

(2002) 03 BOM CK 0102
In the Bombay High Court
Case No : Writ Petition No. 2578 of 1988

Kakoli Shyamlal Sircar

APPELLANT

Vs

Nagpur University and Others

RESPONDENT

Date of Decision : 01-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 4 BomCR 152 : (2002) 2 BOMLR 694 : (2002) 2 MhLj 673

Hon'ble Judges : V.M. Kanade, J;V.G. Palshikar, J

Bench : Division Bench

Advocate : S.V. Manohar, for the Appellant; A.P. Shinde, N.S. Jaiswal and J.L. Bhoot, for the Respondent

Final Decision : Allowed

Judgement

V.M. Kanade, J.—By this petition, the petitioner is seeking an appropriate writ, order and direction directing that the Order dated 27-9-1988 issued by the respondent No. 1 be quashed and set aside and that the petitioner may be declared to be appointed and the services of the petitioner as lecturer in Biochemistry may be confirmed from the date of her initial appointment by holding that the said post stood de-reserved.

2. Facts :

The Petitioner was selected by the Selection Committee which was duly appointed and her selection was approved by the Nagpur University and she was appointed as a lecturer in the respondent College to teach a subject of Biochemistry w.e.f. 2-9-1985. The said appointment was made for the period of one year. The approval which was given by the University was also for a period of one year. The letter of appointment does not state that her appointment was made against the reserved category post. However, the approval which was granted to the said appointment states that the said post would be re-advertised again as reserved category post reserved for Scheduled Caste category for the

next academic year. Accordingly, the petitioner again applied for the same post for the next year and since no candidate from the reserved category was available, the petitioner was continued in the said post and the approval was also granted for the period of one year by an order dated 12-9-1986. The petitioner again worked for a period of one year i.e. for the academic year 1986-1987. Thereafter the post was again advertised on 29-7-1987 for the Scheduled Caste candidate and again no Scheduled Caste candidate was available and, therefore, the petitioner was appointed as a lecturer to teach the subject of Biochemistry for the academic session 1987-1988 and the said selection was approved by the University by its order dated 11-11-1987 and after approval, the services of the petitioner were continued as a full time lecturer in subject of Biochemistry.

3. In the following year i.e. academic year 1988-1989 again the post was advertised for the subject of Biochemistry for Scheduled Caste candidate on 10-3-1988. Pursuant to the said advertisement, only one candidate applied for the said post and appeared before the duly constituted Committee. Out of the six members of the Selection Committee, one member was absent. The remaining five members which included the nominee of Vice- Chancellor, made an unanimous recommendation that the candidate did not understand the subject and, therefore, found that she was not suitable to teach the subject in Senior College and since no suitable candidate was available, the petitioner was appointed and continued in the said post due to non-availability of the Scheduled Caste candidate. The Principal of the College applied for approval by his letter dated 3-8-1988 and gave the particulars regarding advertisement. He mentioned that the post was advertised for the third time for the subject of Biochemistry reserved for Scheduled Caste and it was specifically mentioned in his application that since the petitioner is working for about 3 years, the said post may be approved for the season of 1988-1989 and onwards and accordingly the post should be de-reserved and the services of the petitioner should be confirmed as per the Government Resolution No. USG 1286/1179/University-4 dated 29-9-1986. At this stage, it is pertinent to note that the Government Resolution dated 29-9-1986 it is categorically mentioned that if a person from the reserved category is not available, then a person from the open category should be appointed and if in the second and third year, a person from the reserved category is not available, then the person from the open category who has been appointed in the first year, should be continued without holding any interview and the post should be de-reserved and the said person from the open category should be confirmed in the said post. Further direction was given by the Government to the University to issue an Ordinance through Vice-Chancellor by exercising his power u/s 11(6)(b) of the said Act.

