

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 7372 OF 2007

...

Suresh Shankarrao Kokate

....Petitioner

V/S

Sarchitnis - Dr. Vasant Rao Pawar Maratha Vidya
Prasarak Samaj And Anr.

....Respondents

...

Ms. Seema Sarnaik i/b Shri Ameya Tamhane for the Petitioner.
Shri.K.Y. Mandlik for Respondents Nos.1 & 2.

...

CORAM : A.A. SAYED, J.

DATED : 22 NOVEMBER 2016

ORDER:

1 By this Petition under Articles 226 and 227 of the Constitution, the Petitioner has impugned the order dated 31 August 2007 passed by the Presiding Officer of the University and College Tribunal, Pune, whereby the Appeal of the Petitioner was dismissed. In the Appeal filed by the Petitioner before the College Tribunal, the Petitioner had challenged his 'otherwise termination' from 22 December 2006 and had sought reinstatement with back-wages and continuity in service.

2 The Petitioner/original Appellant is B.Sc., M.Ed. and at the relevant time undergone National Test for physical fitness and was appearing for M.Phil. He was appointed as Director of Physical Education by the Respondent Management in the Respondent No.2 College. Initially he was appointed from 2 October 2000 on yearly basis vide letter dated 28 September 2000. The said letter of appointment stated that the post was reserved for SC/ST/NT. The said appointment letter further stated that the appointment was on temporary basis against reserved post for a period of one academic year i.e. 2000-2001. The Petitioner was continued from time to time every year as a temporary employee until the last appointment order dated 17 June 2006 for the academic year 2006-07 i.e. until 30 April 2007. All the subsequent appointment orders also state that the post is reserved for SC/ST/NT/ or SC/ST/NT/SBC and that the appointment is on temporary basis. The aforesaid orders of appointment are annexed to the Petition. The contention of the Petitioner before the School Tribunal was that his appointment was on permanent and clear post however he was orally terminated/otherwise terminated from service on 22 December 2006 and the termination was illegal and he was terminated without giving him an opportunity put forth his case.

3 In the Reply filed by the Respondent Management it was pointed out that the Petitioner does not possess the requisite qualification for the post of Director of Physical Education and he had not passed his NET or

SET examination. His appointment was never made by any public advertisement nor was any selection committee constituted as per rules and statutes of Pune University. The Petitioner was a temporary employee and he was never appointed on probation. His appointment was not approved by the Pune University. The Petitioner himself had stopped to attend his duty since 22 December 2006. After hearing the parties, the College Tribunal dismissed the Appeal of the Petitioner by the impugned order which is subject matter of challenge in the present Petition.

4 It is an admitted position that the Petitioner was appointed from time to time on a post which was reserved for backward class. The appointment orders specifically state that the appointment of the Petitioner is temporary and he may be terminated at any time by giving one month notice and/or one month's pay in lieu of notice period in case the period spent in service is more than six months. It is also an admitted position that the Petitioner belongs to open category.

5 Learned Counsel for the Petitioner has invited my attention to Statutes 416 and 417 of the Pune University Statutes, which read as follows:

“Statute 416. Reservation of Posts:

Reservation of posts for Scheduled Castes (SC), Scheduled

Tribes (ST), Denotified Tribe and Nomedic Tribes (DTNT)

(1) The University, Affiliated Colleges and Recognised Institutions shall reserve the posts out of the total number of posts to be filled in by selection, for the members of the reserved categories as under:

(a) Scheduled Castes	..	13%
(b) Scheduled Tribes	..	7%
(c) Denotified Tribe and Nomedic Tribes	..	4%

(2) If a candidate belonging to any of the reserved categories above, is selected on merit, he shall be counted against the general (unreserved) post, provided that the total number of candidates from all the three categories together with those selected on merit do not exceed 40% of the total vacancies to be filled in on any occasion of recruitment.

(3) Subject to the general orders issued by the State Government, from time to time, in respect of recruitment of candidates from the reserved categories, vacancies reserved for a particular category shall be filled in by a candidate belonging to any other categories, if the candidate belonging to that particular category is not available for appointment. If no candidate is available out of any of the three categories, the post may be kept vacant for six months and readvertised for the reserved category. Even after readvertising the post three times at an interval of six months each in such a manner a suitable candidate belonging to any of the reserved categories is not available, the post may be filled in by advertising the same for open category.

