

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 50 OF 2018**

DIST. : JALGAON

Dr. Yogesh Uttamrao Sathe,  
Age.42 years, Occu. : Service as  
Assistant Professor,  
Govt. College of Engineering, Jalgaon,  
R/o C/o Shri Kshirsagar,  
Vidyut Colony, Dhule Road,  
Jalgaon.

-- APPLICANT

**V E R S U S**

The State of Maharashtra,  
Through the Additional Chief Secretary,  
Higher & Technical Education Department,  
Mantralaya, Mumbai – 400 032.

-- RESPONDENTS

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APPEARANCE :- Shri Ajay S. Deshpande, learned Advocate  
for the applicant.  
: Shri S.K. Shirse, learned Presenting Officer  
for the respondents.  
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**CORAM** : **J.D. Kulkarni, Vice Chairman (J)**  
**A N D**  
**P.N. Dixit, Member (A)**

**DATE** : **22<sup>nd</sup> February, 2018**  
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**O R D E R**

1. Heard Shri Ajay S. Deshpande, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents.

2. The applicant Dr. Yogesh Uttamrao Sathe a Assistant Professor in Government College of Engineering, Jalgaon has filed this O.A. for the following reliefs :-

“H) The respondent may kindly be directed to issue an order of appointment to the applicant as Associate Professor in Mechanical Engineering in Maharashtra Engineering Teaching Services – Group A, on the basis of recommendations of M.P.S.C., followed by residual formalities, without any further delay.

I) Pending hearing and final disposal of this application the respondent may kindly be directed to appoint the applicant provisionally as Associate Professor in Maharashtra Engineering Teaching Services – Group A within two weeks.”

3. The Maharashtra Public Service Commission has published an advertisement for various posts in Maharashtra Engineering Teaching Services Group – A, which includes the post of Associate Professor. The applicant has submitted his application for the post of Associate Professor in Mechanical Engineering against the earmarked post for S.C. category. The result was declared on 14.9.2016 and the applicant was selected. The applicant was directed to submit the attestation form in prescribed proforma along with prescribed documents and to undergo for medical

examination in the Government Medical College & Hospital, Aurangabad. He has complied with those requirements.

4. On 5.8.2017 the respondents issued an appointment order thereby appointing as many as 16 Associate Professors. In the said letter of appointment it has been stated that in all 17 candidates were to be appointed. However, to the utter surprise of the applicant his name did not figure in the appointment letter. The applicant has, therefore, filed this O.A. for the reliefs as mentioned above.

5. The respondent has filed affidavit in reply and admitted the facts as pleaded by the applicant. It is also admitted that the applicant was recommended by the M.P.S.C. for the post of Associate Professor in Mechanical Engineering for the earmarked category of S.C. category. It is stated that a criminal case is registered against the applicant for the offences u/s 353, 186, 504 & 506 of I.P.C. and the case is sub-judice before the Court at Jalgaon. It is also stated that second criminal case u/s 381 of the I.P.C. is registered against the applicant at Ramanandnagar Police Station, Jalgaon. A departmental enquiry has been initiated against the applicant as regards financial irregularities at Govt. College of Engineering, Jalgaon. It is further stated that the applicant has committed theft of confidential file which carries

various proofs against him and his theft has been recorded in the C.C. T.V. camera and offence u/s 381 of I.P.C. has been registered against the applicant. It is further stated that issue of appointment of the applicant was considered by the duly constituted committee on 19.9.2017 and a conscious decision was taken not to appoint the applicant considering the allegations against him.

6. The learned Advocate for the applicant submits that no decision was taken by the competent authority prior to issuance of appointment order in respect of other candidates. The appointment order was issued on 5.8.2017 wherein name of the applicant is not figured. The learned Advocate for the applicant further submits that a decision not to appoint the applicant has been taken on 19.9.2017 and, therefore, the said decision is after thought as all the candidates, except the present applicant, have been appointed vide order dtd. 5.8.2017.

7. The learned Advocate for the applicant further invited our attention to G.R. dated 26.8.2014 (Exh. G pages 31 to 39) (both pages inclusive). This G.R. gives guidelines as regards constitution of a Committee for considering the appointment of the candidates, whose character verification reports have been received. The said G.R. also gives guidelines under what

circumstances the candidates facing criminal trial / conviction shall be appointed.

