

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Shashikant S. Pujari

C.A.Nos.1386 and 1387 of 2006

(S. B. Sinha and Prakash Prabhakar Naolekar, JJ.)

24.11.2006

JUDGEMENT

S. B. SINHA, J.:-

1. Shahaji Law College, Kolhapur, is affiliated to Shivaji University, Kolhapur. The institution is under the control of the Government of Maharashtra. It started five year law course in the year 1983-84. The department of Political Science is said to be one man department.

2. Shashikant S. Pujari (Respondent No.1) was appointed as a part time Lecturer. Allegedly, a teacher would be considered to be a full timer, if he has a workload of 12 teaching periods per week subject to his making good the shortfall by taking additional lectures. Respondent was appointed on 'Clock Hour Basis' (CHB). He was selected through Local Selection Committee of the College.

3. Following chart would show the nature of post, period of working and process of selection. So far

as the Respondent is concerned :

Nature of Post Period of Working Selection through Local Selection Committee of College and whether approved by University

Clock Hour basis (CHB) 1-8-1983 to 30-4-1984 Selection by LSC of College University granted approval

1-5-1984 to 30-6-1984 61 days break in service Break not condoned by University

Full Timer (though work-load of Part Timer only) 1-7-1984 to 15-4-1985 Selection by LSC of College and approval by University.

16-4-1985 to 15-7-1985 91 days break in service Not condoned by University

Full Timer (though work-load of Part Timer only) 16-7-1985 to 30-10-1985 Selection by LSC of College and approval by University

1-11-1985 to 30-8-1986 295 days break in service Not condoned by University.

Part Timer 1-9-1986 to 15-4-1987 Selection by LSC of College but no approval from University.

16-4-1987 to 30-6-1987 76 days break in service Not condoned by University

Part Timer 1-7-1987 to 30-6-1992 Selection by LSC of College but no approval from University.

1-7-1992 to 30-10-1992 115 days break in service Not condoned by University.

Part Timer 1-11-1992 to 31-1-1993 Selection by LSC of College but no approval from University.

4. Qualifications for college Lecturers were set out in a G.R. dated 31.01.1983, which is in the following terms :

1-2-1993 to 19-6-1995 2 years and 139 days break in service. Not condoned by University.

During this period one Mr. R.A. Patil was appointed by University Selection Committee on Clock Hour Basis.

Part Timer 20-6-1995 to till date Selection by LSC of College but no approval from University.

"College Lecturers :

a. good academic record with at least second class (C in the seven point scale) Master's degree in relevant subject from an Indian University or equivalent degree from a foreign University; and

b. an M. Phil degree or a recognized degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work :

Provided that if the Selection Committee is of the view that the research work of a candidate as evident either from his published work is of a very high standard, it may relax any of the qualifications prescribed in (a) above:

Provided further that, if a candidate possessing the qualifications as at (b) above is not available or not considered suitable, the college on the recommendation of the Selection Committee may appoint a person possessing a consistently good academic record on a condition that he will have to obtain an M. Phil degree or a recognized degree beyond the Master's level within eight years of his appointment failing which he will not be able to earn future increments till he obtains that degree or gives evidence of equivalent published work of high standard."

5. It is stated at the Bar that a person is treated to be Second Class 'C' who has obtained 55% of the marks.

6. The question which arises for consideration is as to whether Respondent satisfied the criteria of having a second class Master's Degree and, thus, could have been considered for regular appointment. Respondent's services were approved as a temporary teacher in 1983 84 by the Selection Committee as he is said to have taught in four periods per week. Allegedly, he was taking twelve periods per week, break up whereof is as under :

4 periods per week : First Year LL.B. Class

8 periods per week : Second Year LL.B. Class

7. The Selection Committee in its meeting held on 29.09.1986 adopted a resolution, the relevant provisions whereof are as under :

"The University Selection Committee held its meeting on Sunday, 29th June, 1986 to appoint Lecturer at Shahaji Law College, Kolhapur, in the premises of Shahaji Law College, Kolhapur in the subject of Politics. Following Selection Committee members were present for the said meeting :

