

(2017) 08 BOM CK 0206
In the Bombay High Court
Case No : 4943 of 2004

Balu s/o Janu Kukade

APPELLANT

Vs

Dr. Babasaheb Ambedkar Marathwada University
Aurangabad, & Ors.

RESPONDENT

Date of Decision : 23-08-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Maharashtra Universities Act, 1994, Section
79(4) - Selection committees for officers an

Citation : (2017) 08 BOM CK 0206

Hon'ble Judges : R.D. Dhanuka, Sunil K. Kotwal

Bench : DIVISON BENCH

Advocate : P.S. Dighe, V.R. Dhorde, K.M. Suryavanshi, V.M. Kagne, V.V. Ingale

Judgement

1. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a writ of mandamus for directing respondent No.1 University to grant approval to the appointment of the petitioner as full time lecturer from 1995-96 in the subject of Sociology in respondent No.4 College run by respondent No.3 and also seeks a writ of certiorari for quashing and setting aside the letter dated 08.04.2008 issued by respondent No.1 University rejecting the proposal of the petitioner for adhoc approval.

2. Some of the relevant facts for the purpose of deciding this petition are as under.

3. It is the case of the petitioner that he passed his B.A. Examination in the year 1991 and passed M.A. Examination in the year 1993 in the subject of "Sociology". On 21.08.1993 an advertisement was published by respondent No.3 for various posts of lecturers in Senior College including appointment on the post of leave vacancy in the subject of Sociology in the newspaper Daily "Kaisari". The petitioner applied for the said post in response to the said advertisement. It is

the case of the petitioner that at that time respondent No.1 had constituted an appropriate Selection Committee for the selection of the candidates. The petitioner was selected by the Said Selection Committee and was appointed to the said post for a period of one year for teaching the subject of Sociology in its college at Talmavale, Taluka Patan, District Satara. Respondent No.1 granted approval to the appointment of the petitioner for a period of one year on 17.08.1993. 3. It is the case of the petitioner that in the academic year 1994-95 respondent No.3 Management was permitted to start new subject of Sociology in the respondent No.4 College. The petitioner's services were accordingly transferred by respondent No. 3 after the period of one year to respondent No.4 College in the same subject of Sociology. The petitioner was accordingly given an appointment in respondent No.4 College. It is the case of the petitioner that however in the letter of appointment, it was wrongly mentioned that the petitioner had been appointed on "Clock Hour Basis". The petitioner was taking more than 8 periods in a week.

4. Respondent No.1 University, vide its letter dated 16.02.1995, raised an objection to the said appointment on the ground that approval could not be given to the teachers appointed on Clock Hour Basis. It is the case of the petitioner that the petitioner thereafter gave necessary explanation to the University and conveyed that the petitioner was eligible to be appointed as parttime lecturer as per the Government Resolution dated 09.12.1994.

5. By an order dated 21.06.1995 the petitioner was appointed for the academic year 1995-96. The Management sent the said appointment order to respondent No.1 University for approval. Respondent No.1 University, however, granted approval vide letter dated 18.01.1996 only for a period of one academic year. The petitioner was thereafter given appointment for the academic year 1996-97 by an appointment order dated 28.06.1996. Respondent No.1 granted approval to the said appointment for academic year 1996-97. Similarly, the petitioner was once again appointed by an appointment order dated 13.06.1997 for the academic year 1997-98. Respondent No.1 University, however, did not grant approval to the appointment of the petitioner.

6. On 10.12.1997 respondent No.1 granted approval for the academic year 1997-98 on the condition that for the next academic year, the advertisement shall be given with the approval of the University and the petitioner would not be continued. For the academic year 1998-99, the petitioner was once again appointed by respondent No. 3 Management in respondent No.4 College. Respondent No.3 sent the requisite proposal on 03.12.1998 to respondent No.1 University for approval. The petitioner was once again appointed for the academic year 1999-2000.

7. By a letter dated 15.05.2000, the Management sent a letter to respondent No.1 informing that the petitioner was selected by duly constituted Selection Committee when there was leave vacancy, and therefore, the appointment of the petitioner should be approved. The Management sent another letter on

15.05.2000 seeking approval to the appointment of the petitioner w.e.f. 12.06.2000 as full time lecturer.

