



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2555 OF 2007

Prakash Wathore,
Residing at C-7/9, Gurudatta CHS.,
Sector 46, Nerul, Navi Mumbai. .. Petitioner

Vs.

1. University of Mumbai
Through the Registrar,
D.N.Road, Fort,
Mumbai – 400 001.

2. The State of Maharashtra,
Through the Joint Director of Higher Education,
Mumbai Division,
3-Mahapalika Marg,
Mumbai – 400 001. .. Respondents

- Mr. Sureshkumar J. Panicker a/w. Ms Poonam Panicker, Ms Anita Chikne i/b. M/s. Panicker & Associates, for the Petitioner.
- Mr. Rui Rodrigues a/w. Mr. Jainendra Sheth, for Respondent No.1.
- Mr. Kedar Dighe, AGP for Respondent No.2–State.

CORAM : SUNIL B. SHUKRE &
FIRDOSH P. POONIWALLA, JJ

DATE : 12th SEPTEMBER, 2023

ORAL JUDGMENT : (PER : SUNIL B. SHUKRE, J.)

1. Rule. Rule made returnable forthwith. By consent of learned counsel for the respective parties heard finally.

2. By this petition, the petitioner, who is the Statistical Assistant, is claiming his changeover to the cadre of Head Clerk w.e.f. 20.12.1999 together with all consequential benefits under the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Services of non-teaching employees) Rules, 1984 ("Standard Code Rules 1984" for short).

3. Learned counsel for the petitioner submits that there are no financial implications involved in the matter and grant of permission for change of the cadre is necessary for the reason that the post of Statistical Assistant is isolated and there are no promotional avenues available to the Statistical Assistant. He further submits that if this is not done, it would lead to frustration amongst the Statistical Assistants which would affect the performance and efficiency of the employees of University and ultimately of the University also.

4. Learned counsel for University invites our attention to the Affidavit-in-Reply filed by the Deputy Registrar of University of Mumbai dated 11.03.2016 and also earlier reply filed by the Registrar of the University dated 28.02.2008 and submits that the prayer of the petitioner cannot be granted for the reasons stated in these affidavits. He submits that since the petitioner possesses specialized qualifications and is entrusted with the task of monitoring and implementing the reservation policy, which requires making of statistical calculations and analysis of the relevant data, the petitioner is more suitable for the job for which he is appointed and he may not be suitable for the post of Head Clerk. He further submits that the other reason stated in the reply is that if the request of the petitioner is granted, there would arise a vacancy in the post of Statistical Assistant and necessary approval for filling up the post would have to be given by the State Government. He

further submits that there was an Experts Committee appointed in the matter, which has given guidelines, which do not recommend the change of cadre from that of Statistical Assistant to the cadre of Head Clerk. On these grounds, he submits that there is no merit in the petition.

5. We would have accepted the submissions made on behalf of the University, had it not been the fact that the stand of the University taken earlier was some what different from what now the University has taken before this Court. It is seen that the University by its letter dated 23.12.2004 had written to the Joint Director (Higher Education), Mumbai for giving of guidance on the subject of change of cadre from that of Statistical Assistant to that of Head Clerk. At that time, the University had specifically mentioned that a post like that of a Statistical Assistant does not have any promotional avenues open, and therefore, it informed the Joint Director that the application of the petitioner could be considered in the light of the Rule 14(6)(A) of the Standard Code Rules 1984, which provides that whenever any request for change of cadre of equivalent level is received, the Competent Authority might examine the merits of the request and its relative utility and it may grant the same. At that time, the University never raised any such objection that as the petitioner possessed specialized qualification he was not suited to hold post of Head Clerk and that there would arise a need for granting approval to fill up the post of Statistical Assistant, which may fall vacant if permission to change the cadre was granted, the permission be not granted; rather the University referred to the provisions made in Rule 14(6)(A) of Standard Code Rules, 1984 thereby suggesting that permission could be granted. If the objections of the University are taken into consideration, the conclusion would be that

way back in the year 2004 itself, the University could have, on merits of the application of the petitioner, rejected the application by relying upon the same Rule 14(6)(A) of the Standard Code Rules, 1984, but the University did not do so and choose to seek guidance from Joint Director, Higher Education, Mumbai. Now, let us see as to what was the response of the Joint Director, Higher Education, Mumbai.