Designation Name Signature

1 President, Council of Education, Kolhapur Shri Ratnappanna Kumbhar Sd/

2 Vice Chancellor, Nominee Shri P. R. Mundragi Sd/

3 University Subject Expert Dr. K. K. Kavalekar Sd/

4 Representative of Joint Director for Higher Education Absent

5 Principal of the College Prin. D. B. Kurane Sd/

To appoint part time teacher in Politics the Committee interviewed candidates and selected following candidates preferentially:

1. Shri Pujari, Shashikant Shankarrao
2. Mrs. Patil Bharti Tukaram."

8. The College appointed Respondent as a full time Lecturer for two years for 1985 and 1986 subject to the condition that he must acquire M. Phil. Degree in six years. There exists a controversy as to whether the University had approved the same or not. Indisputably, he obtained a M. Phil. Degree on 26.01.1986 on the basis whereof he contended that he fulfilled the conditions precedent for his appointment on a regular basis. According to Respondent, even the University Selection Committee found him qualified.

9. On or about 19.09.1991, the University Grants Commission revised the qualifications in the following terms :

"Lecturer

(a) ARTS, SCIENCES, SOCIAL SCIENCES, COMMERCE, EDUCATION, PHYSICAL EDUCATION, FOREIGN LANGUAGES AND LAW :

Good academic record with at least 55% marks or an equivalent grade at Master's degree level in the relevant subject from an Indian University or an equivalent degree from a foreign University.

Candidates besides fulfilling the above qualifications should have cleared the eligibility test for Lecturers conducted by UGC, CSIR or similar test accredited by the U.G.C."

10. However, the Government of Maharashtra issued a letter on 18.06.1994, inter alia, stating :

"The University Grants Commission, vide its letter No.1 11/87 (CPF/PS), dated 28th October, 1991, notified the revised minimum qualifications required for the recruitment of teachers in Universities and Colleges. The revised qualifications for appointment to the post of Lecturer in University/College only is as follows if :

a) He possesses a Good Academic Record with at least 55% marks or a equivalent grade at Master's Degree Level in the relevant subject, and

b) He should have cleared the eligibility test for Lecturership conducted by the UGC/CSIR or a similar test accredited by the University Grants Commission.

It has been brought to the notice of the Commission that the teachers appointed prior to revision of pay scales are not considered eligible for post of Lecturer in other College or University as they do not fulfill the above revised prescribed qualifications. The Commission has examined the matter and it has been decided that the revised qualifications are not applicable to the teachers who were in service as Lecturers prior to revision of pay scales. The Lecturers who were in service prior to revision of pay scales and fulfilling the qualifications prescribed and were in permanent position may be considered eligible for applying to the post of Lecturer in other College or University."

11. On or about 30.06.1997, a direction was issued by the University to consider twelve periods per week as a relevant criterion for recruitment of a full time Lecturer.

12. The State Government also issued an order on 17.03.1998, inter alia, stating :

"While appointing Lecturer at University and affiliated colleges the work load is taken into account. The Lecturer having 12 or more period work load, will be appointed as a full time Lecturer. The educational qualifications and eligibility norms are decided by University Grants Commission they are applicable to full time and part time Lecturers."

13. Respondent is said to have been assigned duties to frame question papers and examination of answer books. A purported approval was granted to Respondent to work as full time Lecturer with effect from 1983 84. A communication to that effect is said to have been made on 04.01.2001.

14. The Managing Committee allegedly found him qualified. By reason of an order dated 22.10.2002, the Management Council, however, declined to accept the recommendations of the Managing Committee, opined that Respondent was not qualified, stating :

"It is clarified in respect of item No. 3 of the recommendation that the opinion has been given by the Dy. Registrar to implement the decision of Management Council made on 30.10.2000. In this, there is no contradiction. In this respect Shri S.S. Pujari has filed a writ petition in the Hon'ble High Court at Mumbai for grant of approval to him as a full time teacher since 1984 85. The Committee appointed by Management Council has recommended to grant the approval to Shri Pujari as a full time teacher from June 1999. Shri Pujari has served from 1983, but for this there was no approval from the University, hence it would be proper to take decision about the approval. Along with this breaks in service of Shri Pujari has not been condoned. After considering the other matters, the report of the Committee appointed by Management Council is for consideration in respect of approval of Shri S.S. Pujari.