8. The learned Advocate for the applicant submits that since offences against the applicant are pending, the applicant should have been appointed. He submits that unless a person is convicted for any offence, he cannot be said to be ineligible for appointment.

9. We have perused the above G.R. dated 26.8.2014 relied by the learned Advocate for the applicant. The plain reading of the said G.R. shows that the guidelines in general have been issued as to under what circumstances the person shall be appointed, wherein there is doubt about character of the person to be appointed. Such doubt may be because of pendency of the criminal trial or doubtful character. A constituted committee has to consider all *pros & cons* of the offences registered against the candidate. In the said G.R. itself it is stated that list of the circumstances / offences under which the candidate to be appointed or not to be appointed is illustrative list and not exhaustive list. The plain reading of the said G.R. would show that the constituted Committee has to apply its mind in each and every cases and then to take a conscious decision.

10. The learned P.O. has placed on record the minutes of the meeting dtd. 19.9.2017. A copy of the said minutes is at Exh. R-1 pages 145 to 147. The Committee has considered the seriousness of the offences registered against the applicant. It seems that in the said meeting dtd. 19.9.2017 cases of the applicant as well as that of Shri Babasaheb Chimaji Kharwas were considered by the said Committee. An offence u/s 498 (A), 323, 504 & 506 was registered against said Shri Kharwas and the Committee consciously decided to issue appointment order in his favour since he was not remotely concerned with the said offence. However, in respect of the applicant a conscious decision has been taken by the Committee as under :-

“(अ) श्री योगेश उत्तम साठे यांना सहयोगी प्राध्यापक, यंत्र अभि. या पदावर नियुक्ती देणेबाबत:-

- सहयोगी प्राध्यापक, यंत्र अभियांत्रिकी, शासकीय अभियांत्रिकी महाविद्यालये, महाराष्ट्र अभियांत्रिकी महाविद्यालये शिक्षक सेवा गट-अ या पदावर नियुक्तीसाठी श्री. साठे यांची महाराष्ट्र लोकसेवा आयोगाने दि. २३.०९.२०१६ च्या पत्रान्वये शिफारस केली आहे.
- सदर उमेदवारांना नियुक्ती देण्याच्या अनुषंगाने केलेल्या कागदपत्र पडताळणीवेळी श्री. साठे यांनी सादर केलेल्या साक्षांकन नमुन्यात त्यांच्याविरुद्ध रामानंद पोलीस ठाणे, जळगांव येथे गुन्हा नोंद असल्याचे नमुद केले आहे. त्यास अनुलक्षुन पोलीस अधिक्षक, जळगाव यांच्याकडून श्री. साठे यांचा चारित्र्य व पुर्वचारित्र्य पडताळणीबाबतचा अहवाल मागविण्यात आला होता.
- सदर अहवाल त्यांच्या दि. ०८.०७.२०१७ च्या पत्रान्वये शासनास प्राप्त झाला असून त्याबाबतचा तपशिल खालील प्रमाणे आहे.

अ.	गुन्हा नोंद	गुन्हायांचे कलम	सद्यस्थिती
क.	असलेल्या पोलीस		

	ठाण्याचे नाव व गुन्हा रजि. क्र.		
9	रामानंद नगर, पो.स्टे. जळगाव गु र नं. ४९/२०१६	भादंवि कलम ३५३, १८६, ५०४, ५०६, व सार्व. मालमत्ता नुकसान प्रतिबंधक अधिनियम १९८४ चे कलम ३ प्रमाणे.	सदर गुन्ह्यात आरोपीविरुद्ध दोषारोपपत्र मा. न्यायालयात दाखल केले आहे. प्रकरण न्यायप्रविष्ट आहे.

