

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 3149 OF 2011

Vaidya Bhaurao s/o Eknath Borkar,
Age 52 years, Occupation : Service
as Professor, Department of Anatomy
(Sharir Rachana), Govt. Ayurvedic
College, Osmanabad

.. Petitioner

versus

1. Vaidya Vikas s/o Mahadevrao Ghutke,
Age : 48 years, Occupation : Service,
R/o House No. 1-9-78, Jaisingpura,
Near University Gate, Aurangabad
2. The State of Maharashtra
3. The Maharashtra State Public Service
Commission, Bank of India Building,
Hutatma Chowk, Mahatma Gandhi
Road, Mumbai – 400 001, through
its Secretary.
4. The Secretary, Medical Education &
Drugs Department, Govt. of
Maharashtra, Mantralaya,
Mumbai-400032

..Respondents

Mr. R. K. Ashtekar, Advocate for petitioner

Mr. Avinash S. Deshmukh with Mr. R.S. Deshmukh,
Advocate for respondent no. 1

Ms. S.S. Raut, Assistant Government Pleader
for respondents no. 2 and 4.

CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.

DATE : 04-12-2017

ORAL JUDGMENT (PER : SUNIL P. DESHMUKH, J.)

1. The petition assails the decision rendered by the Maharashtra Administrative Tribunal, Aurangabad Bench, dated 16-03-2011 in Original Application No. 475 of 2003. Original Application No. 475 of 2003 had been filed by present respondent no. 1 challenging the appointment of petitioner as Reader pursuant to the selection process employed by Respondent No. 3 – Maharashtra Public Service Commission, *inter alia*, laying down eligibility criterion of three years experience as a Lecturer.

2. It has been the case of present respondent no. 1 before the Tribunal that there is fallacy in consideration of petitioner possessing requisite experience since the petitioner had not been a post graduate in the concerned subject till 1997 and after 1997 till March, 2000, he falls short of requisite experience of three years. The Tribunal had considered that since petitioner is short of requisite experience of three years, he does not qualify to the post of Reader and, as such, had

allowed Original Application no. 475 of 2003, holding the appointment of petitioner to be invalid and further directing respondent no. 1 to consider the case of petitioner for the post of Reader in Anatomy, if found fit.

3. During the course of hearing of writ petition, it transpired that while the petitioner had been demoted pursuant to the order of the Tribunal, he has now been promoted as Reader under regular course.

4. Learned counsel for the petitioner refers to that the decision had been rendered by the Tribunal in the absence of counsel for the petitioner and, as such, the Tribunal could not notice vital aspects and had been oblivious of the same.

5. The factual aspects which may be germane from the point of view of decision in the matter are, the petitioner had been appointed as Demonstrator on 21-10-1987 in Government Ayurvedic College, Nagpur. On 10-12-1990, a resolution had been issued by the Government treating and re-designating the Demonstrator appointed before 01-07-1989 as Lecturers with effect from 10-12-1990. Said resolution had been the subject-matter of challenge before High Court at Nagpur Bench in which operation of said

resolution had been stayed. Subsequently, writ petition pending before Nagpur Bench was withdrawn around 1997. On 28-08-2017, a modified resolution had been issued by the Government ratifying earlier decision of treating the Demonstrators not possessing post graduate qualification as Lecturers with effect from 10-12-1990.

6. petitioner in 1997 acquired M. D. post graduate qualification. On 11-01-1999, respondent no. 2 Maharashtra Public Service Commission, published an advertisement for filling up, *inter-alia*, post of Reader in Anatomy (शरीर रचना). In the selection process, the petitioner and respondent no. 1 were interviewed. Respondent no. 1 having not been recommended by respondent no. 2 for Reader's post in anatomy, had filed representations to various authorities which purportedly had been turned down in October, 2002 and thereafter Original Application referred to above had been filed.

7. Mr. Ashtekar, learned counsel appearing on behalf of the petitioner vehemently submits that when a decision has been taken by the State Government to treat the Demonstrator as Lecturer with effect from 10-12-1990, the consideration which apparently has carried away the Tribunal about teaching

experience of three years after acquisition of qualification is an imposition not intended by the State Government and is not borne out from the qualifications prescribed for Reader's post, for making appointments.

