

2023 LiveLaw (SC) 723

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ABHAY S. OKA; J., SANJAY KAROL; J.**

August 28, 2023.

CIVIL APPEAL NOS. 5483 - 5484 OF 2023 (Arising out of Special Leave Petition (C) Nos. 6764 - 6765 of 2018)

Vijaya Bhiku Kadam versus Mayani Bhag Shikshan Prasarak Mandal & Ors.

Constitution of India, 1950; Article 142 - The fifth respondent never objected to the appointment of the appellant pursuant to the first and second advertisements, and she participated in the two further processes conducted on the basis of the third and fourth advertisements. In this process, the appellant has become age-barred to get the appointment to the post of lecturer elsewhere. Even assuming that there was an error committed by the College Management by appointing the appellant against the open category of post in the year 1994, the appellant cannot be allowed to suffer, as in the second process, she was the first in the order of merit. This selection was never challenged by the fifth respondent. On the basis of these facts and circumstances, the Court invoked its inherent power under Article 142 of the Constitution of India to continue her appellant's appointment on a full-time basis. However, the same will be done without disturbing the fifth respondent. Therefore, the appellant should be placed in the seniority list immediately below the fifth respondent and the lecturer appointed on the post reserved for Scheduled Caste. Further, the State Government to release necessary grant-in-aid for payment of salary to the appellant from the date of her appointment to the post of lecturer in English pursuant to this order, if necessary, by creating a supernumerary post. (Para 12 – 16)

(Arising out of impugned final judgment and order dated 25-07-2017 in WP Nos.8016/2016 and 8049/2016 passed by the High Court of Judicature at Bombay)

For Petitioner(s) Mr. Amol Nirmalkumar Suryawanshi, AOR Mrs. Shilpa A. Suryawanshi, Adv.

For Respondent(s) Mr. Sandeep Sudhakar Deshmukh, AOR Mr. Nishant Sharma, Adv. Mr. Tushar D. bhelkar, Adv. Mr. Akshay Jagtap, Adv. Mr. Vinay Navare, Sr. Adv. Mr. Pravartak Pathak, Adv. Ms. Abha R. Sharma, AOR Mr. Sudhanshu S. Choudhari, AOR Mr. Mahesh P. Shinde, Adv. Ms. Rucha A. Pande, Adv. Mr. M. Veeraragavan, Adv. Mr. Sanjay Kharde, Adv. Mr. Siddharth Dharmadhikari, Adv. Mr. Aaditya Aniruddha Pande, AOR Mr. Bharat Bagla, Adv. Mr. Sourav Singh, Adv. Mr. Aditya Krishna, Adv.

J U D G M E N T

ABHAY S. OKA, J.

1. Leave granted.

FACTUAL ASPECTS

2. The issue concerns the employment of the appellant, a lecturer, with the second respondent–College which is affiliated to the fourth respondent–Shivaji University, Kolhapur, Maharashtra.

3. The appellant has done M.A. in English and by the year 1992, she had acquired the qualification of PhD. The second respondent–College was established in the Academic Year 1991-1992. On an application made by the appellant, by the order dated 15th September 1992, the second respondent College appointed the appellant as a part-time lecturer in English for the Academic Year 1992-1993. The first respondent-Society runs the second respondent-College. The fourth respondent–University approved the said appointment.

4. On 5th July 1993, an advertisement (the first advertisement) was published by the first respondent for inviting applications to the posts of full-time lecturer. In the said advertisement, two posts were advertised. One was in the open category and the other one was against the Scheduled Caste category. The appellant and the fifth respondent applied for the said posts along with another candidate, namely, Ms S.D. Patil. The University Selection Committee recommended the aforesaid three candidates. The name of Ms S.D. Patil was first in the order of merit, the fifth respondent was the second one and the appellant was the third one. Though the fifth respondent did not belong to the Scheduled Caste category, on 26th August 1993, the first respondent appointed her against the post reserved for the Scheduled Caste category for a period of one year. Ms S.D. Patil, the candidate at serial no.1 in the order of merit, did not join the employment and therefore, by the appointment order dated 8th September 1993, the appellant was appointed to the post of lecturer in English for one academic year on a fulltime basis.

