

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

WRIT PETITION NO.3509 OF 2021

Dr Sharmila Sandesh Ghuge
Age : 49 years, Occ. Service
R/o B-102, Madhupuri CHS,
Gokhale Road Kandivili (West)
Mumbai 400 067

... Petitioner

Vs.

1. State of Maharashtra
Through Secretary,
CS Office Main Building
Mantralaya, 6th Floor,
Madane Cama Road,
Mumbai 400 032
2. University of Mumbai
Ground Floor, Fort campus
University of Mumbai
400 032 Through its Registrar
3. Joint Director Higher Education
Elphiston Technical School
Premise 3 Mahapalika Marg,
Dhobi Talao, Mumbai 400 001
4. University Grants Commission
Bahadur Shah Zafar Marg
ITO Metro Gate Number 3 Road
New Delhi 110002

..... Respondents

Ms Pushpa Ganediwala, Advocate with Ms Heena Kapoor i/b
Dewani and Associates for petitioner.

Mr Kedar Dighe, Assistant Government Pleader for respondent
Nos.1 and 3.

Mr Sagar Talekar, Advocate for respondent No.2.

Mr Rui Rodrigues, Advocate with Mr Jainendra Sheth, Advocate
for respondent No.4.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.
Arguments were heard on : April 26, 2022
Judgment is pronounced on : May 05, 2022

Judgment (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

The challenge raised in this writ petition is to the Corrigendum dated 10/05/2019 issued by the Higher and Technical Education Department of the State Government modifying Government Resolution dated 08/03/2019 and especially Clause-7.3(VI)(i) thereby specifying that the date of promotion from Level 12 (Assistant Professor) to Level 13A (Associate Professor) would be the date of selection under Career Advancement Scheme for Colleges and Universities. As per the Government Resolution dated 08/03/2019, Clause-7.3(VI)(i) prescribed the date of promotion to be from acquisition of minimum eligibility.

2. The petitioner is serving as an Assistant Professor and claims to be eligible for being promoted to the post of

Associate Professor. Such promotion is liable to be effected under the Career Advancement Scheme (CAS). The candidature of the petitioner was accordingly considered by the Selection Committee for promotion to the post of Associate Professor on 03/07/2021. The Selection Committee recommended the petitioner's promotion from Assistant Professor in Stage-3 to Associate Professor in Stage-4 from 03/07/2021. According to the petitioner she was entitled to the benefit under CAS from the date she acquired the requisite eligibility in view of Clause-7.3(VI)(i) of the Government Resolution dated 08/03/2019. However in view of amendment and additions made by the State Government vide Government Resolution dated 10/05/2019 stipulating the date of promotion to be the date of selection by CAS, she has been granted promotion from 03/07/2021. It is the case of the petitioner that she was eligible to be considered for promotion as on 01/01/2020 but by virtue of the recommendations made by the Selection Committee on finding her fit for promotion on 03/07/2021 which was the date of interview, she has been deprived of the benefit of

promotion for a period of about eighteen months. Being aggrieved the petitioner has challenged Clause-7.3(VI)(i) of the Government Resolution dated 08/03/2019 to extent it has been so amended by Government Resolution dated 10/05/2019.

3. Ms Pushpa Ganediwala, the learned counsel for the petitioner submitted that it was not permissible for the State Government to have amended Clause-7.3(VI)(i) so as to prescribe the date of promotion to be the date of selection by CAS. Government Resolution dated 08/03/2019 vide Clause-7.3(VI)(i) had rightly prescribed the date of promotion to be effective from the date of eligibility which meant that the promotion when effected was liable to be so granted when the candidate became eligible for the same. Government Resolution dated 08/03/2019 was in accordance with the University Grants Commission Regulations, 2018 (for short, Regulations of 2018). Clause-6.3(VI)(i) thereof clearly prescribes that a candidate applying for promotion on the completion of minimum eligibility period on being successful

