

# SUPREME COURT OF INDIA

Giridhar

Vs.

State of Maharashtra

C.A.No.957 of 2017

(L.Nageshwara Rao and M.R.Shah,JJ.,)

06.03.2019

## JUDGMENT

**M.R.Shah,J.,**

1. Being aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur dated 22.09.2016 in Writ Petition No. 5450 of 2015, by which the High Court has restricted the grant of monetary benefits to the petitioner with effect from 03.07.2008 only, the original writ petitioner has preferred the present appeal. The appellant-original writ petitioner was appointed as a Lecturer in Respondent no. 4 College on 26.12.1989 against the post reserved for scheduled tribe category. Though he does not belong to the scheduled tribe category, he was appointed against the said reserved post because, despite the advertisement, no candidate from the said category was available for appointment. As per the Government Resolution dated 25.01.1990, it was resolved that in the absence of candidates for appointment to posts reserved for a backward class category, persons not belonging to the said category can be appointed. The said resolution further provided that, however, the advertisements were to be issued for five years continuously for appointment of the reserved category candidate. It further provided that if, despite the above, no such candidate is available, the post be de-reserved. That, by an appointment order dated 15.03.1990, the appointment of the appellant from 26.12.1989 to the end of session i.e. up to 20.04.1990 as Full-time Lecturer in Chemistry stood approved. That, the Vice Chancellor of Respondent no. 2-University issued direction No. 2/1990 to follow the directions contained in the G.R. dated 25.01.1990, referred to hereinabove. It appears that the appellant-original writ petitioner continued in the said post as every year advertisement was issued for appointment of reserved category candidate, but no such candidate became available. That, by communication dated 16.08.1993, Respondent no. 2 University granted onwards approval to the appointment of the original writ petitioner and the same was communicated by the Joint Registrar of the University to Respondent no. 4-College, where the original writ petitioner was working. Thus, the appellant-original writ petitioner continued in first five years of his service with technical breaks due to the requirement of advertising the post for the reserved category. However, by order dated 06.03.1997, the Deputy Registrar of Respondent no. 2-University condoned the said breaks in service of

the original writ petitioner. As a consequence of the order/letter of Respondent no. 2-University dated 16.08.1003, in the subject-wise seniority list as on 02.07.1997 issued by Respondent no. 4-College, the original writ petitioner was shown as appointed on 25.12.1989 and the post was shown as de-reserved. Therefore, the original writ petitioner and other employees submitted an application on 08.12.1997 to the Vice Chancellor of Respondent no. 2-University praying for de-reservation of that post in view of their continuation in service and approval of their appointments. It is the case on behalf of the original writ petitioner that he waited for the outcome of representation dated 08.12.1997 and did not approach the court at that time in view of the circular issued by the General Administration Department of Respondent no. 1-State dated 28.07.1999 and the letter dated 17.04.2001, which provided that if the employee directly approaches the court without first seeking redressal of their grievances by representation to the Government and exhausting the said process, it would be considered violation of the service rules and disciplinary action would be taken against them. It is the case of the original writ petitioner that as no decision was taken on the representation made by the writ petitioner, he was compelled to approach the court by way of writ petition which, as such, was first in the year 2011. That, in between, and in terms of the aforesaid G.R. dated 25.01.1990, the High Court granted relief to another employee Sanjay Kharbade in Writ Petition No. 1085 of 2004 directing the Respondent-State to de-reserve the post and to give placement as also consequential benefits to the petitioner therein from the date of his first appointment. Therefore, the original writ petitioner filed another representation on 16.10.2007 before Respondent no. 3, through Respondent no. 4, for rectification of fixation of his pay w.e.f. 26.12.1989. It appears that, in this regard, on 16.10.2007, Respondent no. 3 sent a letter to Respondent no. 4-College directing that since the post on which the writ petitioner was appointed was shown in open category in the roaster, necessary action was required to be taken by Respondent no. 4 for the benefit of continuity of service. It appears that vide communication dated 28.03.2008, Respondent no. 3 issued a letter regarding grant of benefit of continuity of service and other benefits to persons, like the writ petitioner, upon de-reservation of their posts. According to the writ petitioner, the said letter clearly stated that such Lecturers were to be given annual increments and other benefits from the dates of their first appointments. That, thereafter, Respondent no. 4 passed confirmation order dated 04.03.2009 in favour of 13 employees, including the writ petitioner, wherein he was shown as confirmed on 26.12.1991, on completion of two years' service from the first date of his appointment i.e. 26.12.1989. That, the writ petitioner made representation to Respondent no. 1-State and proposal for his placement in selection grade which was also forwarded by Respondent no. 4. The writ petitioner prayed for placement, as also, proper fixation of pay scale from the date of his appointment i.e. 26.12.1989, along with grant of arrears as per the Fourth, Fifth and Sixth Pay Commissions. As nothing was done, the writ petitioner issued a legal notice dated 04.06.2011 and, thereafter, filed Writ Petition No. 3694 of 2011 before the High Court. That by order dated 17.07.2013, the High Court disposed of the said writ petition directing Respondent no. 3 to take decision and pass appropriate order on the representation of the writ petitioner. That by order dated 06.09.2013, Respondent no. 3 rejected the representation of the writ petitioner on the ground that there was break in service of 314 days. That, thereafter, there were number of representations made by the original writ petitioner explaining the so-called break in service and sought for an approval as senior lecturer and placement in senior selection grade w.e.f. 26.12.1989, on the basis of

