

20 October 2023.

IN THE HIGH COURT OF JUDICATURE

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14646 OF 2018

Bhartiya Kala Prasarini Sabha
(Through its Secretary) Shri.
Pushkaraj Bhalchandra Tilak

...PETITIONER

V/s.

Shri. Rajendra Pandharinath Dhavale
and Ors.

...RESPONDENTS

WRIT PETITION NO. 6657 OF 2018

Shri. Vilas Machhindra Chormale

...PETITIONER

V/s.

Shri. Rajendra Pandharinath Dhavale and
Ors.

...RESPONDENTS

Mr. Sanjay Kshirsagar, for the Petitioner in WP-6657 of 2018.

Mr. Shirish V. Pitre, for the Petitioner in WP-14646 of 2018.

Mrs. Vaishali Nimbalkar, AGP for Respondent No.4 in both the
Wps.

Mr. Sugandh Deshmukh, for Respondent No.1 in both the Wps.

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CORAM : SANDEEP V. MARNE, J.**Resd. On : 10 October 2023.****Pron. On : 20 October 2023.****JUDGMENT :**

1. These two petitions challenge common judgment and order dated 19 April 2018 passed by the School Tribunal in Appeal No. 20/2016. The Appeal was filed by Shri. Rajendra Pandharinath Dhavale who is Respondent No.1 in both the petitions, who had challenged promotion of Shri. Vilas Machhindra Chormale (Petitioner in Writ Petition No. 6657/2018) to the Post of Lecturer effected on 1 December 2005. By its judgment and order dated 19 April 2018, the Tribunal has set aside the promotion of Shri. Vilas Machhindra Chormale and has directed that Shri. Rajendra Pandharinath Dhavale (Appellant) be promoted to the post of Lecturer w.e.f. 1 December 2005. Both Shri. Vilas Machhindra Chormale as well as the Management are aggrieved by the Tribunal's decision. Shri. Vilas Machhindra Chormale has filed Writ Petition No. 6657/2018. The Management, on the other hand, has filed Writ Petition No. 14646/2018.

2. Facts of the case are that Bhartiya Kala Prasarini Sabha is a Society registered under the provisions of the Societies Registration Act, 1960 and also a public Trust under the provisions of the Maharashtra Public Trusts Act, 1950. It runs Abhinav Kala Mahavidyalaya in Pune. Shri. Rajendra Pandharinath Dhavale

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belongs to S.C. Category and was appointed in the College on 12 December 1995 on the post of Assistant Lecturer. His services were confirmed by letter dated 20 May 1997. Shri. Vilas Machhindra Chormale belongs to NT(C) category and was appointed on the post of Assistant Lecturer on 22 September 1997. This is how Rajendra Pandharinath Dhavale is senior to Vilas Machhindra Chormale. The dispute between the duo is with regard to the promotion to the post of Lecturer. According to Shri. Dhavale, a vacancy of Lecturer in S.T. category had arisen in the year 2005 and since eligible S.T. candidates were not available for promotion, the reservation could be interchanged only between ST and SC categories as per the various Government Resolutions. That by interchanging such reservation, Shri. Dhavale ought to have been promoted to the vacant post of Lecturer reserved for S.T. category. Instead, Shri. Chormale was promoted against that post in violation of the Government Resolutions which does not permit interchangeability of reservation to any other category except S.C. With this grouse, Shri. Dhavale filed Appeal No. 20 of 2016 before the School Tribunal challenging Shri. Chormale's promotion effected on 1 December 2005 and sought his own promotion in place of Shri. Chormale. The Appeal was opposed by both Shri. Chormale as well as the Management. The Management filed reply in the Appeal raising the issue of delay and laches in challenging the promotion of Shri. Chormale effected in the year 2005 in Appeal filed in the year 2016. It also sought to defend promotion of Shri. Chormale on merits. Shri. Chormale adopted the reply filed by the Management.

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3. After hearing all the parties, the Tribunal has proceeded to allow the Appeal filed by Shri. Dhavale by its judgment and order dated 19 April 2018 by setting aside the promotion of Shri. Chormale and directing the Management to promote Shri. Dhavale on the post of Lecturer w.e.f 1 December 2005 with full backwages and continuity of service. Shri. Chormale has filed Writ Petition No. 6657/2018 and the Management has filed Writ Petition No. 14646/2018 challenging the judgment and order of the Tribunal dated 19 April 2018.