was liable to be promoted from the minimum period of eligibility. The Regulations of 2018 had been framed by the University Grants Commission (UGC) in the light of the power conferred by Section 26(1) of the University Grants Commission Act, 1956 (for short, the Act of 1956). The State Government having adopted the Regulations of 2018 in view of Government Resolution dated 08/03/2019, it was not permissible for the State Government to thereafter amend Clause-7.3(VI)(i) as was done by Government Resolution dated 10/05/2019. This exercise was without jurisdiction especially when the Regulations of 2018 had been published in the Gazette of India and were binding on the State Government. Reference was made to Entry-66 in List-I-Union List under the Seventh Schedule to the Constitution of India and it was submitted that the Regulations of 2018 having been framed after being placed before both the houses of the Parliament, the State Government could not have amended Clause-7.3(VI)(i) to alter the date of promotion. Referring to the stand taken by the State Government through its Department of Higher and Technical Education that such

amendment had been effected considering financial implications, it was submitted that the same cannot be a justification for such amendment. In that regard the learned counsel referred to the judgment of the Honourable Supreme Court in *Gambhirdan K. Gadhvi vs. State of Gujarat and Ors.* **2022 SCC Online SC 256** that the State Government having adopted the Regulations of 2018 the same have to be applied in the manner prescribed therein. It was not open for the State Government to modify the Regulations of 2018 by issuing a Government Resolution. Attention was also invited to the decision in *Kalyani Mathivanan vs. K. V. Jeyaraj and ors.* **(2015) 6 SCC 363** wherein the aspect of conflict between the State University Act and the UGC Regulations was considered by the Honourable Supreme Court. It was held therein that having adopted the UGC Regulations of 2010 a diversion therefrom was not permissible. However in SLP Nos.21108-21109/2021 (*Professor (DR) Sreejith P.S. vs. Dr Rajasree M.S. & Ors.*, the Honourable Supreme Court on 14/03/2022 noticed both the aforesaid decisions and issued notice in the said Special Leave Petition. It was thus submitted that the

modification as undertaken was discriminatory, arbitrary and also violative of Article 14 of the Constitution of India. There was no justification to deny the benefit of promotion by CAS from the date of promotion when infact such benefit was admissible under the Regulations of 2018 from the date of acquiring eligibility period. The constitution of the Selection Committee and holding of interview were matters beyond the control of the petitioner and the benefit of promotion could not be delayed on this count. Promotion from the date of acquiring eligibility was more rational than from the date of interview/selection. The learned counsel placed reliance on the decisions in *State of Maharashtra vs. Manubhai Pragaji Vashi and ors. (1995) 5 SCC 730*, *S. Seshachalam and ors. vs. Chairman, Bar Council of Tamil Nadu and ors. (2014) 16 SCC*, *Subramanian Swamy vs. Director, Central Bureau of Investigation and anr. (2014) 8 SCC 682* and *Union of India and anr. vs. Hemraj Singh Chauhan and ors. (2010) 4 SCC 290*. It was thus submitted that the petitioner was entitled to a declaration that she was entitled to the benefit of promotion from the date she acquired minimum eligibility as

per Clause-7.3(VI)(i) of Government Resolution dated 08/03/2019.

4. Mr Kedar Dighe, the learned Assistant Government Pleader for the respondent Nos.1 and 3 referred to the affidavit initially filed by the Joint Director of Higher Education on 25/01/2022 wherein it was stated that there was a difference in the work profile and requisite qualifications of an Assistant Professor and Associate Professor. By applying the principle of “No work No pay” an Assistant Professor till the time he/she had not been promoted to the post of Associate Professor could not claim that he/she ought to be paid salary from the date he/she was eligible for promotion. Since the salary of an Assistant Professor/Associate Professor in an aided College was paid through grant-in-aid provided by the State Government, the Government Resolution dated 10/05/2019 modified Clause 7.3(VI)(i) of the Government Resolution dated 08/03/2019 to that extent. The learned Assistant Government Pleader also referred to the additional affidavit in reply dated 07/04/2022

