

(2010) 10 BOM CK 0144
In the Bombay High Court
Case No : First Appeal No. 3 of 2006

Shri R.S. Mane

APPELLANT

Vs

Government of Goa and The Principal, Government
Polytechnic

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Citation : (2010) 6 BomCR 30

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : S.D. Lotlikar and P. Lotlikar, for the Appellant; G. Shirodkar, A.G.A.,
for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—This appeal is directed against the judgment/decreed dated 17/09/2005 of the learned Adhoc Additional District Judge in Civil Suit No. 39/2004.

2. The plaintiff was appointed on adhoc basis as a lecturer in the Government Polytechnic at Panaji w.e.f. 17/12/1979 and was regularly appointed on officiating basis from 18/02/1988 and retired from 30/11/2001 at the age of 58. In the suit filed by him, the plaintiff claimed that he was entitled to the grant of "senior scale" and "selection scale". The plaintiff was entitled for the grant of "senior scale" from 17/12/1987 subject to the condition that he completed short term course of at least 8 weeks duration by December, 1994. The plaintiff has been granted senior scale from 17/12/1987 and he has also now been ordered to be paid arrears of his salary. This finding has been given by the learned Additional District Judge in the impugned judgment while answering issues Nos. 1 and 2. The Government has not assailed the said finding by filing cross objections or at the hearing of this appeal. On the contrary, Government has chosen to abide by the said finding.

3. The plaintiff was granted senior grade scale retrospectively by order dated 9/05/1994 w.e.f. 17/12/1987. The plaintiff claimed that he was entitled to be granted selection grade from 17/12/1996. According to the Government, the grant of selection grade to the plaintiff w.e.f. 17/12/1996 was deferred since the Review Committee in its meeting held on 4/09/1998 and 3/04/2000 had held that the plaintiff did not fulfill one of the conditions laid down by the AICTE for the consideration of career advancement i.e. consistently good performance appraisal report. The Government had laid down the condition that a lecturer should earn at least four "very good ACR"s for selection grade, as laid down in circular dated 15/12/1998. The plaintiff was required to earn four "very good ACR"s and since the plaintiff did not earn four "very good ACR"s and further did not complete 8 weeks refresher course therein and since the plaintiff's promotion for one year was held up due to disciplinary proceedings against him, the plaintiff was not marked for selection grade as he was ineligible for the same.

4. The Government had produced AICTE circular dated 19/09/1993 at Exhibit 67, which provided eligibility criteria for senior scale and selection scale. Clause II(iii) thereof reads as follows:

II(iii) The lecturers who were in service before 01/01/1986 who are eligible for placement in the senior scale/selection grade in accordance with the above provisions may be placed accordingly by relaxing provisions under 1(b) and II(b) above ensuring that such lecturers participate in the refresher Courses latest by 31st December, 1994. This relaxation will not be allowed to the lecturers appointed on and after 1/01/1986.

The circular dated 19/09/1993 was enforced by circular dated 9/05/1994 and again by circular dated 28/07/1998 (Exhibit 99) and circular dated 15/12/1998 (Exhibit 69). The criteria imposed was:

(a) completion of 8 years of service after regular appointment for senior scale and further 8 years for selection grade.

(b) participation for 8 weeks refresher training to senior scale and further 8 weeks training for selection grade.

(c) Candidate should have consistently satisfactory performance appraisal report.

5. Clause (c) was further explained by circular dated 15/12/1998 (Exhibit 69) to say that the teaching staff should earn at least four "good ACR"s for senior scale and four "very good ACR"s for selection scale.

6. The learned Additional District Judge held that the plaintiff's case for selection grade was reviewed at a meeting held on 3/04/2000 and selection grade scale was not granted to the plaintiff by the Review Committee on the ground that he did not have four "very good ACR"s during the relevant period of time and it was also noted that disciplinary action was taken against the plaintiff. The learned Additional District Judge found that ACR"s of the plaintiff were missing for the period from 1990 to 1994. The learned Additional District Judge posed the

question whether the missing ACR's of the plaintiff for the year 1990 to 1994 were to be presumed to be "very good" and after referring to the order passed by the disciplinary authority dated 26/05/1998, held that disciplinary proceedings were initiated against the plaintiff for the misconduct committed in the year 1989 and 1990 and the plaintiff was found guilty and imposed a penalty and, therefore, all the ACR's of the year 1990 to 1994 could not be presumed to be "very good". The learned Additional District Judge has further held that a public servant was governed by the conditions of service prevailing at the time when his case for career advancement was considered by the appropriate authority unless he had obtained vested right to be governed by the old conditions of service and that on the date the Review Committee considered the plaintiff's case for selection grade, the circular dated 15/12/1998 (Exhibit 69) was in force and, therefore, they were not wrong in applying the guidelines contained therein and, therefore, the contention of the plaintiff that his case for selection grade should have been considered by the guidelines contained prior to circular dated 15/12/1998 could not be accepted.

7. Shri Lotlikar, the learned Senior Counsel appearing on behalf of the plaintiff has submitted that the plaintiff was eligible for selection grade in the year 1996 after it was postponed for one year upto 17/12/1996 because of disciplinary action taken against the plaintiff and, therefore, the plaintiff could not be dealt with by the circular dated 15/12/1998.

8. At the Review Committee meeting held on 4/09/1998, the case of the plaintiff for the grant of selection grade w.e.f. 17/12/1996 was deferred as the plaintiff had not completed 8 weeks of training and as his ACR's were not "very good". At the meeting held on 3/04/2000, it is the Committee, who decided to follow the criteria of 4 "very good ACR's" and that there should not be any adverse remarks in any of the ACR's of 8 years. The minutes do not disclose that they have followed the circular dated 15/12/1998. Three candidates were considered by the Committee. One candidate was recommended for grant of selection grade, the other was also recommended subject to the approval of the Government and the plaintiff was not recommended as the plaintiff did not have 4 "very good ACR's". In the absence of any Rules, governing the grant of selection grade, the Review Committee was certainly entitled to lay down the criteria to be followed for the grant of selection grade. The plaintiff did not fulfill the criteria laid down by the Review Committee. Disciplinary action was taken against the plaintiff for acts of misconduct in the years 1989 and 1990. Therefore, apart from the fact that the plaintiff did not meet the criteria laid down by the Committee, the plaintiff did not also have "consistently satisfactory performance report", as stipulated earlier, by circular dated 19/09/1993 to be eligible for the grant of selection grade, in view of disciplinary action taken against him. Plaintiff might have been a good or very good teacher but had invited disciplinary action which could not have given him good performance appraisal report and he had none to earn a selection grade.

9. In the circumstances, from whatever angle one looks at the case of the plaintiff, neither the decision of the Review Committee nor the conclusion arrived at by the learned Additional District Judge can be faulted.

10. Therefore, I find that there is no merit in this appeal and, consequently, the same is hereby dismissed.