4. Mr. Kshirsagar the learned counsel would appear on behalf of Shri. Chormale in Writ Petition No. 6657/2018. He would submit that the Appeal filed by Shri. Dhavale in the year 2016 challenging the promotion effected on 1 December 2005 was hopelessly time barred. He would invite my attention to the Appeal Memo of Shri. Dhavale in which the pleaded case was that the Management had promoted Mr. Ramesh S. Bhosale on the post of Lecturer w.e.f 1 June 2005 which was objected to by Shri. Chormale, which resulted in withdrawal of promotion of Shri. Bhosale and grant of promotion to Shri. Chormale ignoring the legitimate claim of Shri. Dhavale. He would demonstrate the said pleaded case to be factually incorrect by relying on the minutes of DPC meeting held on 23 November 2005 to show that Petitioner has been promoted against the post reserved for NT(C) category. He would submit that so far as vacant post reserved for S.T. category is concerned, one

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Shri. B.N. Pathan, a candidate in Open Category, was promoted on ad-hoc basis by order dated 31 December 2005 till availability of ST category candidate. He would thus submit that there were two separate posts available in S.T. and N.T. Category and that the promotion of Shri. Chormale has no link to the post reserved for S.T. category. Inviting my attention to the Roster, he would submit that one post for N.T. Category was available and Shri. Chormale has rightly been promoted against that post. He would further submit that the vacant post in S.T. Category was subsequently filled up by appointing a direct recruit belonging to S.T. category. He would submit that Shri. Bhosale was also separately promoted w.e.f 1 June 2005 against the post reserved for S.C. Category. That Shri. Bhosale is admittedly senior to Shri. Dhavale and this is how the entire process of effecting promotions conducted by the Management is strictly in accordance with the Reservation Roster and Seniority. He would further submit that Shri. Chormale was further promoted to the post of Principal in the year 2015 on the strength of his promotion to the post of Lecturer w.e.f. 1 December 2005. That the impugned order of the Tribunal has resulted in his reversion by two places. He would therefore pray for setting aside the order passed by the Tribunal.

5. Mr. Pitre the learned counsel would appear on behalf of the Management in Writ Petition No. 14646/2018. He would submit that there was gross delay in approaching the Tribunal on the part of Shri. Dhavale. That event if the aspect of delay is to be

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ignored, the effect of the order of the Tribunal in award of backwages for 11 long years in favour of Shri. Dhavale is required to be kept in mind and the Management cannot be made to bear the burden of paying backwages to Shri. Dhavale for such abnormally long period of time. That the Principle of “No Work No Pay” would be attracted in the present case. He would further submit that Shri. Dhavale had no grievance about the promotion of Shri. Bhosale and it is only after Shri. Chormale was promoted to the post of Principal that Shri. Dhavale approached the Tribunal by filing Appeal. He would submit that the Tribunal has not applied its mind to the fact that Shri. Chormale has already been paid higher wages on the post of Lecturer during 2005 to 2016 and grant of backwages to Shri. Dhavale in respect of the same period would result in payment of two salaries in respect of the same post. That the Tribunal did not apply its mind to the fact that wages paid to Shri. Chormale on the post of Lecturer need to be recovered or not. Mr. Pitre would therefore submit that in the event this Court arrives at a conclusion that promotion of Shri. Chormale is found to be illegal, the direction of the Tribunal for payment of backwages to Shri. Dhavale needs to be set aside.

6. *Per-contra*, Mr. Deshmukh the learned counsel appearing for Respondent No.1 (Shri. Dhavale) in both the petitions would support the order passed by the Tribunal. He would submit that Shri. Dhavale is admittedly senior to Shri. Chormale. That only S.T. category vacancy was available in the cadre of

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Lecturer, which could not have been filled in by filling NT cadre candidate. That as per the Reservation Roster, no vacant post was available for N.T(C) category. Therefore, promotion of Shri. Chormale in supersession of Shri. Dhavale was *ex-facie* illegal and has rightly been set aside by the Tribunal. He would invite my attention to paras-15 and 19 of the Tribunal's order to demonstrate that the Tribunal has considered the entire aspect for the purpose of arriving at the conclusion that S.T. category post has been utilized for promotion of Shri. Chormale. He would pray for dismissal of the petitions.

