
(2014) 08 BOM CK 0053
In the Bombay High Court
Case No : Writ Petition No. 2374/1999

Arun

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Citation : (2015) 1 ALLMR 134 : (2015) 2 MhLj 223

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : S.A. Radke, Advocate for the Appellant; R.K. Maheshwari, Anand Parchure and Atul Pande Advocates, Advocate for the Respondent

Final Decision : Allowed

Judgement

Z.A. Haq, J.—Heard Shri Radke the learned advocate for the petitioner, Shri Maheshwari h/f Shri Parchure the learned advocate for respondents 2 and 3 and Shri Atul Pande the learned advocate for respondent no. 4.

2. The respondent no. 3 published an advertisement on 23rd June, 1996 inviting applications for various posts of Lecturers available in respondent no. 2-college. After the duly constituted Selection Committee conducted the interviews, the petitioner was selected and was appointed for the post of Lecturer in Geography part time vide appointment order dated 20th July, 1996, the appointment being for the period from 1st August, 1996 till 30th April, 1997. In the academic session 1996-1997, again advertisement was issued. The petitioner was given the appointment order dated 21st July, 1997 appointing the petitioner as Lecturer in Geography, the appointment being till 30th April, 1998. On 21st March, 1998 the respondent no. 4 granted approval to the appointment of the petitioner as a part time Lecturer. According to the petitioner he was appointed as full time Lecturer and required workload was available. The petitioner made complaint to the Grievances Committee of the University in the matter. The Principal of respondent no. 3-college made a request to the University for granting approval to the appointment of the petitioner as full time Lecturer.

3. The services of the petitioner were terminated by the notice w.e.f. 30th April, 1998. The petitioner had filed appeal before the University and College Tribunal. The appeal filed by the petitioner is dismissed by the Tribunal. The petitioner being aggrieved by the order passed by the Tribunal has filed this writ petition.

4. Shri Radke, the learned advocate for the petitioner has submitted that the appointment of the petitioner was made after the post was advertised and the petitioner was selected in the interviews conducted by the duly constituted Selection Committee as per the rules. It is submitted that the University vide communication dated 22nd March, 1998 had granted approval to the appointment of the petitioner from 1996-1997 onwards. It is submitted that the approval granted to the appointment of the petitioner was on ad-hoc basis subject to the conditions laid down in the Government resolution dated 22nd December, 1995 regarding qualifying the National Eligibility Test/State Eligibility Test. The learned advocate for the petitioner has submitted that the termination order dated 31st March, 1998 shows that the services of the petitioner were terminated under the misconception that the appointment of the petitioner was till 30th April, 1998. It is submitted that the respondents 2 and 3 have subsequently changed their stand before the Tribunal and has tried to justify their illegal action by submitting that the services of the petitioner were terminated as he had not qualified NET/SET. It is submitted that according to the Government resolution dated 22nd December, 1995 and specifically clause 7 of it, the petitioner was entitled to continue in service though he had not qualified NET/SET and his services could not have been terminated on that ground. It is submitted that the future increments could have been withheld until the petitioner qualified the NET/SET.

5. Shri Radke the learned advocate for the petitioner has relied on the judgment given in the case of Mula Education Society and Another Vs. Haribhau Kardile and Others, and has submitted that the petitioner having been appointed after being selected by the duly constituted Selection Committee and according to the procedure and the appointment of the petitioner having been granted approval by the University from 1996-1997 onwards, the services of the petitioner could not have been terminated though while issuing the appointment order the respondents 2 and 3 had restricted the appointment of the petitioner for the session only. It is submitted that it was incumbent on the respondents 2 and 3 to give appointment to the petitioner for the probation period. Relying on the above referred judgment it is submitted that the services of the petitioner could not have been terminated on the ground that the petitioner has not qualified NET/SET. The learned advocate for the petitioner has submitted that the order passed by the College Tribunal is unsustainable in law and has to be set aside and the appeal filed by the petitioner has to be allowed in terms of the prayers made in the memorandum of appeal.

6. Shri Maheshwari h/f Shri Parchure the learned advocate for respondents 2 and 3 has submitted that the petitioner was not having the required qualifications at

the time of his appointment and was not fulfilling the requirements as per the advertisement. It is submitted that in the academic session 1996-1997 the post of Lecturer in Geography was created in the college and it was not receiving the grants and full workload was not available and therefore, the petitioner was appointed as part time Lecturer in the academic session 1996-1997. It is submitted that the appointment of the petitioner in the academic session 1997-1998 was till 30th April, 1998 and it was stated in the appointment order. It is submitted that the petitioner having accepted the appointment for the fixed period, it is not open for the petitioner to raise the challenge that the petitioner should not have been given appointment for the probation period. It is submitted that the college is for women students and therefore, respondents 2 and 3 intended to appoint female Lecturer and accordingly it was stated in the advertisement that "lady candidate would be preferred". It is submitted that as female candidate having required qualifications was not available, the petitioner was appointed temporarily to avoid academic loss of the students.