his first appointment i.e. 26.12.1989. It appears that, in between, there were correspondences between Respondent no. 4 and Respondent no. 3 regarding payment of arrears to the writ petitioner. However, no relief was granted to the original writ petitioner and as his grievances were not being redressed by the respondent, the writ petitioner preferred the present Writ Petition No. 5450 of 2015 before the High Court praying for his placement and fixation of pay from the date of his first appointment i.e. 26.12.1989, direction to Respondent nos. 1 and 2 to pay his entire arrears due from 26.12.1989 onwards with interest and to quash the order dated 06.09.2013 passed by Respondent no. 3.

3. That by impugned judgment and order dated 22.09.2016, the High Court has held that the case of the writ petitioner is fully covered by the judgment of the High Court in the case of *Harshendu Vinayak Madge v. Chembur Trombay Education Society*<sup>1</sup> and held that the writ petitioner is entitled to all benefits treating his appointment w.e.f. 26.12.1989. However, thereafter, the High Court held that the benefits would be payable to the original writ petitioner only w.e.f. 03.07.2008 as he could be granted the benefits from the period commencing from three years prior to Writ Petition No. 3694 of 2011 filed by the writ petitioner.

4. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court insofar as restricting the period of benefit to the writ petitioner from 03.07.2008 only and not from the date of his first appointment i.e. 26.12.1989, the original writ petitioner has preferred the present appeal.

5. Learned counsel appearing on behalf of the appellant has vehemently submitted that, in the facts and circumstances of the case, the High Court has materially erred in restricting the period of benefits to the appellant-writ petitioner from 03.07.2008 only and not from the date of his first appointment i.e. 26.12.1989.

5.1 It is vehemently submitted by the learned counsel appearing on behalf of the appellant that by restricting the period from 03.07.2008 only, the High Court has not at all considered the fact that right from 1997 onwards, the appellant-original writ petitioner was making representations for redressal of his grievances to grant him benefits from 26.12.1989 and to de-reserve the post.

5.2 It is further submitted on behalf of the appellant that, as such, as far back in 1990, the G.R. was issued by the State to deal with situations where in the absence of candidate for appointment to posts reserved for backward classes category, persons not belonging to the said category can be appointed. It is submitted that the resolution further provided that such reserved post where persons other than the reserved category stood appointed, advertisements were to be issued for five years continuously. It is submitted that it further provided that if such candidate is not available despite the continuous advertisements, the said post is to be de-reserved. It is submitted that, in the present case, despite number of advertisements, the reserved category candidate was not available and, therefore, the appellant- original writ petitioner was continued and worked continuously from 26.12.1989. It is submitted that G.R. dated 25.01.1990 based on which the appellant was appointed

and working, was required to be de-reserved. It is submitted that, as such the High Court has accepted the same while passing the impugned judgment and order, however, erroneously has restricted the benefits from 03.07.2008 only.

5.3 It is vehemently submitted on behalf of the appellant that, as such, in the case of Harshendu Vinayak Madge v. Chembur Trombay Education Society, the Bombay High Court has granted the similar relief and directed to grant all benefits from the date of the first appointment of the petitioner therein. It is submitted that, therefore, as a model employer, the State Government ought to have granted the similar benefits to all the employees without even waiting for the representation and/or filing the writ petition.

5.4 It is further submitted on behalf of the appellant that, as such, there is no delay at all on the part of the appellant-original writ petitioner in raising the dispute and/or approaching the court. It is submitted that the appellant waited for the outcome of the representation and, therefore, having failed to get any result, only thereafter the appellant filed the writ petition. It is submitted that only in a case where the delay is attributable to an employee/writ petitioner, the benefits can be restricted. It is submitted that, in the present case, the delay in filing the writ petition is not attributable to the appellant and, therefore, the impugned judgment and order passed by the High Court restricting the benefits w.e.f. 03.07.2008 only, deserves to be quashed and set aside and the appellant is entitled to the reliefs and other benefits from the date of his first appointment i.e. 26.12.1989.

