

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

WRIT PETITION NO. 12400 OF 2015

The State of Maharashtra
Through the Principal Secretary,
Higher and Technical Education Deptt.
Mantralaya, Mumbai and Others .. Petitioners

Vs.

Dr. (Smt.) Rizvi Saleha Saiyed Ghulam
Abbas .. Respondent

....
Mr. Nitin P. Deshpande AGP for the Petitioners / State
Ms. Swati P. Manchekar Advocate for Respondent
....

**CORAM : D.H.WAGHELA CHIEF JUSTICE &
SMT.V.K.TAHILRAMANI, J.**

DATE : FEBRUARY 22, 2016

ORDER [PER SMT. V.K.TAHILRAMANI, J.] :

1 Heard learned counsel for both sides.

2 The petitioners have preferred this petition against the order dated 5.10.2015 passed by the Maharashtra Administrative Tribunal Mumbai ("the Tribunal" for short) in

Original Application No. 313 of 2015. The relevant portion of the said order reads as under:

"22. The applicant is hereby held and declared to be entitled to be considered for promotion to a post in the cadre of Lecturer (Assistant Professor) in Group "A" (from Group "B")."

In view of the above, it was held and declared by the Tribunal that the respondent is entitled to be considered for promotion from Group "B" post in the cadre of Lecturer (Assistant Professor) in Group "A". The Tribunal further directed that the respondents i.e. present petitioners shall convene a meeting under the Government Resolution dated 19.4.2007 to consider the case of promotion of the present respondent. If the present respondent was found fit for being promoted, she be appointed to the promotional post with effect from a date to be specified notwithstanding her order of retirement with effect from 30.6.2015. In case, the respondent was promoted, it will be with continuity of service with all benefits available to the said promotional post. Six weeks time was granted for compliance.

3 Brief facts of this case, are as under:

The respondent was born on 10.6.1957. She did her M.A. in Urdu in first class in the year 1983. She had also done B.Ed. in 1981. After a stint as an ad-hoc Lecturer in Urdu, she was selected by a regular selection process through Maharashtra Public Service Commission ("M.P.S.C." for short). The respondent joined as Lecturer Group "B" on 4.7.1985 and cleared her probation on 4.7.1987. She did her Ph.D. on 13.2.2014. As per U.G.C. (Minimum Qualifications Required for the Appointment And Career Advancement of Teachers in Universities And Institutions Affiliated to It) (3rd Amendment) Regulation, 2009, the respondent by virtue of holding Ph.D. Degree, was exempted from NET and SET Examination. The respondent became eligible for being considered for the promotional post from the category of promotion. The other category was by nomination i.e. direct appointment.

4 The matter of appointment to the said promotional post was governed by the Rules framed under the proviso to Article 309 of the Constitution. The said Rules were called "The

Lecturers in Government College / Institutes in Maharashtra Education Service Group A (Collegiate Branch) Recruitment Rules, 2005. They were notified on 3rd July, 2006. We shall call those Rules as "old Rules". They provided two sources of appointments to the promotional posts viz. by promotion (25%) and by nomination (75%). It is not disputed that the applicant fulfilled the eligibility (promotion) criteria on and from 13.2.2014 in the category i.e. appointment by promotion.

5 As per Govt. Resolution dated 19.4.2007 a Committee came to be constituted for considering promotions of the Lecturers from Group "B" to Group "A". It is not disputed that the applicant addressed a number of representations seeking early promotion because as a Group "B" Lecturer, she would retire at the age of 58 (30.6.2014) whereas the age of retirement of Group "A" Lecturers was 60 years. On 6.6.2014, the then Incharge Director (HE) wrote to the Respondent No.1 commending the applicant and one other person for promotion. From that letter, it becomes clear that there was a vacancy in the promotional post for which as already mentioned, the applicant was eligible. The fact that the respondent was

eligible, becomes clear from Para 2 of the Affidavit-in-reply filed before the Tribunal of the Principal Secretary (H & T.E.D.) being the 1st Respondent (Shri. Sanjay Chahande) dated 8.7.2015, it is clearly stated that "out of eleven sanctioned posts in Urdu, three were `reserved' for promotees. At the time of receiving the proposal from the Director, two posts reserved for promotion (SC 1, Open 1) were vacant. It may be stated that the applicant is from Open category and as stated earlier on 6.6.2014, the then Incharge Director (HE) wrote to the Respondent No.1 commending the applicant and one other person for promotion.