5. The fourth respondent–University approved the appointment of Ms S.D. Patil as a full-time lecturer in the open category. The fourth respondent–University approved the appointment of the fifth respondent for a period of one academic year against the post reserved for the Scheduled Caste category. The approval was given subject to a condition that during the period of probation, the candidates must clear the NET Examination. Noticing the mistake in the approval granted by the fourth respondent–University, the second respondent–College wrote a letter on 28th January 1994 to the fourth respondent–University requesting to grant approval to the appointment of the appellant in the open category as Ms S.D. Patil did not join. The fourth respondent–University, by the letter dated 4th March 1994, did not accept the said request as the appellant was not possessing NET qualification. At that time, both the appellant and the fifth respondent were not possessing NET qualification.

6. On 8th September 1994, the second respondent–College again advertised (the second advertisement) the two posts. The advertisement recorded that the requirement of NET qualification was exempted to those candidates who have been awarded a PhD degree before 31st December 1993. Both the appellant and the fifth respondent applied for that post. However, the fifth respondent was not possessing the qualification of a PhD. She had appeared for the M.Phil degree examination. The University Selection Committee recommended the names of the appellant and the fifth respondent. As per the order of merit, the appellant was above the fifth respondent. The Selection Committee recommended the appellant for appointment to the open category post. The fifth respondent was recommended for the post reserved against the Scheduled Caste category. The fourth respondent–University approved the appointment of the appellant on the open post and granted approval to the appointment of the fifth respondent on the post reserved for the Scheduled Caste category.

7. The third advertisement was published by the first respondent–College on 7th August 1995 wherein, only the post of lecturer reserved for the Scheduled Caste category was advertised. Pursuant to the said advertisement, the fifth respondent applied for the said post. The Selection Committee recommended the fifth respondent against the said post. By the letter dated 3rd January 1996, the fourth respondent–University approved the appointment of the fifth respondent against the reserved post for a period of one academic year. Accordingly, a letter of appointment dated 20th June 1996 was issued to the fifth respondent informing her that her appointment will come to an end after the Selection Committee selects a Scheduled Caste candidate. The fourth advertisement was issued on 17th June 1996 for the same post reserved for Scheduled Caste. The fifth respondent again applied for the post. On 28th October 1996, the second respondent–College

terminated the appointment of the fifth respondent from the end of the term. Being aggrieved by the termination, the fifth respondent preferred an appeal before the University and College Tribunal, Pune (for short, 'the Tribunal') in which the appellant was not made a party. The Tribunal granted a stay to the order of her termination. During the pendency of the said appeal, the first respondent-College again passed an order of termination dated 20th April 1997 against the fifth respondent on the ground that the Commerce Section in the College was closed down. Therefore, another appeal was preferred by the fifth respondent before the Tribunal. By the order dated 5th February 1998, the Tribunal allowed the appeal and directed reinstatement of the fifth respondent to her original post. The first respondent-College filed a writ petition for challenging the said order, in which the appellant applied for impleadment. However, the High Court rejected the said application.

8. On 6th May 1998, in the writ petition filed by the College, an interim order was passed by the High Court directing the College to continue the fifth respondent as a lecturer. Therefore, by the letter dated 5th January 1999, the College addressed a letter to the fourth respondent-University, in which it was stated that due to the interim order in favour of the fifth respondent, there will be three full-time lecturers of English for which, there was no approval. Thereafter, the College requested the fourth respondent-University to grant approval to continue the appellant as a half-time or part-time teacher. As the approval was for two and a half posts of fulltime lecturers in English, the fourth respondent-University did not accede to the said request. Therefore, by the letter dated 29th March 2000, the first respondent-College informed the appellant that for the next academic year, she will work for a half-time workload and on half pay. In the meanwhile, the appellant filed a writ petition in the High Court for challenging the order dated 5th February 1998 by which the fifth respondent was ordered to be reinstated. During the pendency of the said writ petition filed by the appellant, in the writ petition filed by the College, there was a compromise between the College and the fifth respondent and therefore, the writ petition earlier filed by the College was disposed of as infructuous. On 5th September 2014, the High Court in the writ petition filed by the appellant set aside the order dated 5th February 1998 of the Tribunal and remanded the appeal for fresh consideration. In the meanwhile, by the communication dated 29th March 2000, the College informed the appellant that her seniority will be below the seniority of the fifth respondent. The appellant preferred an appeal against the said decision before the Tribunal. The restored appeal along with the appeal preferred by the appellant were heard and by the common judgment and order dated 21st December 2015, the appeal preferred by the appellant was dismissed and the appeals preferred by the fifth respondent were allowed.

