

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 8016 OF 2016
With
Writ Petition NO. 8049 OF 2016

Ms Vijaya Bhiku Kadam	...Petitioner
<i>Versus</i>	
Mayani Bhag Shikshan Prasarak Mandal And Ors.	...Respondents

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Mr.PB. Shah i/b. Kayval P. Shah, Advocate for the Petitioner.

Mr. Sanjeev Kadam, Advocate for Respondents No.1 and 2.

Mr. Amit Borkar, Advocate for Respondents No.3 and 4.

Mr. Mihir Desai, Senior Advocate a/w. V.K. Bodhare i/b. A.M. Joshi,
Advocate for respondent No.5.

Ms. M.S. Bane, B Panel Counsel, AGP, for Respondents No.6 and 7.

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CORAM : R. G. KETKAR, J.

DATE : 25th JULY, 2017

P.C.

1. Heard Mr. P.B. Shah, learned Counsel for the
Petitioner, Mr. Sanjeev Kadam, learned Counsel for Respondents
No.1 and 2, Mr. Amit Borkar, learned Counsel for Respondents
No.3 & 4, Mr. Mihir Desai, learned Senior Counsel for

respondent No.5 and Ms. M.S. Bane, learned A.G.P. for respondents No.6 and 7, in both the petitions at length.

2. Writ Petition No.8016/2016 is filed under Articles 226 and 227 of the Constitution of India by Ms.Vijaya Bhiku Kadam, hereinafter referred to as 'Kadam', challenging the judgment and order dated 21.12.2015 passed by the learned Presiding Officer, Savitribai Phule Pune, Shivaji & Solapur University and College Tribunal, Pune (for short, 'Tribunal') in Appeal No.19/2015. By that order, the Tribunal dismissed the appeal preferred by Kadam against the order of reduction in rank dated 29.3.2000. In the alternative Kadam has prayed for issuing appropriate directions to the respondents to absorb her in any other aided college in the post of full time Lecturer in English. Writ Petition No.8049/2016 is also instituted by Kadam challenging the judgment and order dated 21.12.2015 passed by the Tribunal in Appeal No.108/1996 and Appeal No.42/1997 filed by the respondent No.5 Ms. Hemangini Sukhadeo Mane (for short, 'Mane'). By that order, the Tribunal allowed Appeal No.108/1996 against the order of termination dated 28.10.1996 and Appeal No.42/1997 against the termination order dated

20.4.1997, both filed by Mane.

3. As the parties in both the Petitions are common and the Petitions challenge the common order dated 21.12.2015 passed by the Tribunal disposing of all the Appeals, the same can conveniently be disposed of by this common order. The relevant and material facts for deciding these petitions are as follows.

4. At the relevant time, Kadam was having qualification of M.A. B+ (English), Mane also holds qualification of M.A. B+ (English). On 5.7.1993, respondent No.1 Mayani Bhag Shikshan Prasarak Mandal (for short, 'Trust') published advertisement in daily newspaper "Pudhari" inviting applications for filling up various posts including the posts of Teachers in English subject. Out of two full time posts, one post was earmarked for open category candidate and other post was earmarked for schedule caste candidate. The University constituted Selection Committee interviewed the candidates on 20.8.1993 and in terms of Statute 195 (2)(D) recommended the names arranged in the order of merit of the persons. The recommendations made in the order of merit by the Selection Committee are as under :

1. Sunita Dnyandeo Patil
2. Hemangini Sukhadeo Mane
3. Vijaya Bhiku Kadam

5. Though one candidate by name Prashantkumar Bhopal Kamble belonging to reserved category appeared in the interview against the post reserved by SC category, his name was not recommended by the Selection Committee. On 26.8.1993, Mane accepted the appointment on the post of Lecturer in English subject in the second respondent Arts, Commerce and Science College, Mayani. The appointment order recites that it was on temporary basis. On 1.9.1993, the Management issued letter to Sunita Dnyandeo Patil informing her that the University Selection Committee recommended her name at Sr.No.1 and she was called upon to report to the Principal of the College. In case she is not interested, she was called upon to intimate in writing so that the appointment can be made of the next candidate in merit.

