

(2002) 01 BOM CK 0089
In the Bombay High Court
Case No : Writ Petition No. 2714 of 1990

Bhavanrao Thorat

APPELLANT

Vs

Mahatma Phule Krishi Vidyapeeth and Others

RESPONDENT

Date of Decision : 16-01-2002

Acts Referred:

Seniority Regulations, 1972 — Rule 10(b), 13(a)

Citation : (2003) 2 MhLj 710

Hon'ble Judges : N.H. Patil, J;B.M. Marlapalle, J

Bench : Division Bench

Advocate : R.N. Dhorde, for the Appellant; K.G. Navander and M.N. Navander and N.K. Kakde, for the Respondent

Judgement

B.H. Marlapalle, J.—This petition filed under Article 226 of the Constitution of India involves the issue of assigning seniority in the post of Associate Professor under the respondent No. 1 Agriculture University at Rahuri as well as the consequential benefits of promotion.

2. The petitioner completed his M.Sc. degree in Agriculture and came to be appointed as Assistant Professor with effect from 2-7-1973 by direct recruitment under the respondent No. 1 and was initially posted at Kolhapur. He was confirmed in 1975 and thereafter was posted at different places in different Agriculture Colleges affiliated to the respondent No. 1 University. In 1978 he came to be posted at Rahuri as Junior Scientist which post is in same cadre of Assistant Professor and he continued to serve the said post till 24-3-1988.

3. A provisional seniority list came to be published in the post of Assistant Professor by the respondent No. 1 University on 6-4-1985 and the name of the petitioner was shown at serial No. 28, whereas, the names of the respondents No. 2 and 3 were shown at serial Nos. 35 and 36, respectively, mainly because the said respondents came to be promoted to the said posts from 14-10-1976. By the order dated 29-2-1988 the petitioner came to be promoted to the post of Associate Professor under the Ad hoc Project of Nutrition and thereafter, a

revised seniority list was published on 27th June, 1989. In the said seniority list, the seniority of the petitioner was altered and he was shown at serial No. 32, whereas, the respondents No. 2 and 3 were shown at serial Nos. 22 and 23.

4. The petitioner made representations to the Vice-Chancellor on 11-7-1989. He also stated in the said representation that the higher posts should not be filled on the basis of the said seniority list. Having failed before the authorities of the University, the petitioner approached this Court especially when the respondent No. 2 came to be promoted by the order dated 9-4-1990.

5. The petitioner has contended that the respondent No. 1 had constituted a Committee for preparing a seniority list as per Resolution dated 30-5-1989. However, before publication of the said seniority list on 27-6-1989 no meeting of the said Committee was held. The petitioner, therefore, alleges that the said seniority list was published without following due procedure laid down by the University itself. It is under these circumstances that the promotion of the respondent No. 2 to the post of Geneticist and higher post equivalent to the Associate Professor was not legal.

6. It appears that the petitioner had approached the Court of Civil Judge, Senior Division in Regular Civil Suit No. 312 of 1989 and agitated the issue of seniority sometimes in August, 1989. He, however, approached this Court and stated very specifically in para 9 of the petition that after filing of the said suit he got legal opinion and was advised that the suit was not maintainable and the only remedy which was efficacious and substantial available to him was a writ petition before this Court. He has given an undertaking to withdraw the suit in due course of time.

7. This petition was filed on 4-6-1990. It came to be admitted on 31-1-1991.

8. The Registrar of the respondent No. 1 University has filed return and opposed the petition. It is admitted that the respondent No. 2 came to be appointed to the post of Agriculture Supervisor on 16-10-1967, whereas, the respondent No. 3 was appointed to the said post on 4-8-1965. Subsequently, the respondent No. 2 came to be appointed to the post of Agriculture Officer on 9-11-1970, whereas, the respondent No. 3 came to be appointed to the said post on 4-11-1970. Both of them came to be promoted to the post of Assistant Professor on 14-12-1976. Though the issue of inter se seniority between these two respondents is not a subject matter for our consideration, we wish to note that the respondent No. 3 ought to be senior to the respondent No. 2 as he is elder in age than the respondent No. 2 and he joined the said post of Agriculture Supervisor prior to the respondent No. 2 and he was promoted to the post of Agriculture Officer even earlier to the respondent No. 2.

9. In support of the provisional seniority list which has been impugned before us, it was contended at the threshold that it was only a provisional list and in any case, the University has published a final seniority list on 17-11-2001 and therefore, the petition has become infructuous. We had, therefore, directed the

University to produce a copy of the seniority list published on 17-11-2001 and same has been done by the learned Advocate appearing for the respondent No. 1 University.

