

(2009) 07 BOM CK 0080

In the Bombay High Court

Case No : Writ Petition No. 18 of 2009

Ms. Vaishali Shet Shirodkar alias Mrs. Vaishali Sanjay Naik

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (2009) 07 BOM CK 0080

Hon'ble Judges : U.D. Salvi, J;S.B. Deshmukh, J

Bench : Division Bench

Advocate : S.D. Lotlikar and Sourabhi Vaidya, for the Appellant; S.A. Bandodkar, A.G.A. for Respondent Nos. 1 and 2, A.A. Agni, for Respondent No. 3, Sudesh Usgaonkar, for Respondent Nos. 4 and 5 and Melwin Viegas, for the Respondent

Judgement

S.B. Deshmukh, J.—We have heard the learned Counsel for respective parties.

2. The petitioner approached to this Court, under Articles 14, 16, 226 and 227 of the Constitution of India. The petitioner has prayed for issuance of Writ of Mandamus, order of direction commanding respondent No. 5 to appoint the petitioner to the post of lecturer on regular (full time) post on regular pay scale as applicable to the said post from the academic year 2007-08. In the alternative Writ of mandamus has been sought against the respondent No. 4 and 5 to appoint the petitioner for the post of lecturer in Hindi for the academic year 2008-09. Writ of mandamus is also sought in prayer Clause D against the respondent No. 5 for cancellation of the appointment of respondent No. 4 in Hindi subject on contractual basis.

3. In response of this petition, reply affidavit has been filed on behalf of the respondent No. 4, 5 and 6. Respondent No. 4 is a trust, (hereinafter called as Trust for short) registered under the provisions of Indian Trust Act and is a Society registered under the provisions of the Societies Registration Act, 1860. The respondent No. 5 is the Principal of the College run by the respondent No. 4. Respondent No. 6 is a private person appointed as lecturer (Hindi) on contract

basis.

4. The controversy is mainly, amongst the petitioner and respondent No. 4 and 5. Goa University Act 1984 (hereinafter referred to as the Act, 1984 for short) governs the activities of the Goa University and the colleges affiliated permanently or temporarily to said University. Goa University has published a volume in 1988 containing all statutes made from time till that date. Since we are dealing with the matter of appointment of petitioner as lecturer on regular basis, we refer to the requisite qualification for such appointment under the statute. Such recruitment and qualification is the subject matter of SA 19 (ix and x), which is reproduced here in below:

SA-19(ix) The minimum qualifications required for appointment to the posts of Lecturers, Readers and Professors will be those prescribed by the UGC from time to time. The minimum qualifications for appointment to the post of Lecturer in the scale of pay Rs. 220-4000 shall be Master's degree in the relevant subject with at least 55% marks or its equivalent grade, and good academic record, as prescribed by the UGC from time to time.

SA-19 (x) Only those candidates who, besides fulfilling the minimum academic qualifications prescribed for the post of Lecturer, have qualified in a comprehensive test, to be specifically conducted for the purpose, will be eligible for appointment as Lecturers. The detailed scheme for conducting the test including its design, the agencies to be employed in the conduct of the tests, content, administration etc., as worked out by the UGC, will be adopted by this University. Till such time the UGC scheme for conducting the comprehensive test is finalized and made applicable to this University recruitment of teachers in the University teaching departments as well as colleges affiliated to Goa University continue to be made in accordance with the existing procedure.

5. It is not in disputed that the advertisement on behalf of the respondent No. 4 and 5 has been published for the appointment to the post of lecturer in various subjects. In the case on hand, we are concerned with Hindi subject. Advertisement published by the respondent No. 4, at Annexure A, (page 61) is pointed out by the Counsel for the petitioner. This advertisement was initially published for academic year 2001-02. The relevant advertisement so far as the present petitioner is concerned is at Exh. L, (page 125). This advertisement is dated 13.05.2007 published in daily Navhind Times, at serial No. 7, the subject mentioned is Hindi, number of posts advertised are two. The nature of the post as per this advertisement is Regular/Contract, category unreserved/open. The essential qualifications are specified in this advertisement. In response to this advertisement, the petitioner has applied to respondent No. 4 and 5. The Selection Committee duly constituted had interviewed the candidates on 12.06.2007. Annexure M (page 127) is the report of the Selection Committee/recommendation for the appointment to the post of lecturer in Hindi. Three persons seems to have been recommended. First person recommended is the present petitioner/Mrs. Vaishali S. Shirodkar, second person is Ms. Janet Borges

and the third person is Ms. Kiran Popkar. Page 129, the report is important from the view point of the petitioner and the respondent No. 4 and 5 also. The recommendation of the Selection Committee is contained in Clause 5. This Clause 5, we are reproducing herein below:

5. The committee, after interviewing the candidates and after taking into consideration their qualifications, teaching experience, publication, etc. decided to recommend Mrs. Vaishali Shet Shirodkar to be appointed in the post of lecturer in Hindi on the starting pay of Rs. 8000/- basic (regular).

