

(1990) 06 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 1279 of 1985

Suhas Digambar Vidwans

APPELLANT

Vs

University of Bombay and Others

RESPONDENT

Date of Decision : 13-06-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 3 BomCR 252

Hon'ble Judges : H. H. Kantharia, J

Bench : Single Bench

Advocate : V.B. Thadani, for the Appellant; M.B. Palshikar, for respondent Nos. 1 to 4, M.N. Morje and D.K. Ghaisas, for the Respondent

Judgement

H.H. Kantharia, J.—The petitioner's father was working in the University of Bombay, Department of Chemical Technology, Matunga as a Glass Blower for 23 years and died on December 7, 1973. After his death, under the relevant rules, the petitioner was employed by the University as a Laboratory Assistant-cum-Typist-Clerk under the Indian Organic Chemicals Scheme undertaken in the University Department of Chemical Technology on April 21, 1977 where he worked till December 4, 1978. From December 5, 1978 he worked as a Typist-cum Clerk in the University Department of Chemical Technology till June 30, 1980 and was then transferred to the Examination Section of the University. He was paid at the time of his initial appointment a consolidated salary of Rs. 250/- per month till December 4, 1978 but when he joined the office of the University from December 5, 1978 he was paid a basic salary of Rs. 335/- He was given a break of one day after every three months and thus in all three breaks were given to him upto August, 1979. He was recommended to be continued in the service without break by the Director of University Department of Chemical Technology by letters dated November 12, 1979 and March 13, 1980. His salary was reduced from Rs. 335/- to Rs. 260/- with effect from April, 1979 and it was contended by the University that it was on account of implementation of what is known as Bhole Commission Report. He was transferred to Examination section

of the Bombay University from July 1, 1980 where he has been in continuous service. It is the grievance of the petitioner that he has been getting a basic salary of Rs. 260/- and no benefits of leave, medical leave, travel allowance etc. are paid to him although he has been holding a budgeted post. He, therefore, served the University with a legal notice on February 14, 1984 requesting for all the benefits mentioned hereinabove to which he got a reply on January 21, 1985 that the matter was under consideration. The petitioner raised a contention in his petition that all other employees of the University were given benefits, as stated above, from January 1, 1985 but he was denied those benefits merely because he did not sign a certain undertaking dated April 15, 1985 which the University took from all temporary employees. He also made a grievance about his seniority which was very arbitrarily fixed and about non-confirmation. He therefore, invoked the writ jurisdiction of this Court by filing this writ petition under Article 226 of the Constitution.

2. The petition is resisted by and on behalf of the University of Bombay on the grounds that the petitioner was initially not an employee of the University but was taken up as a Laboratory Assistant-cum -Typist on a Research Project sponsored by M/S. Indian Organic Chemicals Limited in the Food Technology Section of the Department of Chemical Technology with effect from April 21, 1977 and he resigned that post on December 4, 1978 to take up a fresh temporary appointment as a Typist-Clerk in the office with effect from December 5, 1978. It was, therefore, contended by the University that the petitioner became the regular employee of the University from December 5, 1978 and his service period with the University is counted from that date and taking into consideration his date of appointment as December 5, 1978 he would be given all benefits of salary as per the Bhole Commission Report. At the hearing it was also submitted on behalf of the University that despite the fact that the petitioner had not given undertaking he would not be deprived of any benefits which others are getting but his date of joining the services of the University should be held to be from December 5, 1978 and not from April 21, 1977.

3. In support of the petition, Mrs. Thadani, learned Counsel appearing for the petitioner, submitted that all documentary evidence on the record shows that the petitioner was in continuous service of the University from April 21, 1977 and merely because he gave up the scheme job and joined the University Department from December 5, 1978 he should not be denied the benefits of continuous service with University from April 21, 1977 Mrs. Thadani also stated that the manner in which the seniority of the petitioner was fixed in an arbitrary manner denying him his usual rank and not confirming him although any number of budgeted posts were available in the cadre is, to say the least, the worst type of exploitation by the University. The vehement the argument advance by Mrs. Thadani is that the petitioner was discriminated against and exploited by the University merely because he did not sign the undertaking dated April 15, 1985. On behalf of the University, its learned Counsel, Mr. Palshikar urged that the University did not act mala fide in any manner whatsoever but honestly believed

