
(2008) 04 BOM CK 0029

In the Bombay High Court

Case No : Appeal No. 661 of 2002 in Writ Petition No. 1201 of 1995

Jaimini Oza (Prof.) and Others

APPELLANT

Vs

Parkar Kaiser Shamsuddin and Others

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Citation : (2008) 6 BomCR 910

Hon'ble Judges : Nirgude A.V., J;Khandeparkar R.M.S., J

Bench : Division Bench

Advocate : G.S. Hegde, instructed by M.J. Shetty, for the Appellant; N.M. Ganguli, for the Respondent

Final Decision : Dismissed

Judgement

Khandeparkar R.M.S., J.—The present appeal arises from the judgment and order dated 12th February, 2002 passed by the learned Single Judge in Writ Petition No. 1201 of 1995. By the impugned judgment and order, the writ petition filed by the appellants against the judgment and order dated 27th April, 1995 passed in Appeal No. 18 of 1992 has been dismissed. By the said order, the College Tribunal had allowed the appeal filed by the respondent No. 1 and the order of termination of the services dated 20th June, 1992 was set-aside and he was directed to be reinstated in the service with effect from 20th June, 1992 while declaring him to be appointed on probation with effect from 20th June, 1991 in the appellant-college.

2. The said Writ Petition was filed also in relation to the order passed in Appeal No. 20 of 1992 by the College Tribunal on 27th April, 1995. In fact, it was a common judgment in both the appeals and the Appeal No. 20 of 1992 related to the respondent No. 2 herein. The learned Advocate for the appellants, however, stated that the respondent No. 2 has already retired and he does not press for the appeal against the respondent No. 2.

3. As far as the respondent No. 1 is concerned, it is the case of the appellants

that the respondent No. 1 was appointed as the part-time Lecturer in Zoology from 1st August, 1990 till 20th April, 1991. He was again appointed on temporary basis in the petitioner college as Lecturer in Zoology from 20th June, 1991 to 19th April, 1992. His temporary services came to an end on 20th April, 1992. On 20th April, 1992, the respondent No. 1 filed an application with the appellants requesting for his appointment on probation basis as the Lecturer in Zoology for the Academic Year 1992-93.

4. In the interview conducted for the purpose of filling up of the said post, the respondent No. 1 also participated; however, the respondent No. 1 was not selected. Thereafter, the respondent No. 1 filed an Appeal being Appeal No. 18 of 1992 which came to be allowed by the order dated 27th April, 1995 and the matter was carried in the Writ Petition before the learned Single Judge which came to be dismissed by the impugned order. Hence, the present appeal.

5. The impugned order is sought to be challenged on three grounds. Firstly that the learned Single Judge as well as the learned Tribunal erred in holding that the respondent No. 1 was appointed on probation solely because he was selected by the selection committee. Secondly that the respondent No. 1 himself had admitted that his appointment for the period of 1991-92 was on temporary basis consequent to the letter written by him to the management on 20th April, 1992. Thirdly that the respondent No. 1 himself having appeared for the interview which was conducted for selecting the candidates for filling up the post for the year 1992-93 and having failed to get himself selected in the said process, he is not entitled to challenge the process of selection or make grievance about termination of the services for the preceding year.

6. In relation to the last ground of challenge, attention is drawn to the decision of the Apex Court in the matter of Suneeta Aggarwal Vs. State of Haryana and Others, . On the other hand, it is the contention on behalf of the respondents that taking into consideration the provisions of Statute No. 417 of the University of Bombay which are applicable to the college managed by the appellants, the respondent No. 1 could not have been appointed on temporary basis and he ought to have been appointed on probation and taking into consideration the said statute he should be deemed to have been appointed on probation and that is what has been held by the Tribunal as well as the learned Single Judge and no fault can be found with the said finding. It is further contention on behalf of the respondents that it was permanent vacancy wherein the respondent No. 1 was appointed after being duly selected by the selection committee, and therefore, there was no scope to contend that the appointment of the respondent No. 1 was on temporary basis.

7. It is also the contention on behalf of the respondents that merely because the respondent No. 1 had appeared for the interview for the subsequent year, that would not affect the status of the respondent No. 1 which was already secured by him consequent to the appointment in the previous year.