6. According to the Counsel for the petitioner, she had been recommended for the appointment on the starting pay of Rs. 8000/-basic (regular). This recommendation is dated 12.06.2007. The Advocate for petitioner points out that apart from Clause 5, order of merits is given. The name or recommendation of the petitioner is at serial No. 1. As against this, recommendation of respondent No. 6, according to the Counsel for the petitioner is on lecture basis, and not on regular basis or full time lecturer.

7. Learned Senior Counsel for the petitioner submitted that despite the fact that the petitioner was holding the requisite qualification but has also passed NET examination and therefore, the appointment of the petitioner on the post of lecturer on regular basis, was expected. Counsel for the petitioner further submitted that the petitioner was not appointed on regular basis. The appointment offered to the present petitioner was on lecture basis. The respondent No. 6 was recommended by the Selection Committee to be appointed on lecture basis for the academic year 2007-08. However, she was appointed on regular basis. In contrast the petitioner was appointed on contract basis for the academic year 2007-08. The contention is also raised on behalf of the petitioner that regular post of lecturer of Hindi subject was available on account of retirement of Mr. Upadhye. The petitioner therefore, seeks her appointment on regular basis for the academic year 2007-08 onwards.

8. On behalf of the respondent No. 4, affidavit-in-reply is filed. Learned Counsel for the respondent No. 4 and 5 took us through the affidavit of respondent No. 5 at page 405. This affidavit is sworn in by Mr. Shrikant V. Deshpande, Principal of the college concerned. Apart from this affidavit, learned Counsel for the respondent No. 4 and 5 also referred to the affidavit filed on behalf of the respondent No. 5 at page 391 by the Principal, Mr. Deshpande. In paragraph 4 of the affidavit, it has been stated that for the academic year 2008-09, the advertisement for the post of Lecturers in Hindi was issued on 07.05.2008. The present petitioner and the respondent No. 6 along with two other candidates who had applied, were called for the interview by the Selection Committee on 02.07.2008. The Selection Committee after conducting the interviews recommended the respondent No. 6 Ms. Kiran Popkar for the appointment on full time regular basis and the petitioner was recommended for the appointment on lecture basis. He further points out from paragraph 5 of the affidavit that as the petitioner was not found suitable to the appointment of the regular (full time)

basis, she was specifically recommended for appointment on lecture basis, and the respondent No. 6 was recommended for the post of regular/contract basis, on the ground of suitability. It is also stated in paragraph 6 of the affidavit that for the academic year 2008-09, the respondent No. 5 received NOC from the respondent No. 2 for filling up the post on regular (full time) basis on 18.07.2009. In view of the recommendation of the Selection committee, the respondent No. 5 on 30.07.2008 forwarded the name of the respondent No. 6 to the respondent No. 3 for approval, for her appointment on full time basis. The respondent No. 3 communicated vide letter dated 26.08.2008 to the respondent No. 5 that the respondent No. 6 is not qualified for the post as (regular/full time basis), she was not having required NET/SET or M.Phil/Ph.D. Examination and respondent No. 5 may deal with her appointment as per Circular referred in its communication. Statement is made in this paragraph 6, that in view of the recommendation of the Committee, respondent No. 6 was appointed to the post of lecturer on contract basis. However, we have to keep in mind that paragraphs 4, 5 and 6 of affidavits of respondent No. 4 pertains to the appointment of the respondent No. 6 for the academic year 2008-09. Advertisement dated 13.05.2007 is the basic foundation for the present petitioner. Qualifications of the petitioner and respondent No. 6, is to be considered in view of the advertisement for the post of lecturer regular (full time) basis, dated 13.05.2007.