7. Shri Pande the learned advocate for respondent no. 4-University has submitted that the Grievances Committee had recommended that the appointment of the petitioner should be granted approval treating him as full time Lecturer. It is submitted that the Management Council of respondent no. 4-University accepted the recommendations of the Grievances Committee and the respondent no. 4-University had informed the respondents 2 and 3 that the services of the petitioner should not be terminated. It is submitted that the termination order issued by respondents 2 and 3 is in breach of the directions given by respondent 4-University.

8. After hearing the advocates for the respective parties and examining the record with their assistance it is clear that the post for which the petitioner is making the claim was advertised, interviews were conducted by the duly constituted Selection Committee and the petitioner was given the appointment order. The appointment order dated 20th July, 1996 states that the appointment of the petitioner was as part time Lecturer in Geography and for the period till 30th April, 1997, however, the advertisement published in the daily "The Hitvada" dated 23rd June, 1996 did not show that the appointment was to be only for the academic session 1996-1997. The respondents 2 and 3 have not been able to point out the reason for restricting the appointment of the petitioner till 30th April, 1997. The conduct of respondents 2 and 3 becomes relevant considering that the petitioner was continued in the service in the subsequent academic session i.e. 1997-1998. Though an order showing that the appointment of the petitioner was till 30th April, 1998 has been placed on the record, it is not clear as to whether this appointment was made according to the procedure. Be that as it may, the fact that the petitioner has continued in the academic session 1997-1998, shows that the action of respondents 2 and 3 in restricting the appointment of the petitioner in the appointment order dated 20th June, 1996 till 30th April, 1997 was illegal and unjustified. Respondent no. 4-University by the communication dated 21st March, 1998 granted approval to the appointment

from 1996-1997 onwards. Respondents 2 and 3 have not challenged this decision of respondent 4-University. The decision of the University granting approval to the appointment of the petitioner from 1996-1997 and onwards supports the claim made by the petitioner that his appointment should have been made for the probation period. Shri Radke the learned advocate for the petitioner has rightly relied on the judgment given by the Division Bench of this Court in the case of Mula Education Society, Sonai and another V/s. Haribhau S/o. Jagannath Kardile and others (cited supra). In paragraph no. 7 of the above mentioned judgment it is laid down as follows:-

7. We must say with emphasis that whenever any management gets the candidate selected by a duly constituted selection committee, it is not open for the management to indulge into arbitrariness and treat the institution as their monarchy as if they can appoint the candidate only for one year and then accommodate somebody else of their choice during the next academic year. If a candidate is selected by following due procedure according to University statutes, it is incumbent on the management to appoint him on probation. The only manner in which their services can be terminated is by termination due to unsatisfactory performance during the probation, otherwise by superannuation unless there is termination earlier as a result of departmental disciplinary action or by resignation of the teacher so appointed. That teacher was appointed on temporary basis for every academic year is not a ground available to the management to stand upon, because that is part of their arbitrariness nay mal-practice.

9. The notice issued on behalf of respondent no. 2-society on 31st March, 1998 informing the petitioner that his services were terminated w.e.f. 30th April, 1998 as per the order dated 21st July, 1997 does not show that the services of the petitioner are terminated on the ground that he does not fulfill the qualifications. The stand taken by respondents 2 and 3 before the Tribunal that the petitioner was not having the required qualifications and therefore, his services are terminated cannot be accepted. Furthermore, clause 7(b) of the Government resolution dated 22nd December, 1995 grants protection to the Lecturers who are appointed in service on or after 19th September, 1991 and who have not qualified NET/SET or who do not possess M.Phil. till that date or who have not submitted thesis for Ph.D. till 31st December, 1993.

10. Clause 7(c) of the above mentioned Government resolution provides that the services of such lecturers should not be terminated and future increments should not be given to them until they qualify the NET/SET. Respondent no. 4-University which is the competent authority considered the matter and granted approval to the appointment of the petitioner from the session 1996-1997 onwards. Considering all the above mentioned facts and the conduct of respondents 2 and 3, the submission made on their behalf that the services of the petitioner were terminated as he was not having the required qualifications cannot be accepted specifically when such reason is not incorporated in the notice dated 31st March,

1998.

