

(1995) 12 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 805 of 1990

Asha Sangram Rane (Smt.)	Vs	APPELLANT
Shivaji University and Others		RESPONDENT

Date of Decision : 05-12-1995

Acts Referred:

Citation : (1998) 3 LLJ 50

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : Prashant Chavan, for the Appellant; R.G. Ketkar, For Respondent Nos. 1 and 2 and A.M. Bagla, A.G.P. For the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

B.N. Srikrishna, J.—This writ petition under Articles 226 and 227 of the Constitution of India is directed against an order of the Industrial Court, Kolhapur, dated April 17, 1989, made in Complaint (ULP) No. 105 of 1988 u/s 28 read with Items 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The First Respondent is a University set up i under the Shivaji University Act, 1974, the Second Respondent the Registrar of the said University, the Third Respondent is a Member of the Industrial Court, Kolhapur, and the Fourth Respondent is the State of Maharashtra. The Petitioner is a Master of Arts and Bachelor of Library Science. She was appointed as Senior Library Assistant in the first Respondent University with effect from August 18, 1978 on daily wages of Rs. 10/- (Rupees ten only). Though her appointment was stated to be for a period of four months from August 18, 1978 to December 14, 1978 on December 15, 1978 her initial appointment was extended for a further period of four months and on April 18, 1979 the appointment of the Petitioner was extended until further notice. On May 27, 1980 the Petitioner's service as Senior Library

Assistant was terminated. Thereafter, the Petitioner was employed during every academic year for about 11 months from July or August. Those appointments were said to be temporary and on daily wages at different rates from year to year. Sometime in 1980 the First Respondent advertised for filling up the vacancies of six posts of Library Assistants. Out of the said six posts, two posts of Senior Library Assistants were to be filled by making permanent Library Assistants on daily wages who were working on the same basis as the Petitioner, while four other posts were to be filled by recruiting fresh candidates after following the prescribed procedure. Initially, there were in all six Library Assistants including the Petitioner working on daily wages. Out of the six, two were made permanent, two left services and the Petitioner and one Ms. Suryawanshi remained as Library Assistant on daily wages. Between them, the Petitioner was Senior. Although there were originally 12 permanent posts of Library Assistants one post lapsed in the year 1982 because the First Respondent did not fill it up as required and the sanction to that post lapsed. Thus, from the year 1982, there are only 11 permanent posts of Library Assistants, which have been sanctioned.

3. On March 11, 1988 the First Respondent advertised two posts of Senior Library Assistants and invited applications for filling the same. One of the posts was reserved for a scheduled caste candidate. Both the Petitioner and Ms. Suryawanshi applied for the open category post of Senior Library Assistant. Both the Petitioner and Ms. Suryawanshi had identical qualifications and had joined the First Respondent as Senior Library Assistants on daily wages at about the same time. Ms. Suryawanshi was selected and appointed to the post.

4. The Petitioner filed Complaint (ULP) No. 105 of 1988 against Respondents No. 1 and 2 before the Industrial Court, Kolhapur, under Items, 5, 6, 9 and 10 of Schedule IV of the Act and prayed for a direction to get the post of Senior Library Assistant. The Industrial Court tried the complaint and by its impugned order dismissed the complaint on the ground that the selection of Ms. Suryawanshi as against the Petitioner, after calling both the candidates for interview by a properly constituted Selection Committee, could not be faulted. The Industrial Court also declined to give a direction to the First Respondent to make the Petitioner permanent in her post or to grant her wages equivalent to those paid to a permanent Senior Library Assistant. In this view of the matter, the Industrial Court dismissed the complaint. Hence, the writ petition.

5. When this writ petition was heard on an earlier occasion, it was contended by Shri Ketkar, learned Advocate for Respondents No. 1 and 2, that one post of Senior Library Assistant having already lapsed for want of sanction, there was no permanent post which could be granted to the Petitioner. It was also contended by him that the power of sanctioning the permanent post lay with the State Government under the provisions of the Shivaji University Act and that unless such sanction was granted to create an additional permanent post of Senior Library Assistant, the First Respondent would not be in a position to make her

permanent, though the University was satisfied with the services rendered by the Petitioner. The State of Maharashtra was, therefore, directed to be made a party Respondent so that the issue could be completely adjudicated. The State of Maharashtra has been impleaded as Fourth Respondent to this Writ petition. In response to the notice of this Court, though the State of Maharashtra appears through the learned Additional Government Pleader, no return has been filed, nor is the learned Additional Government Pleader able to say why the lapsed post should not be revived. Learned Additional Government Pleader states that he has no instructions in the matter.

6. After having considered the facts and circumstances of the present writ petition and after having heard the learned Advocates appearing for different parties, there appears to be no objection to the Petitioner being appointed as permanent Senior Library Assistant, except the want of sanction. It is somewhat surprising that on the ground of want of sanction, the work of Senior Library Assistant is being extracted from a qualified person round the year and when the issue arose as to making the Petitioner permanent, the University has taken the defence that there is no permanent post. In the present case, the Petitioner was continuously employed for about 21 months. Thereafter her appointment was revived from year to year and she is being given work for about 9 to 10 months. It is not possible to conceive that the work in Library of a statutory University suddenly ceases for two months in a year. Shri Ketkar emphasized that the work in the Library fluctuates because of the nearness of the examination there would be work in Library of issue of books. This is work which could be carried out by an unqualified person. As far as the work of a qualified Librarian in the Library is concerned, the work would be there all round the year, irrespective of whether books are issued out or not. Even if the students of the University treat the Library casually, the work of the Librarian does not become "casual" work. In my view, in the facts and circumstances of this case, the interest of justice demands that the lapsed post of Senior Library Assistant be revived and the Petitioner be made permanent thereupon as she is otherwise qualified and suitable admittedly.

7. In the result, the writ petition is allowed. The impugned order of the Industrial Court is hereby quashed and set aside. The Fourth Respondent shall sanction one permanent post of Senior Library Assistant in the First Respondent University within a period of four weeks from today and the First Respondent shall immediately upon receiving the sanction, appoint the Petitioner as Senior Library Assistant on the said post.

8. Rule is accordingly made absolute with no order as to costs.