RESOLUTION :

A) The resolution of Management Council dated 30.10.2000 giving full time approval to Shri Pujari is cancelled.

B) The report submitted by Shri M.J. Mohite and Prin. P.R. Karanjikar Enquiry Committee is taken note of.

C) Shri Pujari does not bear the required eligibility for the post of teacher hence he should not be given approval as a teacher."

15. The University also opined that Respondent was not qualified to be a full time teacher pursuant whereto or in furtherance whereof, Respondent No. 2 College asked him to refund all amounts paid to him since June 1999.

16. A writ petition was filed by Respondent before the High Court. A statement was made before the High Court on behalf of Respondent No. 2 College that the post of full time Lecturer on the basis of the norms set up by the University and the State had fallen vacant from June 1999. Inter alia, relying on or on the basis of the said statement, the High Court opined :

"We are, however, of the view that the alternate submission which has been urged on behalf of the Petitioner has to be accepted and the Petitioner is entitled to the conferment of the status of a full time Lecturer with effect from June, 1999. At the outset, it would be worthwhile to reiterate that this was in fact, the plea of the First Respondent College. The plea found favour with the two member Committee appointed by the University....."

17. Whereas the State of Maharashtra preferred a special leave petition questioning the grant of relief, Respondent has preferred a petition for grant of special leave contending that he was entitled to the benefit of a full time Lecturer from 1983 and not from June 1999.

18. We may place on records that the Respondent No. 2 College has not preferred any special leave petition as it is of the view that whereas from June 1999 it is for the State Government to make reimbursements of payment towards salaries, but in the event, the appeal preferred by Respondent (Civil Appeal No. 1387 of 2006) is accepted, the College will have to bear the same.

19. The State, inter alia, contends that :

(i) No approval having been given after 31.10.1985 in regard to appointment of Respondent by Shivaji University, his continuation therein was illegal.

(ii) There having been several breaks in services of Respondent and such breaks having not been condoned, the High Court erred in passing the impugned order, particularly in view of the fact that

even the University had not condoned the breaks during the period from 01.02.1993 to 19.06.1995 i.e. for the period of two years 139 days.

(iii) The Local Selection Committee although appointed Respondent again on 20.06.1995, but no approval therefor having been granted by the University as it was considered to be a fresh appointment, the question of his eligibility was required to be considered having regard to the educational qualifications laid down by UGC in 1991.

(iv) The impugned judgment is not sustainable in view of Section 26(1)(e) read with Section 14 of the University Grants Commission Act, 1956 (for short, 'the Act') and Regulation 2 of "the Qualifications which Required of a Person to be Appointed to the Teaching Staff of a University and Institutions Affiliated to it) Regulation, 1991", no person shall be appointed to a teaching post in affiliated college of any recognized University, if he does not fulfill the required qualification specified in the Schedule I, which for a Lecturer in Political Science is as under :

a) good academic record with at least 55% marks in Master Degree; and

b) candidate should have cleared eligibility test of Lecturer (NET conducted by UGC or SET conducted by State Govt.)

(v) Indisputably, Respondent having obtained 51% marks in M.A. and having cleared the said examination, was not eligible to continue as full time Lecturer since 19.09.1991.

(vi) Respondent having not fulfilled the requisite qualifications could not have been directed to be appointed as a full time teacher.

The contentions of Respondent , on the other hand, are :

(i) Having obtained a second class Master's Degree and having been appointed on a specific condition which he had fulfilled, the impugned order passed in the writ petition was legal.

(ii) Respondent being a full time lecturer from 1984 onwards, status given to him as a full time lecturer only from 1999 is wholly wrong as he became entitled thereto from 1984;

(iii) Respondent being covered by G.R. dated 31.01.1983, in terms whereof the requirement was to have the minimum of 50% marks in M.A., which he possessed, qualification of 55% marks in M.A. and passing of NET/SET examinations could not have been given a retrospective effect.