filed by the Joint Director of Education stating therein that considering the financial burden involved, the State Government had taken a policy decision to consider the date of promotion to be effective from actual selection of an Associate Professor by the Selection Committee. In the present case there was a delay on the part of the University of Mumbai in constituting the Selection Committee and the State Government was not responsible for the petitioner being interviewed on 03/07/2021. Inviting attention to the decisions in Civil Appeal No.2661/2015 (*State of Uttarakhand vs. Sudhir Budhakoti and others*) dated 07/04/2022 and Civil Appeal No.2217-2218/2022 (*Indresh Kumar Mishra and others vs. State of Jharkhand and ors.*) decided on 13/04/2022 it was submitted that the amendment as effected to Clause-7.3(VI)(i) was neither discriminatory nor arbitrary for being struck down. It was thus submitted that no interference in the writ petition was called for.

5. Mr Sagar Talekar, the learned counsel for the respondent No.2-University referred to the affidavit in reply

filed by the Deputy Registrar in which it was stated that the petitioner submitted an application seeking promotion on 15/01/2020. Considering the position as prevailing on account of the pandemic and lock-down, the Selection Committee could not be immediately constituted. The same was constituted on 31/05/2021 after which the petitioner was interviewed and found suitable for promotion.

Mr Rui Rodrigues, the learned counsel for the UGC referred to the affidavit of the Education Officer in which it was stated that the relevant date for promotion under CAS was the date of eligibility as per the Regulations of 2018 and not the date of interview. Reference was also made to the public notice dated 21/11/2014 in which it was stated that promotion under CAS would be governed by the UGC Regulations that were in operation on the date of eligibility and not on the date of interview.

6. Before considering the challenge to the legality of the Government Resolution dated 10/05/2019 we may refer to the order dated 30/03/2022 that was passed in the writ petition

after hearing the parties. Paragraph 3 thereof reads as under

:

“ 3. We find that the challenge to the corrigendum dated 10/5/2019 can be subdivided into two categories. First category comprising discrimination, arbitrariness and breach of Rule of equality based upon Article 19 and Article 21 of the Constitution and the second category consisting of the principle of primacy of UGC Regulations over the Government Resolution issued by the State Government, when the government resolution is inconsistent with the UGC Regulations. So far as latter category is concerned, we learn, based on the information given by learned AGP, that issue is already pending before the Apex Court in the case of Professor (Dr) Sreejith P.S. vs. Dr. Rajasree M.S. & Ors. in Petitioners for Special Leave to Appeal (C) Nos.21108/2021 and 21109/2021 wherein notice has been issued by the Apex Court on 14/3/2022. In that case the conflict of opinion between the case of Kalyani Mathivanan vs. K. V. Jeyaraj & Ors. reported in 2015(6) SCC 363 and Gambhirdhan K. Gadhvi vs. State of Gujrat (Writ Petition (Civil) No.1525/2019) has been taken cognizance of by the Supreme Court. So it would be difficult for this Court to consider the second category of the challenge as it is already pending before the Supreme Court. However, as regards the first category of the challenge we are of the opinion that the matter can indeed be heard. Pleadings are complete. However, as of

now there is no reply filed by the State as regards the first category of challenge. We grant one weeks time to the State to file reply. Parties shall take notice that on the next date this matter shall be taken up for final disposal and hearing will be restricted to the first category of the challenge.”

