

# SUPREME COURT OF INDIA

Ramesh Gajendra Jadhav

Vs.

Secretary, Late S.G.S.P.Mandal

C.A.No.7215 of 2008

(Dr.B.S.Chauhan and Swatanter Kumar JJ.)

22.07.2010

## JUDGEMENT

### **Swatanter Kumar, J.**

1. The services of Ramesh Gajendra Jadhav, the appellant herein, were terminated by Principal of the respondent college on 18th August, 1999 who, then filed an appeal before Shivaji University & College Tribunal, Pune, University Campus under Section 59(1) of Maharashtra Universities Act, 1994. The grievance of the appellant was that he had been appointed as a regular lecturer of Geography in the said College and the oral termination was unjustified, contrary to Rules and without any basis. On the contrary, the College as well as University ought to have permitted him to continue as a regular lecturer in the College. The Tribunal, vide its judgment dated 21 st July, 2004 found substance in the case of the appellant and while accepting his appeal the order of termination was quashed and set aside and he was ordered to be reinstated w.e.f. 15th September 2000 with full back wages. The College as well as the Secretary of Sambhaji Rao Garad Shikshan Prasarak Mandal, Mohol, Solapur District, filed a Writ Petition in the High Court of Judicature at Bombay being Writ Petition No. 9935 of 2004, which the learned Single Judge, after hearing the parties and vide a detailed judgment accepted the Writ Petition by setting aside the order of the Tribunal and issuing certain directions. The High Court held that the post of the lecturer in Geography was not meant for open category candidates but was reserved for SC category alone. The Court also declined to give advantage to the present appellant on account of any mistake of the authorities concerned. Merely, because the appellant was selected, the Court declined to accept the contention that the appellant had an indefeasible right to the post. Resultantly, the Court sustained the order passed by the College and the University authorities.

2. Aggrieved by the judgment of the High Court dated 7 th December, 2006, the appellant filed an appeal before the Division Bench of the High Court of Judicature at Bombay, which was also dismissed vide order dated 6th June, 2007. The Division Bench held as under:

“6. The finding arrived at by the learned Single Judge was based on the record, which clearly indicates that the post of lecturer in Geography was reserved for S.C. candidate and not for the candidate from open category and, therefore, the Single Judge held that the decision of the Tribunal was not justified while allowing the appeal of the Management.

7. The learned counsel for the appellant, submitted that for no fault of the appellant, his services could not have been discontinued and the findings of the School Tribunal are findings of fact, which cannot be held to be perverse so as to call for interference in exercise of writ jurisdiction.

8. We find that the view taken by the learned Single Judge is based on the correct state of affairs which was ignored by the Tribunal, which based its findings on the advertisement, pursuant to which the appellant was selected, however, the said advertisement was not correct.

9. The learned Single Judge has rightly observed that merely because the Authorities have committed an error in the matter of the advertisement of the post and though it was approved by the University, was also not correct and the University, subsequently, rectified its error by canceling the approval of the appellant.

The appellant has no case. Therefore, we do not find any merit in the appeal. The appeal is accordingly dismissed.”

3. Aggrieved by the reasoning and decision of the Division Bench, the appellant filed the present appeal.

4. The controversy in the present case falls in a very narrow campus: Whether a mistake of fact rectified subsequently in relation to implementation of roaster of reservation would be a sufficient reason for terminating the services of a person appointed under that mistaken impression? To answer this question, we need to notice the facts which have given rise to the present appeal.

5. The college in question was established in the year 1991. The Joint Director of Higher Education, Kohlapur Division had sent a letter approving the schedule of appointment of lecturer wherein one additional post of part time lecturer was sanctioned vide letter dated 6th October, 1998. On the basis of this letter, the College had written to the University on 5th December, 1998 seeking its approval for the draft advertisement to be published for filling up the vacancy including the post of lecturer of Geography. However, in the letter issued by the University granting approval to the post of lecturer for the subject of Geography was shown as part time in open category. On that basis, advertisement was issued, which appeared in the newspaper, for filling up the vacant posts. On 24th December, 1998, the college sent a letter to the University forwarding the copies of the advertisement and requesting for names of the persons to be appointed by Selection Committee. The University granted approval to the

schedule of posts as proposed by the management but in the letter dated 1st January, 1999 approval was shown to be granted for the post of lecturer for the subject of Geography as full time lecturer. After receiving this letter, the management of the college again wrote to the University bringing out this fact that there was a vacancy of part time lecturer in Geography, while the University granted approval to full time lecturer in that subject leading to some confusion. In the meanwhile, pursuant to the advertisement issued, candidates including the appellant had applied for the post and interviews were held on 22nd February, 1999. On 23rd February, 1999, the Selection Committee prepared its detailed proceedings clearly demonstrating that the post for which the appellant was selected was a permanent post in open category.

