

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

WRIT PETITION NO. 7851 OF 2013

1. Smt. Surekha Baban Porlekar & Ors. ... Petitioners

Vs

1. The State of Maharashtra & Ors. ... Respondents

Mr. N.V. Bandiwadekar with Mr. M.G. Bagkar for the Petitioners.

Mrs. M.S. Bane, 'B' Panel' Counsel for the Respondent Nos.1 to 3.

Mr. Amit B. Borkar for the Respondent No.4.

***CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.***

THURSDAY, 02ND MARCH, 2017

P.C. :

1 By this petition under Article 226 of the Constitution of India, the petitioners are seeking a direction to the respondent Nos.2 and 3 to sanction a proposal forwarded by the University to them on 19th September, 2007, regarding the appointments of the petitioners. The petitioners claim that their appointments ought to be reckoned with effect from 18th May, 2011 in respect of petitioner Nos.1 to 4 and 2nd June, 2011, in respect of petitioner

No.5.

2 The petitioners claim to be Indian citizens. They are working in the respondent No.4-University. The third respondent to this writ petition is the Joint Director of Higher Education, Kolhapur Region and the respondent No.2 is the Director of Education (Higher Education) Maharashtra State, Pune. The first respondent is the Secretary in the Department of Higher & Technical Education.

3 In the year 1995, nine employees filed Complaint (ULP) No. 185 of 1995 while another eighty employees filed similar Complaint No.202 of 1995. These Complaints were filed in the Industrial Court at Kolhapur. The Complaints alleged unfair labour practice. The petitioners are the wards / heirs and legal representatives of five such complainants in the aforesaid Complaints. The case of the complainants was that they were employees of the University as Coolies / Class IV employees. They were employed as casual workers and worked continuously and without interruption for years together. They have put in 240 days of service in each year. The University did not extend any

benefits on par with its regular employees. Therefore, not extending such benefits, though extracting work on par with the regular and permanent employees, amounts to an unfair labour practice. The respondent No.1 to that Complaint and respondent No.4 before us - Shivaji University, contested these proceedings and filed its written statement, but eventually by a judgment and order these Complaints were disposed of. They were partly allowed and with directions enumerated in the operative order.

4 Being aggrieved and dissatisfied with the order, the respondent No.1-State and the Joint Director approached this Court by filing Writ Petition No.1345 of 1997. It is the State Government that filed the Writ Petition in this Court. That writ petition was admitted. Interim order was passed. The original complainants were aggrieved by a part of the order of the Industrial Court holding that the respondent Nos.1 and 2 have not engaged themselves in unfair labour practice. Hence, they filed Writ Petition No.1470 of 1997. That also was admitted.

5 During the pendency of the writ petitions, the University and the State Government implemented the order of

the Industrial Court. Each of the five concerned workmen were issued an appointment order by the University. The petitioners claim that it is only after sanctions from the State Government that such appointment orders were issued and equally the incumbents were confirmed in the posts. In the light of the subsequent development and post institution of the Writ Petition No.1345 of 1997, this Court disposed of the writ petition. Even the writ petition filed by the employees was dismissed.

6 After that order was passed, a representation was made and forwarded to the Vice Chancellor of the University. The grievances enumerated therein also pertain to a number of appointments on compassionate basis of such of the wards or heirs of the deceased employees. The respondent No.4 submitted a proposal enclosed in a letter dated 3rd April, 2007, to the State and sought various orders and directions in respect of the matters covered thereby. At Item 4 in the proposal, it was stated that out of hundred employees who have been taken in regular service from 12th August, 1997, eleven have expired. Hence approval was sought to appoint wards of such deceased employees in the service of the University on compassionate

grounds. The petitioners urge that respondent No.4 had no opposition ever to such appointments being made.

7 Since no action was taken by the State on these proposals, a civil application was moved being Civil Application No.572 of 2008 in Writ Petition No.1345 of 1997, stated to be one of the writ petitions and filed challenging the order of the Industrial Court. That Civil Application was dismissed by keeping open a remedy of the present petitioners to seek appropriate relief. That is how the petitioners, pursued their requests and eventually what transpires is that each of the petitioners claim that they should be taken to have been appointed with effect from the dates mentioned therein. Their proposals and the University's proposals equally were kept pending by the State. The petitioners, therefore, approached this Court by filing Writ Petition No.10832 of 2009. The prayers in that writ petition are noted and this writ petition was disposed of with a direction to the State Government to consider the proposal submitted by the University in respect of the appointment of the petitioners and to take a decision thereon within three months. The order of this Court apart, once the directions of the Industrial Court were not

