

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4555 OF 2014

1, Sahebrao Bapusaheb Sonwane,
Age 53 years, occ. Service,
R/o Nandgaon Shingave, Taluka Nagar,
District Ahmednagar.

2. Rohidas Suryabhan Kalapure,
Age 55 Years, Occ. Service
R/o Khadambe Khurd, Tq. Rahuri,
District Ahmednagar.

3. Madhav Govind Pansambal,
Age 53 yrs, Occ. Service,
R/o Sade, Taluka Rahuri,
District Ahmednagar.

..Petitioners

Versus

1. Mahatma Phule Krishi Vidyapeeth,
Post Vidyapeeth, Taluka Rahuri,
District Ahmednagar, through its
Registrar.

2. Gorakshanath Raghunath Shete,
Age 37 years, Occ. Service,
R/o Gotumbe Akhada, Tq. Rahuri,
District Ahmednagar.

..Respondents

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Advocate for Petitioners : Shri Barde Parag Vijay
Advocate for Respondent 1 : Shri Navandar Manish N.
Advocate for Respondent 2 : Shri Kanade Arun G.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 11, 2016

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioners are aggrieved by the judgment and order dated 29.10.2013, delivered by the Industrial Court, by which, Complaint (ULP) No.36 of 2010, filed by the petitioners along with other employees has been dismissed.

5. Shri Barde has strenuously criticized the impugned judgment on the following grounds:-

(a) The petitioners are few employees amongst 15 security guards, who had filed the complaint.

(b) The petitioners are still in employment.

(c) They are made to work on weekly holidays, but are not paid over time wages for the same.

(d) The petitioners had specifically averred that respondent No.2, who has been directly selected for appointment as an Assistant Security Officer (ASO) is not entitled for appointment since he does not possess requisite qualifications, does not possess a genuine project affected person's certificate (PAP) and is guilty of suppression of criminal antecedents.

(e) Respondent No.1 University has issued a notice of termination

to respondent No.2, which is subject matter of Writ Petition No. 6496 of 2012 and by order dated 13.8.2012, passed by the learned Division Bench of this Court, said notice has been stayed.

(f) Prayer clause (c) and (d) have not been considered by the Industrial Court.

(g) The solitary post of ASO deserves to be filled in through promotion, lest, none of the petitioners would ever have any opportunity to seek promotion or achieve promotion to the said senior position.

(h) Unless the post of ASO is filled in by promotion, all the security guards working with the respondent University would become stagnated and would retire from the same positions.

(i) Items 5, 9 and 10 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the said Act ”) have been invoked by the petitioners and the Industrial Court has rejected the Complaint on each count.

6. Shri Barde, submits the Government Resolution relied upon by the respondent University dated 21.9.1998 which was placed before the Industrial Court, does not suggest that an isolated post should not be filled in through in-service candidates. He, therefore, contends that the impugned judgment deserves to be quashed and set aside as the Industrial Court has not considered prayer clause (b), (c), (d) and (e) set out in the complaint.

7. Shri Nawandar, learned Advocate appearing on behalf of respondent

No.1 University submits that the University had relied upon the Government Resolution dated 21.9.1998, which makes a reference to the judgment of the Apex Court dated 17.4.1998, in the matter of Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association, vide which the Apex Court has ruled that no isolated post or solitary post should be reserved for any category and no reservation shall apply to a solitary post. According to the instructions received by the University, even the post of ASO cannot be reserved for any category, including the category of in-service candidates.

8. He further submits that the University has verified the PAP certificate of respondent No.2. The Committee, which was appointed for scrutinizing PAP certificates has concluded that the said certificate is genuine. Respondent No.2 has the requisite qualifications as was advertised on 9.8.2009, while filling in the post of ASO. The Selection Committee appointed for selecting a candidate for the post of ASO has found respondent No.2 to be eligible for such appointment.