7. In the light of the aforesaid order, we have heard the learned counsel for the parties on the question as to whether the Corrigendum issued by the State Government on 10/05/2019 amending Government Resolution dated 08/03/2019 and especially Clause-7.3(VI(i) is discriminatory, arbitrary and beaches the rule of equality. We have given due consideration to the respective submissions made on behalf of the parties. By Government Resolution dated 08/03/2019 the Higher and Technical Education Department of the State Government proposed revision of Pay Scales of teachers in non-agricultural Universities, National Law Universities, affiliated Colleges and Government Colleges/Institutes and as per the recommendations of the Seventh Pay Commission as well as per the UGC Regulations

of 2018. Clause-7.3(VI)(i) in Government Resolution dated 08/03/2019 which is relevant for the present purpose reads as under :

“ 7.3(VI)(i) :

The candidate shall offer himself/herself for assessment for promotion, if he/she fulfils the minimum grading specified in the relevant Assessment Criteria and Methodology Tables, by submitting an application and the required Assessment Criteria and Methodology Proforma. He/She can do so three months before the due date. The university shall send a general circular twice a year, inviting applications for the CAS promotions from the eligible candidates.

(i) If a candidate applies for promotion on completion of the minimum eligibility period and is successful, the date of promotion shall be from that of minimum period of eligibility. (emphasis supplied)

By the Corrigendum dated 10/05/2019, Clause-7.3(VI)(i) has been amended to read as under :

“ If a candidate applies for promotion from Level 10 to Level 11 and Level 11 to Level 12 on completion of the minimum eligibility period and is successful, the date of promotion shall be from that of minimum period of eligibility for both Colleges and Universities.

If a candidate applies for promotion from Level 12

Assistant Professor to Level 13A Associate Professor and Level 13A Associate Professor to Level 14 Professor on completion of the minimum eligibility period and is successful, the date of promotion shall be the date of selection by CAS for both Colleges and Universities.

If a candidate applies for promotion from Level 14 to Level 15 in Universities on completion of the minimum eligibility period if successful, the date of promotion shall be the date of selection by CAS.” (emphasis supplied)

8. Clause-7.3(VI)(i) after its amendment stipulates that for promotion from Level-10 to Level-11 and Level-11 to Level-12 on completion of the minimum eligibility period, the date of promotion would be from that of minimum period of eligibility for both Colleges and Universities. Insofar as promotion from Level-12 to Level-13A and from Level 13A to Level-14 on completion of the minimum eligibility period, the date of promotion would be the date of selection by CAS for Colleges and Universities. Government Resolution dated 08/03/2019 states various levels as under :

- (a) Assistant Professor (Academic Level 10)
- (b) Assistant Professor (Senior Scale/Academic Level 11)
- (c) Assistant Professor (Selection Grade/Academic Level 12)
- (d) Associate Professor (Academic Level 13A) and

(e) Professor (Academic Level 14)

In other words, for promotion from the post of Assistant Professor (Level 10) to Assistant Professor (Level 11 and 12) the date of promotion is to be the date when minimum period of eligibility is achieved while for promotion from the post of Assistant Professor (Level 12) to Associate Professor (Level 13A) and from the post of Associate Professor (Level 13A) to Professor (Level 14) it is from the date of selection by CAS.

9. The challenge principally raised by the petitioner is delineated in the petitioner's representation dated 21/10/2021 made to the State Government. According to the petitioner by amending Government Resolution dated 08/03/2019 the State Government has created a class within class in the matter of promotion which is arbitrary and unreasonable. The same amounts to treating equals differently resulting in discrimination without any reasonable ground. The classification as made not being reasonable it is violative of Article 14 and 21 of the Constitution of India. According to

the petitioner by prescribing the date of promotion to be effected from the date of selection by the Selection Committee results in placing the matter beyond the control of the petitioner despite being eligible as per the Regulations of 2018. It is not known when the Selection Committee would be constituted by the University and despite achieving the minimum eligibility, an Assistant Professor (Level 12) seeking promotion to the post of Associate Professor (Level 13A) is required to wait till the constitution of the Selection Committee and thereafter its decision.