9. The advertisement which we have referred earlier, relevant in this petition at Exh.L (page 125) is considered by us. Exh.M (page 127) is the report of the duly constituted Committee which we have referred earlier. One more advertisement is at Exh.P (page 141). This advertisement also makes mention that two posts of lecturer are available and they are unreserved. Amongst them, one post is to be filled in on regular/contract and one post advertised was on lecture basis but then we have to keep in mind that Annexure Exh.P is for the academic year 2008-09. As we have clarified in foregoing paragraphs that Annexure Exh.L is relevant for the purpose of the present writ petition, however, we have referred this advertisement at Exh.P since it is for the academic year 2008-09. The report of the Selection Committee in response to this advertisement Exh.P is on record at Annexure Exh.Q (page 143). We have on this premise really, no concern with Annexure Exh.P (page 141) and Exh.Q (page 143) report of the Selection Committee. This position is fairly admitted by the Counsel for the parties. All of them have addressed this Court accepting the position of Annexure Exh.L (page 125) and report Annexure Exh.M (page 127) is being significant and relevant for the purpose of deciding the controversy brought before this Court in this writ petition.

10. The learned senior Counsel for the petitioner, relying on the Selection Committee report Annexure Exh.M (page 127) submits that the name of the present petitioner has been recommended by the Committee to be appointed to the post of lecturer in Hindi subject on starting pay of Rs. 8000/- basic. He points out that this recommendation is specifically for appointment of the petitioner on regular basis and with the starting pay of Rs. 8000/-. He has also pointed out

from this report/recommendation that the petitioner was recommended on full time basis and respondent No. 6 is recommended on lecture basis for the academic year 2007-08 which is significant and around which the controversy amongst the parties revolve. Annexure Exh.L (page 125), according to the learned Counsel for the respondent No. 4 and 5 shows essential qualification and service conditions. In both advertisements under the caption "Essential Qualifications and Service Conditions" have been mentioned. While addressing this Court, Counsel for the respondents has emphasized on the relevant clause, which is as under:

In case of candidates having passed the eligibility test or possessing degree of M.Phil/Ph.D in the concerned subjects are not available or not found suitable, the candidates fulfilling other conditions would be considered for appointment on purely temporary basis till the end of the academic year.

According to Advocate for respondent No. 4 and 5, considering this aspect of the matter the Selection Committee has recommended the present petitioner to be appointed on lecture basis, and respondent No. 6 was recommended to be appointed on full time regular/contract basis. (Annexure Exh.Q at page 143) It is pertinent to note that this report or recommendation of the Selection Committee pertains to the advertisement Annexure Exh.P for the academic year 2008-09 for which, no challenge in this petition is made. The petitioner's main grievance pertains to the advertisement Annexure Exh.L (page 125) for the academic year 2007-08. However the Clause which has been pointed out to us from the advertisement Annexure Exh.P by the learned Counsel for the respondent No. 4 and 5 has been considered by us being the same in earlier Annexure Exh.L (page 125).

12. Per contra, learned senior Counsel for the petitioner submits that this Clause has an application in certain circumstances i.e. in the absence of eligible candidates. In other words, learned Counsel for the petitioner submits that the petitioner was eligible as per the advertisement Annexure Exh.L (page 125), and was holding the required qualifications laid down in SA-19. He further points out that petitioner was not holding requisite qualification but in addition to that the petitioner was holding qualification of having passed NET examination. He therefore, submits that there was no reason and or ground to consider the candidature of any other person and or respondent No. 6 by respondent No. 4 and 5. He also points out that apart from this aspect of the matter, Annexure Exh.M (page 127) is recommendation made by the duly constituted Selection Committee in clear and unequivocal terms for the academic year 2007-08.

In our view, it is not a case of interpretation of any Clause of the advertisement, statute or substantial Section of the Act 1984. The report of the Selection Committee relevant for the year 2007-08 Annexure M is on record and recommends in clear terms the present petitioner to be appointed on full time basis. He further submitted that, report further clarifies that the petitioner to be appointed on starting pay of Rs. 8000/- basic(Regular). Ordinarily remuneration/

pay may be consolidated, lumpsum in given circumstances but basic pay concept or the monthly salary is based on the pay scale is more important. Here we are concerned of the petitioner's appointment as a lecturer on regular basis; in a college, affiliated to Goa University, established in the State of Goa and on the pay scale of Rs. 8000/- starting pay (basic) is most important aspect in the case at hand. Salary always has a basic amount and in addition to which other permissible allowances are being paid to the employee concerned. Therefore, in out view, the Selection Committee has in clear terms recommended the appointment of the petitioner on regular basis, (full time) and on starting pay of Rs. 8000/- basic salary. The order of merit is also important in the case on hand.