that the petitioner was appointed regularly in the services of the University effective from December 5, 1978 as prior to that he was working on a scheme sponsored by Indian Organic Chemicals from April 21, 1977. In support of his contention, Mr. Palshikar submitted that unlike the other employees of the University the petitioner was not given a basic salary in a running scale but was paid a consolidated salary of Rs. 250/- per month which shows that he was initially not recruited as an employee of the University. Mr. Palshikar stated that the salary of the petitioner had to be reduced in order to implement the recommendations of the Bhole Commission regard being had that he was employed in the University from December 5, 1978. Mr. Morje, learned State Government Counsel, canvassed that the employment was given to the petitioner by the University of Bombay and that the State Government has nothing to do with it except that if the petitioner is held by this Court to be entitled to the arrears of salary the Government will have to pay it and, therefore, it may be specifically made clear that the petitioner was initially appointed on compassionate grounds as his father who was earlier working with the University had expired. On behalf of one of the employees (respondent No. 7) who was shown senior to the petitioner in the seniority list, Mr. Ghaisas urged that the petitioner had worked in an ex-cadre post before December 5, 1978, and therefore, he would not be entitled to any benefits as if he had joined the services of the University effective from April 21, 1977.

4. On these submissions made before this Court, the only point that arises for my determination is whether the petitioner had joined the services of the University of Bombay effective from April 21, 1977 or from December 5, 1978.

5. Now, it is an admitted fact that the petitioner's father Digambar V. Vidwans was working in the University Department of Chemical Technology at Matunga as a Glass Bowler for 23 years and he expired on December 7, 1973. In fact, in the affidavit filed by the Registrar of the Bombay University, Gajanan Mahadeo Rajarshi, in Notice of Motion No. 1273 of 1986 in this writ petition, it is clearly mentioned that the petitioner was appointed as a Typist-Clerk on a monthly consolidated salary of Rs. 250/- under a Research Scheme at the University Department of Chemical Technology with effect from April 21, 1977 because his father was working in the University Department of Chemical Technology and he died all of a sudden. This goes to show that the petitioner was appointed as a Typist-Clerk effective from April 21, 1977 by the University of Bombay and it is immaterial whether he was appointed under a research scheme or otherwise and on a monthly consolidated salary of Rs. 250/- or otherwise. That the petitioner was not granted the usual basic running scale is not the fault of the petitioner.

6. That apart, Mr. Palshikar showed me, at the instance of the Court, a letter dated 18/19 April, 1997 addressed by the Registrar of the University to the Director of the Department of Chemical Technology in which it is mentioned that the post in which the petitioner was initially appointed was sanctioned by the University. The letter reads as under:

"No. Adm./Estab. 1/2543 of 1977

18/19 April, 1977. To

Director,

Department of Chemical Technology,

Matunga,

Bombay- 400 019.

With reference to your letter No. IOC/DVT/9511, dated 31st March, 1977, I am to inform you that, as recommended by you, appointment of Shri S.D. Vidwans as a temporary Laboratory Assistant-cum-Typist on the Research Scheme on " Fermentation of Molasses for the production of Citric Acid and other Organic acids" on behalf of M/s, Indian Organic Chemicals Ltd., under Dr. T.V. Tamhane in the Department, on a consolidated salary of Rs. 250/- p.m., in place of Kum. Lyra Pereira, has been sanctioned.

Sd/-- Registrar." (The letter has been returned to Mr. Palshikar). 7. Then when the petitioner joined the services on April 21, 1977 he reported for duty to the Director , Department of Chemical Technology.

The letter reads as under. "Mr. Suhas D. Vidwans,

83, Uday Co. op. Society,

Aarey Road,

Goregaon (West),

Bombay-400 062,

Dated: 21st April, 1997.

To

The Director,

Dept. of Chemical Technology,

Matunga,

Bombay- 400 019.

Through: Dr. D.V. Tamhane.

Sir,

This is to inform you that I have joined my duties as a Laboratory Assistant-cum-Typist on a Research Project sponsored by M/s. Indian Organic Chemicals Ltd., In the Food Technology Section from today (21st April, 1977) forenoon.

Thanking you,

Yours faithfully,

Sd/- (Mr. S.D. Vidwans)" Thereafter, the petitioner addressed a letter to the same functionary of the University on December 4, 1978 informing him that he was resigning from that scheme job in order to join the office of the Department from December 5, 1978. The said letter reads as under:

"Bombay,

4th December, 1978. The Director,

Dept. of Chemical Technology,

Bombay- 400 019.

Dear Sir,

I have been working on the I.O.C. scheme in the Department as Lab. Assistant and Typist-Clerk under the supervision of Dr. D. V. Tamhane. I have now been appointed temporarily as Typist-Clerk in the office of the Department. I wish to resign from the scheme job from 4th December, 1978 (afternoon). I request you that my resignation may kindly be accepted as so as to enable me to join the office of the Dept. from 5th December, 1978.

