
(1993) 08 BOM CK 0035
In the Bombay High Court
Case No : Writ Petition No. 863 of 1988

Dr. L. Rodrigues

APPELLANT

Vs

Mrs. Shashi S. Mishra and Others

RESPONDENT

Date of Decision : 19-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1993) 08 BOM CK 0035

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Judgement

B.P. Saraf, J.—By this writ petition, the petitioner - the Principal of Sophia College for Women, Bombay, has challenged the judgment and order dated 19.2.1988 of the College Tribunal of Bombay, setting aside the order of the College terminating the services of the Respondent No. 1 - a Lecturer of the College with a direction to reinstate her with continuity of service and other benefits.

2. The facts of the case, briefly stated, are as under :

By a letter dated 15.6.1983, the Respondent No. 1 was appointed in the Sophia College as Lecturer in Hindi. In the letter of appointment, it was stated that she will be on probation for a period of one year at the first instance and if her work was found satisfactory, the probationary period would be extended for a further period of one year. It was also made clear that if the probationary period was not extended before the expiry of the first year of probation the appointment would stand automatically terminated on the expiry of the first year of probation i.e., with effect from 21.4.1984. There was a further stipulation in the said letter that on successful completion of two years of probation, the appointment would be confirmed. The appointment was, however, subject to the approval of the University of Bombay.

It seems that the work of Respondent No. 1 was found satisfactory by the Petitioner College and in that view of the matter, by letter dated 20.4.1984, she

was intimated by the Principal of College that her probationary period had been extended by a further period of one year up to the end of the academic term 1984-85 subject to the same terms and conditions as contained in her original letter of appointment. Before the expiry of the next academic year, by a letter dated 20.4.1985, the respondent No. 1 was informed by the Principal of College that the College was pleased to confirm her in her post of "Full-time Lecturer" in the Department of Hindi, subject, however, to University approval, with effect from the current academic year 21.6.1985. There is no dispute about the fact that the appointment was permanent. That is evident from the above letter itself where it was so stated in clear terms. Thus, the services of the respondent No. 1 in the above College which commenced as a probationer from 15.6.1983, got confirmed with effect from 21.6.1985, on her satisfactory completion of two years period of probation and she thus became a permanent confirmed employee of the petitioner College. However, on 12.3.1986, the respondent No. 1 got a letter from the Principal of the College informing her that as the University had approved her appointment as a temporary appointment, her services would come to an end at the end of academic year 1984-85 and the post would be readvertised in accordance with the regulations concerning temporary appointments. The text of the above letter is set out below :

March 12, 1986.

Dear Mrs. Mishra,

I write with reference to our letter No. Staf/5 of 20th April 1985, in which you were confirmed in your post subject to University approval of the same. I regret to inform you that we have now received the list of staff approvals/disapprovals for the academic year 1984-85 and your appointment has been approved only as a temporary appointment. Because of this, at the end of this year we will re-advertise the post in accordance with the regulations concerning temporary appointments.

Yours Sincerely,

Sd/- (Dr. (Sr.) L. Rodrigues) Principal

3. Respondent No. 1 was aggrieved by this action of the petitioner. According to her, she was never a temporary teacher. Right from the beginning, she had been appointed as a permanent teacher, though on probation for a period of 2 years. But that is not relevant as on satisfactory completion of the above probationary period she was confirmed to the said post by letter date 20.4.1985. She challenged the above action of the Principal of the College before the College Tribunal by filing an appeal u/s 42-B(1) of the Bombay University Act, 1974. The College Tribunal of Bombay, after hearing the parties at length on consideration of the entire facts and circumstances of the case and the rival submissions, arrived at a finding that the termination of her services (of Respondent No. 1) after confirmation was patently illegal and in violation of the relevant Circular of the University being Circular No. 238 of 1983, which had the force of law in that

regard.

4. The Tribunal in its detailed and reasoned order also pointed to a number of disturbing features of the case which had come to its notice and in view of its finding that the termination of services was illegal, set aside the order of the Principal of the College terminating the services of the Respondent No. 1 and directed her reinstatement as Full-time Lecturer in Department of Hindi with continuity of service and other benefits. While doing so, the Tribunal, however, accepted the contention of the College that in computing back wages, the College should be allowed to take into account the amount received by the respondent No. 1 as Lecturer in another College where she had served during the academic year 1986-87.