8. It is the case of the petitioner that respondent No.4 had repeatedly sent the proposals to respondent No.1 i.e. on 22.11.2000, 27.03.2011, 29.06.2001 and 01.06.2002 informing the respondent No.1 that though the petitioner was working from 1994 initially on "no grant basis" and thereafter he had also worked as full time lecturer from 1995-96, no approval was granted. Respondent No.4 applied for approval to the appointment of the petitioner as a full time lecturer since 1995-96. By a letter dated 05.03.2001 respondent No.1 University, however, replied that the approval to the appointment of the petitioner could not be granted as the said post had been filled in without following the rules of the University.

9. On 13.02.2001 the Director of Higher Education, Maharashtra State, Pune issued directions granting 100 % grants to the subject of Sociology and as to how the proper permission of the University should be taken for the purpose of selection of the lecturer. Respondent No.4 College once again vide letter dated 12.04.2001 sought approval from the University to the appointment of the petitioner. Respondent No.1 University, however, did not grant approval vide letter dated 16.05.2001. By letter dated 30.07.2001 respondent No.1 University informed respondent No.4 that the earlier two decisions given by the University should be treated as final. Respondent No.4 once again sent a letter on 01.02.2002 to respondent No.1 seeking the approval to the appointment of the petitioner. Respondent No.1 University, however, gave similar reply on 21.09.2002 reiterating that the earlier decision of the University should be treated as final.

10. On 31.10.2002 respondent No.2, Joint Director of Higher Education, informed respondent No.4 College about the workload. On 18.02.2002 respondent No.4 College requested respondent No.1 to grant approval to the appointment of the petitioner alleging that the petitioner had been appointed after selection process. Similar letter was also sent by respondent No.3 to respondent No. 1 on 16.08.2003. Various representations were made by respondent Nos.3 and 4 even thereafter to respondent No.1.

11. On 22.01.2004 the petitioner made representation to the Vice Chancellor of respondent No.1 stating that the petitioner had been selected by the duly constituted Selection Committee pursuant to his application made in response to advertisement issued by respondent No.3 for the said post of lecturer in the subject of Sociology. The petitioner requested for approval to the said post.

12. During the pendency of this petition, the petitioner submitted a proposal on 05.03.2008, through respondent No.4 College, to the respondent No.1 University seeking adhoc approval to his appointment as per Government Resolution, AnnexureY to the petition. By a letter dated 08.04.2008 respondent No.1 University rejected the said proposal for adhoc approval conveying that the order

dated 05.03.2001 of the University be considered as final. The petitioner amended the Writ Petition and prayed for setting aside the said letter dated 08.04.2008 issued by respondent No.1 rejecting the proposal of the petitioner for adhoc approval.

13. This Court did not grant any interim relief while admitting this petition.

14. Mr. Dighe, learned Counsel for the petitioner submits that there was a clear permanent vacant post in the subject of Sociology in respondent No.4 College. The petitioner was appointed by the proper Selection Committee of respondent No.3 and was transferred to respondent No.4 College run by respondent No.3. He submits that the petitioner was granted the approval on temporary basis from time time by respondent No.1 till January 2004. It is submitted that though the petitioner was qualified to be appointed on clear vacant post on permanent basis, respondent Nos.3 and 4 did not send the proposal of the petitioner to respondent No.1 to take appropriate decision. He submits that 158 persons appointed by the Local Selection Committee of the respective colleges were considered by respondent Nos.1 and 2 for permanent approval in view of the fact that the requisite proposal for approval was submitted by the respective colleges in respect of those appointments. He submits that there was, thus, discrimination between the petitioner and other 158 persons, who were similarly situated.

15. It is submitted by the learned Counsel that during the pendency of this petition, the State Government had issued letter to the Director of College and University in respect of 158 lecturers appointed between 19.09.1991 and 11.12.1999. The Committee was constituted who made recommendations to the University for granting approval to those 158 persons. After the proposals were forwarded by the University to the State Government, the Government had decided that those appointments which would made by the Local Selection Committee on clear and vacant post taking into consideration policy, would be protected.

