

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 955 OF 2003
WITH
WRIT PETITION NO. 1062 OF 2011
WITH
WRIT PETITION NO. 666 OF 2014

Dr.Pratibha Gokhale } Petitioner
versus
University of Mumbai and Ors. } Respondents

Mr. Mihir Desai-Senior Advocate
I/b.Mr.S.P.Sarnath for the petitioner.

Mr.Rui Rodrigues for respondent no. 1.

Mr.A.A.Kumbhakoni-Advocate General
with Mr.Kedar Dighe-AGP for respondent
nos. 2 and 3.

Dr.Rohidas B. Kate-Joint Director, Higher
Education, Mumbai Region present.

Mr.G.P.Date-Administrative Officer, Higher
Education, Mumbai Region present.

CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.

DATE :- MARCH 7, 2019

P.C. :-

1. By these petitions, petitioner-Pratibha Gokhale has claimed a common relief and that is that, she should be declared as a permanent full time Reader in the Department of Library Sciences.

2. It is unfortunate that three petitions had to be filed by this lady, who says that she is holding a Masters Degree in Library Sciences and is also Ph.D. She is qualified to hold all academic posts in the concerned subject. However, she belongs to open category.

3. The first respondent is the employer of the petitioner, whereas, respondent nos. 2 and 3 are the State of Maharashtra through the Department of Higher and Technical Education and the Director of Higher and Technical Education.

4. In para 2 of the memo of Writ Petition No. 955 of 2003, the petitioner has pointed out as to how she rendered 28 years service. We are concerned with her service in the University of Mumbai. There, she says that an advertisement was published and that bears the date 4th November, 1992. That was an advertisement to fill up the post of Lecturer in Library Sciences in the first respondent-University. A selection committee was constituted, which, pursuant to an application by the petitioner, interviewed her and recommended her name for appointment. Unfortunately, the appointment was made against a reserved post, but after fully satisfying oneself that no reserved category candidate was available. The post was reserved for a Scheduled Caste candidate. The petitioner continued to apply, for her

appointment was made year to year and successive advertisements resulted in the same manner and mode of appointment. Thus, the petitioner continued to be appointed for year to year.

5. However, in 1995, the post of Reader in Library Sciences was advertised and the petitioner applied for the same. Once again, a selection committee was constituted and once again, she was found to be eligible and recommended for selection. This post of Reader was also reserved for a Scheduled Caste/ Scheduled Tribe candidate. On 12th July, 1996, the petitioner was issued the appointment order and with the same conditions. The petitioner continued as a reader and when the advertisement of September, 2002 was issued, the petitioner found that the same seeks to make appointments to three posts, which one of the same is reserved was not clear to her at all. She applied and once again, she was interviewed on 3rd March, 2003. She was to be appointed against an open category post. She was categorically informed that she would be appointed as such. However, it was stated that one Dr.Waydande, belonging to Scheduled Caste, has been selected for the post of Deputy Librarian /Reader and hence, she was relieved from the post. A copy of this letter is dated 19th March, 2003 (Exhibit 'H') to the petition.

6. This prompted the petitioner to immediately move this court and what we have found from the record is that the petition was placed before a Division Bench of this court on 31st March, 2003. On that date, it passed the following order:-

“Heard Mr.Desai for the petitioner. Mr.Gore appears for respondent no.1. He seeks time to file reply.

2. The petitioner is making grievance that though she has been working in reserved post since about 1996, now she has been discontinued when she is selected on an open category post. Mr.Gore learned counsel for the University states that this is because of the Resolution of the State Government not to fill open category post. University may file its reply.

3. Matter to come on 7th April, 2003.

4. In the meanwhile there will be an ad-interim order in terms of prayer clause (d) pending the admission.

5. Parties to act on copy of this order duly authenticated by Sheristedar of this Court.”

7. From that date and even prior thereto, the petitioner has been protected and Dr.Waydande could not, therefore, be accommodated.