10. Before considering the nature of challenge as raised to the amendment to Clause-7.3(VI(i)) as per Government Resolution dated 10/05/2019, it would be necessary to refer to the decision of the Honourable Supreme Court in *State of Uttarakhand* (supra). In paragraphs 14 to 18 thereof it has been observed as under :

“ Classification Test & policy Decisions of the State :

14. A mere differential treatment on its own cannot be termed as an “anathema to Article 14 of the

Constitution". When there is a reasonable basis for a classification adopted by taking note of the exigencies and diverse situations, the Court is not expected to insist on absolute equality by taking a rigid and pedantic view as against a pragmatic one.

15. *Such a discrimination would not be termed as arbitrary as the object of the classification itself is meant for providing benefits to an identified group of persons who form a class of their own. When the differentiation is clearly distinguishable with adequate demarcation duly identified, the object of Article 14 gets satisfied. Social, revenue and economic considerations are certainly permissible parameters in classifying a particular group. Thus, a valid classification is nothing but a valid discrimination. That being the position, there can never be an injury to the concept of equality enshrined under the Constitution, not being an inflexible doctrine.*

16. *A larger latitude in dealing with a challenge to the classification is mandated on the part of the Court when introduced either by the Legislature or the Executive as the case may be. There is no way, courts could act like appellate authorities especially when a classification is introduced by way of a policy decision clearly identifying the group of beneficiaries by analysing the relevant materials.*

17. *The question as to whether a classification is reasonable or not is to be answered on the touchstone*

of a reasonable, common man's approach, keeping in mind the avowed object behind it. If the right to equality is to be termed as a genus, a right to non-discrimination becomes a specie. When two identified groups are not equal, certainly they cannot be treated as a homogeneous group. A reasonable classification thus certainly would not injure the equality enshrined under Article 14 when there exists an intelligible differentia between two groups having a rational relation to the object. Therefore, an interference would only be called for on the court being convinced that the classification causes inequality among similarly placed person. The role of the court being restrictive, generally, the task is best left to the concerned authorities. When a classification is made on the recommendation made by a body of experts constituted for the purpose, courts will have to be more wary of entering into the said arena as its interference would amount to substituting its views, a process which is best avoided.

18. As long as the classification does not smack of inherent arbitrariness and conforms to justice and fair play, there may not be any reason to interfere with it. It is the wisdom of the other wings which is required to be respected except when a classification is bordering on arbitrariness, artificial difference and itself being discriminatory. A decision made sans the aforesaid situation cannot be tested with either a suspicious or a microscopic eye. Good-faith and intention are to be

presumed unless the contrary exists. One has to keep in mind that the role of the court is on the illegality involved as against the governance.

11. The Honourable Supreme Court in the aforesaid decision has referred to the observations in paragraphs 29 of the decision in ***Indian Drugs and Pharmaceuticals Ltd. vs. Workmen (2007) 1 SCC 408*** in the matter of economic considerations and financial implications being considered by the State Government in the context of public employment.

12. The Joint Director of Higher Education, Mumbai by filing an additional affidavit in support of the Corrigendum dated 10/05/2019 has indicated various aspects to support its stand that the amendment as effected to Clause 7.3(VI)(i) was neither discriminatory nor arbitrary. These aspects are :

- a) CAS selection for Assistant Professor (Stage-2 and Stage-3) is made as per the UGC guidelines by the Screening Committee. CAS selection for Associate Professor and Professor (Stage-4 and Stage-5) is done as per the UGC guidelines by a Selection Committee. This distinction is carved out by the UGC and not by the State

Government. In effect, there are different committees for granting CAS benefits to Assistant Professors and Associate Professors. Hence there are two different classes that cannot be compared to each other.

- b) The Screening Committee evaluates the work/performance of an Assistant Professor in academics and co-curricular activities. On the other hand, Associate Professors and Professors are already evaluated by the Screening Committee when they are at Stage-2 and Stage-3 respectively. The Selection Committee thereafter interviews an Associate Professor and Professor while granting benefit of CAS.
- c) The educational qualification prescribed for Assistant Professor (Stage-2 and Stage-3) is different than that prescribed for Associate Professor and Professor (Stage-4 and Stage-5). In the matter of prescribing qualification as well, a class is created within the class by the UGC guidelines.
- d) The minimum working hours for Assistant Professor are sixteen clock hours while minimum working hours for Associate Professors and Professors are fourteen clock hours.