Provided that the post shall be filled in temporarily by a suitable candidate belonging to open category, if the candidate

belonging to reserved category does not become available in response to the advertisement.”

“Statute-417. Probation:

1. The period of probation of the teacher shall in no case be more than 24 months, on the expiry of which he will be deemed to be confirmed unless after assessment of his work by the Committee, his services are terminated by giving him one month's notice or one month's salary in lieu of notice.

2. The Principal of the conducted College or the Head of the University Department concerned shall maintain Assessment Reports of the teacher on probations in the proforma prescribed for the purpose by the Vice-Chancellor, for every six months, and complete it at the end of each term of the academic year. The Principal of the conducted College or the Head of the University Department under whom the teacher is working shall send to the Registrar at least two months before the date of expiry of the period of probation, his assessment report with definite recommendations for confirmation in service or otherwise. In case the teacher appointed on probation for a period of less than 24 months is not to be confirmed at the end of his probationary period or his probationary period is to be extended, a confidential report justifying the decision should be attached and such cases be referred to the Vice-Chancellor for further instruction. The Executive Council shall be the deciding authority in these cases. In the case of teachers of Affiliated Colleges, the Principal will maintain Assessment Reports in a similar manner and forward the recommendations to the Chairman, Governing

Body for further instructions. The Governing Body shall be the deciding authority in these cases.”

Learned Counsel for the Petitioner submitted that in view of the aforesaid Statutes-416 and 417 of the Pune University Statutes it was not permissible for the Respondent-Management to have given artificial breaks by giving temporary yearly appointments and the Petitioner would be deemed to have been confirmed.

6 In my view Statutes-416 and 417 of the Pune University Statutes cannot come to the aid of the Petitioner in any manner. Statute 416 provides that if the candidate belonging to the particular reserved category is not available for appointment the post may be kept vacant for six months and re-advertised for the reserved category and after re-advertising the post three times at an interval of six months each in such manner if a suitable candidate belonging to any of the reserved categories is not available the post may be filled in by advertising the same for open category. The proviso to statute 416 clearly provides that if the candidate belonging to reserved category does not become available in response to the advertisement the post shall be filled in “temporarily” by suitable candidate belonging to open category. It is also not the case of the Petitioner that the procedure contemplated under the Statute 416 was followed and that after advertising the post for open category he was appointed.

7 So far as Statute 417 is concerned, it is applicable only to a case where an employee is appointed on probation. Admittedly, the Petitioner was appointed on temporary basis and was not appointed on probation. Hence, the Statute 417 would not apply to the case of the Petitioner.

8 In my view, while dismissing the Appeal of the Petitioner, the College Tribunal has rightly referred to the case of **Secretary, State of Karnataka and Ors. v/s. Umadevi and Ors.**¹, wherein it was held that unless the appointment was in terms of relevant rules, no rights can be conferred on the appointee. The Supreme Court in the said judgment has held that such appointee by adopting back door method without following relevant rules of appointment would not get any right to the post. In the present case the Petitioner was not appointed by the regular selection committee by following the prescribed procedure of advertisement etc.

9 Learned Counsel for the Petitioner has cited the judgment of the Supreme Court in **Maharashtra State Road Transport Corporation and Anr. v/s. Casteribe Rajya P.Karmachari Sanghatana**². Drawing support from the aforesaid judgment, she contends that the Petitioner would be entitled to the benefit of permanency. This judgment would not assist the case of the Petitioner in any manner as the Supreme Court in

1 2006 II CLR 261

2 2009 (8) SCC 556

the said case was dealing with benefits of permanency, which have been specifically conferred by the Statute i.e. MRTU & PULP Act. In the present case, no such provision has been pointed out under the Pune University Statutes, which grants permanency to a person who is appointed on temporary basis on a post meant for a reserved class candidate.

10 On 23 July 2009 the statement of the Counsel for the Respondent Management was recorded that pursuant to any advertisement, if the Petitioner applies for the post, if he is qualified for the said post, his Application will be taken into consideration by the Selection Committee, The Court is informed that accordingly, the Petitioner was considered by the Selection Committee and he was appointed in the year 2009 in the one of the institutions belonging to the Respondent Management where he served till 2011, whereafter he has left the service of the Respondent Management.

11 For the reasons stated above, no case is made out to interfere with the impugned order of the College Tribunal. The Petition shall accordingly stand dismissed. Rule is discharged. No order as to costs.

(A.A. SAYED, J.)