16. It is submitted by the learned Counsel for the petitioner that during pendency of the Writ Petition, the petitioner had submitted proposal on 05.03.2008 through respondent No.4 College and had requested for adhoc approval to the appointment of the petitioner based on the Government Resolution on the ground that the petitioner was serving with respondent No.4 since the year 1994-95. He submits that respondent No.1, however, mechanically rejected the said proposal for adhoc approval on the ground that the order dated 05.03.2001 passed by the University was to be considered as final.

17. It is submitted by the learned Counsel for the petitioner that though the post on which the petitioner was appointed for last several years on year to year basis was clear and permanent post, the appointment letter initially issued, inadvertently mentioned that the appointment of the petitioner was on Clock Hour Basis, though the petitioner was entitled to be appointed as full fledged lecturer on permanent basis.

18. It is submitted by the learned Counsel for the petitioner that the petitioner had filed Civil Application No. 8804 of 2009 and in which this Court granted injunction from issuing any advertisement for the purpose of filling up the post in the subject of Sociology. It is submitted that the State Government has withdrawn the Circular directing the University to approve the appointment of 158 lecturers.

19. Learned Counsel for respondent No.1 University, on the other hand, submits that all recruitment of the teachers in respondent No.4 College by respondent No.3 is governed by the procedure prescribed under the statute of Dr. Babasaheb Ambedkar Marathwada University, Aurangabad and more particularly bearing No.219 framed by the Senete of the University. He placed reliance on statute No. 219 and would submit that all appointments of teachers and the principals in all the colleges affiliated and the institutions recognized by respondent No.1 are to be made by the Selection Committee under the said Statute. He submits that all appointments to those post shall be made on merits and on the basis of all India advertisement. He submits that the quorum to constitute a meeting of every Selection Committee shall be four members and no selection shall be valid unless the expert nominated by the University is present.

20. It is submitted by learned Counsel for respondent No.1 that respondent No.3 however failed to comply with the said mandatory provisions of Section 79 (4) of the Maharashtra Universities Act, 1994. He submits that the appointment of the petitioner was not made by the Selection Committee as prescribed under the statute of respondent No.1 University. He submits that the petitioner was appointed for the period from 18.08.1993 to 31.07.1994 against leave vacancy of Mr. M.G. Thorat in Shri Kakasaheb Chavan College of Swami Vivekanand Shikshan Sanstha, Kolhapur by an order dated 17.08.1993. The appointment of the petitioner was for the specific period i.e. for leave period of Professor M.G. Thorat from 18.08.1993 to 31.07.1994. He submits that the appointment of the petitioner was also approved by respondent No.1 only from 29.08.1993 to 29.08.1994. He submits that by letter dated 31.08.1994 the Government had granted permission to start new subject i.e. Sociology to respondent No.4 College from the academic year 1994-95.

21. It is submitted by the learned Counsel that the petitioner was not transferred from Shri Kakasaheb Chavan College of Swami Vivekanand Shikshan Sanstha, Kolhapur to respondent No.4 College, but was issued a fresh appointment order dated 01.12.1994 by respondent No.4 College. The petitioner has not explained the gap between 18.08.1993 to 01.12.1994. He submits that the appointment orders issued in favour of the petitioner dated 01.04.1994, 21.06.1995, 28.06.1996, 13.06.1997, 15.06.1998 and 15.06.1999 were issued on year to year basis and thus the petitioner could not have contended that he was transferred from Shri Kakasaheb Chavan College of Swami Vivekanand Shikshan Sanstha, Kolhapur to respondent No.4 College, run by respondent No.3.

22. Learned Counsel for the University submits that respondent No.1 has already

rejected proposal for the approval of the services of the petitioner by letter dated 16.02.1995 as he was appointed on Clock Hour Basis in respondent No.4 College. He invited our attention to the letters annexed at Exhibit-J & N to the petition and would submit that respondent No.4 while forwarding proposal of the petitioner for approval had specifically stated that the appointment of the petitioner was done by Local Selection Committee.