“On the recommendation of the Selection Committee, the appellant was appointed as lecturer in the subject of Geography on probation vide letter of appointment dated 3rd March, 1999. The appellant joined the post. However, the University on 15th March, 1999, sent a letter stating therein that earlier advertisement was to be cancelled and new advertisement showing the post of lecturer in Geography as full time and reserved for SC category, is required to be issued. In fact, at that point of time, the University also asked the College as to how the advertisement for appointment of part time lecturer was issued as the post was full time and reserved for SC category. Vide their letter dated 12th July, 1999, the College sent a detailed reply giving reference to all the events in response to which, the University, vide letter dated 18.8.1999 stated that those appointed on the post including the appellant must be treated as full time lecturer but only for the academic year 1999-2000 and in the meanwhile steps should be taken to fill up the vacancy keeping in view the direction that the post was reserved for SC category and it was a full time post of lecturer in Geography. The appellant had made a request in the meanwhile, submitting that he had been selected by a properly constituted Selection Committee and he should be given the appointment against a full time lecturer post. No response to the same was received. The appellant filed a Writ Petition No. 1689/2000 praying for quashing and setting aside the letter dated 18th August, 1999 issued by the University giving approval only for the academic year 1999-2000. This Writ Petition, when came up for hearing before the High Court, was dismissed vide order dated 22nd August, 2000. In furtherance to the advertisement, which appeared in the newspaper on 1st January 2001, amongst other persons Respondent No. 5 also submitted his application.

Respondent No.5 belonged to a reserved category (SC), was selected and appointed as lecturer in Geography in the respondent college. Approval thereto was granted by the University on 2nd February, 2001. Thereafter, the appellant was not permitted to serve which resulted in filing of the appeal before the Tribunal, as already noticed.”

6. There is no dispute before us that the post in question was full time post and was reserved for SC. Once this fact is not disputed, the only question that remains is whether an indefeasible right was vested in the appellant by his selection against the advertisement

issued earlier by the College. The learned Single Judge of the Bombay High Court while setting aside the order of Tribunal held as under:

“20. It is then sought to be contended that no fault can be found with the respondent no. 1 who had bonafide believed in the advertisement issued by the petitioners on 11th December, 1998 and had applied for the post and on being interviewed, was issued the order of the appointment and even the initial appointment disclosed that his appointment was on probation for two years which disclosed that the appointment was in permanent vacancy. Undoubtedly, there was a mistake on the part of the petitioners in that regard which was immediately brought to the notice by the respondent No. 4.

21 Question then arises whether on account of mistake of the petitioners, can the respondent no. 1 be penalized? It is well settled law that in case of entry in service it has to be a lawful entry. Any irregularity in that respect cannot create any vested right in favour of the employee illegally appointed, irrespective of the fact whether the fault in that regard lies with the employee or the employer. Otherwise, under the pretext of fault on the part of the employer, every employee seeking back door entry may illegally seek to regularize such entry in the service. Being so, merely because there was a fault on the part of the petitioners in following the procedure, on that count the respondent no. 1's services cannot be regularized.

That will not ensure to benefit of the respondent no. 1 to content that he cannot be penalized for the fault on the part of the petitioners in not following the proper procedure while filling up the vacancy in relation to the post of Lecturer in the subject of Geography. In fact, it is not a matter of penalizing the respondent no. 1; rather the respondent no. 1 cannot seek to regularize an illegal act to have benefit on the pretext that the fault lies with the petitioner in not following the regular procedure. The respondent no. 1 is to be absolutely blamed for illegally availing the benefit of such acts on the part of the petitioner.”

