

(2004) 11 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No's. 1935 and 4722 of 2004

Dr. Babasaheb Ambedkar Memorial Society and Another

APPELLANT

Vs

Nagpur University and Others

RESPONDENT

Date of Decision : 20-11-2004

Acts Referred:

Maharashtra Universities Act, 1994 — Section 72, 81(4)

Citation : (2005) 2 MhLj 731

Hon'ble Judges : V.C. Daga, J;S.U. Kamdar, J

Bench : Division Bench

Advocate : R.K. Deshpande and S.P. Bhandarkar, in W.P. No. 4722 of 2004 and P.S. Wathore, in W.P. No. 1935 of 2004, for the Appellant; B.G. Kulkarni in W.P. No. 4722 of 2004 and R.K. Deshpande and S.P. Bhandarkar, in W.P. No. 1935 of 2004, for the Respondent

Judgement

S.U. Kamdar, J.—These two writ petitions are filed in respect of an appointment to the post of Lecturer in Political Science in Dr. Ambedkar College of Arts, Commerce and Science at Chandrapur.

2. Some of the material facts in the present case briefly stated are as under:--

3. Dr. Ambedkar College of Arts, Commerce and Science at Chandrapur is established by the petitioner No. 1 society. The said college receives grant-in-aid from the State Government and is affiliated to the Nagpur University which is Respondent No. 1 herein.

4. The petitioner institution is a society and a public trust under the provisions of the Bombay Public Trusts Act. It is run by 18 members of Governing Body and it is the case of the petitioner that the said institution is meant for backward class category of the persons. In view of increase in the workload from the academic year 1998-99 a need arose to have an additional post of lecturer. For the academic year 2001-2002 a post of part-time lecturer was required. Accordingly, the petitioner herein made an application for creation of an additional post. On

9-11-2001, a report was prepared by the respondent No. 4 and assessment was carried out and was found that there is a necessity of an additional post of lecturer. Accordingly, the respondent No. 4, the Joint Director of Higher Education sanctioned the work load increase. For the year 2004-2005, a request was made by the petitioner to the respondent No. 1 University for sanction to create an additional post of lecturer in the field of Political Science and pursuant thereto the respondent No. 1 and 2 sanctioned one full time post of lecturer by letter dated 12-3-2003. By another letter dated 17-3-2003, the University after verification of the roster point gave a clearance for fulltime post of lecturer in Political Science. Under the roster points the said post was reserved for the Scheduled Caste category.

5. Under the provisions of the Maharashtra University Act, 1994, a Committee is required to be constituted for the purpose of selection of suitable candidates. Accordingly, on 21-6-2003 a Committee was constituted of seven persons by the University. In view thereof the petitioner issued an advertisement in the News Paper on 18-5-2003 inviting application for the post of Lecturer in Political Science for the reserved category candidates. In response to the said advertisement, various applications were received. On 28-6-2003, a committee of following persons was constituted for interview of candidates, namely :-- Nominee of the Vice Chancellor - Shri Vijay Bobde - Yeshwant College, Wardha, Nominee of the Management Council - Shri R.P. Gajbhiye, Nabira Mahavidyalaya, Katol, Nominee of Academic Council - Shri Sheshkumar Yerlekar, R. S. Bidkar College, Hinganghat, Nominee of Academic Council - Shri R. S. Dahelkar Karmaveer College, Mul, being members of the said Committee. The Principal of the College and Chairman and Government nominee were put thereon. Thus, a Committee of seven members was constituted by the University for the purpose of selection of the professor in the Political Science faculty.

6. On 28-6-2003, a meeting of the Committee was called when all the members were interviewed. After interview of all the members a certificate dated 28-6-2003 is issued by the Principal along with the signature of the members of the Selection Committee. The said certificate inter alia states that an interview was held on 28-6-2003. Four candidates were invited for an interview. Out of four three persons attended the interview.

7. Thus, at a meeting on 28-6-2003 out of the three persons who attended the interview, one of them was required to be selected by the selection committee for the post of Lecturer in Political Science. On 28-6-2003, a further report of the selection committee is filed selecting the petitioner in Writ Petition No. 4565 of 2003, namely Bhaskar Mayendrarao Kole. The selection committee comprising of seven members prepared the said report of the Selection Committee. However, three persons did not sign the said selection committee report. It is because the government nominee Dr. Jiwaji did not attend the said meeting of the selection committee at all. Whereas the other two nominees, namely, the Chairman of the Institution and Principal have not signed the said selection committee report as

they did not concur with choice of other members of the Committee. The other members of the selection committee prepared the report addressed to the Vice Chancellor, Nagpur University and filed the same with university. In the said report, the said members have stated that the interview took place and the said Shrikant Baliramji Bhowate was accepted as first preference candidate and Kum. Vijaya Damuji Dongre was accepted as a second preference candidate. The necessary report of the selection committee.

