
(1989) 02 BOM CK 0039

In the Bombay High Court

Case No : Writ Petition No. 3786 of 1988

Vasant Digambar Kamble

APPELLANT

Vs

Sou. M.B. Deshmukh and Others

RESPONDENT

Date of Decision : 21-02-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 59 FLR 92 : (1995) 3 LLJ 227

Hon'ble Judges : Tipnis, J;Pendse, J

Bench : Division Bench

Advocate : K.Y. Mandik, for the Appellant; R.M. Kadam and A.G. Pawar for Respondent No. 1 and A.N.S. Nadkarni and Bhimrao N. Naik for Respondent No. 2 and 3, R.C. Ketkar and V.D. Hon for Respondent No. 4 and V.S. Dighe, Asst. Govt. Pleader for Respondent No. 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

Pendse, J.—The dispute in this petition filed under Article 226 of the Constitution of India is about the inter se seniority between the petitioner and respondent No. 1 in the services in the College run by respondent No. 3 The relevant facts which led to the filing of this petition are as follows:

2. The petitioner was appointed as a Lecturer in the Senior College at Barsi on July 30, 1973 and the petitioner was taking Lectures in the subject of English. The appointment of the petitioner was in a permanent vacancy caused by resignation of Prof. Mr. Pitake and the duration of this appointment was for a period of one year. The appointment of the petitioner was approved by the Executive Council of Shivaji University to which Barsi College is affiliated. The service of the petitioner was continued for academic year 1974-75 also and on March 14, 1975, the petitioner was informed that his services are not required from June 15, 1975 onwards. By appointment order dated March 31, 1975, the petitioner was appointed as a Method Master in English in Barsi College from June 16, 1975 for a duration ,of one year. The petitioner was transferred to

Junior College from July 1, 1977, and to Senior College from September 1, 1978. The petitioner was confirmed as Lecturer on March 7, 1979 but was subsequently given a deemed date of confirmation with effect from July 1, 1975

The respondent No. 1 was initially appointed as a Part time Lecturer on August 20, 1975 in the Senior College at Barsi and acted as full-time Lecturer from August 10, 1977 onwards. The seniority list of the teachers in English Department was prepared on February 14, 1980 and the petitioner was placed at Serial No. 3, while respondent No. 1 at Serial No. 5. On February 21, 1983, the respondent No. 1 was informed by the management that her services are not required as there is no sufficient workload in the Senior College, The respondent No. 1 made representation to the Government and also lodged a complaint dated May 27, 1983 with Shivaji University about the fixation of the seniority list and showing the petitioner as senior to respondent No. 1.

3. On August 12, 1985, Shivaji University in exercise of powers u/s 24 of the Shivaji University Act, 1974, appointed Shri D.U. Pawar as one man Commission to enquire about the complaint of respondent No. 1 about the seniority over the petitioner. Shri Pawar submitted his report on March 10, 1986 accepting the claim of respondent No. 1 and that has given rise to the filing of the present petition.

4. Shri Mandlik, learned counsel, appearing on behalf of the petitioner submitted that the petitioner joined Barsi College with effect from July 30, 1973 and had uninterrupted continuous service all along. Shri Mandlik did not dispute that the petitioner was transferred from Junior College to Senior College and even to a Diploma Course as Method Master but the learned counsel urged that the seniority of the petitioner over respondent No. 1 who was appointed almost two years after the initial appointment of the petitioner was never in dispute and the seniority list of February 14, 1980 clearly demonstrates the fact of seniority of the petitioner. Shri Mandlik submits that it was only when the management informed respondent No. 1 that there is no enough workload for the continuation, that respondent No. 1 started complaining about her alleged seniority over the petitioner. We find considerable merit in the submission of the learned counsel. We have perused the report made by Shri Pawar and we are afraid we cannot share the opinion of Shri Pawar. The report by artificial reasoning gives seniority to respondent No. 1 over the petitioner and it was an error on the part of Shivaji University to accept such report and direct management, to treat respondent No. 1 as senior.