7. There can be no doubt that a post is determined to be a part time or full time depending on the work load in a particular college. The University, vide its letter dated 5th December, 1998, had referred to the requirements which a college ought to satisfy. In response thereto, the College had completed the requirement and had clearly stated that in Geography, there was one vacancy of part time lecturer which was for open category. This had been approved by the University, but subsequently it was noticed that the University by mistake had granted approval for full time lecturer in English and Geography, while the advertisement had indicated the vacancy of a part time lecturer in Geography.

“It is expected and desirable of the Authorities concerned to have corrected the mistake at that juncture itself. However, because of inter se correspondence between the University, College and the Director of Education, the matter got delayed and in the meanwhile the Selection Committee, on the basis of the approval letter issued by

the University, selected the appellant as full time lecturer to the post vide letter dated 3rd March, 1999. The University had informed the College that as per the roaster, the full time regular vacancy of the College has to be given to SC category candidate and, therefore, earlier advertisement should be cancelled and fresh advertisement should be issued. It is a settled principle of law that a vacancy which has been reserved for SC category cannot be converted to an open category unless and only if specified and that too only if the rules permit. Nothing of this kind has been placed on record and in fact no submission in that behalf has been made by any of the parties before us.

Once the post was reserved for SC category, the Authorities could only fill up the said post by a reserved category candidate. No advertisement for reserve candidate had been issued earlier, as such, none would have applied for the same being a post for open category and this mistake vitiated the entire selection process. As already noticed, fresh advertisement was issued and Respondent No. 5 was appointed to the said post, resulting in termination of services of the present appellant. Of course, to some extent, this mistake was ought to be corrected at least partially by University by giving the approval to the full time post for one academic year 1999-2000 in favour of the appellant. No doubt, appellant has been subjected to some inconvenience and prejudice and his remedy for damages or any other relief, as he may deem fit and proper, are open to be taken but this is not a case where interference of this Court is called for under Article 136 of the Constitution. We must notice that in the needs of employments, particularly, in the Institutions which are aided and are under the control of the State or statutory bodies, adherence to the concept of equality and avoidance of discrimination is an essential feature. In other words, the respondents were expected to act in consonance with the constitutional mandate contained under Articles 14 and 16 of the Constitution of India. We find that the Selection Committee was at fault in selecting the candidate as full time lecturer, while admittedly the advertisement had been given for a post of part time lecturer in Geography. It is a matter of common knowledge that the eligible candidates, if knew, that the post was that of 'full time lecturer in Geography' would have applied in larger number and even with better qualifications. In other words, number of candidates have been denied an opportunity of competing for this post. It would add arbitrariness or unfairness to the entire process of selection. The appointment of the appellant, even if otherwise, in accordance with procedure would stand vitiated on this ground alone. It is a matter of concern that the post which was advertised as part time was treated as full time, that too under the general category only on the pretext that the University had written a letter that the post of Geography lecturer was full time while completely ignoring the stand of the College when it had sought clarification from the University to remove the confusion created by this stand. Thus, it was not a case where post of full time lecturer in Geography in general category was available. It was neither desirable nor fair for all the Authorities concerned to make this appointment in the manner in which it has been done, even if the Selection Committee had recorded its minutes to that effect. Viewed from this angle as well, we do not think it was a case, where we can find any error in the judgment of the High Court."

8. Another factor, which has to be considered by the Court, is that in the Writ Petition No. 1689 of 2000 filed by the appellant, which was dismissed by the High Court, he could have raised these issues in that Writ Petition but the point of resjudicata/constructive resjudicata had not been decided against the appellant by the learned Single Judge. The appellant could have challenged the order of High Court and even raised the issue with regard to reservation or his deemed regular appointment as full time lecturer in Geography in that writ petition itself. However, the advertisement was issued for filling up the reserve vacancy on 1st January, 2001.

“Therefore, we cannot find fault with the appellant to the extent that appeal filed by him could be dismissed on that ground. Be that as it may, a detailed discussion on this subject would be uncalled for in the facts and circumstances of the present case. The fact of the matter remains that there was a collective error on the part of the University and College and more on the part of the University that led to this situation. But this mistake cannot vest indefeasible legal right in the appellant to be appointed or deemed to have been appointed against a reserve category while he is a candidate, admittedly, belonging to the open category and was so appointed by the Selection Committee.”

9. For these reasons, we find no merit in the appeal and the same is dismissed. Parties are left to bear their own costs.