5. The College was not satisfied with the above order of the Tribunal. Hence, it filed the present writ petition challenging the same and obtained an interim order of stay of operation of the order of the Tribunal.

6. I have heard Dr. Chandrachud, learned counsel for the petitioner-Principal of the College. His main submission is that the respondent No. 1 did not possess the requisite qualification for holding the post. She was appointed by the College temporarily due to non-availability of a suitable candidate with requisite qualification. Such a candidate can not claim any right over the post. The College is free in such cases to part with the services of such an under-qualified teacher at any time. The second contention is that the appointment being subject to the approval of the University and the University having not approved the appointment, the Respondent No. 1 had no right to be in service and, as such, the termination was within the powers of the College and the College Tribunal committed an error in setting aside the order of the College authorities terminating her services and directing her reinstatement. In support of the first contention that where a teacher does not possess adequate qualifications and is appointed under Circular No. 238 of 1983 due to non-availability of duly qualified candidate, the College is free to terminate his services as and when it likes, reliance was placed on a Division Bench decision of this Court in *Shivaji Education Society v. G. A. Gonpethkar & Ors.* reported in 1991 I CLR 268.

7. I have considered the above submissions. I have also heard Mr. Vashi, learned counsel for the Respondent No. 1 who submits that all the submissions of the learned counsel for the petitioner are wholly misconceived and based on wrong premises. The submission of the learned counsel is that it is not one of those cases where owing to non-availability of a duly qualified person with M. Phil. degree, the respondent No. 1 was appointed temporarily for a period of one year or otherwise. On the other hand, the uncontroverted position in this case is that the Respondent No. 1 was appointed on a permanent post on permanent basis, which is evident from the fact that she was put on probation for two years, which is applicable only to persons who are employed on permanent basis. It is further pointed out that admittedly the services of respondent No. 1 during the period of first year of probation were found satisfactory and it is only on that basis that the

period of probation was extended for another year in terms of the letter of appointment on completion of that period after being fully satisfied with her services, she was confirmed by the College to the post. Having regard to these facts, according to Mr. Vashi, it is not correct to say that she was appointed temporarily. In regard to appointment being subject to the confirmation of the University, the submission of the counsel for the Respondent No. 1 is that the very appointment in the year 1983, which itself ultimately culminated into permanent appointment after completion of two years of satisfactory service on probation, was subject to confirmation of the University. If the petitioner did not get the confirmation, the services would have come to an end in the very first year. The confirmation of the university is a matter between the College and the University. The University is neither expected nor required under the Ordinance, Statutes or any guidelines to intimate the teacher concerned its decision in regard to confirmation of appointment. In that view of the matter, the respondent No. 1 was fully justified in believing that her appointment in 1983 by the College had been approved by the University and it was only on that basis that the College had proceeded further to extend her probation, as otherwise her services would have stood terminated automatically in terms was, thus, no occasion for the Respondent No. 1 to apprehend the rejection of the proposal of the College by the University because instead of terminating her services, after the end of the academic year, she was informed that on account of completion of the first year of her probation to the satisfaction of the authorities, the period of probation was extended by another one year in terms of the letter of appointment. There was no break of service even of a day. The first appointment itself being a permanent appointment, on completion of the period of probation, on completion of the period of probation, by letter dated 20.4.1985, she was confirmed in the post of Full-time Lecturer in the Department of Hindi in terms of the original letter of appointment dated 15.6.1983. She had full justification to act under the presumption that the College had obtained the requisite permission/confirmation from the University before giving her the letter of confirmation. It was too late for the College, after long three years of her appointment and after one year of her confirmation to the post on successful completion of her probationary period, to turn round and say that the University had approved her initial appointment in the year 1983 only as temporary teacher. Such action is most arbitrary, unjustified and illegal. The counsel for the respondent No. 1 submits that the respondent No. 1 is still not ready to believe that the above statement of petitioner in regard to refusal on the University to grant approval to the appointment of the respondent No. 1 as a permanent teacher because, according to him, a highly placed academic body like the University cannot be expected to act in the manner alleged by the petitioner.

