
(2022) 02 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition (L) No. 31705 Of 2021

Divya T.A

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 24-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 02 BOM CK 0052

Hon'ble Judges : Sunil B. Shukre, J; Amit Borkar, J

Bench : Division Bench

Advocate : Bernardo Reis, Priyanka Pandit, Kedar Dighe, Susheel Mahadeshwar, Kavita Anchan, Arsh Misra, M.V. Kini

Final Decision : Dismissed

Judgement

Amit Borkar, J

1. By this petition under Article 226 of the Constitution of India, a Associate Professor working with Respondent No. 2 – Sardar Patel College of Engineering ("College") seeks a writ of mandamus commanding the Respondent No.2 to recall its decision refusing to grant consent for deputation of the Petitioner with Respondent No. 3 and relieve the Petitioner to pursue full-time PhD programme under Quality Improvement Programme ("QIP") as per Government Resolutions dated 20th November 1996 and 28th October 1998 issued by Respondent No. 1.

2. The Petitioner is an Associate Professor in Physics at the Autonomous College administered by Respondent No. 2, affiliated to the University of Mumbai. In pursuance of the Quality Improvement Programme floated by Respondent No. 1 by Government Resolution dated 20th November 1996, the Petitioner on 18th July 2019 applied to Respondent No. 2 for No-Objection to allow the Petitioner to apply for PhD programme under QIP for the year 2020. Respondent No. 2 on 18th July 2019 granted No-Objection to Petitioner.

3. By Government Resolution dated 24th February 2021, Respondent No. 1

revised guidelines about permitting Teachers to pursue PhD under QIP, which did not provide for the replacement in place of a Teacher pursuing a PhD. Respondent No. 2, therefore, by communication dated 30th December 2021, withdrawn No Objection granted in favour of the Petitioner for pursuing PhD. Thus, the Petitioner has challenged communication dated 30th December 2021 by way of the present petition.

4. Respondent No. 2, in pursuance of notice issued by this Court, filed its affidavit stating that initial No Objection granted on 24th October 2019 was based on Government Resolution dated 20th November 1996, which permitted the employer to engage services of another Teacher in place of the Teacher pursuing PhD. But Respondent No. 1 introduced change in policy by the Government Resolution dated 24th February 2021, with the result, the Respondent No. 2 would no longer be permitted to engage services of replacement Teacher in place of Teacher like Petitioner. It is stated that Petitioner is the only Teacher teaching Engineering Physics to 180 students of three programmes: Civil, Mechanical and Engineering of First-Year Engineering and, therefore, the students of First Year will suffer if the Petitioner is relieved. It is also stated that two Teachers of Respondent No. 2 are pursuing their PhD course similar to the Petitioner while carrying out their duties in Respondent No. 2 College. Respondent No. 2 has given details of the names of both the Teachers. It is also stated that Petitioner can pursue PhD course while continuing to be in employment of Respondent No. 2 without availing study leave.

5. Respondent No. 2 has filed an additional reply affidavit stating that for achieving National Assessment and Accreditation Council (NAAC) and National Board of Accreditation (NBA), it is mandatory to have at least one Professor and one Associate Professor in every department. Therefore, if the Petitioner is relieved, it will affect their chances of getting accreditation.

6. We have heard learned Counsel for the parties. Learned Advocate for the Petitioner placing reliance on principle of promissory estoppel submitted that Respondent No. 2 could not have recalled its decision, once having permitted the Petitioner to pursue PhD programme with Respondent No. 3. He submitted that there is a legitimate expectation from the Respondents to fulfill their promise once made. Learned Advocate for the Petitioner relied upon judgments of the Apex Court in the case of *M/s. Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh & Others*, (1979) 2 SCC 409 and *Balco Employees Union (Regd.) v. Union of India & Others*. AIR 2002 SC 382

7. Per contra, learned Advocate for Respondent Nos. 1 and 2 submitted that there is no legal right available with the Petitioner without employer's consent to seek study leave. It is submitted that the earlier consent was based on the then policy of Respondent No. 1, which is now materially changed, with the result Respondent No. 2 would not get a replacement Teacher in place of the Petitioner. Learned Advocate for Respondent No. 2 conceded before the Court that Respondent No. 1 is ready to accommodate the Petitioner with timings of the

lecture as and when it would be convenient for the Petitioner while pursuing PhD programme. It is submitted that similar concession is given to other two Teachers who are pursuing their PhD programme while carrying out their duties in Respondent No. 2.