6 The first series of representations made by the respondent for promotion was dated 14.2.2014. From the record, it is seen that the Directors' recommendation in relation to the respondent, was dated 6.6.2014. However, it is seen that despite the fact that the name of respondent was recommended in the meeting of DPC constituted as per Govt. Resolution dated 19.4.2007, it was decided to take a fresh opinion / clarification from UGC in respect of letter dated 15.9.2004 of UGC and after obtaining opinion from UGC the

proposal of promotion would be considered. The Directorate office forwarded the said proposal to the State Government on 8.4.2015. In the meantime, the State Government had published Revised Recruitment Rules for the post of Assistant Professor vide Notification dated 30.3.2015. As per the Revised Recruitment Rules, the post of Assistant Professor can only be filled by nomination and not by promotion, hence, accordingly decision was taken by the State Government not to fill the said post by way of promotion. According to the petitioners, in view of Notification dated 30.3.2015, the request of the respondent for being promoted from Group "B" to Group "A" was held to be untenable.

7 As far as seeking clarification / fresh opinion from UGC in respect of letter dated 15.9.2004 of UGC is concerned, there was no need at all to seek any clarification or opinion as the letter dated 15.9.2004 from UGC was very clear and categorical. The said letter is reproduced below.

"Shri. A.M. Bhattalwar,
Deputy Secretary to Govt. of Maharashtra
Higher and Technical Education Deptt.
Mantralaya, Annexe, Mumbai-32

Sub: Provision of reservation of 25% posts of Lecturers in M.E.S. Grade-A for the promotion of Lecturers in M.E.S., Grade-B".

Sir,

With reference to your office letter No. SCP-1004(1/04)/ Mashi-2 dated 31st July, 2004 on the above cited subject, I am directed to say as under:

1. As regards 25% reservation in promotion for Jr. College Lecturer to Sr. College Lecturer, the same seems to be within the purview of State Government and as such UGC has no role to play. The State Government may decide the same accordingly.

2. As regards seeking of the exemption by the State Government from 100% direct recruitment to the post of Lecturer of a College (Degree Level), the UGC has 'no objection' provided the candidate concerned fulfills all minimum eligibility conditions as per UGC regulations of 2000 (copy enclosed) for appointment to the post of Lecturers in Colleges / Universities".

8 From the above, it is seen that the letter is self-explanatory. There was no need to seek any clarification or

opinion in relation to the said letter. Despite this, for reasons best known to the petitioners, the matter was referred to UGC for opinion / clarification. We have already observed earlier that the letter of UGC is quite clear and there was no occasion to seek any clarification / opinion in relation to the same.

9 To deny promotion to the respondent, the petitioners have relied on the new Rules. As far as the new Rules are concerned, they are dated 13.3.2015. These Rules nowhere take away the rights accrued under the old Rules. The only pertinent point is that the new Rules leave only one source or channel for filling up Group "A" post i.e. by nomination and filling up post by promotion, was done away with. As stated earlier, the new Rules do not take away rights accrued under the old Rules. The entitlement of the respondent to the promotional post in Group "A" and the vacancy therein was already in existence much before the new Rules came into force. In fact, the new Rules did not have any retrospective operation. In the light of these facts, we would like to place reliance on the decision of the Supreme Court in the case of **State of Madhya Pradesh Vs. Yogendra Shrivastava, (2010)**

12 SCC 538. In the said decision, it is observed as under :

"15. It is no doubt true that Rules made under Article 309 can be made so as to operate with retrospective effect. But it is well settled that rights and benefits which have already been earned or acquired under the existing Rules cannot be taken away by amending the Rules with retrospective effect. (See N.C. Singhal Vs. Armed Forces Medical Services, K.C. Arora Vs. State of Haryana and T.R. Kapur Vs. State of Haryana). Therefore, it has to be held that while the amendment, even if it is to be considered as otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended Rules. The right to NPA @ 25% of the pay having accrued to the respondents under the unamended Rules, it follows that respondent employees will be entitled to non-practising allowance @ 25% of their pay upto 20.5.2003."