8. The further submission of the learned counsel for the respondent No. 1 is that the College Tribunal has considered all aspects of the matter very carefully and given a considered judgment after taking into account all relevant materials and evidence on record and there is no cogent reason for this Court to interfere with

the same in exercise of its powers under Article 226/227 of the constitution. As regards the Division Bench judgment of this Court in Shivaji Education Society, (supra), the learned counsel submits that the said judgment has no application whatsoever to the facts of the present case.

9. I asked Mr. Radhakrishnan, learned counsel for the Bombay University, to inform this Court as to how an educational institution like the University could act in the manner projected by the College. Wherever appointments are subject to the approval of the University, it is expected that the proposals are sent by the College within a month or two from the date of appointment and the University takes a decision thereon as expeditious as possible, in any event before the expiry of the term or expiry of the academic year. Such matters can not remain pending indefinitely keeping the teacher concerned in a state of uncertainty. In reply, Mr. Radhakrishnan, the learned counsel for the University, stated that the projection of facts by the College before this Court is not correct and proper. The counsel produced before me photo-copies of the connected papers filed by the College from time to time in connection with approval of the appointment of the Respondent No. 1. A perusal of these papers leaves distressing impression. The first proposal for approval of the appointment in the year 1983-84 is dated 19.9.1983. It is stated that it was sent to the University by College on 4.1.1984 i.e., after about three months of the same being made ready. In the above proposal the nature of the appointment of the respondent No. 1 is shown as :

"Full-time, on probation for 2 years".

The University seems to have sent a letter to the Principal in reply to the various proposals including the proposal of the respondent No. 1 in May 1984 in which the respondent No. 1's name appears at Sr. No. 4 and against the approval, following remarks are given :

"Approved. Temporary for 1983-84 i.e., upto 20.4.1984".

10. As earlier stated, the respondent No. 1 was appointed on permanent post and was on probation for a period of one year which was already extended on 20.4.1984 by one year. However, in the statement which was sent to the university for the year 1984, the date of appointment of the respondent No. 1 was shown as 20.6.1984 and column "nature of appointment" the following remarks were given :

"Full time Temporary, 1 year".

The above statement is at page 11 of the compilation filed by the University. It is stated by Mr. Radhakrishnan, the learned counsel for the University, that this statement was sent by the college to the University with its covering letter dated 19.1.1985. There is, however, another statement also at page 12 where there were some deletions and corrections made by someone on 3.9.1985. In this statement the following description had been given originally :

"Full time Probation 1 year".

The word "Probation" appears to have to be scored off on 3.7.1985 and the word "Temporary" substituted in its place. This statement, it is stated by the learned counsel for the University, was sent by the College on 10.5.1985 when the respondent No. 1 has been already confirmed by the College by their letter dated 20.4.1985. At the bottom of the statement at page 20 of the compilation, the following note has been given :

"The other applicant interviewed were not upto the standard. Therefore, the Selection Committee recommended the appointment of Mrs. Mishra - respondent No. 1, who has five years teaching experience".

The contention of the University is that it was never apprised of the fact that the College had already extended the period of probation of the respondent No. 1 in the year 1984 and on further satisfactory services, confirmed her service in the year 1985. On the other hand, the University was given to understand, which is evident from the various statement, that her services got terminated at the end of the each academic year and she was working on temporary basis from year to year on the basis of fresh appointment which were subject to the approval of University. If correct facts would have been brought to the notice of the University by the College, the university would have definitely considered the whole matter in a different perspective.

11. I have considered the rival submissions. I fail to understand why the Principal of the College failed to apprise the University of the correct factual position and substituted the correct factual position and substituted the correct description originally made by it by incorrect description No. 1 was misrepresented before the University. Two contradictory representation were made, one to the respondent No. 1 and other to the University. The respondent No. 1 was always given to understand that she was a permanent employee subject to the completion of satisfactory probationary period on the completion whereof, she would be confirmed. Factually also, the college did so. She was formally confirmed by letter in writing that the effect with effect from 21.6.1985. She had no occasion to even suspect that the College might be making contradictory statements to her and the University. It is these contradictory statements which, in fact, gave rise to all complications. No satisfactory explanation is forthcoming for such conduct of the College. I fail to understand what propelled College to do so. When the appointment was subject to the confirmation of university, on the failure or refusal of the University to confirm, it could have informed the teacher concerned accordingly and terminated her service in terms of the letter of appointment itself. There was nothing to hide and seek in it. But what has happened in this case is somewhat unusual and is not understandable. In any event, in such a situation, the college cannot be allowed to take shelter behind the letter of University and terminate the service of the teacher after confirmation. It is difficult in this case to find fault with the University, as the uncontroverted factual position is that the University was not apprised of the correct fact and its decision in regard to approval was based on incorrect and

misleading informations furnished by the College about the nature of appointment etc.