11. This petition was earlier decided by this Court by the judgment dated 16th December, 2008. While considering the issues involved in the petition this Court recorded the statement made on behalf of respondent no. 4-University that the petitioner was entitled for exemption from qualifying NET/SET. The judgment passed by this Court was challenged by respondents 2 and 3 in Letters Patent Appeal No. 26/2009. The learned advocate appearing for respondent no. 4-University at that time submitted before the Court that his intention was not to submit that the petitioner is entitled for exemption and there was some communication gap because of which his statement was wrongly recorded. In view of the submission as made on behalf of respondent no. 4-University in the letters patent appeal, the Hon'ble Division Bench directed the University to resolve the issue by making an appropriate application in this writ petition and in view of that the judgment passed in this writ petition earlier was set aside and the matter is remanded for decision afresh.

12. Now respondent no. 4-University has changed the advocate which in my view is most inappropriate on its part considering the facts of the case. Respondent no. 4-University has not filed any application clarifying its stand. The submission made on behalf of respondent no. 4-University before this Court when the judgment was passed on 16th December, 2008 that the petitioner is entitled for exemption from qualifying NET/SET, continues. It is undisputed that the Grievances Committee has recommended that the appointment of the petitioner should be granted approval on "onwards" basis and this decision of the Grievances Committee has been upheld by the Management Council of respondent no. 4-University. Shri Pande, the learned advocate for respondent no. 4-University has submitted that the stand of respondent no. 4-University is as per the decision of the Grievances Committee which is upheld by the Management Council of respondent no. 4-University.

13. The submissions filed by respondents 2 and 3 show their conduct and their attempt to justify their illegal action. Respondents 2 and 3 have made the submission of desperation that the college is for women and therefore, respondents 2 and 3 intended to appoint a female candidate and therefore, the appointment of the petitioner was for the specific period. The ground as raised by the respondents 2 and 3 cannot be accepted in view of the decision of the duly constituted Selection Committee which has selected the petitioner for the post of Lecturer.

14. Furthermore, it is not the case of respondents 2 and 3 that the post in which the petitioner was appointed was reserved for women candidate. The submission is that as per the advertisement female candidate was to be given preference. It is admitted fact on the record that the woman candidate having required qualifications was not available when the petitioner was selected and given the appointment order. The learned advocate for respondents 2 and 3 has not been able to point out any provision which enabled them to restrict the appointment of

the petitioner for the academic session when the post was not specifically reserved for woman candidate.

15. In view of the above, the order passed by the Tribunal dismissing the appeal filed by the petitioner cannot stand to the scrutiny of law and it has to be set aside. Consequently, the appeal filed by the petitioner has to be allowed.

16. The services of the petitioner are terminated w.e.f. 30th April, 1998. Therefore, it has to be examined that how the relief can be moulded in the facts of the case.

17. Respondents 2 and 3 have filed Civil Application No. 46/2014 praying for grant of early hearing. Respondents 2 and 3 have stated that respondent no. 4-University is not permitting them to appoint any candidate in the post for which the petitioner is making the claim. During the course of the hearing, respondents 2 and 3 have filed an additional affidavit dated 20th June, 2014 stating that the University has not constituted the Selection Committee for selecting the Lecturer in Geography though respondents 2 and 3 have requested. In paragraph 11 of this affidavit it is stated that if the petitioner is reinstated, respondent no. 4-University will not grant approval to his appointment as permanent lecturer and he would be an ad-hoc lecturer which may threaten the affiliation of the college. It is clear that according to respondents 2 and 3 the full time post of lecturer for the subject Geography is available in the college.

18. Considering the facts of the present case, I am of the view, that the petitioner is entitled for the relief as stated by him in the appeal filed before the Tribunal. The order passed by the University and College Tribunal in Appeal No. N-98 on 5th August, 1998 is set aside. The notice dated 31st March, 1998 issued on behalf of respondent no. 2 terminating the services of the petitioner w.e.f. 30th April, 1998 is quashed. The respondents 2 and 3 are directed to reinstate the petitioner in the post of lecturer in geography. The respondents shall grant him status depending on the availability of the workload. The petitioner shall not be entitled for the arrears of salary from the date of termination i.e. from 1st May, 1998 till the date of this judgment. However, the petitioner is entitled for the continuity of service from the date of his initial appointment i.e. from 20th July, 1996. The petitioner will be entitled for the increments notionally and for fixation of the salary accordingly. The petitioner will not be entitled for any monetary benefits from 1st May, 1998 till the date of this judgment. The petition is allowed. Rule is made absolute in the above terms. In the circumstances, the parties to be bear their own costs.

Shri Maheshwari h/f Shri A. Parchure the learned advocate for respondents 2 and 3 seeks stay of this judgment for 8 weeks. Considering the facts of the present case, the request, as made on behalf of respondents 2 and 3, is rejected.