
(2008) 02 BOM CK 0193

In the Bombay High Court

Case No : Writ Petition No. 2201 of 1997

Mrs. Savita Pradip Datar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-02-2008

Acts Referred:

Citation : (2008) 4 ALLMR 385 : (2008) 3 MhLj 923

Hon'ble Judges : Nishita Mhatre, J;J.N. Patel, J

Bench : Division Bench

Advocate : A.M. Joshi, for the Appellant; C.R. Sonawane, A.G.P. for respondent Nos. 1 and 2, M.H. Doshi, for Respondent Nos. 3 and 4 and Sanjay Kshirsagar, for the Respondent

Judgement

Nishita Mhatre, J.—The petitioner has challenged the order of the Presiding officer, University Tribunal dated 31.1.1996 to a limited extent. By this order, the Tribunal allowed the appeal filed by the petitioner and set aside the order of termination of service dated 30.4.1995. The Tribunal directed that the petitioner would be deemed to have continued in the post she was appointed in after 30.4.1995. However, the claim for back wages was denied by the Tribunal while directing that the petitioner be paid salary at the rate she was being paid in April, 1995.

2. The petitioner responded to an advertisement issued by respondent No. 3 inviting applications for the post of Senior College Teacher in various streams including Zoology with specialization in Physiology. Pursuant to an interview, the petitioner was appointed on 7.12.1988 after being duly selected for one academic year. She was appointed against a post reserved for a candidate from the Scheduled Tribes. A fresh advertisement was issued by respondent No. 3 for the next academic year 1989-90. The petitioner continued after being selected pursuant to an interview held. Similarly, an advertisement was issued in May, 1990 and the petitioner was appointed in a post meant for the candidate from the reserved category. In November, 1991, an advertisement was issued

indicating that the post which was occupied by the petitioner was available for the open category. The petitioner applied for the said post and was interviewed. She was then appointed in a leave vacancy. The petitioner continued in this post till October, 1994 when the post, in which she was working against the leave vacancy, was declared as a post reserved for the Scheduled Tribes category. An advertisement inviting applications for the post was issued indicating that the post was reserved for the Scheduled Tribes. The petitioner was then appointed to the post on 3.1.1995 for the academic year 1994-95. The petitioner was informed that her services would automatically be terminated at the end of an academic year. An appeal was filed by the petitioner before the College Tribunal. Since it had been filed after some delay, an application for condoning the delay was also filed. The Tribunal condoned the delay and the appeal was heard on merits. The Tribunal held that the petitioner was entitled to continue in service from May, 1995 and directed that she be paid salary at the same rate that she was drawing on 30.4.1995. The Tribunal thus granted reinstatement with continuous service to the petitioner, however, without back wages.

3. The petitioner through this petition contends that the Government Resolution dated 29.9.1986 entitled her to continue in the post which she was appointed in the year 1988 once it was de-reserved after being advertised on three consecutive occasions. The learned Counsel for the petitioner submitted that in the case of Ashok Chandrashekar Rao Vs. University of Mumbai and Others, , the Division Bench of this Court has considered this Government Resolution and has concluded that when a candidate is not available from the reserved category and a candidate of the general category holds the post continuously, the candidate is entitled to be regularised in that post without it having to be re-advertised on de-reservation. The learned Counsel submits that, in view of this judgment, the petitioner would be entitled to back wages from the time she was terminated from the post and would also be entitled to be confirmed and regularised in the post with effect from 1988 i.e. from the date she was first appointed. The learned Counsel then draws our attention to the fact that after the petitioner was reinstated her pay has not been properly fixed by respondent No. 3. He submits that though the petitioner was drawing Rs. 2,575/- from 6.10.1994 upto 30.10.1994, she has been paid Rs. 2,275/- on reinstatement.

4. We have perused the order of the Tribunal and in our opinion the Tribunal has correctly held that the petitioner was entitled to be reinstated in service. The petitioner had been continuously appointed in the post from 1988 onwards, either against a reserved post or against a leave vacancy. Her service was found to be satisfactory by respondent No. 3. The Tribunal has, therefore, rightly held that the petitioner would be deemed to have continued in service as a permanent employee. The learned Counsel has taken exception to the fact that the petitioner's services were made permanent with effect from 30.4.1995 rather than 1988, when she was first appointed. The Government Resolution dated 29.9.1986 entitles the petitioner to be made permanent if she has been continued in a reserved post for a number of years as there was no suitable

candidate from the reserved category. The Government Resolution provides that, if no suitable candidate is available for three consecutive years for the reserved post, then the post may be de-reserved. On de-reservation of the post, the candidate who is appointed in the de-reserved post, is entitled to permanency from the date on which the post is de-reserved, provided other conditions for permanency are fulfilled. In the present case, the post was de-reserved as there was no suitable candidate belonging to the Scheduled Tribes. The post has been de-reserved with effect from 30.4.1995. The Tribunal has rightly held that the petitioner would be entitled to permanency from that date and not from the year 1988. She would not be required to undergo probation since she was in service from 1988 onwards. Therefore, the submission of the learned Counsel for the petitioner that she should be granted permanency with effect from 1988 cannot be accepted. The reliance placed by the learned Counsel on the judgment of Ashok Chandrashekar Rao (supra) does not lend assistance to the petitioner to claim that she should be considered to be regularized and made permanent in the post from 1988 onwards. The Government Resolution on which the petitioner relies is extremely clear and unambiguous. It stipulates that the regularization in service of a candidate who has been appointed after a post has been de-reserved since there was no suitable candidate available for three consecutive years, will be with effect from the date on which the post is de-reserved, and not from the date when the candidate was actually appointed in service.

5. The petitioner has pointed out that she ought to have been paid Rs. 2,575/- from 18.3.1994 to 17.3.1995 and Rs. 2,650/- from 18.3.1995 to 17.3.1996 in the pay scale of Rs. 2,275-4000. The learned advocate for Respondent No. 3 and 4 submits that the Tribunal has directed payment of salary at the rate that the petitioner was drawing on 30.4.1995. She points out that the petitioner has made no grievance about the reduced salary that she was being paid in April 1995 and, therefore, she cannot claim any enhancement in her salary. We have perused a copy of the appeal filed by the petitioner as well as the petition. The petitioner has pleaded in her appeal that her pay was illegal and erroneously reduced to Rs. 2,275/- on an from 29.11.1994 from Rs. 2,575/-. Even in her petition, she has pointed out this illegality by raising a specific ground. Unfortunately, the Tribunal has not adverted to this aspect of the matter in the impugned order. We have no reason to disbelieve the petitioner and the claim made by her. She would thus be entitled to draw a salary of Rs. 2,650/- on her reinstatement in service with effect from 30.4.1995 as she is deemed to have continued in that post with effect from that date.

6. In this view of the matter, the petition is partly allowed.

7. Rule made absolute partly. No order as to costs.