10 In **P. Ganeshwar Rao Vs. State of Andhra Pradesh, AIR 1988 S.C. 2068 = 1988 SCR Suppl. (2) 805**, it was held that the new rules would not apply in case of the vacancies that existed since before the enforcement of the new rules. To the same effect was the Law laid down by the Hon'ble Supreme

Court in **Y.U. Rangaiah and Others Vs. J. Shrinivasa Rao and others, (1983) 3 SCC 284 (Para 9)**.

11 In **Y.V. Rangaiah (supra)**, the manner in which and the indolence with which the matter was handled by the respondents, has been elaborately discussed. In the present case also, it is seen that there is indolence on the part of the petitioners in the matter of respondent's promotion. We would not like to comment on whether it was deliberate and intentional or not. In **Y.V. Rangaiah (supra)**, the Supreme Court observed as under:

"4. In the light of the rules and instructions mentioned above, a list of approved candidates should have been prepared as on September 1, 1976 for making appointments to the grade of Sub-Registrars Grade-II by transfer. The grievance of the petitioners is that contrary to the rules and instructions a list of the approved candidates was not prepared as on September 1, 1976; instead it was considerably delayed and drawn up only in the year 1977 when an amendment to the rules had been incorporated by G.O. Ms. No. 265-Revenue (UI) dated March 22, 1977 whereby the original rules, providing for consideration of Lower Division Clerks for

appointment as Sub-Registrars Grade-II were done away with and promotion or transfer to that category was to be made from amongst Upper Division Clerks employed in the Registration and Stamps Department. The complaint of the petitioners in the two representation petitions is that by delaying the preparation of list of approved candidates till after the rules were amended their chances for consideration for appointment to the higher post were adversely affected inasmuch as the petitioner in Representation Petition No. 302 of 1978 ranked as serial No.2 in Zone IV and the two petitioners in Representation Petition No. 1036 of 1978 stood at serial Nos. 9 and 10 in the category of Lower Division Clerks, i.e. much higher to respondents 3 to 15. Had a list been prepared as on September 1, 1976 in accordance with the prescribed rules and instructions the petitioners by virtue of their high seniority among the Lower Division Clerks stood a fair chance of being appointed to the higher grade. The inevitable result of the delay in the preparation of the list has been that respondents 3 to 15, who were juniors to the petitioners in the category of Lower Division Clerks, have been promoted as Sub-Registrars Grade-II and the petitioners who were senior to those respondents have been denied their legitimate chance of promotion. The petitioners in the two representation petitions, therefore, prayed for cancellation of the appointment of respondents 3 to

15 and for their appointment in the vacancies that existed from September 1, 1976 to August 31, 1977. The petitioners further sought direction to respondents 1 and 2 to prepare a panel or list of the Upper Division Clerks and Lower Division Clerks eligible for appointment by transfer as Sub-Registrar Grade-II according to old Rule 5 of the Andhra Pradesh Registration and Subordinate Service Rules and to make appointments by transfer with retrospective effect out of the panel for vacancies arising during the said period".

12 Before the Tribunal, in the affidavit-in-reply filed by Mr. Marale on behalf of present petitioners in paragraph 17, it is clearly admitted that in 2009, 2010 and 2012 promotions were given like that sought by the respondent. In view of the decisions quoted above, it is clear that the respondent is governed by the same old Rules and not the new Rules which came into force on 13.3.2015. The record shows that the Annual Confidential Reports of the respondent of the past five years, were "A Outstanding" for four years and "B+" for one year. As per the old Rules, the respondent was very much eligible for being considered for promotion to Group "A".

13 The Tribunal in view of the facts of this case and the decisions of the Supreme Court cited above, held and declared the respondent to be entitled to be considered for promotion to a post in the cadre of Lecturer (Assistant Professor) in Group "A" from Group "B".

14 In view of the above, we find that the decision of the Tribunal is just, legal and proper. The Tribunal had directed the petitioners to convene a meeting to consider the case of the respondent for promotion and if the respondent is found to be fit for being promoted, she be appointed to the said promotional post with effect from a date to be specified by the petitioners and other consequential reliefs. The Tribunal had given six weeks time to the petitioners for compliance. We extend the said period by a further period of four weeks from today.

15 In view of the above, the order of the Tribunal does not call for any interference, save and except, that the period of compliance is extended by a further period of four weeks from today.

16 Writ petition is dismissed accordingly with the above direction.

[SMT. V.K.TAHILRAMANI,J.]

[CHIEF JUSTICE]

kandarkar