12. Turning to the eligibility of the respondent No. 1 to continue to serve as a Lecturer in view of the Circular No. 238 of 1983 of the university, I find that the stand taken by the petitioner is totally devoid of any merit. In fact, the contention of the petitioner goes counter to the language of the said circular which is clear and unambiguous. It may be expedient to mention here that in the year 1983, the University decided to make M. Phil/Ph. D. degree as one of the essential qualifications for appointment as College teachers but as it was felt that this requirement will not only seriously effect the existing teachers but it will also be difficult to get requisite number of teachers in various faculties, certain transitory provisions were made in that regard. It is in this context, the College teachers were divided in two categories : Those appointed before 31.1.1983 and (2) those newly recruited on or after 31.3.1983. The admitted position is that respondent No. 1 falls in the latter category. So far as old incumbents serving from a date anterior to 31.3.1983 are concerned, they were allowed a period of 8 years to obtain the requisite degree, failing which it was provided that, they would not be above to earn future increments till they obtained such degree. As regards the teachers newly recruited to Colleges on or after 31.3.1983, the following provision was made :

"That, in respect of new recruitment to the posts of teachers in Colleges on or after 31.1.1983, the colleges may recruit a person with lower qualifications only in case a person with the prescribed qualifications is not available or is not considered suitable; provided that such person shall have to acquire an M. Phil, degree or a recognised degree beyond the Master's level or publish research work indicting his capacity for independent research work, within five year from the date of his appointment, failing which, he shall not be allowed to earn any future increment and his services will be liable to be replaced by recruiting a person possessing the prescribed qualifications".

The above clause, in no less unambiguous terms, permits a College to recruit persons with lower qualifications in case persons with prescribed qualifications in case persons with prescribed qualification are not available or are not considered suitable. The only condition to such appointments is that such persons are required to acquire a M. Phil. degree or a recognised degree beyond the Master's degree or publish research work indicting its capacity for independent research work within 5 years from the date of his appointment. The consequence of failure to do so are also set out. These are that on expiry of the period of five years, such persons :

- (1) Shall not be allowed to earn any future increment;
- (2) Their services would be liable to be replaced by a person possessing the prescribed qualifications.

12. There is a perceptible difference in case of consequences prescribed for the

two categories of persons viz., those appointed before 31.3.1983 and those appointed after that date. In case of persons falling in the first category i.e., those appointed before 31.3.1983, in the event of their failure to acquire the prescribed qualifications within 8 years they are not allowed to earn future increments. But the consequences in case of those falling in the second category on their failure to acquire the prescribed qualification within 5 years of recruitment are more stringent. The consequences are two fold.

(1) They are not allowed to earn future increments;

(2) They are also liable to be replaced by person possessing the prescribed qualification.

The first consequence is automatic. But the second is only at the discretion of the College. It is the College which has a right to replace such person by person possessing prescribed qualifications. This right accrues to the College only after the expiry of five years and on the failure of the incumbent to acquire the requisite degree within that period. It is not obligatory or mandatory for the College to replace such person. It is only a discretion vested in the College which may or may not exercise in a given case depending on the performance of the candidate concerned. Even after the expiry of five years, a person on his failure to acquire the prescribed degree, does not become disqualified to continue in service nor his services stand terminated automatically. But his continuance in service thereafter ceases to be as a matter of right. It depends on the College to retain him or to replace him. The option lies with the College. The change in legal status, however, takes place only after the expiry of five years. Till then, he has a right to continue in service. In that view of the matter, the contention of the petitioner that the above circular permits the appointed under Circular No. 238 of 1983 at any time it likes by another person possessing prescribed qualification is not tenable and the same is, therefore, rejected.