13. The manner and mode of selection of teachers is provided by Statutes. SC-5 (i) lays down the constitution of the Selection Committee. Procedure to be adopted by the Selection Committee is provided by Statute No. 5 (ii) which we quote herein below:

SC-5(ii) Procedure

a): All appointments to the posts of teachers shall be made on merit and on the basis of an advertisement published in a newspaper of all India circulation in the name and address of the College and not by a Post Box number. The qualifications prescribed for the posts shall essentially be related to the academic attainment in the subject concerned and shall not be linked with languages or other regional considerations. Appointment shall not be made on communal or the caste considerations. The particulars of minimum qualifications and additional qualifications if any, required and the scale of pay and allowances shall be included in the advertisement and reasonable time, which shall not be less than 15 days from the date of publication of advertisement, shall allowed within which the applicants may submit their application. Applicants who are already employed shall be required to submit their applications through proper channel. Applicants shall also be required to account or breaks, if any, in their academic career.

b): The date of the meeting of every selection Committee shall be so fixed as to allow notice thereof being given of at least 15 days to each member and to the candidates and the particulars of the candidates shall be supplied so as to reach the members of the Selection Committee at least 7 days before the date of the meeting.

c): The quorum to constitute a meeting of the Selection Committee shall be four members, one of whom shall be the expert nominated by the University.

d): The Selection Committee shall interview and adjudge the merits of each candidates in accordance with the qualifications advertised and recommend the names arranged in order of merit of the persons, if exceeding one, whom it recommend for appointment to the post advertised. If no person is selected a report to that effect shall be made. The Committee shall have the right to recommend only one name if others are not found suitable. The recommendation

of Committee shall be subject to the approval of the Vice-Chancellor and in the even of Vice-Chancellor not approving the recommendation he shall record the reasons in writing and communicate the same to th Principal.

e): The Governing Body shall appoint, from amongst the persons in order recommended by the Selection Committee and approved by the Vice-Chancellor, the teachers required to fill in the posts advertised. A letter of appointment shall be issued in the form C-2 as shown in Appendix C.

14. After making provision of manner and mode of selection and appointment of teachers in colleges, statute, SC-5 (ii) procedure, obligates that all appointments to the post of teachers shall be made on merits and on the basis of advertisement.

Thus it has been provided that the Selection Committee shall interview and adjudge the candidates in accordance with the qualifications advertised and recommend the names, arranged in order of merit of the persons, if exceeding one. Thus it is statutory obligation of the Selection Committee to make recommendation. That is how we find that the name of the petitioner is mentioned at serial No. 1, in the case at hand.

15. A grievance has been raised by the counsel for the petitioner that despite the recommendation by the Selection Committee, petitioner was not appointed and no steps have been taken by the respondent No. 4 and 5 seeking approval for the appointment of the petitioner from the authorities concerned. The respondent No. 4 and 5 on the contrary have submitted a proposal in favour of the respondent No. 6 which ultimately ended in non approval of the Goa University. We are not dealing with aspect of alleged illegal appointment of respondent No. 6, since we are only examining the grievance of the petitioner's appointment on regular basis and on the starting pay of Rs. 8000/- (basic). Learned Counsel for the respondent No. 4 and 5 has pointed out to us the reply affidavit filed on behalf of the respondent No. 5. Paragraphs 4, 5 and 6 of the affidavit of respondent No. 5 is referred to us. In paragraph 6, it has been stated that for the academic year 2008-09, the respondent No. 5 received NOC from the respondent No. 2 for filling up the post on regular full time basis on 18.07.2009. We have clarified in foregoing paragraphs that the academic year 2008-09 is not relevant since we are referring to the advertisement Annexure Exh.L (page 125) for the year 2007-08. Apart from these paragraphs, Counsel for the respondent No. 4 and 5 also took us to paragraph 14. According to him, the Selection Committee has interviewed and recommended the present petitioner for appointment on full time basis and respondent No. 6 on lecture basis in order of merit. There is reference to the communication dated 09.08.2007 made in paragraph 13. According to the learned Counsel for the respondent No. 4 and 5, the appointment of the present petitioner was communicated to him verbally on 17.06.2007 on commencement of the academic year 2007-08. Learned Counsel for the respondent No. 4 and 5 also took us to paragraph 17. According to him, Shri Upadhye was appointed on permanent post in the year 1970 which post was