implemented, a complaint styled as Criminal Complaint invoking section 48 of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practice Act, 1971, was filed in the Labour Court, Kolhapur against the Registrar of respondent No.4-University. That Labour Court issued a summons, summoning the Registrar. Against this order issuing summons, the Registrar of the University filed a Revision Application before the Industrial Court at Kolhapur. The said Revision Application was also disposed of. Not being satisfied with the order passed by the Industrial Court in that Revision Application, the University, through its Registrar, approached this Court. Thereafter, the Management Council of the University, in its meeting held on 28th February, 2011, absorbed in the services of the University, such of the wards of the deceased employees, but on the basis of their seniority in Group C and D posts which would become vacant, subject to approval from the Government. It was further resolved that employees who cannot be absorbed on regular basis, they should for the time being be absorbed in the Department of Self Reliance and as and when the Government sanctioned the posts or granted the aid and such posts would become vacant, these employees should be absorbed in those vacant posts. The

proposals on these lines came to be forwarded to the State Government. The proposals forwarded included those pertaining to the petitioners. The grievance is that the proposals subsequent to the proposals of the petitioners and forwarded by other employees have been accepted and their appointments were reckoned as permanent absorptions in the University services on the aided posts. The petitioners rely upon Exhibit-K in that behalf. That is how the petitioners pursued their request and ultimately on 18th May, 2011, the order of appointment to each of the petitioners in the posts enumerated in such letters or orders were issued. That one of the conditions based on which the appointment has been issued pertains to a sanction or approval from the State Government.

8 The Government sanctioned aided posts were the posts against which the petitioners were claiming absorption. That is why they went on pursuing their demand in their letters and representations. They were discussed at the highest level in the Shivaji University. A decision then was taken that the present appointment orders be issued on aided posts by mentioning the Government letter, the decision of the Court and

the resolutions passed pursuant thereto. After such appointments are made a proposal be forwarded to the Department of Higher Education in relation to the salary and other perquisites. That is how on 20th April, 2013, a decision was taken in a joint meeting involving the petitioners as well. Pursuant thereto, an order of appointment was issued on 12th June, 2013. These orders were issued appointing the petitioners against these sanctioned posts / aided posts, but on probation. If the Government approves their appointment, then, they continue else their services would come to an end. The petitioners, therefore, pursued their claim for confirmation in the posts against which they were appointed, but finding no response thereto, an advocate's notice was issued. The petitioners says that they are suffering because they have worked in the University and to the satisfaction of their superiors. They have never given any opportunity to the authorities to question their conduct or their behaviour. Thus, satisfactory services being rendered, it was incumbent upon the Government to have granted the benefits. The petitioners have set out all the relevant details, including making a reference to the Government Resolutions enabling the Government to pass requisite orders

and directions.

9 What we have on record is this specific stand of the Shivaji University. The University does not dispute any of the factual statements. It also does not dispute the decisions taken by it from time to time. Therefore, the only contesting parties are the State Government and the Director of Higher Education. An affidavit has been filed on their behalf. In the affidavit, the stand of the Government as reflected at page Nos.114 and 115, paragraphs 2 and 3, is that the posts against which the appointments by the University were made are not approved / sanctioned posts. The posts were not falling within the staffing pattern of the University. If the University wanted to employ any person on permanent post, it ought to have obtained prior permission from the State Government as the State Government releases the salary grant towards the payment of salary of teaching and non-teaching employees. The University should have also followed a recruitment process before appointing these people on permanent posts. The responsibility of the State to pay salary arises only when the University abides by these procedures. In the present case, the University has chosen to

appoint somebody and on its own. If it has not obtained approvals and sanctions as above, then, the employees cannot be foisted on the State nor can the State be burdened with the liability and obligation to pay their salaries. It is stated that a letter / communication dated 5th September, 2014, from the State Government was received wherein it is mentioned that the claim of the petitioners for their appointment on compassionate ground has been rejected. In view of these circumstances, the State Government has prayed for dismissal of the writ petition.

