

(2014) 03 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 323 of 2007

Dattaguru Amonkar

APPELLANT

Vs

Kala Academy

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Constitution of India, 1950 — Article 16(d)

Citation : (2014) 6 ALLMR 185

Hon'ble Judges : Z.A. Haq, J; F.M. Reis, J

Bench : Division Bench

Advocate : J. Supekar, Advocate for the Appellant; M. Salkar, Government Adv., S.D. Lotlikar, Sr. Advocate and M. Furtado, Advocate for the Respondent

Judgement

Z.A. Haq, J.—Heard Mr. Supekar, learned Advocate for the petitioner, Mr. Salkar, learned Government Advocate for respondent Nos. 1 and 2 and Mr. S.D. Lotlikar, learned Senior Counsel with Ms. M. Furtado, learned Advocate for respondent No. 3. The petitioner takes exception to the Recruitment Rules which according to the petitioner are illegally modified in 2006 and because of which his entitlement for the promotion to the post of Programme and Development Officer (in short "PDO") is affected. The case of the petitioner is that in 2004 when the post of PDO had fallen vacant no candidate from the feeder cadre was eligible for that post and, therefore, the respondent No. 3 Dr. Kale, was given an additional charge of PDO for a period of two years. Mr. Supekar, learned counsel for the petitioner has pointed out that the resolution by which Dr. Kale was given an additional charge makes a specific reference to the fact that the candidate eligible for the post of PDO would be available after the period of two years and according to the petitioner, that reference is regarding him. However, on 04.05.2006 Dr. Kale came to be regularised in the post of PDO on the basis of amended Recruitment Rules. At that time, the petitioner had not become eligible for the post of PDO as it requires an experience of 10 years from the feeder cadre. On 15.05.2006 on acquiring the eligibility criteria, the petitioner had made a representation to the respondent No. 1 for considering his claim for promotion.

According to the petitioner, he was informed that his claim would be considered but subsequently the petitioner came to know about the regularisation of Dr. Kale on the post of PDO and this according to him gives a cause of action to file the instant Writ Petition.

2. Mr. Supekar, learned Advocate appearing for the petitioner has pointed out from the documents which the petitioner has obtained under the Right to Information Act, the endorsement below the Recruitment Rules at page 174 of the paper book which is as under:

"To the best of our knowledge and belief and as per the present records available, after due scrutiny it is to state that the exact date from when the R.Rs came into force is unascertainable".

3. The learned Advocate relying on the above referred endorsement has submitted that even the concerned office was not aware about the date on which the amendment to the Recruitment Rules came into force and, therefore, there is reason to believe that the Recruitment Rules have been amended illegally to favour the respondent No. 3 and to promote him and deny the promotion to the petitioner. Mr. Supekar, learned Advocate has further relied on the minutes of the meeting of DPC and submitted that the contents of the minutes substantiate the case of the petitioner that the Recruitment Rules have been amended without following the procedure and it has been done arbitrarily and illegally only to enable the respondent No. 3 to get the promotion. The learned Advocate for the petitioner has further relied on the Constitution of the respondent No. 1 Kala Academy and submitted that the powers to frame its regulations, bye laws and rules of procedure are with the executive body as per Article 16(d) of the Constitution of the respondent No. 1 Kala Academy. The learned Advocate has further submitted that there is nothing on record to show that the executive body has amended the Recruitment Rules. The petitioner has relied on the answers given to him pursuant to the queries made under the Right to Information Act on 29.01.2007 in which it is stated that as per the records available and on the basis of knowledge of its officers, it cannot be ascertained the exact date when the Recruitment Rules were placed before the executive body of the respondent No. 1-Kala Academy.

