

(2015) 09 BOM CK 0086

In the Bombay High Court

Case No : Writ Petition No. 3470 of 1999

Sudhakar Nathuji Kaple and Others

APPELLANT

Vs

Vice Chancellor, Nagpur University and Others

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Universities Act, 1994 — Section 115, 115 (2)(xii), 19(2), 2, 2(21)

Citation : (2015) 6 ABR 336 : (2016) 2 MhLj 471

Hon'ble Judges : B.P. Dharmadhikari, J;P.N. Deshmukh, J

Bench : Division Bench

Advocate : R.S. Parsodkar, for the Appellant; Atul Pande, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J—Four petitioners in the present matter invoke jurisdiction of this court under Article 226 of the Constitution of India for quashing a communication dated 11.08.1999 by which it is communicated to them that they do not have a promotional channel. They also challenge advertisement dated 21.06.1999 issued by respondent nos. 1 and 2 for direct recruitment to the post of Assistant University Librarian. By other prayer, a direction is sought to respondent University not to treat the post of Librarian or Assistant Librarian as non-vacational academic staff and to treat them as per Section 2(34) of Maharashtra Universities Act. A direction is also sought not to act in furtherance of government resolution dated 14.11.1995 whereby the State Government has declared their post as non-vacational post.

2. It needs to be noted that when petition was filed, there was only one advertisement i.e. advertisement dated 21.6.1999. Thereafter another advertisement has been issued on 24.3.2012. This court has vide its order dated 20.4.2000 directed that appointment of a candidate would depend on decision of this writ petition and successful candidates would not be entitled to claim any

equity in the matter. Similar order has been passed on 5.3.2013 while deciding CAW 541/2013. In short, appointments made by respondent nos. 1 & 2 in pursuance of such advertisement are already subjected to final orders in this writ petition.

3. Shri Parsodkar, in this background, has invited our attention to provisions contained in Maharashtra Non-Agriculture Universities Standard Code to urge that these provisions, particularly Rule 3 thereof which is on subject of classification, sub-divides non-teaching employees of University in three classes and vide its sub-rule 3 it lays down that appointment has to be by promotion or by nomination by adhering to ratio of 50:50 unless otherwise directed. He further states that thus the staff working in library also got benefit and was being promoted in accordance with above mentioned 50:50 ratio. He states that petitioners before this court are qualified Library Assistants and as per channel of promotion in vogue, they are entitled to next promotion as Assistant Librarian. He invites attention to said channel as described in paragraph 2 of writ petition. He points out that petitioners have improved their qualification and hold much higher qualification than prescribed in the Rules. Our attention is also drawn to orders dated 13.12.1991 and 29.11.1993 to show that one Smt. Pawar Qualified Library Assistant was promoted as Assistant Librarian and though the duration was shown to be of one year, she continued on that post till 27.3.2000 and on that date she was given a further promotion as Deputy Librarian. He has also invited our attention to order issued to one Suresh Randai on 12.5.2000 to urge that that person also had been promoted. Learned counsel submits that thus, promotion is being extended only to favoured ones and petitioners have been discriminated against.

4. The communication dated 11.08.1999 sent by Assistant Registrar in response to representation of petitioners on 30.07.1999 is assailed. It is pointed out that reason given therein is irrelevant and though post of Assistant University Librarian may be treated as non-vacational post or holder thereof may be classified as non-vacational academic staff under section 2(21) of Maharashtra University Act, 1994 (hereinafter referred to as the 1994 Act), that by itself does not mean that the promotional channel ceases. He invites our attention to the provisions of Section 2(34) of the 1994 Act to show that the post of University and College Librarian has been included therein and thus petitioners have been recognized as teachers. However, he points out that for recruitment of petitioners and regular teachers the 1994 Act contemplates separate procedure. Procedure under section 76 needs to be followed for selection and appointment of the University teachers while procedure prescribed in Section 79 could be followed for appointment of librarian. In this background, he submits that impugned communication reveals non application of mind and is liable to be quashed and set aside.

5. Our attention is also drawn to a letter dated 3.3.2005 sent by office of Chancellor on clarification regarding amended section 57(3)(ba) of 1994 Act.

Office of Chancellor has directed that librarian cannot be treated as teacher. He states that this situation ought to have been kept in mind while deciding representation of petitioners. Office order dated 11.9.2012 issued in favour of Dr. Pramod Dakhole appointing him as Librarian is also pressed into service for this purpose.