6. On 8.9.1993, the College issued appointment letter to Kadam appointing her on purely temporary basis for A.Y. 1993-94. It appears that on 20.1.1994, respondent No.4 Shivaji

University gave approval to the appointment of Mane on temporary basis against the post earmarked for S.C. Category for a period of one year i.e. till the end of A.Y. 1993-94 as per condition No.2, as the candidate from S.C. Category was not found suitable. By communication dated 28.1.1994, the Principal of the college informed Registrar of respondent No.4 University that as the candidate Patil recommended at Sr. No.1 did not join, Kadam at Sr. No.3 was appointed and, therefore, sought approval of the appointment.

7. It appears that on 8.9.1994, an advertisement was issued for filling-up posts of Lecturers in English for A.Y. 1994-95. Out of two posts, one post was earmarked for open category and one post was reserved for S.C. category. In pursuance thereof, Kadam and Mane, among others applied. Interviews were held by the University Selection Committee on 26.10.1994 and the Committee recommended Kadam against Open category post and Mane against S.C. category post for a period of one year. Accordingly appointment letter was issued to Kadam on 26.10.1994 appointing her on probation subject to her passing NET during the probation period. Similarly on 24.10.1994, the

College issued appointment letter to Mane appointing her on temporary basis. The University granted approval to the appointment of Kadam against Open category and Mane against reserved category (S.C.) on 5.1.1995.

8. On 7.8.1995, the College issued advertisement to fill up one post reserved for SC category. Mane made an application on 18.8.1995. The University Selection Committee recommended the name of Mane on the post reserved for SC category for a period of six months. On 3.1.1996, the University gave approval to the appointment of Mane for A.Y. 1995-96 against the post reserved SC category. On 28.10.1996, the College terminated the services of Mane on the ground that she was appointed against the post reserved for SC category and as the term of that appointment came to an end, her services were terminated. Aggrieved by this termination, Mane preferred appeal No.108/1996 before the Tribunal. She also prayed for declaration that it be declared that her initial appointment should have been on the post earmarked for open category. It appears that the Tribunal granted stay to the termination order dated 28.10.1996. Despite that, the College terminated her

services again on 20.4.1997. Mane filed appeal No.42/1997 challenging that order. It appears that initially Kadam was not impleaded as a party respondent in Appeal No.42/1997. By order dated 5.2.1998, the Tribunal allowed Appeal No.42/1997 and set aside the termination orders dated 28.10.1996 and 20.4.1997.

9. Aggrieved by this decision, Kadam instituted W.P. No.3829/2000 in this Court. Kadam also challenged the order dated 29.3.2000 by which she was reduced in rank from full time post to clock hour basis. By order dated 5.9.2014, the Petition was disposed of by setting aside the order of Tribunal dated 5.2.1998. Appeal No.42/1997 was restored to the file of the Tribunal subject to impleadment of Kadam as a party respondent in the appeal.

10. This Court noted that pending that petition, Kadam was reduced in rank from full time to clock hour basis on 29.3.2000. Liberty was given to Kadam to challenge the order of Management dated 29.3.2000 by filing an independent appeal. Accordingly Appeal No.19/2015 was filed by Kadam challenging the order dated 29.3.2000. Appeal No.108/1996 was preferred by

Mane challenging the termination order dated 28.10.1996 terminating her services w.e.f. 1.11.1996. Appeal No.108/1996 filed by Mane against the order dated 28.10.1996, Appeal No.42/1997 filed by Mane against the order dated 20.4.1997 and appeal No.19/2015 filed by Kadam against the order dated 29.3.2000 were heard together and by a common order dated 21.12.2015, Appeal No.108/1996 and Appeal No.42/1997 preferred by Mane challenging the termination order dated 28.10.1996 and 20.4.1997 respectively were allowed and these orders were set aside. The Management was directed to reinstate Mane on her original post within two months with backwages and other consequential benefits as agreed between Mane and Management in compromise dated 7.1.2000. Appeal No.19/2015 preferred by Kadam against the order dated 29.3.2000 was dismissed. Kadam has instituted W.P. No.8016/2016 against the order dated 21.12.2015 passed in Appeal No.19/2015 and W.P. No.8049/2016 against the order dated 21.12.2015 passed in Appeal No.108/1996 and Appeal No.42/1997.