23. It is submitted that the said post was to be filled up by issuing an advertisement which was to be approved by the University. Respondent No.3, however, did not issue any advertisement in compliance with the statute of respondent No.1 University. He submits that the appointments of the petitioner made by respondent No.3 was contrary to and in violation of the statute and more particularly bearing No.219 (A) (2) (a). It is submitted that the petitioner was not qualified for the appointment as lecturer in respondent No.4 College also on the ground that he did not possess the requisite qualification not having passed NET/SET examination.

24. It is submitted that the respondent No.3 was directed by the University to fill up backlog of the College and advertise the post by taking approval of the Special Cell and by Regular Selection Committee. He submits that there is no discrimination between the petitioner and other candidates as sought to be canvassed by the petitioner. He submits that in the year 1996 itself while granting approval to the appointment of the petitioner on yearly basis, it was made clear that the future appointments would be made by respondent No.3 after advertisement was issued. He submits that all appointments made by respondent No.3 of the petitioner were made subject to the approval of the University. The petitioner, thus, could not say that though respondent No.3 had not followed the statute of respondent No.1 University, the University was bound to grant approval to the petitioner. He submits that at no point of time the petitioner was appointed on probation admittedly. He submits that respondent No.1 has refused to grant approval on the ground that the petitioner was not appointed as per procedure and law. He submits that the petitioner has been admittedly paid salary on the Clock Hour Basis.

25. Learned Counsel for the Management submits that there is no workload available in the College of the Management at Tuljapur. The petitioner was accordingly given appointment on Clock Hour Basis.

26. Mr. Kagne, Learned A.G.P. submits that the appointment of the petitioner was approved by the University for the leave period from 29.08.1993 to 29.09.1994 only. The approval to the selection or appointment of the lecturers has to be as per the norms under the provisions of Maharashtra Universities Act, 1994. He submits that the petitioner was selected and appointed by the Local Selection Committee, and therefore, the University has rightly not granted approval to the appointment of the petitioner.

27. The learned Counsel for the petitioner, in rejoinder, submits that during the

period between 1991 and 2000, there was no Selection Committee appointed by respondent No.1 University. He placed reliance on the order dated 06.02.2014 passed by the Division Bench of this Court in Writ Petition No.6459 of 2011 in case of Vasudeo Dattatraya Jadhav and others Versus The State of Maharashtra and others and would submit that this Court had granted protection to all the appointees made by the colleges, who were appointed by Local Selection Committee.

28. It is not in dispute that the petitioner was appointed for the period from 18.08.1993 to 31.07.1994 against leave vacancy of Professor M.G. Thorat in Shri Kakasaheb Chavan College of Swami Vivekanand Shikshan Sanstha, Kolhapur by an order dated 17.08.1993. The said appointment of the petitioner was for the leave period of Professor M.G. Thorat from 18.08.1993 to 31.07.1994. Respondent No.1 had approved the said appointment of the petitioner for the said leave period only. Government had granted permission to respondent No.4 College by letter dated 31.08.1994 to start new subject i.e. Sociology in respondent No.4 College from the academic year 1994-95.

29. A perusal of the record indicates that respondent No.4 College had issued an appointment order on 01.12.1994 to the petitioner appointing him as parttime Senior Lecturer of Sociology in respondent No.4 College w.e.f. 05.12.1994. The said appointment was on temporary basis as per University Rules. It was made clear that appointment of the petitioner was governed by the Rules of respondent No.1 University and was subject to approval by respondent No.1. The petitioner was appointed on the reserved post. We are, thus, not inclined to accept the submission of the learned Counsel of the petitioner that the services of the petitioner were transferred from Shri Kakasaheb Chavan College of Swami Vivekanand Shikshan Sanstha, Kolhapur to respondent No.4 College.

30. Respondent No.1 had already rejected the proposal for approval of the services of the petitioner by letter dated 16.02.1995 as the petitioner was appointed on Clock Hour Basis in respondent No.4 College. Respondent No.4 itself had informed respondent No.1 while forwarding the proposal for approval to the appointment of the petitioner that the appointment of the petitioner was made by Local Selection Committee. Respondent No.1 University accordingly had directed respondent No.3 to fill up the post by issuing advertisement which was approved by the University. Respondent No.3, however, did not issue any advertisement in respect of subsequent appointments made by respondent No.3 in respondent No.4 College.