approved as permanent regular post, as there was sufficient work load, considering the education structure prevailing at that time. According to him subsequently there was a change in the educational structure whereby the workload in the college decreased and the lecturers in the college were declared surplus by the respondent No. 2 under PI category in the year 1989. In paragraph 21 of the reply affidavit, the assessment and re-assessment of the work load has been mentioned. It has been urged on behalf of the respondent No. 4 and 5 that in view of the assessment of the work load, appointment could not be made of the present petitioner despite the fact that the petitioner was recommended to be appointed on regular basis (full time) for the post of lecturer. It has been pointed out to us from paragraph 24 of the affidavit that vide advertisement dated 29.04.2006 they advertised two posts, one on regular/contract basis and the other on lecture basis. After the interview of the petitioner and the respondent No. 6, report was submitted by the Committee. The present petitioner accepted the appointment on 27.06.2006. It has been urged that the present petitioner is not capable of invoking the jurisdiction under Articles 226 and 227 of the Constitution of India. It is not possible for us to countenance the submissions of the learned Advocate for respondent No. 4 and 5. In our opinion, right from the submission of the application to the advertisement Annexure Exh. L, at page 125, all along the petitioner was aspiring to be appointed as a lecturer in Hindi subject on regular basis. She was recommended by the duly constituted Selection Committee and was at serial No. 1 in the order of merit. Despite this fact, she was not appointed in that post. In the facts and circumstances she worked on the post of lecturer on lecture basis for one year. Another advertisement was then advertised on 26.04.2005 and she applied for the same. In this background, in our view, the petitioner was eligible for appointment on the post of lecturer (Hindi) on regular basis for the year 2007-2008. Acceptance of the petitioner, the post of lecturer on lecture basis for the subsequent year cannot be considered to be a circumstance against her.

16. Counsel for the respondent No. 4 and 5 has also invited our attention to the additional affidavit at page 405. He has pointed out to us the position of the work load from page 403. He has also emphasized on the note which reads that "The number of existing full time approved posts of lecturers at column No. 7 will continue till the exiting incumbents retire/resign, etc." The work load in the facts and circumstances of the present case may have some relevance while appointing a person on lecture basis. The appointment of a person on regular basis, cannot be, subjected to such work load The respondent No. 4 and 5 may consider the work load at the relevant time, in view of the statutory provisions and or circular issued by the Goa University, or State of Goa. However, in the case hand that will not be a ground to refuse the appointment to the petitioner on the post of lecturer on regular basis. We reiterate that in response to advertisement at page 125, the petitioner was eligible and most suitable candidate to be appointed as lecturer on regular basis (full time) on starting pay of Rs. 8000/- basic for the academic year 2007-08.

17. The prayers made by the petitioner in this writ petition have been referred by us in the forgoing paragraphs. The appointment of persons as teachers and lecturers in view of the provisions of the Act and Goa University Statutes is a matter to be dealt with by the Governing Body. However the Governing Body has to act in view of the provisions of the Act 1984, Goa University Statutes and various directives issued by the Goa University and the State of Goa. Governing Body is defined in Clause SA-1 (xvii) as a Body which actually conducts the affairs of a college and which has been so recognized by the University for the purpose of the statutes as employer. In substance the matter is to be dealt with by the employer and in the case on hand, by the respondent No. 4. Citizens are approaching this Court with grievances. Reliefs in a given case can be moulded by the Court. In the facts and circumstances of the present case, we are inclined to allow the petition partly and issue direction to the respondent No. 4 to consider the appointment of the petitioner on the post of lecturer (Hindi subject) on regular basis (full time), on the starting pay of Rs. 8000/- (basic), from the academic year 2009-10 as it has been advertised in Annexure L, (page 125) and proposal of such appointment to be forwarded to the Goa University, for further necessary approval. In view of the date of publication of the advertisement, various facts and circumstances, we direct the respondent nos.4, 5 and respondent No. 3 Goa University to complete the entire exercise within a period of five weeks from today i.e. on or before 31.08.2009.

18. Rule made absolute in the above terms with no order as to costs.