8. Rival contentions of the parties now fall for my consideration.

9. Before proceeding to advert to the merits, it would be necessary to deal with the objection of limitation. The order of the Tribunal is sought to be assailed on the ground of inordinate delay of 11 long years in filing the Appeal by Shri. Dhavale. However, it appears that Shri. Dhavale had filed application for condonation of delay in filing the Appeal and by its order dated 26 February 2016, the Tribunal allowed the application and condoned the delay subject to payment of costs of Rs.750/-. That order dated 26 February 2016 was not challenged either by Management or by Shri. Chormale. The said order dated 26 February 2016 is also not challenged in any of the two petitions. Since the Tribunal has already condoned the delay and the order condoning the delay is

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not under challenge, the objection of delay and laches sought to be raised by both the Petitioners deserves to be rejected.

10. Adverting to the merits of the petition, there are competing claims between Shri. Chormale and Shri. Dhavale for promotion to the post of Lecturer. There is no dispute to the position that Shri. Dhavale is senior to Shri. Chormale in cadre of Assistant Lecturer. The total sanctioned strength of Lecturers in the College appear to be five. Reservation Roster is placed on record. From the Roster it appears that Shri. Chormale was earlier promoted to the post of Lecturer w.e.f 1 June 2005 and was reverted and again promoted w.e.f. 1 December 2005.

11. There is some debate between the parties about the exact category for which the post was reserved against which promotion of Shri. Chormale was effected. Mr. Kshirsagar has attempted to prove that Shri. Chormale was not appointed against the post earmarked for S.T. Category. He has placed reliance on order dated 31 December 2005 by which Mr. Pathan was promoted on ad-Hoc basis against the post reserved for S.T. Category on account of non-availability of S.T. Category candidate. He has also invited my attention to the minutes of DPC meeting to demonstrate that promotion of Shri. Chormale is effected against N.T.(C) category.

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12. However, the entire controversy is put to rest on account of specific statement made by the Management in its reply filed before the Tribunal. In para-22 of its reply, the Management has pleaded as under :

“The Respondents submits that, further on the remaining post of S.T. category candidate was not available hence the Respondent No.3 i.e. Shri V.M. Chormale who belongs to N.T. (C) category candidate was promoted.”

13. Thus, the above contention raised in the Reply of Management would leave no matter of doubt that promotion of Shri. Chormale was effected against the vacancy earmarked for S.T. Category. Further explanation is sought to be given in para-22 of Reply that due to non-availability of S.T. Category candidate, earlier Mr. Bhosale belonging to S.C. Category was promoted on 1 June 2005 against vacant ST post. However, if that is the position, how one ST Category post remained vacant for promotion of Shri. Chormale has not been explained in any manner. Mr. Dhavale has specially averred in his Appeal that though Shri. Bhosale was promoted against S.C. vacancy category, Shri. Chormale objected to such promotion on account of which Shri. Chormale was promoted against the very same vacancy. In my view instead of drawing surmises and conjectures on the basis of pleas raised by the two candidates, it would be safer to rely on the Management's specific stand before the Tribunal that Shri. Chormale's promotion was

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effected against ST vacant post due to non-availability of eligible ST candidate.

14. There is a specific admission by the Management that Shri. Chormale was appointed against the post earmarked for ST Category. Therefore, the finding recorded by the Tribunal holding the promotion of Shri. Chormale as illegal, cannot be found fault with. Admittedly, it is not permissible to interchange the post reserved from S.T. to NT(C) Category. Perusal of the Reservation Roster also indicates that no vacancy was earmarked for N.T.(C) Category at the time of promotion of Shri. Chormale. Therefore, promotion of Shri. Chormale as Lecturer w.e.f 1 December 2005 appears to be clearly illegal and has rightly been set aside by the Tribunal.