8. However, the petitioner herein have refused to accept the said report and has vehemently contended that since there was no unanimity on the selection of the candidate of professor, the report should not be accepted. It was contended that the representative of the petitioner did not sign the document nor signed the selection report nor signed the certificate issued and, therefore, there was no valid interview and thus the selection of the petitioner in Writ Petition No. 4565 of 2003 cannot be accepted as a valid selection and, thus, the said post is not filled up and the same is yet vacant. On the aforesaid basis, the petitioner issued a fresh advertisement on 19-9-2003 inviting fresh applications for the post of lecturer in Political Science.

9. As soon as the said new advertisement was issued, the petitioner in Writ Petition No. 4565 of 2003 who was first preference selected candidate has filed a writ petition in this Hon"ble Court claiming that he is entitled to be appointed on the said post and the petitioner herein cannot reject his name and invite fresh applications for the said post. The petitioner in the said writ petition No. 4565 of 2003 also made representations and complaints to various authorities including the respondent university as well as to Scheduled Caste Commission.

10. Thereafter the respondent No. 1 University issued a letter dated 24-2-2004 directing the petitioner herein to comply with the said selection and threatened the petitioner college authorities stating that failure to comply with the directions would invite serious action in terms of the provisions of Section 72 read with Section 81 (4) of the Maharashtra University Act, 1994. It is this communication dated 24-2-2004 which is the subject matter of challenge in the present writ petition.

11. In a companion Writ Petition being Writ Petition No. 1935 of 2004 selected candidate Shrikant Baliram Bhowate has claimed appointment to the said post on the ground that after being selected for the said post, he cannot be refused to be appointed on the purported ground that there is no unanimity in selection.

12. In these light of the facts, both these petitions are before us for determination.

13. The learned counsel for the petitioner in Writ Petition No. 4722 of 2004 has vehemently contended before us that the right of appointment of any teacher or a lecturer is an inherent right of the management and the Respondent University is not at all entitled to interfere with the said right of the management which is absolute right. In support of the said contention, the learned counsel has relied

upon the judgment of the Apex Court in the case of *Brahmo Samaj Education Society and Others Vs. State of West Bengal and Others*, and has contended that the right to establish and administer an educational institution is an absolute right and only reasonable restrictions can be imposed for proper maintenance of standard of education and to check maladministration but the day to day administration of the institution cannot be controlled or interfered with by the authorities. He has also relied upon the judgment of the Apex Court in the case of *The State of Haryana Vs. Subash Chander Marwaha and Others*, and *Anr.* judgment of the Apex Court in the case of *Indra Kumar Chopra v. Pradeshik Co-operative Dairy Federation Limited and Ors.*, reported in 1992 (5) SLR 24 and has contended that the petitioner in writ Petition No. 1935 of 2004 has no right to the said post unless he is confirmed to the said post and is in continuous service of five years. According to the learned-counsel for the petitioner-management the petitioner in Writ Petition No. 1935 of 2004 has no right to the said post when there is no clear vacancy and the petitioner in the said writ petition cannot claim appointment as a matter of right. He relied upon the said judgment to contend that unless there is five years period expired, the post is not a clear and regular post. Once there is no clear and permanent post, there is no right in favour of any person to be appointed on the said post in a clear vacancy. He has also contended that clear vacancy is only such vacancy where there is another person in service and was holding the said post at least for five years period.

14. We are not impressed by the argument of the learned counsel for the petitioner in Writ petition No. 4722 of 2004. The post in the present case is created for the first time for the academic year 2004-2005 and once the post is legally and validly created, it is obviously a clear and permanent post. The question of clear vacancy in the present case does not arise as this is not a case where vacancy is sought to be filled in. This is a case where the post is to be filled in consequent to the creation thereof for the first time. Thus, reliance on the judgments of the Apex Court in the case of *The State of Haryana v. Subhash Chander Marwaha and Ors.* (supra) and *Indra Kumar Chopra v. Pradeshik Co-operative Dairy Federation Limited and Ors.* (supra) has no relevance. Furthermore, the reliance is placed on statute No. 4 of statute 53 to contend that there must be a clear vacancy in the first instance and the person should be appointed on probation for a period of two years has also no application to the problem at hand as it is a question of appointment of a lecturer on a post which has been created for the first time.