8. Now, when she claims a declaration that the post be de-reserved and that her appointment be regularised, we have an affidavit of the Administrative Officer in the Department of Higher and Technical Education. In paras 2, 3 and 4, this deponent says as under:-

“2. I say that petitioner has passed Master of Library Science Degree as well as acquired PhD in Library Science and cleared UGC National Eligibility Test (NET) as stated in her

biodata annexed to the petition as Exhibit "A". She was employed in various organisations, in various capacities and have gathered professional experience in the field of library science. Therefore there is no doubt that the petitioner possess requisite qualifications and experience for the post of lecturer or Reader in Lib. Science. However she was appointed initially as lecturer in Library Science during the year 1993-94 against a post reserved for Scheduled Caste. She was reappointed on the said post during the academic year 1994-95 and 1995-96. Thereafter from 16th June 1996 she was appointed on the post of Reader in Lib. Science against the post reserved for Backward classes. This appointment was continued during the academic year 1997-98, 1998-99, 1999-2000, 2000-01, 2001-02 i.e. too against a reserved post. I further submit that in the appointment letter it was clearly mentioned that the appointment of the petitioner was against a post reserved for backward classes and that is till the suitable backward class candidate is available and accordingly the University of Mumbai on availability of suitable backward class candidate relieved the petitioner from her services as a Reader vide letter dated 19-3-2003 annexed to the petition as Exhibit "H".

3. I further say that the first appointment of the petitioner in the University was on temporary basis as a lecturer in Library Science vide order dated 3rd January 1994 (Exhibit "B") against a reserved post and she was never appointed on probation conferred in the post of lecturer and hence her services were replaceable by a suitable backward class candidate. Therefore she has no right to claim confirmation on the said post of lecturer or Reader.

4. I further say that the Government of Maharashtra as well as the University of Mumbai have adopted subject-wise reservation policy from the academic year 1994-95 and the reservation criteria has been changed from the year 1995-96. According to inter changeability prescribed in the G.R. dated 5th December, 1994, bearing No. BCC/1094/CR-57/94/16B, a post reserved for scheduled caste can be filled by scheduled tribe candidate, if suitable scheduled caste candidate is not available. This interchangeability is permissible in the 6th year of recruitment. I further say that if such suitable candidates are not available, then in the 7th year the post can be proposed for de-reservation to the State through the University as per provision of the said G.R. dated 5-12-1994. I further say that the policy of reservation is as per the principles enshrined in the Constitution of India and all out efforts need to be made for getting the backward class getting their due share in employment. So, the dereservation of post is allowed in rarest cases when all efforts to fill a post from the backward classes have been failed. I further say that Government have issued

orders for filling the backlog of backward classes vide Government circular General Administration Department no BCC/2002/1306/16B dated 31-10-2002. In response to this drive the University of Mumbai have advertised the posts wherein suitable backward class candidate was available and the University have appointed the said candidate relieving the petitioners from the post. I say that the petitioner was made aware that her post is temporary and is replaceable by a suitable backward class candidate and she has no right to claim the said post.”

9. We find that on several counts, the appointment is faulted and we are left guessing as to which is the real reason for objecting the appointment. If the appointment is objected on the ground that the petitioner was relieved from services and she was appointed against a reserved post and therefore could not have claimed any relief from inception, all that is belied by the fact that the deponent admits that she was qualified, the deponent admits that she was appointed against a reserved post, but her services were never terminated, save and except a relieving letter of 19th March, 2003, which also could not take effect on account of the interim order of this court. Then, it is claimed that the petitioner cannot be protected for the University failed to carry out the mandate of the Government Resolution, particularly the Government Resolution dated 5th December, 1994. Insofar as that aspect is concerned, on the earlier occasion, we had requested Mr.Rodrigues appearing for the first respondent to obtain the necessary instructions. The Deputy Registrar of the University of Mumbai has addressed a communication to Mr.Rodrigues

informing him that the advertisements for the reserved post were indeed published in the year 1995, 1997, 1999, 2002, 2003 and 2007. Thus, on six occasions, this advertisement was published and insofar as Dr.Waydande's appointment is concerned, the deponent of the affidavit says that Dr.Waydande's appointment fills up the post. Now, this fact also is belied by the facts peculiar to the petitioner's case, inasmuch as Dr.Waydande could not have been replacing the petitioner as she was never relieved from the post of Reader which she held. Noticing that position, this court, by its interim order, protected her claim and services.

10. It is in these circumstances that we are unable to accept the arguments of Mr.Dighe-AGP that the appointment of the petitioner is not valid.

