution. It is hereby overruled.

85.2. The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services.

17. Applying the principles analogous thereto, as the law which existed on the date of consideration is the governing factor, the vacancy position that exists on the date of eligibility is to be considered. In the present case, the advertisement is of the year 2013 and for the posts of lecturers. Considering the lapse of almost thirteen years, the

proposition that vacancies must be filled up by taking into consideration the position on date of advertisement, must be necessarily negated.

18. After termination of the advertisement by MPSC, there was no re-advertisement and no filling of posts. The decision taken by the Respondents not to fill up the advertised posts cannot be questioned. The Hon'ble Apex Court in ***State of Odisha v. Sreepati Ranjan Dash*** (supra) has held in paragraph 15 as under:

"15. This Court has observed that an employee does not have a vested right to be promoted nor does he possess a legitimate expectation to be promoted (See Haryana SEB vs Gulshan Lal 2009 112 SCC 231). The limited right that an employee can legitimately claim is for consideration of his candidature. However, should be government, being the appointing authority choose, in its wisdom, to not fill up vacancies by promotion, especially when there is change of cadre and restructuring of posts, it cannot be compelled to carry out the appointments."

19. In ***Shankarsan Dash v. Union of India***⁴, the Constitution Bench was considering the issue whether a candidate whose name appears in merit list acquires indefeasible right to appointment if vacancy exists. The Hon'ble Apex Court held in paragraph 7 as under:

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to a invitation to qualified candidates to apply for recruitment and on selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license to act in an arbitrary manner. The decision not to fill up

4 (1991) 3 SCC 47.

the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court and we do not find any discordant note in the decisions in *State of Haryana vs Subhash Chander Marwaha*, *Neelima Shangla v State of Haryana* or *Jatendra Kumar vs State of Punjab*.”

20. It further noted in paragraph 8 the decision in ***State of Haryana vs Subash Chander Marwaha***⁵, where the Hon’ble Apex Court has expressly ruled that existence of vacancies does not give a legal right to a selected candidate and that candidates did not acquire any right merely by applying for selection or even after selection.

21. The enunciation of law by the Hon’ble Apex Court would negate the vested right claimed by the Petitioners to be appointed on the posts advertised. It is open for the Respondents not to fill up the vacancies for valid reason and in the present case, the advertisement came to be terminated and there is no re-advertisement by Respondents for filling up the posts. With the passage of time, there has been subsequent reduction of cadre strength by application of revised student-faculty ratio and resultantly there is a *bona fide* decision not to fill up the advertised post. The staffing pattern is determined on the basis of the student faculty ration which is prescribed by AICTE. There is no submission canvassed to dispute the determination as arbitrary. The

5 (1974) 3 SCC 220.

Petitioners cannot insist on vested right to the advertised post despite the reduction of sanctioned posts of lecturers.

22. As there is *bona fide* reduction of cadre and no vacancy in the posts of sanctioned lecturers for DDGM course, the entire issue of whether the Petitioners' qualification satisfies the equivalence test under the GR of 6th May, 2013 has been rendered academic. In so far as the appointment on supernumerary posts is concerned, the same is an exception rather than rule. Considering the reduction in cadre, we do not find any exceptional necessity to compel creation of supernumerary post. The decision of ***N.T. Devin Katti*** (supra) does not assist the case of the Petitioners.

23. In light of the above discussion, we are not inclined to entertain the present Petition. The issue as regards the equivalence qualification is an issue left open to be decided in an appropriate case. Resultantly, Petition stands dismissed. Rule is discharged.

[Neeraj P. Dhote, J.]

[Sharmila U. Deshmukh, J.]