
(2015) 01 BOM CK 0310
In the Bombay High Court
Case No : Writ Petition No. 2614 of 1998

Vinayak

APPELLANT

Vs

Punjabrao Deshmukh Krishi Vidyapeeth and Others

RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 01 BOM CK 0310

Hon'ble Judges : B.P. Dharmadhikari, J;A.S. Chandurkar, J

Bench : Division Bench

Advocate : A.M. Gordey, Counsel, for the Appellant; U.A. Patil, Counsel, Advocates for the Respondent

Final Decision : Disposed off

Judgement

B.P. Dharmadhikari, J—Heard learned counsel appearing for the respective parties.

2. By this petition filed under Article 226 of the Constitution of India the petitioner seeks quashing of order dated 15.7.1998, issued by respondent No. 1 - employer, promoting respondent No. 2 to the post of "Assistant Professor of Pathology" for a period of eleven months. This Court, on 30.3.1999, issued Rule in the matter and also granted Rule on interim relief. However, no orders as such are passed and no interim relief is operating. On 3.4.2002, i.e. after expiry of period of eleven months, this Court has ordered "no interim relief at present".

3. Learned counsel for the petitioner, in this background, invites our attention to Statutes 72, 74, and 77 of the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes, 1990, to urge that promotion can be given on the basis of merit and upon recommendation of the Competent Selection Committee. It is further pointed out that, though respondent No. 2 was promoted by impugned order only for a period of eleven months, it was in supersession of better claim and merit of the petitioner. Though in the lower category cadre of "Assistant

Professor", the petitioner happened to be junior to respondent No. 2, as he obtained Ph.D. Degree on 16.11.1993, as per Resolution of the Government of Maharashtra dated 17.3.1989 on subject of revision of pay-scale of the Teachers in Agricultural Universities, the petitioner came to be designated as "Associate Professor" in the year 1996 and started receiving salary in the Pay Scale of Rs. 3700 - 5700. The reliance is placed upon Clause No. 7(ii) of the said Government Resolution for this purpose.

4. It is pointed out that respondent No. 2 was not having Ph.D. Degree and, therefore, on 15.7.1998 was receiving salary in the Pay Scale of Rs. 2200 - 4000 i.e. the Pay Scale lower than that of the petitioner. As such, when the promotions were to be made on regular basis, entitlement of the petitioner needed to be considered first. Learned counsel submits that as per the provisions of Government Resolution dated 20.3.1997, a person like respondent No. 2 regularly promoted is made senior to a person like the petitioner who has been designated as "Associate Professor". Consequently, validity of Clause No. (iv) of said Government Resolution dated 20.3.1997 is also assailed urging it to be arbitrary.

5. Mrs. U.A. Patil, learned counsel for respondent Nos. 1 and 3, does not dispute the legal provisions or the Government Resolutions. She points out that respondent No. 2 was always senior to the petitioner in the cadre of "Assistant Professor" and the petitioner, as he acquired Ph.D. Degree, was only designated as "Associate Professor". Thus, according to her, such designation does not constitute a promotion and hence, the provisions, contained in Clause No. (iv) of Government Resolution dated 20.3.1997, are just. When a vacancy is sought to be filled in by regular promotion and a candidate is selected either by nomination or on the strength of merit-cum-seniority, he is shown as senior to such a person who becomes "Associate Professor" only on account of designation. Effort is to urge that for conferment of such designated status, the incumbent is not supposed to face any selection process.

6. In alternate and without prejudice, it is pointed out that respondent No. 2 was promoted only for a period of eleven months and had been reverted thereafter to her substantive post. As such, no legal right of the petitioner can be said to be violated. Mrs. U.A. Patil, learned counsel for respondent Nos. 1 and 3, therefore, prays for dismissal of the writ petition.

7. Learned counsel in reply, invites our attention to order dated 19.6.1999 produced on record as Annexure-R-2 by respondent No. 1. It is pointed out that, though post held by respondent No. 2 is shown as that of "Assistant Professor" in Pathology Department, a remark has been put that her pay and allowances would be drawn on post of "Associate Professor" of Pathology. It is, therefore, contended that the contention, that promotion given to respondent No. 2 was only for eleven months, is not correct.

8. Perusal of order of promotion dated 15.7.1998, impugned before this Court,

shows that respondent No. 2 was promoted as "Associate Professor" for a period from 20.7.1998 to 19.6.1999. There is no other or further orders produced before this Court either by petitioner or respondent No. 2. Later order dated 19.6.1999 is not continuation of that promotion order. On the contrary, it expressly places respondent No. 2 on a lower post i.e. "Assistant Professor". The remark, that her pay and allowances would be drawn on post of "Associate Professor", does not mean that she would receive pay as "Associate Professor" or then it is indirect continuation of impugned promotion order dated 15.7.1998.

9. In this situation, it is apparent that the impugned order of promotion expired on 19.6.1999 itself.

10. Perusal of Government Resolution dated 17.3.1989, on subject of revision of Pay Scale of the Teachers in Agricultural Universities, shows a revised Pay Scale of Rs. 3700 - 5700 for "Associate Professor". Similarly, very same pay-scale is also mentioned for the post of "Assistant Professor" (Selection Grade). Clause No. 7(ii) of Government Resolution dated 17.3.1989 needs to be construed in this background. Its perusal shows that an "Assistant Professor", who has completed eight years of service in senior scale and has obtained Ph.D. Degree, becomes eligible for promotion to the post of Selection Grade in the Pay Scale of Rs. 3700 - 5700. Thus, this Selection Grade is prescribed in the cadre of "Assistant Professor" only. The Selection Grade as prescribed in the cadre of "Assistant Professor" and revised Pay Scale for "Associate Professor" though are same, does not imply that a person getting Selection Grade ipso facto becomes "Associate Professor". Perhaps, it is in this background that Government Resolution dated 20.3.1997 clarifies that "Associate Professor" appointed by nomination or promotion will be senior in service than the designated "Associate Professor".

11. Mere designation as "Associate Professor" and grant of Selection Grade may not be resulting in incumbent occupying a post sanctioned and borne in the cadre of "Associate Professor". Moreover, after expiry of order of promotion, there ought to have been some other promotions and developments. The petitioner has not brought these developments on record. Respondent No. 2 has also not disclosed the same. Material before us is insufficient to conclusively record any finding on the arguments advanced. We, therefore, leave the contentions raised by learned counsel for the petitioner, open for due evaluation in more appropriate circumstances.

12. Here, since the order of promotion given to respondent No. 2 was only for eleven months, the cause of action has ceased and not in existence and as there is no material to gather any prejudice caused to the petitioner due to that order, we discharge the Rule.

The writ petition is accordingly disposed of. There shall be no order as to costs.