It is thus stated that in view of aforesaid aspects there cannot be any comparison in the mode and manner of granting CAS benefits to an Assistant Professor on one hand

and an Associate Professor and Professor on the other.

13. The learned counsel for the petitioner sought to rely upon the decision in *Manubhai Pragaji Vashi and ors.* (supra) to urge that financial implications cannot be a reason, basis or justification to accord differential treatment within the same class. In the aforesaid decision the issue involved was extending the benefit of the grant-in-aid scheme to non-Government Law Colleges in the State of Maharashtra retrospectively. This was in the backdrop of the fact that other non-Government private professional Colleges such as Engineering Colleges, Medical Colleges etc. were given benefit of the grant-in-aid scheme. It was in that context that this Court had held that by not extending grant-in-aid to Law Colleges when such benefit was extended to non-Government Colleges like Arts, Science, Engineering and Medicine the same resulted in discrimination. The Honourable Supreme Court upheld the decision of this Court. We find that the ratio of the aforesaid decision cannot be made applicable to the facts of the present case considering

the distinguishing features highlighted by the State Government in the matter of applicability of the date of promotion to an Assistant Professor in comparison to an Associate Professor and Professor. For the same reason the reliance placed on the decisions in *Kalyani Mathivanan, Gambhirdan K. Gadhvi, S. Seshachalam and Ors. Subramanian Swamy and Hemraj Singh Chauhan and ors.* (supra) also does not assist the case of the petitioner.

14. Thus applying the classification test as laid down by the Honorable Supreme Court in *State of Uttarakhand* (supra) in the context of the policy decision taken by the State Government, it is seen that two identified groups namely, Assistant Professors and Associate Professors are neither equal nor can they be treated as a homogeneous group. The classification while prescribing the date of promotion does not result in any inequality as Assistant Professors and Associate Professors cannot be said to be similarly placed. There is hardly anything arbitrary and discriminatory in the matter. Merely because there is a likelihood of some time

being taken in constituting the Selection Committee, the same would not make the amendment discriminatory as urged. On the contrary, it is seen from the material on record that directions have been issued from time to time to expeditiously constitute the Selection Committee for evaluating the case of the eligible candidates to benefits under CAS. The University contends that there was some time consumed in constituting the Selection Committee due to the pandemic situation.

In the passing it may also be observed that Clause-7.3(VI)(i) was already amended on 10/05/2019 when the petitioner acquired minimum eligibility by 31/12/2019. The petitioner was thus aware when she was interviewed by the Selection Committee on 03/07/2021 that if found entitled she would be promoted from the date of her selection. It is only after her selection on 03/07/2021 that the petitioner on 21/10/2021 made a representation and has thereafter on 24/11/2021 filed this writ petition. The petitioner knowingly participated in the selection process and has thereafter raised the present challenge. This vital aspect also cannot be

ignored.

15. We thus find that the challenge as raised by the petitioner to the amendment to Clause-7.3(VI)(i) as being discriminatory, arbitrary and violative of the provisions of Articles 14 and 21 of the Constitution of India cannot be accepted. It is held that the amendment as made to Clause-7.3(VI)(i) by the Corrigendum dated 10/05/2019 is valid. The Writ Petition is thus dismissed. Rule stands discharged by clarifying that the challenge as raised has been examined only in the context of arbitrariness and unreasonableness while amending Clause-7.3(VI)(i) on 10/05/2019. The question as regards competence of the State Government to amend Clause-7.3-(VI)(i) in a manner that is inconsistent with the UGC Regulations, 2018 has not been gone into.

The parties shall bear their own costs.

(G. A. Sanap, J.)

(A. S. Chandurkar, J.)