10. The return filed by the respondent No. 1 University states that though the respondents No. 2 and 3 were promoted to the post of Assistant Professor on 14-10-1976, they were given the deemed dates of promotion to the said post from 3-12-1972 and 27-7-1973, respectively, in support of grant of these deemed dates of promotion, reliance has been placed on the provisions of Rule 10(b) and 13(a) of the Rules framed by the University for determining seniority as well as grant of deemed dates of promotion. It has been contended that in December, 1972, there were eight posts of Assistant Professors to be filled in by nomination and five posts to be nominated by way of promotion. Eight posts were filled in by nomination on 4th December, 1972 and out of five posts filled in by promotion only one person was given promotion vide an order dated 14-8-1973. The affidavit further states that the respondent No. 2 completed his probationary period in the post of Agriculture Officer on 3-12-1972 and the respondent No. 3 completed it on 27-10-1972. Both of them were eligible for being promoted to the post of Assistant Professor on completion of the probationary period in the post of Agriculture Officer. Though they were promoted to the said post with effect from 14-10-1976, the Vice-Chancellor considered the provisions of Rules 10(b) and 13(a) of the Rules and assigned the deemed dates of promotion to the respondents No. 2 and 3 in the posts of Assistant Professors with effect from 3-12-1972 and 20-8-1973, respectively.

11. Before we proceed to decide the legality of these contentions, we must note that on the contentions of the respondent No. 1 University alone, the seniority of the respondent No. 3 in the post of Assistant Professor is required to be shown from 3-11-1972 or in any case, as soon as the post of Assistant Professor was available in December, 1972. There is no justification why his deemed date in the said post is shown as "20-8-1973".

12. Be that as it may, the issue before us is whether the petitioner could be shown junior to the respondents Nos. 2 and 3 on the basis of provisions of Rule 10(b) and Rule 13(a) of the Seniority Regulations, 1972. The said rules read as under:

"10(b) Where more than one appointment has been made in the same Discipline/promotion group, at the same time, some by method of promotion and some by direct recruitment, the persons appointed by promotion shall be considered senior to those who have been appointed by direct recruitment. The promotee persons shall retain their inter-se seniority."

13(a) In the cases of University employees who were not immediately available for promotion for the reasons other than non-fulfilment of requirements by them, their seniority will be protected by giving them appropriate deemed dates even though they are promoted subsequently." At the first instance, we hold that Rule

10(b) is not applicable in the instant case, inasmuch as, the respondents No. 2 and 3 were not appointed by promotion along with the petitioner and they were appointed almost after three years to the post of Assistant Professor after the petitioner had joined the said post.

13. Coming to the provisions of Rule 13(a) of the Rules, the language of the same is very clear and it must be given its natural meaning. It provides that in the cases of University employees, who were not immediately available for promotion for the reasons other than non-fulfilment of requirements by them, their seniority will be protected by giving them appropriate dates even though they are promoted subsequently. This rule, in the nutshell, states that if a Professor was qualified for promotion and if he fulfilled all the requirements when such an opportunity for promotion was available but he was not available for such a promotion at the relevant time, he is entitled to the deemed date even though he has been subsequently promoted. The affidavit does not say that when the vacancies arose in December, 1972, the respondents No. 2 and 3 were not available in the University for such promotion. The words "not available" have to be interpreted to mean that the Professors concerned were either on deputation to some other institution or had proceeded on study leave for higher studies on scholarship or for research and under such circumstances, they were "not available" for being promoted. This rule cannot be interpreted to mean that the benefit of deemed date of promotion is available to each and every Professor, who was not promoted when the vacancy was available. Such an interpretation would defeat the academic interests and demoralize the academicians of high standing. Rule 13(a) is, therefore, not applicable for assigning deemed date of seniority to the respondents No. 2 and 3 and therefore, even the so-called final seniority list as published on 17-11-2001 as well as the impugned provisional list published on 27-6-1989 cannot be sustained.

14. We, therefore, direct the respondent No. 1 to re-draw the seniority list for the cadre of Assistant Professors (in discipline of Animal and Dairy Science) as on 1-6-1989 without considering the provisions of Rules 10(b) and 13(a) of the Seniority Regulations of 1972 within a period of two months from today and show the petitioner senior to the respondents No. 2 and 3. The respondents No. 2 and 3 shall be shown in the seniority list below Shri V.D. Savkar, who figures at serial No. 38 of the seniority list dated 27-11-2001. We further hold that the petitioner shall be entitled to all the consequential benefits of promotion in all the higher cadres from the dates on which his juniors were promoted and notwithstanding the fact that the respondents No. 2 and 3 have already retired.

The petitioner shall be entitled to the deemed dates of promotion in higher posts as well.

15. Rule is made absolute in terms of the above order with no order as to costs.