6. The present appeal is vehemently opposed by Shri Karthika, learned advocate appearing on behalf of the respondent-State of Maharashtra.

6.1 It is submitted that, as such, in the present case, the court order is a consent order and, in fact, the learned counsel appearing on behalf of the appellant-original writ petitioner agreed before the Court that the benefits be restricted from 03.07.2008 only.

6.2 It is submitted by the learned counsel appearing on behalf of the State of Maharashtra that, even otherwise, as the appellant-original writ petitioner for the first time approached the Court by way of writ petition in the year 2011, which was earlier disposed of by directing the State to take an appropriate decision on the representation made by the writ petitioner, the High Court has rightly restricted the grant of arrears and other benefits from 03.07.2008.

6.3 Making the above submissions, it is prayed to dismiss the present appeal.

7. Heard the learned counsel appearing on behalf of the respective parties at length. At the outset, it is required to be noted that the only issue in the present appeal is whether, in the facts and circumstances of the case, the High Court is justified in restricting the grant of arrears and other benefits from 03.07.2008, and not from the date of first appointment of the writ petitioner i.e. 26.12.1989?

7.1 Having heard the learned counsel appearing on behalf of the respective parties and considering the facts narrated above and the fact that, right from 1997 onwards, the appellant-original writ petitioner made representations for his grievances and requested to de-reserve the post, which was made in view of the G.R. dated 25.01.1990, it cannot be said that the appellant had slept over his rights. In fact, when the representations were made, it was for the appropriate authority to deal with the same expeditiously. From the material on record and, as per the case of the appellant, in view of the circular dated 28.07.1999 and letter dated 17.04.2001, the employees were restrained from going to Court straightaway, without first seeking the redressal of their grievances by representation to the Government and exhausting the said process. Therefore, it is the case on behalf of the appellant that, therefore, the appellant-original writ petitioner waited for the outcome of his representation and did not prefer the petition earlier. It is submitted that, even thereafter, when the appellant-original writ petitioner filed representation in the year 2011, the High Court directed the State to decide the representation at the earliest. It is submitted that, therefore, the delay is not attributable to the appellant at all. The appellant was vigilant from the very beginning. In fact, the State and the appropriate authority/College/University ought to have taken the decision earlier to de-reserve the post on which the appellant was working, in view of G.R. dated 25.02.1990 and the subsequent communications. Therefore, the delay cannot be attributed to the appellant and the High Court is not justified in restricting the benefits with effect from the preceding last three years' only. Only in a case where the delay is attributable to the employee the benefit can be restricted. That is not the case here.

7.2 Now, so far as the submission made on behalf of the respondent-State that the impugned order is a consent order and the learned counsel appearing on behalf of the appellant agreed to restrict the monetary benefits w.e.f. 03.07.2008 i.e. the period of three years preceding the last date of filing of the previous petition is concerned, the aforesaid has no substance. First of all, there is no such concession made by the learned counsel appearing on behalf of the appellant. What is pointed out in paragraph 4 is the submission made by the learned Additional Government Pleader. As such, there is no concession given as sought to be canvassed on behalf of the respondent State. Even considering the order passed by the High Court in the case of *Harshendu Vinayak Madge v. Chembur Trombay Education Society*<sup>2</sup>, though the said case is of termination, the High Court while quashing and setting aside the order of termination, has directed to grant the benefits with effect from the initial appointment.

7.3 Therefore, in the facts and circumstances narrated above and, more particularly, that the delay is not attributable to the appellant-original writ petitioner at all, the High Court is not justified in restricting the monetary benefits w.e.f. 03.07.2008 only. The appellant-original writ petitioner shall be entitled to all the monetary benefits, including the arrears etc. treating his appointment from 26.12.1989 and all such consequential benefits accordingly.

8. In view of the above and for the reasons stated hereinabove, the present appeal succeeds. The impugned judgment and order passed by the High Court restricting the monetary benefits w.e.f. 03.07.2008 only is hereby quashed and set aside and it is held that the appellant shall be entitled to the arrears/monetary benefits from the date of his first appointment i.e. 26.12.1989 and the appellant shall be paid all other consequential benefits accordingly, to be paid within a period of three months from today. The present appeal is allowed accordingly. No costs.