13. So far as decision of this Court in Shivaji Education Society, (supra) is concerned, I do not find that it has any relevance in deciding facts of the above case are completely different. In that case, the teacher concerned did not possess the requisite qualifications. He was appointed on temporary basis for one year. On the expiry of one year the post was readvertised. The said teacher alongwith others again appeared for interview. None was found to possess the prescribed qualifications. In such a situation, the particular teacher, who had been already in service, was given preference over others and appointed afresh for another one year on purely temporary basis. On the expiry of that period, the post was again readvertised and this time a qualified person was found and appointed. It is action which was challenged in that case and the Court held that as the teachers was not appointed permanently and was appointed on year to year basis, he has no right to continue after one year and he could not claim to be retained taking resort to the above clause of Circular No. 238 of 1983 to continue for a period of five years. That is not the case in the present writ petition. This judgment, therefore, has no application to the facts to the present

case.

14. In view of the above discussions, I find that the termination of services of the respondent No. 1 by the petitioner was rightly held to be illegal by the College Tribunal and the order of termination was correctly set aside. I do not find any cogent reason to interfere with the same. It is a well reasoned order and all relevant materials have been considered. I do not find any infirmity therein. On the other hand, many new facts, which do not reflect well on the conduct of the College, have come to light in course of hearing of this case before this Court from the compilation filed by the University.

15. The learned counsel for the petitioner pointed out that even if this Court is satisfied with correctness of the order of the College Tribunal holding the order of termination illegal and upholds the same, the letter part of order by which the petitioner had been directed to reinstate the respondent No. 1 in service should at least be set aside because the relations of the present Principal (Petitioner) with the respondent No. 1 were strained even before her termination and, in such a situation, it would not be in the interest of the institution to reinstate her in service. He, therefore, submits that in that view of the matter, she should not be directed to be reinstated. She may be awarded any other compensation in lieu thereof. Reference was made to the decisions of the Supreme Court in *Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another*, and *Dipak Kumar Biswas Vs. Director of Public Instruction and Others*, . I am amazed at this submission. Firstly, because this submission has been made for the first time before this Court. Secondly, on perusal of the letters of appointments etc., it appears that the initial appointments of the respondent No. 1, the extension of probation on her satisfactory completion of service of one year and confirmation thereafter were all by one Sr. P. Goes who was the principal at the material time. She was later succeeded by Dr. (Sr.) L. Rodrigues, the present Principal and petitioner herein. The letter of termination appears to have been sent by her. The present writ petition challenging the order of the College Tribunal has also been filed by her. The petition has been filed by her by name (for which I do not find any justification petition by the Principal in her official capacity). This fact, however, assumes significance in the light of the above statement about her strained relations with the Respondent No. 1. It that is so, the termination requires still closer scrutiny in that light. However, as I am of the opinion that it is neither in the interest of institution to delve deep into all that nor is necessary for the present purpose, I refrain from doing so. Sufficient to say that termination of the services of the Respondent No. 1 having been found to be patently illegal, there is no justification whatsoever to interfere with the order of the College Tribunal directing reinstatement with full back wages. The College Tribunal was very reasonable in accepting the contention of the College that in computing back wages, the amount received by the Respondent No. 1 for the services rendered by her in another College might be deducted. In my opinion, considering the clear language of the Circular No. 238 of 1983, the facts of the case and the order of the College Tribunal, the College should have given effect to the order

instead of challenging the same before this Court.

16. In any view of the matter, this writ petition has no merit and same is, therefore, dismissed. The petitioner is directed to reinstate the respondent No. 1 in terms of the order of the College Tribunal with full back wages and all other benefits within four weeks from today. Whatever amount if sound due to her up to the date she is actually taken back in service should be paid to her within a fortnight there after with interest from the date of the order of the College Tribunal till the date of payment at the rate of 15 per cent.

17. It is unfortunate that the Principal of College, who should have devoted its time and energy for better management of the College and maintenance of higher standards of education, decided to come to this Court in a case of this nature and also dragged the teacher, whose time and energy could have been better utilised in imparting educating to the student, to this Court thereby making her run round the corridors of the Court and the chambers of the Counsel only to sustain the relief which had been granted to her by the College Tribunal by a well-reasoned order. It is a fit case where the teacher concerned should be awarded reasonable costs. Considering the totality of the facts and circumstances of the case and the period spent in litigation and other factors, I think that a sum of Rs. 7,500/- would be a reasonable amount of compensation that the petitioner should be directed to pay to the respondent No. 1 by way of costs in addition to whatever is due to her in terms of the award of the College Tribunal.

18. In the result, this writ petition is dismissed with cost as indicted above.

Certified copy expected.