Perusal of the impugned judgment as well as the judgment of the School Tribunal apparently discloses that the matter proceeded on assumption that the respondent No. 1 was appointed in a permanent vacancy after following regular procedure for selection which is required to be followed to fill up the permanent vacancy. It is not in dispute that the selection of the respondent No. 1 prior to his appointment in the year 1991-92 was on the recommendations of the selection committee.

8. However, merely because a candidate is appointed on the recommendation of the selection committee on the Lecturer's post in a college affiliated to the University, that would not lead to a conclusion that the appointment was either in the permanent vacancy or such appointment to be on probation basis. Even in case of filling of temporary vacancies, there is no bar for selecting candidates by following the procedure which is normally applicable for filling up the permanent vacancy. In fact, the Statute 417(iii) of the University of Bombay clearly provides for selection of such candidates when filling up of temporary vacancies is required for more than six months. The contention that the said provision is applicable only in case of minority institution is totally devoid of substance. Being so, merely because the respondent No. 1 was appointed pursuant to the recommendation of the selection committee, that by itself cannot be a justification to conclude that he was appointed in a permanent vacancy. It was necessary for the respondent No. 1 to establish that his appointment was in a permanent vacancy. On the contrary, the letter dated 20th April, 1992 by the respondent No. 1 himself addressed to the management clearly states that "I am working as a Lecturer in the department of Zoology on purely temporary basis.

9. As rightly submitted on behalf of the appellants that there is an admission on the part of the respondent No. 1 that he was appointed for the year 1991-92 on purely temporary basis. Nothing was placed before the School Tribunal or the learned Single Judge or even before this Court which could disclose that the post of Lecturer in Zoology which the respondent No. 1 was occupying for the year 1991-92 was a permanent vacancy in the appellant college.

10. The letter dated 20th April, 1992 further discloses that knowing well that the respondent No. 1 was appointed purely on temporary basis, he has requested the management for his re-appointment for the said post for the year 1992-93. It is not in dispute that pursuant to the advertisement issued for filling up the said post for the said academic year, the respondent No. 1 had appeared in the interview and having failed to get selected in the said interview, only thereafter the respondent No. 1 approached the college Tribunal with the grievance relating to the alleged termination of his services.

11. The law on the point that once the candidate applies for the post and attends the interview without demur in response to the advertisement even though he/she had been temporarily occupying the said post, and thereafter merely because he/she is not selected in the selection process, he/she could not make grievance about the same and he/she is estopped from challenging the

termination of his/her services. That is the law reiterated by the Apex Court in Suneeta Aggarwal's case (supra). The Apex Court therein held that:

The appellant did not challenge the order of the Vice Chancellor declining to accord approval to her selection and, on the contrary, she applied afresh to the said post in response to re-advertisement of the post without any kind of protest. Not only did she apply for the post, but also she appeared before the Selection Committee constituted consequent upon re-advertisement of the post and that too without any kind of protest, and on the same day she filed a Writ Petition against the order of the Vice Chancellor declining to accord his approval and obtained an ad interim order. In the writ petition she also did not disclose that she has applied for the post consequent upon second advertisement. The appellant having appeared before the selection Committee without any protest and having taken a chance, we are of the view that the appellant is estopped by her conduct from challenging the earlier order of the Vice Chancellor. The High Court was justified in refusing to accord any discretionary relief in favour of the appellant.

12. The decision squarely applies to the facts of the case in hand.

Perusal of the impugned order as well as that of the Tribunal nowhere discloses consideration of above points which clearly arose in the matter and ignoring the same, merely because the respondent No. 1 was appointed on temporary basis on the recommendations of the Selection Committee, it was held that he was deemed to have been appointed on probation and therefore, his services could not be terminated. The decision is contrary to the settled position in law. Hence, the decision cannot be upheld and both the judgments are liable to be set-aside and the appeal filed by the respondent No. 1 before the College Tribunal is liable to be dismissed.

13. The appeal, therefore, succeeds. The impugned judgment as well as the judgment of the College Tribunal are hereby set-aside. The appeal filed by the respondent No. 1 before the College Tribunal is hereby dismissed. There shall be no order as to costs.