

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9459 OF 2013

Vivek Babu Patil Petitioner
Vs.
The State of Maharashtra & Others Respondents

Mr. N.V. Bandiwadekar for the Petitioner.
Mr. B.V. Samant, AGP, for Respondent Nos.1 to 3.
Mr. Asadullah Shaikh h/f Mr. Rui Rodrigues for
Respondent No.4.
Mr. Ashutosh M. Kulkarni for Respondent Nos.5 & 6.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : NOVEMBER 13, 2017

P.C:

1. The petitioner by this petition seeks a direction to respondent Nos. 3 to 6 to include his name in the category of permanent aided employees (aided Division) in the sixth respondent-College and to grant all consequential benefits to him.

2. The prayers (c) and (d) are in furtherance and in aid

of the main prayer which we have referred to.

3. The case of the petitioner is that being a physically handicapped person, he had, against a vacant post, applied for appointment. The petitioner is born on 28-9-1972 and also claims to be belonging to Other Backward Class. He has a Bachelors Degree in Arts and has passed Computer Software Diploma. By an appointment letter dated 28-8-1999, the petitioner came to be appointed as a Junior Clerk/Typist in respondent No.6-College with effect from 1-9-1999 in the pay-scale of 950-20-1150-25-1400. The petitioner was granted benefit of permanency in service with effect from 20-9-2001.

4. It is claimed by the petitioner that the sixth respondent to this petition is a College of Arts and Commerce and is Government aided. It imparts education in under-graduate and post-graduate courses. It has various faculties. It is a Trust. It is affiliated to the University of Mumbai. It is claimed that the third respondent to this petition is the Joint Director of Education (Higher Education). He is the competent

authority to sanction the grant-in-aid for payment of salary to the approved teachers and non-teaching employees in Senior Colleges. The second respondent is the Director of Education (Higher Education), State of Maharashtra.

5. The petitioner relies upon a circular dated 24-12-2004 which instructs all Colleges and Institutions affiliated to respondent No.4-University to furnish information as to how many teaching and non-teaching physically handicapped persons are employed by them. It is because after the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, “the Persons with Disabilities Act, 1995”) was brought into force, the inaction of the authorities thereunder to make the reservation and appointments in pursuance thereof has been noticed by the State machinery.

6. Though the petitioner makes a grievance that he was continuously working, he has not been appointed against a post which is notified as Government approved and aided. It is the

case of the petitioner that those employees who are less educated and appointed in service after the petitioner have been made permanent and their posts are approved, enabling them to obtain higher pay-scale. Therefore, the petitioner made representations.

7. The representation of the petitioner dated 28-5-2010 to respondent No.6 also highlighted the fact of non-deduction of Provident Fund from the salary, not being exempted from payment of Professional Tax being a physically handicapped person, non-payment of Special Conveyance Allowance at 10% of basic salary, etc.. This representation was replied by the Management on 8-6-2010. The petitioner made a further representation and the correspondence with the Management continued.

8. The petitioner also made a representation to the Commissioner, Handicapped Welfare Commissionerate, Maharashtra State, Pune, the Competent Authority under the Persons with Disabilities Act, 1995 which provides for assistance

to persons with disabilities. The petitioner also approached respondent No.4-University. The sixth respondent, however, has not been accepting the claim of the petitioner. The petitioner has several grievances and one is that though the Grievance Committee of the University held meetings in relation to the application made, heard the petitioner as also the Management and made recommendations to the University, but in terms of these recommendations no further action has been taken, and particularly by the statutory authorities.

9. We have, therefore, summarised these grievances, and the principal amongst which is that the petitioner is working for more than 14 years on the date of the petition and now for a further period but his name has not been finding place in the Government approved appointments/employees, enabling him to draw salary and other benefits on par with the teaching and non-teaching staff in the same institution.

10. On such a petition, we find that there is an affidavit filed by the Management. The Management says in this affidavit

that there is no substance in the grievance of the petitioner but pertinently it does not deny that the petitioner was appointed as Junior Clerk, which is a Class-III post, with effect from 1-9-1999 in the fifth respondent's College in an unaided post. As far as his allegation that his name should be included in the category of permanent aided employees is concerned, the Management states that there are in all seven aided Class-III category posts, approved by the Government in the fifth respondent's College. As per the prevailing Government policy, 3% quota has been sanctioned for the handicapped persons provided that the sanctioned aided posts should be at least eight in the particular category. In the present case, there are only seven posts which are sanctioned aided posts and as such the Government policy is not applicable to respondent Nos.5 and 6. Even otherwise, at present all the seven posts have been filled up and there is no vacancy to accommodate the petitioner on any sanctioned aided post.