Thanking you,

Yours faithfully,

Sd/- (S.D. Vidwans)".

Two things are very clear from the letters dated April 21, 1977 and December 4, 1978 addressed by the petitioner to the Director of the Department of Chemical Technology of the University that the petitioner had reported for duty to, as stated above, one of the most important functionaries of the University and had also submitted the so-called resignation to the same functionary. It is also important to note that he was working under the supervision of Dr. D.V. Tamhane who admittedly was an employee of the University and more importantly working in the Department of the Chemical Technology. Mr. Palshikar submitted that had the petitioner been working with the University from the beginning there was no necessity for him to resign his earlier post from December 4, 1978 to join another one in the office of the department. The submission of the learned Counsel is that the petitioner was well aware that he was not initially appointed by the University and that he was working on a scheme undertaken by the Department of Chemical Technology and that unless he resigned from that post he could not join the services of the University which goes to show that in fact the petitioner was not initially appointed by the University. I am not able to persuade myself to agree with the submission of Mr. Palshikar for the simple reason that the letter dated December 4, 1978 of the so called resignation clearly show that what he had given up was the scheme job and had taken over another job of Typist Clerk in the office of the Department. Merely because he

used the word "resignation" in his letter it cannot be argued and construed against him that he resigned from one job and accepted another. It is pertinent to note here that the petitioner was quite aware that he was initially appointed on a scheme job undertaken by the Department of Chemical Technology for and on behalf of the Indian Organic Chemicals which scheme was bound to get over after a certain period and thereafter he would be out of the employment and, therefore, when a post of Typist-Clerk was available in the office of the Department of Chemical Technology what he did by his letter dated December 4, 1978 was to give up the scheme job and took over in the office of the department as a Typist-Clerk. This letter of so-called resignation, in my opinion, certainly does not suggest that the petitioner had given up one job and taken over another independent job.

8. Further, a certificate dated November 20, 1981 issued by the Director of the University Department of Chemical Technology (Exh. "A" to the petition) shows that the petitioner was in the continuous services of the University from April 21, 1977. The said certificate read as under:

"University of Bombay,

University Department of Chemical Technology,

Matunga, Bombay-400 019.

AC/STF/2/19185 20th November, 1981.

TO WHOMSOEVER IT MAY CONCERN. This is to certify that Shri S.D. Vidwans has worked in this Department as mentioned below : 1. Temporary Laboratory Assistant cum Typist Clerk in I.O.C. Scheme from 21/4/1977 to 4/12/1978.

2. Temporary Typist Clerk in place of Mrs. V.B. Deshmukh who was on Maternity Leave from 5/12/1978 to 31/8/1979.

3. Temporary Typist Clerk in place of Shri R.S. Dabholkar who was promoted as Temporary Head Clerk from 1/9/1979 to 30/6/1980.

4. Shri Vidwans was transferred to University Office with effect from 1/7/1980.

Sd/- E.H. DARUWALLA,

Director." 9. At the instance of the Court, Mr. Palshikar produced the muster roll and the salary register maintained by the University Department of Chemical Technology. The muster roll at page 47 shows that the petitioner had been working with the University Department of Chemical Technology under a designation IOC/DVT effective from April 21, 1977 and the salary register at page 75 show that the petitioner was paid a sum of Rs. 333.33 as his salary in the post of Laboratory Assistant-cum-Typist for the months of April and May, 1977. This page of the salary register is signed by the in-charge Director of the Department of Chemical Technology and somebody for the University Registrar. These documents clearly prove a fact that the petitioner was an employee of the

University in the Department of the Chemical Technology effective from April 21, 1977. (The documents are returned to Mr. Palshikar).

10. We have also on record a Resolution dated July 7, 1984 passed by the Executive

Council of the University. The said resolution, shows that after a considerable discussion, the Council resolved that the recommendations made by the Committee appointed by the Council to examine the note submitted by the office containing issues like seniority etc. and the proposed guidelines and to make a report to the Council on the guidelines suggested to resolve the various issues be approved, subject to the following : "(i)...

(ii) that hereafter recruitment to the various posts of non-officer cadres in the categories of General Administration (including Library and Press). Accounts and Technical in the University and the posts under Research Schemes be made centrally by following the selection procedure prescribed by the Committee in Appendix III; (A).

(iii) that the persons appointed to various posts under the Research Schemes be absorbed in the University service after the cessation of schemes provided that the persons have completed two years of continuous service.