- त्याशिवाय श्री. साठे यांच्याविरुद्ध रामानंद नगर पोलीस ठाणे, जळगाव येथे गुर नं. ९४/२०१७ अन्वये भादंवि कलम ३८१ प्रमाणे गुन्हा नोंद असल्याचे व सदर प्रकरण न्यायप्रविष्ट असल्याने शासनाच्या निदर्शनास आले आहे.
- उपरोक्त गुन्ह्यांव्यतिरिक्त श्री. साठे हे शासकिय अभियांत्रिकी महाविद्यालय, औरंगाबाद येथे कार्यरत असताना आर्थिक घोटाल्या प्रकरणी त्यांच्याविरुद्ध अन्य अपचा-यांसोबत म. ना.से. (शिस्त व अपिल) नियम १९७९ मधील नियम १२(सामाईक चौकशी) व नियम ०८ (जबर शिक्षा) अन्वये विभागीय चौकशीची कार्यवाही सुरु असून त्यांना दोषारोप पत्र बजावण्यात आले आहे.
- श्री. साठे यांच्याविरुद्ध उपरोक्त नमुद गुन्ह्यांचे गंभीर स्वरूप, सुरु असलेली विभागीय चौकशीची कार्यवाही व त्यानुषंगाने सामान्य प्रशासन विभाग, शासन निर्णय दि. २६.०८.२०१४ मधील तरतुदी लक्षात घेता श्री. साठे यांना शासन सेवेत सहयोगी प्राध्यापक, यंत्र अभियांत्रिकी, शासकीय अभियांत्रिकी महाविद्यालये, महाराष्ट्र अभियांत्रिकी महाविद्यालये शिक्षक सेवा गट-अ या पदावर नियुक्ती देण्यात येवू नये, असा निर्णय समितीने एकमताने घेतला आहे.”

11. Perusal of the record shows that 2 crimes have been registered against the applicant under various sections of the I.P.C. and not only that but the charge sheet has also been filed against the applicant in those cases. The charges are also of serious nature. Not only that the D.E. has been initiated against the applicant on various charges, which are also of serious in nature. The competent Committee therefore decided not to appoint the applicant.

12. The learned Advocate for the applicant submits that the F.I.R. has been filed against the applicant due to malice. He submits that even a charge of theft has been mala-fide as he has already intimated the competent authority that he was likely to be implicated in false charges. As already stated, whatever charges alleged against the applicant are sub-judice before the competent Court and this Tribunal is not expected to go into the merits and to see whether such charges are true or not. From the record, it seems that while issuing the appointment orders to various candidates, no appointment order was issued in favour of the applicant and this is because serious crimes were registered against him. The respondents, therefore, constituted a Committee to consider as to whether the applicant shall be appointed or not and the said Committee unanimously decided not to appoint the applicant due to pendency of serious complaints and due to his antecedents. We therefore do not find any mala-fides in the said decision taken by the Committee. The copies of F.I.R. placed on record clearly show that the allegations leveled against the applicant are of serious in nature.

13. The learned Advocate for the applicant submits that the issues involved in the D.E. against the applicant are totally independent and the applicant is ready to face the consequences

of the said D.E., however, it shall not come in way of appointment of the applicant. Even the appointment orders issued in respect of other candidates dated 5.8.2017 show that some of the candidates have been appointed, subject to character verification. Mere selection for a post may not give any cause of action as the appointment is always depends on certain conditions such as character verification, verification of documents, medical fitness etc.

14. The learned Advocate for the applicant further states that the respondents have taken arbitrary decision. It is stated that in respect of Shri Babasaheb Kharwas a different decision has been taken. Similarly a contrary decision has been taken in respect of a candidate at sr. no. 6 in the appointment order dtd. 5.8.2017. In the case of candidate at sr. no. 6 - Shri Uday Vitthalrao Pise – the respondent has taken a decision to appoint him, subject to verification of character and medical fitness. It is stated that similar decision should have been taken in respect of the applicant.

15. From the above discussion, it will be crystal clear that considering character verification of the applicant and considering the grave allegations against him so also considering the fact that serious crimes have been registered against him, the Committee

took a conscious decision not to issue appointment order in favour of the applicant. A Departmental Enquiry is also pending against the applicant for serious charges, such as theft of confidential documents etc. Considering all these aspects, we do not find mala-fides in the decision of the respondents in not appointing the applicant. Hence, we do not find this a fit case to interfere. Hence, we pass following order :-

**ORDER**

The Original Application stands dismissed with no order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN (J)**