11. Strangely, we find the State Government filing an affidavit of its Regional Joint Director of Higher Education,

Konkan Region, seeking to endorse this stand of the Management. The State Government's affidavit says that as per the record available with the Joint Director of Higher Education, the Government by a letter dated 24-8-2012 granted permission to respondent No.6 to appoint staff for aided posts. This respondent appointed a total of 17 employees for non-teaching aided posts. The petitioner was not recruited by respondent No.6. This action, and to our mind, is nothing but play of words. The fifth respondent before us is the Management/Trust and which runs this sixth respondent-College. The appointment of the petitioner is made by the fifth respondent-Management. Then, on what basis the State Government says that the appointment was not made by respondent No.6. In any event, the petitioner has claimed to have been working on an unaided post. The recruitment was made without taking any permission from respondent Nos.1 to 3. In the circumstances, according to the State Government, the petitioner cannot claim the benefit of any Government policy.

12. Then, it is stated that there is a Government

Resolution which provides for 3% reservation for physically handicapped persons but the posts available under the said reservation is already filled-up by respondent No.6. Moreover, the initial appointment of the petitioner was not under the said reservation nor was the same in an aided post. He being appointed in an unaided post, cannot now claim relief against this respondent, namely, the State and to appoint him in an aided post.

13. On such pleadings, we have heard Mr. Bandiwadekar, appearing for the petitioner, Mr. Samant, learned AGP, for respondent Nos.1 to 3, the learned Advocate appearing for respondent No.4-University and Mr. Kulkarni, appearing for respondent Nos.5 and 6.

14. We are not impressed, in the least, by the stand taken by the Management and that of respondent Nos.1 to 3. Each one of them seem to forget that the 1995 Act styled as the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 mandates employment

opportunities. The Chapter VI of this Act, titled as 'Employment', incorporates Sections 32 to 41. It is clear from a perusal of these provisions that the State Government has to identify posts in the establishment, which can be reserved for the persons with disability, at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the development in technology. Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than 3% for persons or class of persons with disability of which 1% each shall be reserved for persons suffering from disabilities pointed out in Section 33. Then, there are further enabling powers including vacancies not filled up to be carried forward. The employers have to maintain records. By Section 38, schemes for ensuring employment of persons with disabilities have to be formulated. The Section 39 mandates all educational institutions to reserve seats for persons with disabilities. Therefore, these are affirmative actions. There has to be no discrimination but equal treatment to persons with disability on par with those who are able-bodied.

15. We do not see how the petitioner can be denied the relief, but we express presently no opinion. Once the Management has accepted that the petitioner is its employee, working from 1999, then, we expect the Government and particularly respondent Nos.1 to 3 to apply their independent mind and take a rational and informed decision consistent with the mandate of the Persons with Disabilities Act, 1995. They cannot be so insensitive as to file an affidavit in this Court and accept the version of the Management. It is clear that once this Act has intervened, its provisions will have to be given such interpretation as would uphold its object and purpose and not defeat it. We do not see how any technical, much less hyper-technical, plea of the Management can be readily accepted by the State Government and contrary to the mandate of the Persons with Disabilities Act, 1995. We have found that the petitioner having been appointed and working without any Government aid in the form of salary grant being provided to him on par with other permanently aided employees, deserves an opportunity to satisfy the authorities about his entitlement

and the grievances in relation thereto.

16. We, therefore, direct the Director of Higher Education, Maharashtra State, Pune to give an opportunity to the petitioner to substantiate and prove his allegations and grievances, as raised in the petition against respondent Nos.5 and 6. He must be granted a personal hearing by the Director and allowed to produce all the records in relation to his appointment, as also the reservation made for persons with disabilities by the Management. He must also be given an opportunity to satisfy and prove his case that the reservation under the Persons with Disabilities Act, 1995 cannot be equated or brought or understood on par with the constitutional reservation like the reservation for the Scheduled Caste and the Scheduled Tribe candidates. Once the petitioner is not claiming to be appointed on the basis of his caste/class but under the category of persons with disability, then, commensurate with that claim of the petitioner, the Director must take a decision as expeditiously as possible and after taking into consideration even the reply or version of the Management. The Management's

representative can also be given an opportunity to appear and make submissions. It will be open for the Director to obtain from respondent No.4-University its appropriate clarifications and version on this aspect.

17. Based on all these materials, the Director shall take a decision as expeditiously as possible in accordance with law and in any event, within a period of three months from today. The Director shall not take into consideration the contents of the affidavit filed by the Management or by the State Government (respondent Nos.1 to 3) in this petition. He must decide the issue independent of these affidavits and their contents so also the annexures thereto. He is expected to pass a reasoned order.

18. Once we direct the Director to look into the grievance of the petitioner and equally the version of the Management in regard thereto, the Director must also obtain the opinion and views of the Commissioner under the Persons with Disabilities Act, 1995 before passing his final order.

19. With the above directions, this petition is disposed of.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)