15. Insofar as the second argument is concerned, namely, an absolute right of the management to an appointment of a lecturer in the institution run by them, it has been admitted by the learned counsel for the petitioner that the same is governed by statute No. 8 of 1979. This statute No. 8 of 1979 contains a guideline which has been given by UGC for revised pay scales for teachers working in the affiliated colleges. It is also an admitted position before us that the petitioner has accepted the said guidelines contained in statute No. 8 of

1979. Clause 14 of the said statute provides for mode of recruitment. The said Clause 14 reads as under:--

"14. Future recruitment to posts of Teachers in colleges and Principals of colleges shall be made through a Selection Committee, the composition of which is specified in the terms and conditions (Appendix-I)."

Appendix-I to the said Clause 14 provides that all appointments of the lecturers in colleges shall be made on merit and on the basis of all India advertisement. It further provides for constitution of a Selection Committee for recruitment to the post of Lecturer in colleges. The said Appendix-I Clause (ii) which pertains to the appointment of teachers in colleges reads as under :--

(ii) All appointments of teachers in colleges shall be made on merit and on the basis of all India advertisement. The qualifications prescribed for the posts should essentially be related to the academic attainment in the subject concerned and should not be linked with language or other regional consideration. Appointment should not be made on communal or caste considerations. The constitution of a Selection Committee for recruitment to the posts of Lecturers in a College should be as follows :--

(a) Chairman, Local Managing Committee of the College or his nominee; (b) One expert nominated by the Vice Chancellor, (c) One expert to be nominated by the Executive Council; (d) One nominee of the Director of Education (Higher Education); (e) Principal of the College; and (f) Head of the Department concerned of the College; No selection shall be considered valid unless at least one expert is present. The recommendations of the Selection Committee shall be subject to the approval of the Vice-Chancellor, who may reject the recommendations after recording reasons therefor.

(iii) All appointments of the Principals of Colleges shall be made by a Selection Committee composed of the following :--

(a) Chairman, Local Managing Committee of the College; (b) One member of the Local Managing Committee; (c) Two nominees of the Vice-Chancellor, and (d) One nominee of the Director of Education (Higher Education). The recommendations of the Selection Committee shall be subject to the approval of the Vice-Chancellor, who may reject the recommendations after recording reasons therefor."

Thus, it is clear that the appointment to the said post of lecturer particularly for the subject of Political Science in the petitioner college has to be in accordance with the provisions contained under statute 8 of 1979. It is not open on the part of the petitioner herein to contend that the appointment is an absolute prerogative of the management and the respondent university has no role to play. If that be so, then question of the constitution of the Selection Committee under Rule 14 of Statute 8 of 1979 could not have arose as the management itself could appoint any person of their choice without undergoing any selection

process. Once the appointment of a lecturer is governed by a statute then the right of the petitioner to appoint lecturer has to be governed and regularised by the same. The theory of an absolute right propounded by the petitioner management is anathema to the provision of the said statute and therefore has to be rejected. Once there is a Committee constituted, then obviously the functioning of the Committee is always to be governed by the majority view of such Selection Committee members. In the present case there are seven members of the selection committee. Admittedly, one of the members did not attend the interview by the said selection committee. Thus, there were six members on the Committee. Majority of the members have unanimously recommended the name of the petitioner in Writ Petition No. 4565 of 2003 as the first preference candidate. Secondly, each of the said members of the selection committee having been an expert on the subject in different field, only two persons who have opposed the name of the petitioner in the said Writ Petition No. 4565 of 2003 is the chairman of the petitioner institution and the principal of the said institution. Obviously, therefore, it is clear that it is only the petitioner institution which is opposing the said appointment for reasons other than selecting the meritorious candidate. Once a selection is prescribed under Statute 8 of 1979, then procedure of the said Statute has to be followed. As per the procedure of the said statute the Committee has to deliberate on the merits and demerits of the case and has to recommend a suitable candidate for the said post. If there is no appointment of any particular teacher, then, majority view of the Committee prevails. In our view, if this is the interpretation of Clause 14, the contention of the petitioner must necessarily fail insofar as the absolute prerogative of the management institution is concerned, for the purpose of appointment to the various posts in an institution run by the petitioner.