(iv) G.R. dated 18.06.1994 must be read with G.R. dated 22.12.1995 and the letter dated 21.03.1997 which clearly show that the teachers appointed by Local Selection Committee prior to the pay revision of 19.09.1991 were exempt from 55% qualifying marks and NET/SET examinations.

(v) The University having approved the recruitment of a person cannot be permitted to resile therefrom as he had been granted full time status with effect from 1983 84.

(vi) The Managing Committee could not have taken a different view from the resolution of the Management Council resolution dated 30.10.2000 granting approval of full time with effect from 1983 84 and the letter of the University informing the College dated 04.01.2001. In any event, there was no basis for the Managing Council to depart from its earlier resolution dated 30.10.2000.

(vii) Respondent No.2 itself having recommended that Respondent No.1 be appointed as a full time lecturer in Political Science with effect from June, 1999, the State should not have filed this special leave petition.

20. The fact of the matter as noticed hereinbefore is not much in dispute. The core question, however, is as to whether G.R. dated 28.10.1991 could be given a retrospective effect. We would deal with the said question, a little later.

21. We may at the outset, note that concededly Respondent obtained 51% marks in his Master's Degree.

22. The question with regard to retrospective effect of the said resolution will have to be answered having regard to the fact situation obtaining herein. If prior to October 1991, Respondent was validly appointed, he could justifiably contend that the 1991 Regulation could not have been given a retrospective effect. With a view to examine the said question, we may notice the following provisions of the Act.

23. Section 14 of the Act reads as under:

"14. Consequences of failure of Universities to comply with recommendations of the Commission.

If any University [grants affiliation in respect of any course of study to any college referred to in sub section (5) of section 12A in contravention of the provision of that sub section or] fails within a reasonable time to comply with any recommendation made by the Commission under section 12 or section 13, [or contravenes the provisions of any rule made under clause (f) or clause (g) of sub section (2) of section 25, or of any regulation made under clause (e) or (f) or clause (g) of section 26,] the Commission, after taking into consideration the cause, if any, shown by the University [or such failure or contravention,] may withhold from the University the grants proposed to be made out of the Fund of the Commission."

24. Section 26(1)(e) reads as under :

"26. Power to make regulations.

(1) The Commission [may, by notification in the Official Gazette, make regulations] consistent with this Act and the rules made thereunder,

... ..

(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University having regard to the branch of education in which he is expected to give instructions;"

25. The colleges affiliated to University are bound by the Regulations. The Regulations have force of law. Terms and conditions of services of an University Employee as also the employees of colleges affiliated to it are governed by statutory regulations. Regulations in terms of the provisions of the Act were framed in 1991 known as "The University Grants Commission (Qualification required of a Person to be Appointed to the Teaching Staff of a University and Institutions Affiliated to it) Regulation, 1991". Regulation 2 provides for the essential qualifications.

26. Statute 195(1) of the Shivaji University provides for composition of duly constituted University Selection Committee for Teachers. Statutes 195(3)(d) and 195(3)(e) read as under :

"d) The Selection Committee shall interview and adjudge the merits of each candidate in accordance with the qualifications advertised, and recommend to the Vice Chancellor the names arranged in order of merit of the persons, if exceeding one, whom it recommends for appointment to the posts advertised giving reasons for the order of preference. If no person is selected, a report to that effect be made. The Committee will have the right to recommend only one name if others are not found suitable for recommending a panel. The recommendations of the Committee shall be subject to the approval of the Vice Chancellor.

e) The Governing Body shall appoint from amongst the persons so recommended and approved by the Vice Chancellor the Principal or the number of teachers required to fill in the posts advertised.

Such appointment shall be strictly according to the order of merit prepared by the Selection Committee and approved by the Vice Chancellor.