4. Accordingly, the Nagpur University through the Vice-Chancellor had issued an Ordinance dated 29th May, 1987, in which clause (iv) laid down as follows :

"If any of the vacancies reserved for the members of the particular section of the backward classes (i.e. S.C./S.T./D.T. & N.T.) cannot be filled in by appointment of

members of that section for want of suitable candidates, they shall be carried forward upto a period of three recruitment years subject to the proviso that the reserved vacancies and the vacancies carried forward together shall not exceed 50% of the total vacancies on any one occasion of recruitment. If there are only two vacancies one of them shall be treated as reserved vacancy,"

5. The Vice-Chancellor, however, by his Order dated 29th September, 1988 did not grant approval to the appointment of the petitioner to the post of lecturer in Biochemistry and also did not de-reserve the said post on the ground that since one candidate from the Scheduled Caste category had appeared for the interview and from the record the Scheduled Caste member of the Selection Committee was absent and, therefore, the said approval was not granted.

Being aggrieved by the said impugned order passed by the Vice-Chancellor communicated through the Deputy Registrar, the petitioner has filed this petition under Article 226 of the Constitution.

6. Shri S.V. Manohar, the learned counsel appearing on behalf of the petitioner, submitted that in view of the Resolution issued by the Government of Maharashtra dated 29th September, 1986, the petitioner was entitled to be confirmed in the said post from the date of her initial appointment since no candidate was available from the reserved category. He further submitted that the Ordinance issued" by the Nagpur University through the Vice-Chancellor also made it very clear that the post could be reserved for a period of 3 years. The petitioner had been working uninterruptedly for the period of more than 3 years i.e. from 2-9-1985 onwards. He further submitted that the ground given by the Vice-Chancellor for rejecting the approval was unsustainable in law. He submitted that merely because one member of the Selection Committee was absent, the recommendations made by the remaining five members, cannot be treated as invalid. He submitted that it was not the case of the Vice-Chancellor that the Selection Committee was not properly constituted. He further submitted that the University had issued a letter to the Principals of the Affiliated Colleges of Nagpur University, in which it was categorically stated that in case the candidate is not available from the Backward Class Community against the reserved post and if available, is not recommended by the duly constituted Selection Committee, a candidate from the open category can be appointed. The relevant extract of the Circular dated 27-3-1987 issued by the Registrar, Nagpur University, is reproduced hereinbelow.

"As per Government of Maharashtra, Education and Employment Department Resolution No. USG-1286/(1179)/UNI-4, dated 29-9-1986, in case a candidate is not available from the backward class community against the reserved post and if available is not recommended by the duly constituted selection committee, a candidate from the open category can be appointed and such candidate be not called for interview again at the 2nd and 3rd time, when the post is readvertised for the Backward Class Community candidate only. If at the time of 2nd and/or 3rd interview, a candidate belonging to Backward Community is not again

available or if available, not recommended by the Selection Committee, the candidate of open category appointed after the 1st selection through duly constituted selection committee be reappointed and after three years when the post gets dereserved as per Government Rules in this regard," the same candidate should be confirmed with effect from the date of the dereservation of the post."

In view of this, the said Circular clearly states that even if a person from the said Backward Class category is available, he should be found suitable and should be recommended by the Selection Committee and since this was not done, the said person from the Scheduled Caste Category could not have been appointed in the said post. He, therefore, submitted that the petitioner is entitled to be confirmed in the said post. He submitted that the Petitioner had continued in service by virtue of the interim orders passed by this Court and has been continuously working for the period more than 14 years and since then the petitioner has already put in more than 17 years of service as of today and, therefore, he seeks directions that the post may be de-reserved and the services of the petitioner may be confirmed from the date of her initial appointment i.e. from 18-8-1986. He relied upon the Division Bench Judgment of this Court reported in 1990 (2) BCR 586 wherein this Court had held that on completion of 3 years, in view of the Government Resolution, the petitioner therein was deemed to be on probation right from the time of the first appointment. The learned counsel appearing on behalf of the respondents vehemently opposed the submissions made by the learned counsel appearing on behalf of the petitioner. She submitted that since a candidate from the reserved category was available, she ought to have been appointed and, therefore, Vice-Chancellor had correctly declined to grant approval to the appointment of the petitioner. She further submitted that one person from the Selection Committee was absent and, therefore, the recommendations of the Selection Committee cannot be accepted. She further submitted that there cannot be an automatic de-reservation of the post and neither the Government Resolution nor the Ordinance issued by the Vice-Chancellor talks about automatic de-reservation.