10 In the affidavit in rejoinder, filed by Dipal Babso Kamble, it is pointed out as to how the stand of the Government as reflected from the affidavit-in-reply is incorrect. It is stated that during the pendency of the writ petition to challenge the order of the Industrial Court, the first respondent issued a Government Resolution dated 4th July, 1997, accepting the recommendations made by the Sonawane Committee and issuing directions to implement the recommendations of the Sonawane Committee. The University was directed that while filling up the newly created posts, it should first make appointments from the daily wage employees working on their establishments for long

time and thereafter the balance posts should be filled by following the prescribed selection procedure. Then, the attention of this Court is invited to a letter dated 23rd July, 1997, addressed by the Shivaji University informing the first respondent that the University will act in terms of the instructions received and the Sonawane Committee recommendations. Accordingly, respondent No.4 passed the Resolution No. 61 and issued the appointment orders to all the complainants before the Industrial Court in the above mentioned ULP Complaints. The orders of appointment were effective from 12th August, 1997, but dated 4th April, 1998. Thereafter, on 26th April, 2000, the University confirmed the said complainants / some of the employees, involved in the matter before the Industrial Court, in their respective posts. Thus, the predecessors of the petitioners were duly appointed against sanctioned and approved posts. Once these posts fall vacant, then, it is not known which other procedure has to be complied with by the University. It is evident and an admitted fact that the predecessors of the petitioners duly appointed by the University against sanctioned and approved posts permanently, died during the service. Therefore, compassionate employment came to be offered to the petitioners.

It is in these circumstances that the petitioners question the stand of the State Government as reflected from the affidavit-in-reply. It is submitted that there is no substance in the stand of the State Government that proper and complete recruitment procedure should have been followed by the University. None of the above matters and documents have been considered by the State Government.

11 We have, therefore, seen from the records that this is a peculiar case and which will not fall within the normal and ordinary stance adopted by the State Government in such matters. We do not see how the Joint Director of Higher Education or the Director of Higher Education and equally the Secretary in the concerned Department can be unmindful and oblivious to the facts and circumstances brought on record in this case. The chequered legal history of this case and involving even the State in various litigations before this Court and the Industrial Court should have been the only relevant factor for guiding the State Government to take appropriate steps and decisions. It should have been aware of the fact that at every stage, the stand of the State Government has been considered by

this Court. It has been noted in several orders and directions of this Court. Equally in the communications from the University, none of the factual aspects as highlighted by the petitioners in the present proceedings have ever been disputed. It is common ground that the University accepts the settled position about the posts on its establishment. The University says that it has never committed any irregularity, much less illegality in making the appointments in question. It is the University's stand and throughout that it is bound by the orders and directions of the competent Court. We do not see why the *bona fides* of the University are questioned by the State Government. The State Government should have acted, bearing in mind the peculiar facts and circumstances of this case and taken a decision to approve the appointments of the petitioners from the dates desired by the University as also the petitioners.

12 It is such a simple thing and decision on these lines which we expected the State to take. However, beyond seeking adjournments and filing this reply with the above frivolous stand, the State Government has done nothing. From 18th October, 2013, on which date notices were issued on this writ petition till

today, we waited for the State Government to finalise its stand. It did not, even on the earlier occasion, as informed to the Assistant Government Pleader, convey and communicate its decision.

13 In the above facts and circumstances and bearing in mind the record of this case, we are of the firm opinion that the respondent Nos.1 to 3 should be directed to grant *ex post facto* approval to the petitioners' appointments. They shall be treated on par with such other compassionate appointments which have been made by appointing the complainants in the Industrial Court against sanctioned and permanent posts by the University. Meaning thereby, that all the benefits that accrue to the complainants in the Industrial Court, excluding the present petitioners, should be made available and extended to the present petitioners as well. The State Government should grant the *ex post facto* approvals and it may say that as far as these posts on which the petitioners are appointed, are allowed to be created or sanctioned and approved qua the incumbents who hold the posts. Later on, the University should not proceed on the footing that the number of posts available as approved and duly sanctioned by the State include the posts against which appointments are made

of the petitioners herein. With proper clarifications, but by protecting the entitlement of the petitioners, the State shall take an informed and rational decision as expeditiously as possible and before 15th April, 2017. In the event the decision is not taken, the State should bear in mind that the Director, Higher Education and the Joint Director, Higher Education and equally the Secretary in the Department concerned may face contempt proceedings. They then can also be saddled with a direction to pay costs personally. This Court would then utilise all such powers as are vested in it so as to ensure enforcement and implementation of its order and direction.

14 The writ petition is disposed of accordingly. There shall be no order as to costs.

B.P. COLABAWALLA, J. S.C. DHARMADHIKARI, J.