31. A perusal of the statute No. 219 (A) indicates that the said statute provides for the mode of recruitment of teachers in affiliated colleges. Respondent No.4 was one of the college affiliated to respondent No.1. The said statute clearly provides that there shall be a Selection Committee for making recommendations to the government bodies of the colleges for the appointment of teachers and the principals of the colleges affiliated to and institutions recognized by the University. Statute 219 (2) (a) provides that all appointments to the post

categorised in the said statute shall be made on merits and on the basis of all India advertisement.

32. A perusal of the record indicates that when the petitioner was appointed in the leave vacancy of Professor M.G. Thorat, the said appointment was not made after issuing any advertisement as contemplated under Statute 219 of respondent No.1 University, but was made on leave vacancy only during the leave period. Though respondent No.1 had directed the Management to make subsequent appointments only after issuing advertisement under the statute of respondent No.1, admittedly respondent No.3 did not issue any advertisement and continued to make yearly appointment of the petitioner on temporary basis and that also through Local Selection Committee.

33. In our view, the appointments of the petitioner made from year to year on temporary basis is without following the mandatory provisions prescribed in the Statute of respondent No.1 University which were binding to the petitioner and the respondent No.4 College which was affiliated to respondent No.1 University, and thus approval of the petitioner was rightly rejected by respondent No.1 University.

34. We are not inclined to accept the submission of learned Counsel for the petitioner that the services of the petitioner were transferred by respondent No.3 from Shri Kakasaheb Chavan College of Swami Vivekanand Shikshan Sanstha, Kolhapur to respondent No.4 College. No such letter of transfer was produced by the petitioner or by the Management before this Court. On the contrary, the letter of appointment issued by respondent No.4 clearly indicates that the same was a fresh appointment order appointing the petitioner on temporary basis subject to Rules of respondent No.1 University and subject to its approval. The petitioner, thus, cannot claim any vested rights in the said post merely because the petitioner was appointed on year to year basis inspite of respondent No.1 University repeatedly directing respondent No. 3 to fill up the post after issuing advertisement as per the Statute of respondent No.1 University

35. In so far as the submission of learned Counsel for the petitioner that about 158 other teachers were appointed through Local Selection Committee and their appointments were approved by the University is concerned, it is not in dispute that the Government has already withdrawn the said circular directing University to approve the appointment of 158 teachers. In our view, reliance placed by learned Counsel for the petitioner on the order dated 06.02.2014 in case of Vasudeo versus State of Maharashtra (supra) would not assist the case of the petitioner. The petitioners in the said Writ Petition No. 6459 of 2011 alongwith several other Writ Petitioners had impugned the communication issued by the Government dated 14.07.2011 by which process of appointing new teachers was directed to be initiated without putting an end to the services of those teachers who were petitioners in those petitions in accordance with law.

36. This Court recorded that the Government had decided to withdraw any such

direction if issued and the letter of Government need not to be construed as an order of termination or putting an end to the services of those petitioners. This Court recorded the statement made by learned Counsel for the University that in the event of the University desiring to put an end to the services of those petitioners, it would take requisite steps in accordance with law and will not proceed to terminate the services only by relying on the Government communication, but would act independent thereon. It would hear each of the petitioner in these petitions and would pass reasoned order in accordance with law. This Court clarified that this Court had not expressed any opinion on the rival contentions including on the point of authority of the State to issue such directions. The facts before this Court in this Writ Petition are totally different. The Government has neither issued any such directions as were issued which were the subjectmatter of those Writ Petitions, nor rejection of the appointment of petitioner is made based on any such directives issued by the Government.

37. In our view, appointment of the petitioner not having been made in accordance with Statute of respondent No.1, this Court cannot issue a writ of certiorari or mandamus for directing the respondent No.1 to grant approval to such appointment of the petitioner made in the teeth of the Statutes of respondent No.1. In our view, the petition is totally devoid of merit and is accordingly dismissed.

38. We, therefore, pass the following order.

ORDER

1. Writ Petition No. 4943 of 2004 is dismissed.
2. Rule is discharged.
3. There shall be no order as to cost.