
(2011) 11 BOM CK 0105
In the Bombay High Court
Case No : Writ Petition No. 1840 of 2003

Parle Tilak Vidyalaya Association	Vs	APPELLANT
University of Bombay and Another		RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Maharashtra Universities Act, 1994 — Section 57(4)

Citation : (2011) 11 BOM CK 0105

Hon'ble Judges : D.K. Deshmukh, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : Gaurav Joshi with Mr. Anirudh Joshi and Ms. Rucha Jog Raheja instructed by M/s R.V.J. Associates, for the Appellant; Susheel Mahadeshwar for Respondent No. 1 and Ms. Madhubala Kajle, AGP, for the Respondent

Final Decision : Allowed

Judgement

1. The present petition is filed by the Society registered under the Societies Registration Act 1960, which runs three Senior Colleges, all of which are affiliated to the respondent No. 1 University. The Colleges are (1) Sathaye College of Arts, Science and Commerce, Vile Parle (East); (2) M.L. Dahanukar College of Commerce, Vile Parle (East) and (3) Mulund College of Commerce, Mulund (West). The present petition has been filed basically challenging the decision of the University directing the College to club the posts of Teachers in all the three Colleges together for the purpose of reserving the vacancies for candidates belonging to backward class. The University has filed its reply. According to the University, the University has taken decision that the posts in different cadres in the three Colleges of the petitioners are to be clubbed together for the purpose of reserving vacancies for backward class candidates in view of the Government Resolution dated 20th January 1990 and Government Circular dated 25th November 1994. Perusal of the Government Resolution dated 20th January 1990 shows that it contains policy decision of the State Government that for the purpose of giving effect to the reservation policy of the State Government,

cadres having small number of posts indifferent Universities and affiliated Colleges should be clubbed together. By Government Circular dated 25th November 1994, a direction has been issued that if an Education Society is running more than one Senior College, then all the posts in one cadre in all the Colleges should be clubbed together for the purpose of implementing the policy of reservation of posts for backward class. For example, if there are 30 posts of Lecturer in three Colleges, then all be clubbed together irrespective of the subjects for which those posts are. The short submission on behalf of the petitioners is that the direction contained in the aforesaid Government Resolution and the Government Circular is contrary to the judgment of the Supreme Court in the case of Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, . It is submitted that the Supreme Court in that judgment has upheld the judgment of the Full Bench of this Court which had held that in so far as the posts under University are concerned, the posts can be clubbed together subject-wise for the purpose of giving effect to the reservation policy and not cadre-wise. In other words, it is submitted that the posts of Lecturer in all the three Colleges, irrespective of the subjects, can not be clubbed together.

2. We have heard the Learned Counsel appearing for University. He submits that though clubbing of posts cadre-wise irrespective of subjects in which the posts are may not be possible, it is possible to club the posts cadre-wise and subject-wise.

3. It is clear that under the provisions of the Maharashtra Universities Act 1994, the policy of the State Government in relation to reservation is to be implemented by the University. The University by filing affidavit in this petition has made it clear that a direction to the petitioners for clubbing of posts in cadres in all the Colleges is based on Government Resolution dated 20th January 1990 and the Government Circular dated 25th November 1994. Perusal of the Government Circular dated 25th November 1994 shows that it directs clubbing of all the posts in one cadre in all the Colleges which are conducted by one Education Society for the purpose of reservation, it does not take into consideration the subject in which particular post may be available. Perusal of the judgment of the Supreme Court in Dr. Suresh Chandra Verma's case shows that this question was considered by the Supreme Court in that judgment. The University while issuing advertisement had clubbed all the posts of Lecturer in various subjects together and applied the reservation policy. The Full Bench of this Court held that such procedure is illegal. When that judgment of the Full Bench was challenged in the Supreme Court in paragraph 11, the Supreme Court has observed thus :

11. The argument based on section 57(4)(a) of the Act to support the procedure adopted by the University is, according to us, not well merited. The contention is that since section 57(4)(a) requires the University to state in the advertisement only the total number of posts and the number of reserved posts and not post-wise, i.e. subject-wise, the employment notice in question was not bad in law.

According to us, the word 'post' used in the context has a relation to the faculty, discipline, or the subject for which it is created. When, therefore, reservations are required to be made 'in posts', the reservations have to be post-wise i.e. Subject-wise. The mere announcement of the number of reserved posts is no better than inviting applications for posts without mentioning the subjects for which the posts are advertised. When, therefore, section 57(4)(a) requires that the advertisement or the employment notice would indicate the number of reserved posts, if any, it implies that the employment notice cannot be vague and has to indicate the specific post, i.e. The subject in which the post is vacant and for which the applications are invited from the candidates belonging to the reserved classes. A non-indication of the post in this manner itself defeats the purpose for which the applications are invited from the reserved category candidates and consequently negates the object of the reservation policy. That this is also the intention of the legislature is made clear by section 57(4)(d) which requires the selection committees to interview and adjudge the merits of each candidate and recommend him or her for appointment to 'the general posts' and 'the reserved posts' if any, advertised.

The Supreme Court has thus clearly held that the reservations are required to be made in posts and the reservations have to be post-wise i.e. Subject-wise and not cadre-wise irrespective of subject in which the post is. Though it was argued before us by the Learned Counsel appearing for University that for the purpose of giving effect to the reservation policy, the Colleges which are run by one Institution can be asked to club the posts in a particular cadre subject-wise, in our opinion, that question does not arise for consideration in the present petition because in the present petition, what is challenged is the direction issued by the University based on the aforesaid Government Resolution and Government Circular and therefore, unless the Government takes a decision to that effect and it is adopted by the University, that question will not arise for consideration.

4. It is thus clear that the decision of the Government contained in Circular dated 25th November 1994 and the Government Resolution dated 20th January 1990 are contrary to the law laid down by the Supreme Court in its judgment in Dr. Suresh Chandra Verma's case. In our opinion, therefore, the University, in implementation of that decision, could not have directed the petitioners to club all the posts cadre-wise in all the three Colleges conducted by them. In the result therefore, petition succeeds and is allowed, rule is made absolute in terms of prayer clause (a). No order as to costs. Notice of motion No. 53 of 2008 is disposed off.

Parties to act on the copy of this order duly authenticated by the Associate/Private Secretary of this Court.

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