15. Having found that the promotion of Shri. Chormale as Lecturer w.e.f. 1 December 2005 was illegal, next question is what is the exact relief that the Tribunal could have granted in favour of Shri. Dhavale. The Tribunal has directed that Shri. Dhavale be promoted to the post of Lecturer with effect from 1 December 2005. In my view, promotion of Shri Dhavale to the post of lecturer cannot be automatic and his case needs to be considered by the DPC. Shri Dhavale has only the right to be considered for promotion. The promotion is based on selection and the same is to be effected as per the recommendations of the DPC. Therefore, in such circumstances, the appropriate relief to be granted to Shri Dhavale is to direct

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consideration of his case for promotion to the post of lecturer with effect from 1 December 2005. For that purpose, the management is required to constitute a review DPC to consider his case for promotion to the post of lecturer with effect from 1 December 2005. To this extent, the Order of the Tribunal would need a modification.

16. There is yet another area where the Tribunal's order needs modification. The Tribunal has awarded full backwages to Shri. Dhavale consequent to his promotion w.e.f. 1 December 2005. Undoubtedly, the Appeal was filed after the delay of 11 long years. Though the delay has been condoned and the order condoning the delay has attained finality, Shri. Dhavale cannot be rewarded for his slumber by awarding difference of salary and allowances from 1 December 2005. Considering the undue delay in approaching the Tribunal, the relief of difference of salary and allowances needs to be restricted from the date of Tribunal's order. On account of gross delay on the part of Shri. Dhavale in approaching the Tribunal, his success in the proceedings has warranted setting back the clock to the year 2005. This disturbs the entire administrative machinery of the College where several promotions and appointments have taken place in the interregnum. It is also required to be borne in mind that Shri. Chormale has discharged duties of the post of Lecturer and drawn salary and allowances of the post of Lecturer from 1 December 2005 till the time the Tribunal decided the Appeal filed by Shri. Dhavale. In these circumstances, Shri. Dhavale cannot be awarded difference

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of wages between the post of Assistant Lecturer and Lecturer upto the date of decision of his Appeal on 19 April 2018. Similarly, no recovery can be made against Shri. Chormale. Since Shri. Chormale is required to be reverted from the post of Lecturer w.e.f. 1 December 2005, his case needs to be reconsidered by against vacant post available for him after 1 December 2005.

17. In such circumstances, though Shri. Dhavale can be promoted to the post of Lecturer w.e.f. 1 December 2005, he cannot be awarded difference of salary upto the date of decision of his Appeal on 19 April 2018. He shall however be entitled to the benefit of pay-fixation from 1 December 2005 onwards.

18. I accordingly proceed to pass the following order :

- (i) The Order dated 19 April 2018 passed by the School Tribunal in Appeal No.20/2016 is upheld with a modification that the Petitioner-Management shall convene a Review DPC for review of DPC minutes which had recommended promotion of Shri. Chormale. The Review DPC shall consider the case of Respondent No.1 (Rajendra Pandharinath Dhavale) for promotion to the post of Lecturer w.e.f. 1 December 2005 and if found fit, he be promoted as Lecturer w.e.f. 1 December 2005. He shall however not be entitled for benefit of difference of salary and allowances during the period

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from 1 December 2005 till 19 April 2018. He shall however be granted notional pay-fixation on the post of Lecturer w.e.f 1 December 2005 onwards. He shall be entitled to the benefit of actual arrears of salary w.e.f 19 April 2018 onwards. Such payment be made within a period of 2 months.

- (ii) The case of Petitioner-Shri. Vilas Machhindra Chormale be considered for promotion to the post of Lecturer as per his seniority and reservation roster as and when the vacancy for his promotion has arisen after 1 December 2005 and he be promoted to the post of Lecturer from that date.
- (iii) Considering the fact that the Shri. Chormale has worked on the post of Lecturer w.e.f 1 December 2005 onwards, no recovery shall be made from his salary on account of his reversion consequent to the order of the School Tribunal.

17. With the above directions, the Writ Petitions are disposed of. There shall be no orders as to costs.

**NEETA
SHAILESH
SAWANT**

SANDEEP V. MARNE, J.

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