Provided that, where the Governing Body proposes to make an appointment otherwise in accordance with the order of merit arranged by the Selection Committee, it shall record its reasons in writing and submit them to the Vice Chancellor, who may approve the proposal or return it to the Governing Body for reconsideration. After reconsideration, if the Governing Body desires to pursue its Original Proposal, it shall refer the matter again to the Vice Chancellor for his decision which shall be final."

27. Respondent was appointed on 'Clock Hour Basis' through the Selection Committee. There exists a dispute as to whether it is one man department or not. It is also in dispute as to whether the workload was divided or not.

28. It is not denied and disputed that prior to June 1999 there had been workload of a full time post of teacher. It is furthermore not in dispute that Respondent was not appointed by a duly constituted University Selection Committee. The Government Resolution dated 31.01.1983 to which reliance has been placed by Respondent reads as under :

"The qualifications prescribed by the University Grants Commission and accepted by the Government of India are applicable as a condition precedent to the teachers becoming eligible for the revised scales have, inter alia, been mentioned in para V of Government Resolution, Education and Youth Services Department No. USG 1180/129387/XXXII (Cell), dated 25th October, 1977. The question of relaxation of the condition regarding consistently good record and B+ at the Master's degree precedent to the eligibility of the revised University Grants Commission recommended scales was under consideration of the Government of India for some time past. The Government of India, Ministry of Education and Culture, New Delhi in their letter dated 4th

November, 1982 have since communicated that the question regarding relaxation of minimum qualifications has since been reviewed by them and that the revised minimum qualifications recommended by the University Grants Commission for teaching posts in Universities and Colleges will continue to be operative as in the past. The University Grants Commission has since revised the qualifications for the University and College teachers suitably. In view of the decision taken by the Government of India, Government is pleased to direct in partial modification of the orders contained in para V of Government Resolution, Education and Youth Services Department No. USG 1177/129387/XXXII (Cell), dated 25th October, 1977 that the revised qualifications prescribed by the University Grants Commission and accepted by the Government of India as shown in Appendix 'A' of this Government Resolution shall be applicable as a condition precedent to the teachers becoming eligible for the revised scales.

2. Orders contained in Government Resolution dated 25.10.1977 mentioned above should be treated as modified to the extent indicated in para 1 above.

3. The Universities should be requested to initiate action to amend the existing statutes in the matter framed under the relevant provisions of the respective Universities Acts of 1974 with a view to implementing the scheme of revision of scales of pay of their own teachers as well as of teachers in Colleges affiliated to them in the light of the provisions contained in this Government Resolution."

29. On that date, Respondent was not in service. If on that date he was not in service, the question of his being duly selected by the University Selection Committee on permanent basis would not arise. He, furthermore, was not even found suitable.

30. The purport relaxation granted in terms of the G.R. in regard to the qualifications of the teacher was in relation to those who were already in service in permanent position duly selected by the University Selection Committee prior to revision of pay scales. It was, therefore, not applicable to the case of Respondent.

31. Prior approval, moreover, of the State Government in terms of Section 8(1)(a) of the Act was a pre requisite.

32. The relaxation of NET/SET examinations in terms of the GR dated 22.12.1995 was granted to the lecturers, who had got more than 55% marks at Master's Degree; passed M. Phil. Examination before 31.12.1993; submitted their Ph.D. thesis; and who were appointed through competent proper Selection Committee constituted by University.

33. It is in that view of the matter no relaxation about percentage of the marks obtained by Respondent in Master's Degree was available to him, as he had not submitted his Ph.D. thesis. He, it will bear repetition to state, was also not appointed on permanent post by the University Selection Committee.

34. We may also notice the Government Circular dated 11.01.1996, which is in the following terms :

"While discussing the problems of teachers, MFCTO brought it to the notice of the Government that, if between two full time services of a teacher, there is a part time service, his full time services are not considered in counting the total period of service. As a result while giving him the benefit of Career Advancement Scheme, he is not given the benefit of his former full time services. If the break between his two full time services is condoned and his services are treated as continuous, he gets the benefit, due to him, after retirement. In order to remove this discrepancy, the Government is issuing the order that if the part time services occur or fall between two full time services, such services should be treated as a technical break and subject to the following terms and conditions, the benefit of such services should be given to the lecturers.

a. Between two full time services, maximum six breaks amounting to the maximum period of two years should be considered as acceptable.

b. No break out of these six breaks should be more than the period of one year."