11. In support of these petitions, Mr. Shah strenuously contended that though the University Selection Committee

recommended Ms. Sunita Patil at Sr. No.1, Mane at Sr. No.2 and Kadam at Sr. No.3, Mane accepted the appointment against the post reserved for SC category and accepted the appointment order dated 26.8.1993. On 1.9.1993, the Management addressed letter to Ms. Patil asking her to report to college so that appointment letter can be issued. In case she is not interested to join the college, she was asked to intimate in writing. He submitted that Ms. Patil did not respond to the letter dated 1.9.1993. In view thereof, on 8.9.1993 the Management issued appointment letter to Kadam and appointed her against Open category on probation basis.

12. Mr. Shah further submitted that in the years 1994, 1995 and 1996 all along Mane appeared for interviews which were held for filling-up one post reserved for SC category. She was appointed on temporary basis against post reserved for S.C. Category by the Management and she accepted these appointments. He submitted that Mane never protested appointment of Kadam made on 26.10.1994 on probation basis as also her appointment on temporary basis against the post reserved for S.C. category. It is only after her services were

terminated on 28.10.1996, she filed appeal No.108/1996 challenging the termination order. He submitted that Mane having accepted the appointments on temporary basis right from 1993 onwards till 1996, she is precluded from challenging the appointment of Kadam on Open post on probation basis. He submitted that the Tribunal has failed to consider the subsequent interviews and the approvals given by the University to the appointment of Mane on temporary basis against the post reserved for SC category.

13. In the alternative, he submitted that by order dated 3.2.2017 this Court directed the parties to appear before the Regional Joint Director for considering whether Kadam can be absorbed in some aided college affiliated to University on the same post having equal benefits on full time basis. In pursuance thereof, the Divisional Joint Director (Higher Education), Kolhapur Division, Kolhapur has submitted report dated 16.1.2017 / 22.2.2017 setting out therein that Kadam was not declared as surplus and there are no Government Resolutions for absorbing the teachers who are working on non-aided posts. He submitted that in the alternative, the respondents may be

directed to absorb Kadam in any other aided college on the post of full-time Lecturer in English.

14. On the other hand, Mr. Desai supported the impugned order. He invited my attention to the reply filed by the University before the Tribunal in Appeal No.42/1997 and in particular paragraphs-1 and 2. In paragraph-2, the University contended that in the first selection for A.Y. 1993-94, the candidate selected at first preference by name Smt. Patil did not join the services as Open category candidate. The Management should have given post to Mane against Open category as she was at Sr. No.2. However, this fact was not brought to the notice of University and Mane got approval of the University against the post reserved for SC category. He submitted that basically the Management was not justified in appointing Mane on the post reserved for SC category and Kadam on the post against Open category as admittedly in the selection for A.Y. 1993-94, she was at Sr. No.2 and Kadam was at Sr. No.3. He further submitted that the Tribunal rightly held that the subsequent advertisements, interviews and appointments of Mane on the post reserved for SC category are irrelevant as basically the Management was not

justified in appointing Mane against the post reserved for SC category and Kadam on the post against Open category. He, therefore, submitted that no case is made out for interfering with the impugned order.

15. Mr. Borkar appearing for the University also supported the impugned order and reiterated the contentions that were raised in the reply filed before the Tribunal.

16. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier in the year 1993-94, the University Selection Committee had recommended Ms. Patil at Sr. No.1, Mane at Sr. No.2 and Kadam at Sr. No.3. Statute 195(D) and (E) read thus:

“D) The Selection Committee shall interview and adjudge the merits of each candidate in accordance with the qualifications advertised, and recommend to the Vice-Chancellor the names arranged in order of merit of the persons, if exceeding one, whom it recommends for appointment to the post/s advertised giving reasons for the order of preference. It shall be observed that the candidates selected are eligible and have work-load to teach one of subjects for which affiliation (Temp. or Permanent) has been granted. If no person is selected, a report to that

effect be made. The Committee will have the right to recommend only one name if others are not found suitable for recommending a panel. The recommendations of the Committee shall be subject to the approval of the Vice-Chancellor.