6. Reply filed by University is read out to substantiate the contention that only because librarian is included as a non-vacational staff, the promotion has been denied. He argues that in the light of Section 76 and Section 79 supra librarian cannot be treated as university teacher or part of teaching cadre. He also invites attention to an order dated 30.8.1995 issued by State Government which according to him only looks at language of section 2(34) and therefore is not relevant for deciding present controversy. The government decision dated 29.7.1993 pointing out categorization of various employees due to wage revision and clarifying the confusion is also pressed into service. He submits that it does not prohibit the promotion from post of Qualified Library Assistant to Assistant Librarian.

7. Our attention is invited to fact that petitioners are substantively appointed on a lower post and without promoting them to higher post, are made to hold additional charge thereof on 10% officiating basis for years together. He states that when this situation is compared with treatment extended to Smt. Pawar or Shri Randai, injustice done to petitioners is apparent. He points out that petitioner no. 1 had continued to officiate on 10% post till his superannuation on 1.9.2004.

8. Advocate Pande on behalf of respondent University has strongly opposed the petition. He submits that petitioner no.1 has proceeded on voluntary retirement in September, 2004 and petitioner no. 4 has also resigned and presently is not in employment. The advertisement dated 21.06.1999 which has given rise to filing of present petition was never acted upon and died its own death. In so far as the later advertisement is concerned, petitioners did not apply and as such there was no reason or occasion to consider them. He points out that order dated 13.12.1991 issued to Smt. Pawar or orders of her continuation are prior to coming into force of the 1994 Act. The posts in library held by petitioners have been treated and accepted as non-vacational posts as understood in Section 2(21) of the 1994 Act. This is because of inclusion of that cadre in definition of teacher in section 2(34) of the 1994 Act. Our attention is invited to provisions contained in direction no. 7 of 1999. He points out that it has been issued for implementation of revised university grant commission pay scales for teachers and for other measures to maintain standard in higher education. There in clause 9 while prescribing qualification and recruitment the post of Assistant Librarian, Deputy Librarian and Librarian have been included. The provisions of clause 12 thereof also prescribe the constitution of selection committee. Pay scales have been accordingly prescribed for Deputy Librarians as also Assistant Librarians while the minimum qualification for direct recruitment to the post of Librarian,

Deputy Librarian and Assistant Librarian are given in Appendix-V to this direction. He also invited our attention to order dated 14.11.1995 issued by government after coming into force the 1994 Act to dispel the doubts and to clarify how a Librarian or College Librarian needed to be treated as a teacher. He argues that because librarians became teachers, as per provisions of section 76 of 1994 Act and Standard Code mentioned supra ceased to apply to them. He also argues that in fact that Standard Code is impliedly repealed and cannot be looked into while deciding present controversy. It is urged that petition as filed, therefore, does not expressly refer to said Standard Code and does not raise any specific contention based upon it. Learned counsel submits that respondent nos. 1 & 2 are obliged to follow the provisions of law and as there is no promotional channel available to the cadre of librarian, the advertisement issued on 24.3.2012 is for direct recruitment. He points out that Dr. Dakhole has been selected in pursuance thereof as Librarian directly.

9. Learned AGP appearing for respondent no.3 adopted arguments of Advocate Pande and states that provisions of the 1994 Act only need to be looked into in this petition.

10. Advocate Parsodkar in his brief reply submits that the respondents had ignored basic distinction between librarian and teacher. He states that that distinction has been noticed in section 76 and section 79 of the 1994 Act. Because of that distinction only the office of Vice Chancellor has on 3.3.2005 issued a clarification and on 14.11.1995 the posts of Librarian or Assistant Librarian have been recognized as non-vacational academic staff posts. He, therefore, states that in this situation promotional channel prescribed in Standard Code must be acted upon in so far as petitioners are concerned.

11. Maharashtra Universities Act, 1994 has come into force on 21st of July, 1994. As per Section 3 thereof, in relation to existing University namely, Nagpur University constituted under the Nagpur University Act, 1974, a corresponding University with name Rashtra Sant Tukdoji Maharaj University, Nagpur is constituted from commencement of 1994 Act. Section 115 of 1994 Act repealed Nagpur University Act, 1974. As per Section 115 (2)(xii), all Statutes and Ordinances made under Nagpur University Act can continue insofar as they are not consistent with provisions of 1994 Act. Clause (xiv) provides that standard code, if any, prescribed under said Act shall be deemed to have been prescribed under 1994 Act and shall, save as otherwise provided by or under this Act, continue to remain in force, until it is superseded in accordance with the provisions of 1994 Act. The perusal of Maharashtra non-Agricultural Universities and Affiliated Colleges Standard Code shows that it is issued by exercising powers conferred by Section 77-A of the Nagpur University Act, 1974 for providing terms and conditions of services of the non-teaching employees of Non-agricultural Universities in Maharashtra. Accordingly, it has been named as Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and conditions of service of non-teaching employees), Rules 1984.