16. Thus, in aforesaid light of the matter, we are not impressed with the argument of the learned counsel for the petitioner that the petitioner has prerogative to accept the recommendation of the selection committee and either to accept or refuse to accept the same and make their own appointment by giving a fresh advertisement for the said appointment. In view of our interpretation of the provisions of the said statute and rejection of the arguments of the petitioner of absolute prerogative of selection of candidate we do not find any merits in the contention of the petitioner that the direction of Vice-Chancellor to appoint petitioner in Writ Petition No. 1955 of 2004 as a lecturer in consequence of valid selection process is illegal, invalid or without jurisdiction.

17. The majority view of the selection committee was forwarded by the Selection Committee to the University. The majority view has been contained in the letter duly addressed by the members of the Selection Committee to the Vice Chancellor as well as in the form filed by the Selection Committee with the Vice Chancellor. It is rather surprising that the Principal of the college has filed the report of the selection committee with the university where the names of the persons selected is kept blank and no name is recommended for the purpose of appointment to the said post. This report filed by the principal of the college is in

variance to the report of the selection committee filed by the majority of the members. There is no reason mentioned by the Principal why the Selection Committee did not select any one of the three candidates who appeared for interview. It will not be out of place to state here that we are quite distressed by the conduct on the part of the petitioner. In the present case, in the report of the selection committee as filed by the principal the order of preference is shown blank as if nobody is selected. Whereas in fact the report of the majority of committee members provides for selection of the petitioner in Writ Petition No. 1935 of 2004 Shrikant Baliram Bhowate and one Kum. Vijaya Damuji Dongre in order of their preference accordingly. Secondly, the certificate which has been issued by the Principal of conducting of the interview has been produced before us by the petitioner herein which contains blank as against the signature of the chairman as well as signature of the principal and the signature of the government nominee. Whereas the certificate which has been produced by the Committee members who were impleaded subsequently in the present writ petition by our order dated 1840-2004 has produced before us a certificate issued by the Principal contains the signature of everybody save and except the signature of the government nominee who did not attend the interview. The learned counsel for the petitioner by relying upon the said certificate which has no signature of the Chairman and Principal of the petitioner herein as well as relying upon the said selection committee report which also does not contain their signature and contain blank as against the name of government nominee had contended that the selection committee did not arrive at any conclusion of a selection of any candidate because there was no unanimity amongst themselves. However, from the documents which are produced by the selection committee as well as from the record of the University, we find that both, the Principal and the chairman have signed the said certificate issued by the Principal though the selection report is not signed by them. This is, in our view, a clear attempt on the part of the petitioner to mislead this Court to take a view that there was no selection process at all and therefore there was no selection of candidate at the said meeting. However, we find from the record produced by the University as well as the record produced by the Selection Committee that this is not so. In fact the interview took place and the majority view was taken recommending the two of the persons in their order of preference. However, on being confronted with the aforesaid fact the petitioner filed an application being C.A. 7343 of 2003 for inspection of the documents. The inspection was granted. After taking inspection, the learned counsel for the petitioner admitted the signature of the chairman and the Principal on the said documents and thereafter filed an affidavit admitting the said signatures to that effect. We are constrained to observe that the conduct on the part of the petitioner in the present writ petition is not honest and the petitioner ought not to have relied upon the documents which are not true and correct reflection of the proceedings of 28-6-2003. Be that as it may be, we are of the opinion, that on the true and correct interpretation of the regulation the view of the selection committee is valid and binding on the petitioner college. We are of the further view that the petitioner

cannot take up a stand that the majority view of the committee is not binding merely because they are not concurring with the said view. In the aforesaid circumstances, we find no merit in Writ Petition No. 4722 of 2004 and we dismiss the same.

18. Insofar as Writ Petition No. 1935 of 2004 is concerned, it is filed by the first. We are of the opinion that the present petition must succeed in view of our reasoning indicated hereinabove. Accordingly, we allow the present writ petition and direct the petitioner in Writ Petition No. 4722 of 2004 to appoint the petitioner in Writ Petition No. 1935 of 2004 to the post of Lecturer in Political Science since he is selected as first preference candidate by the selection committee. Thus, insofar as Writ Petition No. 1935 of 2004 is concerned, the same is made absolute in term of prayer Clause (1) of the said writ petition.

19. In light of the dismissal of Writ Petition No. 4722 of 2004 and conduct of the petitioner therein, we are of the opinion that the petitioner in that writ petition should be saddled with the cost of the present proceedings and we direct the petitioner in Writ Petition No. 4722 of 2004 to pay cost of both the writ petitions quantified at sum of Rs. 10,000/- each to the University.

20. We dispose of both the writ petitions accordingly.