8. He submits that even otherwise, after acquisition of post graduate qualification, the petitioner had almost completed three years experience, may not be with mathematical precision and as such, respondent no. 2 by applying the criteria as prescribed had recommended appointment of petitioner according to which the petitioner had been appointed. Not only that he had started working as Reader but also during pendency of Original Application before the Tribunal, he had further been promoted as Professor and had been working as such till the order had been passed by the Tribunal in 2011. Thus, possession of qualification and performance of duty, balancing the situation, would show that so called consideration which had weighed with the Tribunal had not affected performance in duty of petitioner as Reader or for that matter Professor. Moreover, petitioner's performance as a Reader was a major consideration when he came to be promoted as Professor. He submits that the view taken by the Tribunal is a classic example of its decision

being tending to be too pedantic. He submits, even the same is not tenable in view of resolutions passed by the State, one on 10-12-1990 and the other on 28-08-1997.

9. In support of his submissions, Mr. Ashtekar refers to and relies on decision in the case of *Ramesh Vithal Padhye vs. State vs. State of Maharashtra*, 2006 Mh.L.J. 803. He submits that the reasoning which has gone into making of said decision applies on all fours to present facts and circumstances and therefore applying analogy therefrom, present writ petition deserves to be allowed.

10. Mr. Deshmukh, learned counsel appearing on behalf of respondent no. 1 states that with the subsequent events after passing passing order in the Original Application, his client is no longer interested in prosecution of present writ petition and gracefully states that he leaves it to the court to decide the matter in accordance with facts and law.

11. Learned Assistant Government Pleader supports the order impugned and submits that the resolutions by the Government depict that as Demonstrators appointed before 1990 are re-designated as Lecturer and that the Demonstrators who would not possess requisite qualification

would perform duties as Demonstrators. In view of the same, the Tribunal has taken a decision that since the petitioner is not possessing requisite experience after 1997, he is not entitled to relief sought by him. Learned Assistant Government Pleader, however, is not in a position to show that so-called shortfall of fraction of experience of three years had affected performance of the petitioner as Reader or for that matter thereafter as Professor.

12. While the government had taken a decision to re-designate Demonstrators as Lecturers and while making recruitments pursuant to advertisement prescribing three years experience as a lecturer, it did not make any other distinction between Lecturer with teaching experience and person designated as Lecturer. While the petitioner, indeed, would be required to be treated as Lecturer since 1990 pursuant to Government Resolutions of 1990 and 1997 and also having regard to that performance by him in duty had not been affected by shortfall of fraction of experience for completion of three years after acquisition of post graduate degree by him, the view taken by the Tribunal in the Original Application tends to be rather too hypothetical and pedantic. This may have to be seen on the background also that so

called lack of experience as considered by the tribunal would not be in keeping with the intention of the State Government and the position as appearing under the resolutions issued by the State Government.

13. Having regard to the position as would be revealed by the resolutions dated 10-12-1990 and 28-08-1997, the post of Demonstrator had been re-designated as Lecturer, further stipulating that the persons who do not possess post graduate qualification would continue to discharge same duties as Demonstrator so long as they do not acquire necessary qualification. This position had not only been ratified but had been clarified that the persons appointed before 01-07-1989 and not possessing post graduate qualification will be treated as Lecturers with effect from 10-12-1990. Such a treatment had not been restricted for any specific purpose and appears to be applicable to all the purposes.

14. In the present case, petitioner's services pursuant to aforesaid resolutions will have to be treated as of a Lecturer having undergone change in designation with effect from 10-12-1990, and as such, the intention underlying the Government Resolutions will have to be given its due

and more so while the petitioner has acquired post graduate qualification in 1997. The petitioner appears to have had vast experience in service since 1987 onwards till he had been appointed as Reader in 2002. His performance in service thereafter does not appear to have been affected by so-called deficiency in experience which had weighed with Tribunal. Even otherwise, while there has been a decision by the State, treating Demonstrators appointed before 1989 as Lecturers, requirement of teaching experience after acquisition of post - graduate qualification as considered by the Tribunal appears to be rather overreaching the decision by the State Government.

15. Besides, the position is that petitioner's career after 2002 as Reader till he had been working had been blemish-less having regard to the submissions on behalf of the parties and the affidavits filed by the respondents. In the circumstances, we feel that the approach of the Tribunal had been rather over-imposing, overbearing, overreaching and too pedantic affecting service career of the petitioner. Even otherwise, it appears that pursuant to the directions of the Tribunal, respondent no. 1 has not been able to secure the post held by the petitioner. Petitioner, in fact and

indisputably, had been working as Professor while he had been demoted pursuant to impugned order passed by the Tribunal.

16. In view of the same, we allow the writ petition in terms of prayer clause (B) and dispose it of.

17. We direct the respondents to grant to the petitioner all concomitant benefits arising from his appointment as Reader with effect from 31-10-2002. Rule made absolute accordingly.

SANGITRAO S. PATIL,
JUDGE

SUNIL P. DESHMUKH,
JUDGE

pnd/-