11. Now that the petitioner has superannuated on attaining the age of superannuation, all the more we do not wish to deny her the principal relief. She is clearly entitled to the principal relief, namely, a declaration to the effect that the post held by her as Lecturer and Reader stands de-reserved. Meaning thereby, the post of Lecturer held by her for the duration that she occupied it will be treated as a valid and legal appointment from inception. This would mean that her services with the University of Mumbai would stand regularised. If the service is of the required tenure

and which we have noticed, then, the consequential reliefs of continuity, seniority and promotional benefits, if any, would follow automatically.

12. As far as the relief of pension is concerned, we have noticed that there is a scheme of pension. That is to be found in Government Resolution dated 21st July, 1983. If there is no pension scheme and which can be said to be admissible, then, this Government Resolution Extends pension-cum-gratuity scheme to the teaching and non-teaching staff of the non-Agricultural Universities and the affiliated non-Government Colleges. We are dealing with non-agricultural university. Thereafter, this scheme also covers the non-Governmental aided Engineering, Technical and/or Technological College, Polytechnics and Pharmacies. Insofar as the Government Resolution of 21st July, 1983 is concerned, it carves out this scheme and in clause (2), it also comprehensively deals with the point of entitlement. It says that the provisions contained in Chapters X and XI of the Maharashtra Civil Services (Pension) Rules, 1982, shall be applicable to the both, teaching as well as non-teaching employees in the non-Governmental collegiate institutions as well as the non-Agricultural Universities under this scheme except where otherwise provided.

13. Mr.Desai, therefore, would submit that the petitioner is also entitled to pensionary benefits and that is a consequence flowing from our order and declaration, automatically.

14. As far as this aspect is concerned, we do not think that we should express any conclusive or final opinion. If the Maharashtra Civil Services (Pension) Rules, 1982 are declared to be applicable, except otherwise provided under the scheme, then, that is a matter entirely to be determined and decided by the Directorate. The Directorate would be guided by the scheme and its clauses and paragraphs so also the relevant rules, including Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982. This relief cannot be said to be automatically granted for it would require the Directorate to examine the records insofar as this benefit of pension-cum-gratuity is concerned and in the event the petitioner's case is covered by the scheme, but the scheme is silent on this aspect, then, the Directorate will definitely take assistance of the Pension Rules. It will scrutinise the records and find out whether the qualifying service has been rendered or not. All that we can do is, because we have regularised her services and granted the declaration as prayed, the Directorate should not now go into the issue of the service rendered by the petitioner being either temporary or not permanent or being not complying

with the law. As far as that matter is concerned, it stands entirely closed and that point cannot be reopened. However, The Department and the Directorate should examine whether the services rendered by the petitioner as Lecturer and Reader together would entitle her to pension by clubbing both services. If there is a rule enabling the Department or the Directorate to grant such a relief, then, let both services may also be clubbed. If there are rules permitting condoning any notional break, then, even those rules can be invoked so as to consider the claim. We do not say that we have granted this relief for it is for the Directorate to examine the records and render its conclusion on the point of pension-cum-gratuity. Let that be done as expeditiously as possible and bearing in mind that the petitioner is a senior citizen, within a period of three months from the date of communication of this order.

15. Needless to clarify that the University of Mumbai will forward all the papers to the Department and let that be done within a period of four weeks from today. The period of three months granted to the Department shall commence after the receipt of the necessary records from the University. However, we have been noticing that this Directorate sits on technicalities. It does not take any decision irrespective of time frame stipulated

in the court's order. Let that apathy be not shown to the petitioner who has rendered meritorious service to the University. In the event any clarification is required or any document is not forthcoming, let the Director contact the concerned Deputy Registrar of the University of Mumbai and obtain from him the remaining papers or the clarification. In no case, we would countenance an application for extension of time or refusal to comply with the order on the ground that the records were not received by the Directorate.

16. Since a duly constituted committee has throughout interviewed the petitioner, it goes without saying that the Director is aware of the appointment made for his nominee is part and parcel of the selection committee. After the selection committee makes recommendations and submits its report, the Director is fully aware of the same. Once Mr.Rodrigues clarified to us that the advertisements were indeed published, then, the Director shall be precluded from seeking any clarification on the point whether the advertisements were published or the published advertisements met the requirement of law. That issue is fully covered by our order and declaration in the foregoing paragraphs.

17. We keep the copy of the letter received from Mr.Rodrigues on record and mark it as 'X' for identification.

18. With the aforesaid directions, the writ petition is disposed of.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)