35. Respondent could not take any benefit of the said circular letter also, inter alia, for the reason that he had not been appointed by duly constituted University Selection Committee. Another question which was relevant but had not been considered by the High Court was that having regard to the breaks in service, he could have been appointed only as a freshly recruited teacher. At one point of time, the College and the University might have committed mistake in treating him as a full time teacher, but such mistakes could have been rectified, if they were apparent on the face of the records. Moreover, the order impugned in the writ petition, in our opinion, cannot be said to be wholly arbitrary and unreasonable so as to warrant interference by a superior Court. The eligibility criteria cannot be relaxed unless there exists a specific provision therefor. A person can avail the benefit of relaxation notification only when he comes within the purview thereof and when he satisfies the conditions specified therein.

36. It has been contended that the University had not given any approval as regards his appointment as part time teacher in Political Science, as he did not receive a copy therefor. If there had been no approval to his appointment after 30.10.1985, the decision of the University Managing Council on 30.10.2000 cannot be faulted. Condonation of breaks in his service was also imperative in nature

which had not been given.

37. The Council of Education of the College by a communication dated 03.05.2000 stated :

"The Principal Shahaji Law College has sent proposal for approval of Prof. S.S. Pujari as a full time teacher a number of times from 1983 84 onwards, but the approval was refused by the University Authorities on the ground that he does not fulfil the required educational qualifications (University letter No.5980 dated 05.09.1985 No.11228 dated 10th May 1996, No.12929 dated 3rd January 1998, letter from Joint Director of Higher Education, Kolhapur letter No. 10493 dated 25.06.1997). It clearly shows that, there was no default on the part of the college. Hence, the question of payment of fine does not arise. In these circumstances, the decision taken by the University Authorities in respect of grant of approval to Prof. S.S. Pujari as a full time teacher (Political Science) since 1983 84 onwards is not correct and legal and hence is liable to be cancelled.

University authorities have taken the decision in connection with the letter from Shahaji Law College dated 23rd September 1999. According to the above mentioned letter dated 4th January, 2001, we are taking necessary steps to appoint Prof. Pujari as a full time teacher (Political Science) from June 1999 subject to the approval of the Joint Director of Higher Education, Kolhapur. Under the circumstances, as mentioned above, I request your honour to issue fresh order to that effect. I am enclosing herewith some of the relevant zerox copies of the letters received from University and Joint Director (H.E.), Kolhapur for favour of information and early action."

[Emphasis supplied]

38. If that is so, the High Court must be held to have committed an error in arriving at the said decision. We may also notice that he was found unsuitable, as being not possessed of the requisite qualifications.

39. Respondent might have been appointed by the College, but the State while undertaking to bear the financial burden of payment of salaries and other remunerations to teachers of a College are not bound thereby. It is entitled to contend that all appointments must be in accordance with the Statute. [See *A. Umarani v. Registrar, Cooperative Societies and Others* (2004) 7 SCC 112; *Mahendra L Jain and Others v. Indore Development Authority and Ors.* (2005) 1 SCC 639; *National Fertilizers Ltd. and Others v. Somvir Singh* (2006) 5 SCC 493; and *Surendra Prasad Tiwari v. Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad and Others* (2006) 9 SCALE 101]. 2004 AIR SCW 4462, 2004 AIR SCW 6569, 2006 AIR SCW 2972, 2006 AIR SCW 4738

40. Keeping in view the facts and circumstances of the case, we are of the opinion that the impugned judgment cannot be sustained, which is set aside accordingly. However, in exercise of our jurisdiction under Article 142 of the Constitution of India, we direct that no recovery of any amount paid to him, shall be made. Civil Appeal No.1386 of 2006 filed by the State of Maharashtra, therefore, is allowed and Civil Appeal No. 1387 filed by Respondent herein is dismissed. No costs.

Order accordingly.