4. Mr. Lotlikar, learned Senior Counsel has submitted that the respondent No. 3 is superannuated on 31.10.2011 from the post of PDO and the petitioner is given promotion on 01.11.2011 and, therefore, the challenge as raised by the petitioner now is only academic. The learned Senior Counsel has further submitted that the attempt on the part of the petitioner is only to make a roving inquiry without any material being placed on record to substantiate the contentions. He has argued that this Court in exercise of the extraordinary jurisdiction cannot make the roving inquiry as sought by the petitioner to fish out the alleged irregularity or lacuna. The learned Senior Counsel further pointed out that DPC has considered objectively the entitlement of Dr. Kale for the post of PDO and the relevant portion of it is at page 324 of the paper book which is as

under:

"The details of R.R. for the post of P.D.O. may kindly be seen at para 3, 4, 5 and 6 at page 7/N. As per para 5 at page 7/N, feeder grade consists of posts like Programme Executives (PE) with 10 years experience and Head Clerk with 15 years experience. It is very strange that the Head Clerk, who is no way connected with programmes and activities and drawing one scale lower than Programme Executives are considered under feeder grade. But the post of Curator, who also executes similar work as compared to Programme Executives and draws a pay scale equivalent to the pay scale drawn by Programme Executives, is not included in the feeder grade for the promotion to the post of P.D.O. Another thing noticed that the Asst. Production Manager (APM) who also executes similar work and drawing identical scale with PEs, is also not included in the feeder grade for the promotion to the post of P.D.O. It is very much apparent that this is an anomaly which might have taken place by oversight.

The main objective of any R.R. is to select/appoint a right person to the right post and to give fair opportunity to all those employees who are capable and qualified to officiate the post. It will be regarded as injustice, if a person who is fully qualified having requisite experience as stipulated in RRs but not considered with a sole reason that the post is not brought under feeder grade due to oversight. As a matter of natural justice the RRs require review/reconsideration to set right the anomaly".

5. It is submitted by the learned Senior Counsel that the matter is also discussed in the General Council of the respondent No. 3 - Kala Academy about which also an endorsement is found on the document which is at page 325 of the paper book.

6. Mr. Salkar, learned Government Advocate adopts the submissions made on behalf of respondent No. 1- Kala Academy. In addition, he submits that the petitioner has not alleged malafides against the concerned officers of the respondent No. 1 - Kala Academy. He has further submitted that on 04.05.2006 when the respondent No. 3 Dr. Kale was promoted as PDO, the petitioner was not even in the zone of consideration and could not have been considered for the promotion. According to the learned Government Advocate, the claim as made by the petitioner is misconceived and the petition is liable to be dismissed.

7. We have considered the submissions made on behalf of the respective parties and we have seen the records with the assistance of the learned Advocates.

8. The submissions made on behalf of the petitioner about the alleged irregularity or illegality in the Recruitment Rules cannot be considered without there being any substantive challenge supported by material on the record, to the irregularity or illegality in the procedural aspect. The submission made on behalf of the respondents about the attempt on the part of the petitioner to make a roving inquiry is worth consideration, specifically in the absence of any malafides having been attributed to the officers of the respondent No. 1- Kala

Academy. Further, we find that on 04.05.2006 when the respondent No. 3 Dr. Kale was regularised in the post of PDO, the petitioner was not eligible for being considered for the promotional post and, therefore, it cannot be said that the petitioner is deprived of his legitimate claim. It is relevant to note that Dr. Kale continued in the post of PDO from 04.05.2006 till 31.10.2011 i.e. for a period of about 5 1/2 years. In this situation, we are not in a position to consider the submission made on behalf of the petitioner that there is no ratification to the regularisation of Dr. Kale by the Executive Board of the respondent No. 1-Kala Academy. The petitioner has not pointed out anything from the record to show that he had made any grievance in this respect to the Executive Board of respondent No. 1 - Kala Academy. In view of the above, we find that there is nothing on record which necessitates the invoking of the extraordinary jurisdiction to interfere in the matter. The Writ Petition is accordingly dismissed. Rule is discharged. In the circumstances, the parties to bear their own costs.