- E) The Governing Body shall appoint from amongst the persons so recommended and approved by the Vice-Chancellor the Principal or the number of teachers required to fill in the posts advertised. Such appointment shall be strictly according to the order of merit prepared by the Selection Committee and approved by the Vice-Chancellor.

Provided that, where the Governing Body proposes to make an appointment, otherwise in accordance with the order of merit arranged by the Selection Committee, it shall record its reasons in writing and submit them to the Vice-Chancellor, who may approve the proposal or return it to the Governing Body for reconsiderations. After reconsideration if the Governing Body desires to pursue its original proposal, it shall refer the matter again to the Vice-Chancellor for his decision which shall be final.”

17. A perusal of Clause (D) shows that the Selection Committee has to interview and adjudge the merits of each candidate in accordance with the qualifications advertised, and recommend to the Vice-Chancellor the names arranged in order of merit of the persons, if exceeding one, whom it recommends for appointment to the post/s advertised giving reasons for the order of preference. Clause (E) shows that the Governing Body

shall appoint from amongst the persons so recommended and approved by the Vice-Chancellor the Principal or the number of teachers required to fill in the posts advertised. Such appointment shall be strictly according to the order of merit prepared by the Selection Committee and approved by the Vice-Chancellor. Proviso thereto lays down that where the Governing Body proposes to make an appointment, otherwise in accordance with the order of merit arranged by the Selection Committee, it shall record its reasons in writing and submit them to the Vice-Chancellor, who may approve the proposal or return it to the Governing Body for reconsiderations. After reconsideration if the Governing Body desires to pursue its original proposal, it shall refer the matter again to the Vice-Chancellor for his decision which shall be final.

18. From the perusal of the material on record, it does not appear that the Governing Body of the Management has invoked the clause (E) of statute 195(2). In the event the Governing Body had no option but to appoint the candidates as per the names arranged in the order of merit. It is common ground between the parties that Ms. Patil who was recommended by the University

Selection Committee at Sr. No.1 did not join the College. In that event, the Management ought to have offered the appointment to Mane on the post which was earmarked for Open category candidate and Kadam against the post reserved for S.C. category. Instead of doing that the Management appointed Mane on the post reserved for SC category and appointed Kadam on the post against Open category. In my opinion, the Management was not justified in adopting this course.

19. A perusal of the approval dated 20.1.1994 by the University shows that the University gave approval only to the appointment of Mane against the post reserved for SC category. Though the approval did not deal with the appointment of Kadam, by letter dated 28.1.1994, the Principal of the College sought approval to the appointment of Kadam. A perusal of that letter shows that the Principal of the college did not clarify that Mane was appointed on the post reserved for SC category and that the approval to the appointment of Kadam is sought against the post earmarked for Open category. In paragraph-2 of the written statement, the University contended that in the first selection for A.Y. 1993-94, as the candidate selected at first

preference did not join, Mane being at preference No.2, the Management should have appointed Mane against Open post. Not only that the Management did not bring this fact to the notice of the University. In my opinion, the college should have appointed Mane on the post earmarked for Open category as per Statute 195(E) and should have sought approval for appointment of Kadam on the post reserved for SC category. This would have been consistent with letter dated 1.9.1993 addressed by college to Sunita Patil.

20. The Tribunal has considered this aspect. The Tribunal also considered the arguments advanced on behalf of Kadam that Mane had appeared in pursuance of successive advertisements and interviews and was appointed on the post reserved for SC category and repelled that submission. I do not find that the Tribunal has committed any error in that regard. Basically the Management was not justified in appointing Mane on the post reserved for SC category as the candidate at Sr. No.1 Ms. Patil did not join the duty.

21. The petitioner was not in a position to demonstrate that the findings recorded by the Tribunal are perverse, being

based upon no evidence or that they are contrary to the evidence on record. The petitioner was also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Tribunal. In the result, no case is made out for interfering with the impugned order. Hence, Petitions fail and the same are dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)