(iv) "

This shows that the selection procedure followed in the matter of recruitment to a person like the petitioner would be the procedure followed in the matter of selection to the University staff and after the scheme for which persons were recruited was over the persons working on such schemes were to be absorbed in the University service provided they completed two years of continuous service. The argument of Mrs. Thadani is that if the petitioner was not an employee of the University there was no reason for following the procedure of recruitment meant for the University staff and that if the schemes had nothing to do with the University it was not necessary for the persons working on the schemes to be absorbed in the University service if they completed two years of service. I find lot of force in the argument of Mrs. Thadani because had the scheme in question nothing to do with the University there was no reason for the University to absorb the staff working on the scheme. If the petitioner in our case was to complete two years of continuous service from April 21, 1977 he would have been automatically absorbed, in the University service effective from April 21, 1979. But the petitioner appears to be quite vigilant that if the scheme was to get over before he completed two years of service on the scheme he would be out of the job and, therefore, he very wisely gave up that scheme job and joined the office of the Department of Chemical Technology. Mr. Palshikar urged that if the petitioner was in the employment of the University, the question of he being absorbed after completing two years of service on the scheme would not arise. I find no force in this argument because after all the petitioner was employed by the University to work on a particular scheme which suggests that he would be

out of the job on completion of the said scheme. But if the scheme was to exceed a period of two years and if the employee working on such scheme were to be in continuous service for two years he would be absorbed in the services of the University in one of its departments because normally one who is in continuous service for more than a year would not be rendered jobless and under certain circumstances he would be made permanent. If it was a scheme job pure and simple, an employee has to be out on completion of the scheme and the question of absorbing him in some other job would not arise. In fact, as stated earlier, the initial employment of the petitioner was by the University to work on a scheme and in order to see that on completion of the scheme the petitioner would not be out of the job when opportunity came he switched over to a job in the Department of the Chemical Technology. The affidavit of Gajanan Mahadeo Rajarshi, Registrar of the University, filed in Notice of Motion No. 1273 of 1986 in this writ petition shows that even after such resolution was passed by the Executive Council, it was later on decided by the University authorities that previous service put in, any research scheme for any length of period is not to be counted for the purpose of determining seniority in the University service. A part from the objection taken by Mr. Thadani about the University disowning its own resolution, what is more important to note is that no record is produced by the University to show as to which authorities of the University had taken such a decision which is in direct conflict with the Resolution passed by the Executive Council. At any rate, I am of the view that such a decision taken by the University authorities which is inconsistent with the resolution passed by the Executive Council is arbitrary because there is nothing on the record to show as to on what rational basis the said decision was taken by the so-called authorities of the University which are not specified. 11. And lastly Mrs. Thadani pointed out Rule 14 of the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of non-teaching employees) Rules, 1984 which came into force on May 1, 1985 shows that the services rendered by an employee in other recognised institution or affiliated College under the same management, whether aided or unaided, or in the office of the management shall be treated as foreign service and the same shall be counted for seniority. This shows the intention of the University that even if the petitioner had put in services with the Department of Technology which could be called foreign service the same had to be counted for his seniority which points out that he was entitled to continuity of service from April 21, 1977.

12. I find no substance in the argument of Mr. Ghaisas that the petitioner was working in ex-cadre post and, therefore he was not entitled to the benefits available in a cadre post.

13. In this view of the matter, in my opinion, the petitioner was in continuous employment of the University from April 21, 1977, despite a couple of breaks in his service for some days, and he would be entitled to all the benefits as an employee of the University in his cadre effective from April 21, 1977. He is, therefore, entitled to his seniority and confirmation in the service on that basis.

The question of reduction in his salary on account of implementation of Bhole Commission Report would also, therefore, not arise. Under the circumstances, the University is directed to count the services of the petitioner from April 21, 1977 and on that basis give him the proper seniority in his cadre and also confirm him from the day he would be entitled to confirmation taking into consideration the length of his services from April 21, 1977 and work out the arrears of the loss in his wages on account of reduction in his salary and pay to him the said amount within two months from today failing which the University shall be liable to pay interest at the rate of 15 per cent per annum on such amount of arrears. The University is further directed to ignore the fact that the petitioner had not signed the undertaking dated April 15, 1985 and work out the loss suffered by him in terms of money on the basis of what was paid to other employee similarly situated and who had signed the said undertaking.

14. In the result, the writ petition succeeds and the same is allowed. Rule is made absolute in the terms aforesaid but with no order as to costs.