5. It is clear to us that the petitioner was appointed as a Lecturer with effect from July 30, 1973 while respondent No. 1 joined the College only on August 20, 1975. Shri Kadam, learned counsel appearing on behalf of respondent No. 1, submitted that though respondent No. 1 had joined subsequent to the petitioner, the one man Commission report should not be disturbed because the claim of the petitioner that he was in uninterrupted service as a teacher is incorrect. Shri Kadam submits that there was a break in service in view of the letter dated

March 14, 1975 whereby the employment of the petitioner was terminated. Shri Kadam urges that due to the termination of employment as a Lecturer, the services of the petitioner as Method Master was a fresh service and, therefore, the seniority of the petitioner cannot be determined with reference to the date of his initial appointment. In view of this submission, it is necessary to examine whether there was a break in the service of the petitioner. The letter dated March 14, 1975 issued by Barsi Shik-shan Prasarak Mandal recites that the services of the petitioner are not required from the next academic year i.e. from June 15, 1975. Shri Kadam relies upon this letter to urge that the services of the petitioner as Lecturer in English came to an end with effect from March 14, 1975 or in any event from June 15, 1975. The submission overlooks that the petitioner was appointed by fresh appointment order dated March 31, 1975 as Method Master in English with effect from June 16, 1975. The appointment of the petitioner as Method Master is in respect of a Diploma Course conducted by the same institution. Shri Kadam submits that the posting of Method Master is an inferior job and the petitioner accepted the same as a fresh appointment and the services of the Method Master cannot be treated as continuation in service as Lecturer. It is not possible to accede to the submission. The management had shifted the petitioner from the post of a Lecturer to that of a Method Master and merely because the scales of the two posts are different cannot lead to the conclusion that there is a break in service. Indeed the fact that before June 1975, the petitioner was posted to the post of Method Master by appointment order clearly establishes that the management never desired to treat the services of the petitioner as being appointed to a different service. The management intended to treat the service of the petitioner as continuous but in different post. The intention of the management becomes extremely clear from the fact that the petitioner was confirmed with effect from July 1, 1975 i.e. at the expiry of two years from the date of initial recruitment. The intention of the management is further clear from the fact that in the seniority list dated February 14, 1980 the petitioner was shown at Serial No. 3 and that is over respondent No. 1 who was posted at Serial No. 5. In our judgment, it is not possible to accept the claim of Shri Kadam that there was a break in service of the petitioner and, therefore, respondent No. 1 is senior. The one man Commission has made a complete mess of the undisputed facts and somehow or other has deprived the petitioner, who belongs to Scheduled Caste, of his deserving seniority.

6. Shri Kadam also submitted that in the year 1976, when the management forwarded to the University the list of teachers, the name of the petitioner was not disclosed while respondent No. 1 was shown at Serial No. 4 in the category of teachers for subject of English. Shri Kadam also pointed out that the petitioner lodged complaint with the Chairman of the Shivaji University, but subsequently withdrew the same. Shri Kadam urges that by conduct of withdrawing the complaint, the petitioner is estopped from disputing the seniority of respondent No. 1. We are unable to accept the contention of learned counsel. The doctrine of

estoppel has no place whatsoever in the facts and circumstances of the present case. While determining the seniority inter se between the teachers, the right cannot be negated by reference to principle of estoppel. Shri Kadam was unable to show as to how respondent No. 1 had changed the position because of withdrawal of the complaint of the petitioner. If Shri Kadam desires to attract the doctrine of estoppel against the petitioner then respondent No. 1 has equally no answer as to why she did not complain about the seniority list prepared by the management in February 1980. The respondent No. 1 raised the complaint only in February 1983 when her services were on the verge of termination because of non-availability of workload. In our judgment, it is impossible to determine the claim of seniority of the teachers inter se by importing the doctrine of estoppel. We have no hesitation in concluding that the petitioner is senior over respondent No. 1 all along and the report of Shri D.U. Pawar is entirely faulty and misconceived. We direct the management to treat the petitioner as senior over respondent No. 1 all along.

7. Accordingly, petition succeeds and rule is made absolute, in terms of prayers (b) and (c). In the circumstances of the case there will be no order as to costs.