9. Shri Kanade, learned Advocate appearing on behalf of respondent No.2 has adopted the submissions of Shri Nawandar. He further submits that the show-cause notice challenged by the second respondent before the learned Division Bench of this Court is not with regard to suppression of criminal antecedents, but is with regard to a criminal case filed against respondent No.2 by a complainant in his personal capacity. He further submits that the oral submission made in this court by the petitioner that

an FIR has been registered against respondent No.2 on 13.9.2014 with the Rahuri Police Station, the same is subjudice and is subsequent to the appointment of respondent No.2.

10. I have considered the submissions of the learned Advocates as have been recorded herein above

11. It is not in dispute that none of the petitioners are qualified considering the advertisement dated 9.8.2009 for being appointed as ASO. Item 5 of Schedule IV has been invoked, which pertains to an act of an employer showing undue favoritism to a set of workers regardless of merits. There is no pleading nor any proof that respondent No.2 constitutes a set of workers, who has been shown undue favoritism. His PAP certificate has been scrutinized and is found to be in order. His qualifications are found to be in tune with the advertisement by the selection committee. In so far as the criminal cases against him are concerned, a part of the said issue is subject matter of Writ Petition No.6496 of 2012. Nevertheless, if respondent No.2 suffers any conviction, he would naturally lose his employment as a consequence of such conviction.

12. I do not find that the Industrial Court could have looked into this issue of appointment of respondent No.2 in the light of the above and more so in the light of the fact that none of these petitioners or even the original complainants were eligible for appointment as ASO as per the advertisement.

13. The petitioners have raised the issue that if the isolated post of ASO is filled in by direct recruitment it would result in stagnation of the petitioners. It is their desire that the said post should be filled in only by promotion and not by direct appointment. Under the 1971 Act, a ULP has to be established, based on the facts of the case and provided, the acts committed by the employer are covered under any of the items invoked. Firstly, the desire of the petitioners cannot have the effect of law. Their prayer for the post of ASO being filled in by promotion and not by direct recruitment, does not find place in any law, rule or policy applicable to the respondent / University. Item 9 pertains to failure on the part of the employer in implementing a settlement, agreement or award. The case of the petitioners does not fall in any of these categories, as no settlement, agreement or award is pointed out which can be said to be violated by the employer.

14. The Government Resolution dated 21.9.1998 is relied upon by the University as being a policy decision of the State Government not to subject any isolated post to any reservation of whatsoever nature. Respondent No.1 has canvassed that reserving an isolated post to the category of in-service candidates, would also amount to reservation. If any of the petitioners / complainants were eligible as per the Government Resolution and the advertisement, they could have applied and could have competed with the other candidates. I also find that neither the Government Resolution dated 21.9.1998, nor the advertisement dated 9.8.2009 was

challenged by the petitioners. Those security guards, who have completed 12 years in employment, including the petitioners, have been granted time bound scale, which is aimed at giving them higher pay scale. As such, they cannot allege that they are stagnated.

15. I am, therefore, unable to agree with the contentions of the petitioners that the said Government Resolution does not mean that an isolated post should be reserved as a promotional post for in-service candidates. I, however, make it clear that I have arrived at this conclusion, since the Government Resolution dated 21.9.1998 is yet to be challenged by any of the employees working with the respondent University. If they pose any challenge to the said Government Resolution, that could then be looked into by the Court having jurisdiction to do so.

16. In so far as the prayer of the petitioners in terms of clauses (c) and (d) of the complaint are concerned, I do not find from the impugned judgment that any evidence was brought on record to prove that the petitioners should have been given raincoats, warm clothing, cycles, uniforms, torches and overtime wages for the days they have worked overtime and/or on weekly holidays.

17. In the event, any employee of the respondent / University or their Union can collect sufficient material for seeking such facilities, based on any provision of law, they are at liberty to approach the respondent / University by making an appropriate representation and in the event any of

the employees are working over time, respondent No.1 University will have to deal with the said situation for extending monetary benefits to such employees based on the records available. The dismissal of the complaint and this petition, shall not come in the way of any employee of the University in putting forth a grievance on these counts and seeking benefits thereon.

18. In the light of the above and the observations made, I do not find that any interference is called for in the impugned judgment. The petition is, therefore, dismissed.

19. Rule stands discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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