8. During the hearing, it was specifically asked to the learned Advocate for the Petitioner whether there is any Rule that permits deputation or study leave to the Petitioner or any legal right in favour of the Petitioner as per any Government Resolution. Learned Advocate for the Petitioner could not show any Rule that entitles the Petitioner for deputation without employer's consent or study leave for pursuing PhD programme or any other law that creates any legal right in favour of Petitioner.

9. The policy of Respondent no. 1 formulated in the form of Government Resolution dated 20th November 1996 and 24th February 2021 uses the expression 'Deputation' for permitting a teacher to pursue a Ph.D. program. In our opinion, the aforesaid policy confers privilege on qualified teachers to obtain higher training while in service. It is in the mutual interest of the Petitioner and Respondent No. 2. Respondent No. 2 gets more qualified employees, and Petitioner obtains career advancement prospects.

10. In ordinary course, there is no need to discuss concept of 'deputation' but in view peculiar conditions in Government Resolution dated 20th November 1996 and 24th February 2021 it is necessary to decide as to whether Petitioner pursuing higher studies with Respondent No. 3 can be termed as 'deputation'. In simple words, 'Deputation' means service outside the cadre or outside the parent department. The concept of 'Deputation' as commonly understood in-service law requires an assignment of an employee of one department or cadre or an organisation to another department or cadre or organisation. It is an assignment of an employee by the parent department to borrowing authority. Usually, the necessity for sending an employee on deputation arises in the public interest to the exigencies of public service. Deputation is generally made with the consent of the employer and employee. In the facts of the case, strictly speaking, going to Respondent No. 3 for higher studies keeping the service in the parent department intact may not correspond to the deputation. Still, it is only because of certain elements in the policy, such as retention of lien, reversion after studies, that the assignment of Petitioner to Respondent No.3 will have to be treated as 'Deputation'.

11. The concept of deputation came up for consideration before the Apex Court in the case of Umapati Choudhary V. State of Bihar. (1999) 4 SCC 659.

In paragraph 8 the Apex Court has emphasized the element of the consent of both employer and employee thus:

"8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending

authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not.”

12. In the present case, Respondent No. 2 has withdrawn No Objection granted to the Petitioner. The Petitioner in the absence of any legal right cannot force Respondent No. 2 to give consent in his favour. Moreover, Respondent No. 2 has already explained the reasons for recalling the No-Objection Certificate stating that under the old policy, Respondent No. 2 was entitled to have the services of a replacement Teacher. Under the new policy, Respondent No. 2 does not have benefit of replacement Teacher. Petitioner being only Teacher in the subject of Physics for three streams, i.e. Civil, Mechanical and Engineering, the rights of students would be affected, if Petitioner is relieved of his post. Therefore, we are satisfied that Respondent No. 2 was justified in recalling the consent.

13. Apart from the facts of the case, in law, the Petitioner is unable to show any legal right in his favour that entitles him for any relief. Moreover, it is an established principle that this Court will not interfere with the functioning of educational institutions in the exercise of the power of judicial review. See *Director (Studies) v. Vaibhav Singh Chauhan*, (2008) 14 Scale 554; *Sanchit Bansal & Another v. The Joint Admission Board (JAB) & Others*, (2012) 1 SCC 157

14. Reliance on *M/s. Motilal Padampat Sugar Mills Co. Ltd* (Supra) and *Balco Employees Union* (Supra) is misconceived. For invocation of the doctrine of promissory estoppel, the Petitioner must lay a clear, sound and positive foundation in the petition. Bald assertions, averments or allegations without any supporting material are not sufficient to press into aid the doctrine of promissory estoppel.

15. Before parting, we would like to note that the power of judicial review of administrative orders by Courts while exercising powers under Article 226 of the Constitution of India is well settled. Unless the decision is arbitrary, unreasonable or capricious, the Court will not interfere with the administrative decisions. See *Tata Cellular v. Union of India*, 1994 (6) SCC 651; *Reliance Airports Developers Pvt Ltd v. Airports Authority of India & Others*, 2006 (10) SCC 1; *Rajeev Suri v. Delhi Development Authority & Others* (2021) SCC Online 7.

16. We do not find any infirmity, arbitrariness or unreasonableness or consideration of wholly irrelevant or extraneous reasons in the decision-making process of Respondent No. 2, which is impugned before us, with the result, the petition fails.

17. The petition is dismissed. No costs.