6. The documents placed on record show that Joint Director, Higher Education, Mumbai indeed gave his response to the aforesaid letter of the University, but the response was addressed to the Principal Secretary of the State Government, which was marked as copy to the University. This response was in the form of Communication dated 19.04.2006. It stated that considering the technical nature of the post of the employee working as Statistical Assistant which was equivalent to the administrative cadre and also the fact that the pay scale of this post was equivalent to that of the Head Clerk, there would not be any additional financial burden on the Government if it granted sanction for change of cadre. For this reason, Joint Director, Higher Education, Mumbai recommended to grant permission of change of cadre as applied for by the petitioner, in view of the provisions made in Standard Code Rules, 1984.

7. Of course, Principal Secretary of the State Government did not give any reply to this Communication, but it is seen that he also did not take any objection to the recommendation so made by the Joint Director, Higher Education, Mumbai. That being so, we are of the view that the University was bound to accept the recommendation so made by the Joint Director, Higher Education, Mumbai in his letter dated 19.04.2006, which was infact invited by the University itself; but that did not happen, and therefore, the petitioner was required to approach

this Court by filing this petition.

8. In our considered view, after having taken one stand earlier and after having invited the guidance of the Joint Director, Mumbai, the University now cannot take another stand, which is contradictory to its earlier stand. Then, if any contradictory stand was to be taken by the University, it ought to have informed the Joint Director, Higher Education, Mumbai that his recommendation was not acceptable to it and thereafter, it should have rejected the application of the petitioner. But, it did not; maintained a stubborn silence; waited for the petitioner to approach this Court, and suddenly changed its stand after so many years, saying that application deserves to be rejected, though it would not reject it on its own. The approach of the University is unjust and arbitrary, to say the least, calling for exercise of extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

9. In the facts and circumstances of the case, which are peculiar to the case of the petitioner, the University now cannot take a different stand and seek to reject, through the machinery of the Court, the application of the petitioner seeking change of his cadre. There may be some guidelines issued by the Committee of Experts, which may perhaps not permit such change of cadre, but the facts and circumstances of this case, peculiar as they are, and also the fact that considerable time has passed over since the filing of the application for change of cadre by of the petitioner, it would be unjust for this Court to not issue necessary directions for accepting change of cadre. Those guidelines, therefore, would not come in the way of the University in granting the application of the petitioner. Of course, the University would be at liberty to appoint another Committee of Experts for revisiting and reconsidering those guidelines, if required.

10. In the circumstances, we find that this petition deserves allowed and it is allowed with following directions:-

- (i) Petition is allowed.
- (ii) Impugned Communication dated 18.06.2007 is hereby quashed and set aside.
- (iii) Respondent No.1-University is directed to allow the application of the petitioner for change of his cadre from the that of Statistical Assistant to the cadre of Head Clerk with effect from the date of the order that would be passed by the University.
- (iv) We direct the State Government to grant approval to the change of cadre of the petitioner with effect from the date of the order that would be passed by the University.
- (v) We further direct the State Government to grant approval for release of the salary of the petitioner as applicable to the cadre of Head Clerk, as per rules, effective from the date of its approval.
- (vi) We further direct the State Government to grant its approval to the proposal of the University for filling up the posts of Assistant Statistical Superintendent which would fall vacant in consequence to the directions hereinabove, if such proposal is received by it.

11. Rule is made absolute in the above terms.

12. Petition is disposed of accordingly. No costs.

[FIRDOSH P. POONIWALLA, J.]

[SUNIL B. SHUKRE, J.]