7. We have perused the petition, annexures thereto and reply filed by the respondents. In the facts and circumstances of the present case, which are very peculiar, in our view, the services of the petitioner are entitled to be confirmed from the date of the initial appointment i.e. from 18-8-1986. The petitioner has been continuously working since last 17 years. The Government Resolution of 1986 specifically states that if the candidate from the Scheduled Caste Category is not available then the person from the open category should be continued for a period of 3 years and thereafter the post should be dereserved. The Ordinance issued by the Vice-Chancellor by exercising his statutory power u/s 11(6)(b) of the Nagpur University Act also specifically states that the vacancy can be carried forward up to the period of 3 years. The petitioner, by virtue of the interim orders of this Court, has continued to work as a lecturer in Biochemistry and she is being paid salary from month to month. Though it is true that the Resolution or

the Ordinance issued by the University does not speak about automatic de-reservation, yet it cannot be overlooked that the petitioner has continued to work as a lecturer in Biochemistry and is working for the last 17 years. In our view, the petitioner is entitled to get the benefits of the Resolution issued by the Government of Maharashtra dated 29th September, 1986 which in clear terms states that if a candidate from the Scheduled Caste Category is not available then after third year the post has to be de-reserved and the person from the open category who has worked should be confirmed in the said post. The ordinance issued by the University also clearly states that the post which is reserved for a reserved category can be carried forward only upto 3 years. In this view of the matter, we are of the view that the petitioner who has worked continuously for 3 years from 18-8-1986 in the reserved category post, is entitled to get confirmation from the said date. The ratio of the Judgment reported in 1990 (2) BCR 586 also would apply to the facts of the present case. In the said case, however, the services of the petitioner therein were discontinued for some time. However, there the petitioner had worked continuously for 3 years and Division Bench by interpreting the Government Resolution which is identical to the Resolution dated 29-9-1986, has held that the petitioner therein was entitled to be confirmed after 3 years from the date of her initial appointment. The ratio of the said Judgment would, therefore, squarely apply to the present case where the Government Resolution is squarely couched in identical words and Clause 3 of the Government Resolution dated 29-9-1986 is identical to the Government Resolution dated 29-9-1986 which is reproduced in para No. 4. The Division Bench in para 16 has observed as follows :

"In our opinion, therefore, notwithstanding the break in the actual employment of the petitioner, she was continuously in employment from 19-3-1984 to 30-4-1986. It follows that the consequences laid down by the government in its Resolutions dated 29-9-1986 and of the University dated 27-2-1987 must follow. These circulars make it clear that the petitioner who was appointed for two consecutive years must be deemed to have been on probation right from the time of the first appointment."

8. So far as the second submission of the respondent is concerned that the recommendations of the Committee are invalid and that since the candidate was available from the Scheduled Caste Category she ought to have been appointed, such contention cannot be accepted. The University of Nagpur had issued a circular through the Registrar which is annexed at Exh. J dated 27-3-1987 in which it is clarified that even if the candidate from the reserved category is available, he should be recommended by the Selection Committee. Thus, there is no substance in the contentions raised by the learned counsel appearing on behalf of the University merely because the said candidate was available she should have been appointed.

9. In the result, the writ petition is allowed. The order passed by the Vice-Chancellor dated 27-9-1988 declining to grant approval to the petitioner in the

post of full time lecturer in Biochemistry is quashed, and set aside. The post of full time lecturer in Biochemistry in the Respondent College in which the petitioner is working since 18-8-1986 is de-reserved and the services of the petitioner are confirmed from the date of her initial appointment i.e. 18-8-1986.

Rule is made absolute in the above terms. Under the circumstances, there shall be no order as to costs.