Nagpur University Act, 1974 defines ""teacher"" in its Section (30) and said definition or then definition of "Teacher of the University" contained in Section 2(31) does not show that qualified Library Assistant or Assistant Librarian were then recognized as part of teaching staff. The Standard Code mentioned supra in Rule 3 while prescribing the classification, appointment and recruitment, etc. therefore regulated even the cadre of Librarians. The argument that ratio of 50% by nomination and 50% by promotion should have been followed is, therefore, possible under the said provisions.

12. However, after coming into force of 1994 Act the said definition of teacher has undergone change and its Section 2(34) reveals that post like Librarian, Deputy or Assistant Librarian as also Documentation Officer in the University and College Librarian are included within said definition.

13. Section 2(21) of 1994 Act defines ""non-vacational academic staff"" to mean that such staff as the Government may classify to be non-vacational academic staff and it includes all such staff which is complementary academic staff but does not include staff engaged purely in discharge of administrative functions. On 14th of November, 1995 the State Government has declared post of University Librarian and Assistant Librarian and as also Deputy Librarian and College Librarian to be non-vacational posts.

14. The moment, post of Librarian or cadre as such found inclusion in cadre of teacher in 1994 Act, it is clear that in view of above mentioned provisions of Section 115 of the 1994 Act, the inconsistent provisions in Standard Code cannot survive beyond 21st of July, 1994.

15. The communication dated 3rd of March, 2005 sent by office of Chancellor has been strongly relied upon by the petitioner to urge that there it has been specified that Librarian cannot be treated as a teacher. We find that communication itself is very clear. The clarification was sought on amended Section 57(3)(ba) of 1994 Act. Section 57 is on Grievances Committee and Section 57(3) is on its composition. Clause (ba) states that two members of Senate nominated by members of Senate are to be members of Grievances Committee. One of them has to be a woman representative of the management while the other has to be a "teacher". Clarification sought for was whether a Librarian can be nominated on Grievance Committee as such "teacher" under Section 57(3) (ba). The office of Hon"ble Chancellor has looked into provisions under Section 25 and found that Senate consists of the Librarian of University Library as per Section 25(2)(i) and 20 teachers as per its clause (p). It is in this background that said word "teacher" in Section 57(3)(ba) has been construed to exclude Librarian. Section 2 which defines teacher in its sub-section 34 itself begins the words "unless the context otherwise requires". Thus word ""teacher"" has been interpreted with reference to context in which it has been used in Section 25(2) of 1994 Act and communication dated 3rd March, 2005 has been issued. The communication therefore does not mean that a Librarian is found not to be a teacher as defined in Section 2(34).

16. While narrating facts, we have already noted that after advertisement dated 21st of June, 1999 next advertisement has been published on 24th of March, 2012. It is apparent that Dr.Pradeep Dakhole has been selected and appointed in pursuance of said advertisement and office order dated 11th of September, 2012 appointing him therefore mentions Section 19(2) of 1994 Act. That order also mentions that he has been selected by Selection Committee constituted under Section 79 thereof.

17. As against this, Smt. Pawar was first appointed on 13th of December, 1991 and thereafter second order in her favour is of 27th of March, 2000. Developments after 1993 till 27th of March, 2000 are not pointed out to us but an order dated 27th of March, 2000 has been produced. By that order it is mentioned that Smt. Pawar, Assistant Librarian is appointed as a Deputy Librarian on probation for a period of one year. Petitioners have not pointed out that after 1993 and till 2000 there was any advertisement for post of Deputy Librarian and Smt. Pawar has been appointed in pursuance of such advertisement. Smt. Pawar is not party before this Court. As such nothing more can be said about legality or otherwise of said order dated 27th of March, 2000 in present matter. Order dated 12th of May, 2000 by which one Suresh Tulsiram Randai came to be appointed as an Assistant Librarian expressly stipulates that it is subject to decision of this Court in the present writ petition. Thus it is again not in furtherance of any advertisement. If it is a promotion, there is no challenge to it in this writ petition. Hence, the appointment of Smt. Pawar or Shri Suresh Randai cannot be said to be in alleged violation of quota prescribed for direct recruitment and for promotion. As such their orders cannot be subjected to result of present writ petition.

18. We have already found that provisions of Standard Code are not relevant after 21st of July, 1994. Hence, petition as filed by placing reliance upon it and for claiming promotion is misconceived. No case is made out for warranting interference. Writ petition is, therefore, dismissed. Rule is discharged. No costs.