9. Being aggrieved by the said common judgment, the appellant filed two writ petitions before the High Court of Judicature at Bombay. By the impugned judgment and order dated 25th July 2017, the learned Single Judge of the High Court dismissed both the writ petitions. Being aggrieved by the said judgment, the present appeals have been preferred by the appellant in which on 12th March 2018, while issuing notice, the status quo was ordered to be maintained. As a result of which, the appellant continued in part-time/half-time service.

SUBMISSIONS

10. The submission of the learned senior counsel appearing for the appellant is that the appellant was appointed on the basis of the first advertisement. Even on the basis of the second advertisement, the appellant was selected. In both processes, the appellant was

selected against the open category post. That is how, on 26th October 1994, the first respondent–College issued the letter of appointment appointing the appellant in open category to which the fifth respondent did not raise any objection. On the contrary, pursuant to the third and fourth advertisements, the fifth respondent applied for the post which was reserved for the Scheduled Caste category. The submission of the learned senior counsel is that after the fifth respondent accepted the appointment of the appellant against open category, it was too late in the day for her to approach the Tribunal and contend that she was above the appellant in the order of merit in the process conducted on the basis of the first advertisement. His submission is that the appellant was a regularly appointed candidate and therefore, her appointment on a fulltime basis cannot be disturbed.

11. The submission of the learned counsel appearing for the fifth respondent is that pursuant to the first advertisement when the selection process was conducted, the fifth respondent was shown above the appellant in the order of merit. Therefore, the fifth respondent ought to have been appointed against the open category post and the appellant on a temporary basis against the post reserved for the Scheduled Caste category. As far as the first and second respondents are concerned, their stand is that they have abided by the orders of the High Court and the Tribunal. The learned counsel appearing for the fourth respondent justified the action of granting approval to the fifth respondent against the open category post. The submission of the learned Standing Counsel for the State Government is that the additional burden of payment of salary cannot be put on the State Government by directing the appointment of the appellant against the full-time post.

CONSIDERATION OF SUBMISSIONS

12. Pursuant to the first advertisement published on 5th July 1993, both the appellant and the fifth respondent had applied for selection to two posts of lecturers in English. Pursuant to the said process, on 8th September 1993, the appellant was appointed by the first respondent–College as lecturer in English against the open post. In the said letter of appointment, it was mentioned that it was on a temporary basis till the appellant passed the NET Examination during the Academic Year 1993-1994, during the probation period. What is important here is that by the letter dated 20th January 1994, the fourth respondent–University approved the appointment of Ms S.D. Patil against the open post of lecturer. As noted earlier, Ms S.D. Patil had participated in the process on the basis of the first advertisement but she was not interested in getting employment. Under the same letter, the appointment of the fifth respondent was made for one academic year against the post reserved for the Scheduled Caste category. Thereafter, the College Administration wrote to the fourth respondent–University stating that Ms S.D. Patil had not joined and therefore, they requested for grant of approval to the appointment of the appellant. The fifth respondent never made any protest about her appointment against the post reserved for the Scheduled Caste category. In fact, pursuant to the second advertisement dated 8th September 1994, the fifth respondent again applied. Even the appellant applied. As per the advertisement, as the appellant was a PhD, the requirement of NET qualification was relaxed. It is pertinent to note here that the fifth respondent did not challenge the process that commenced on the basis of the second advertisement on the ground that against the first advertisement, she was entitled to the appointment to the open post. On the basis of the second advertisement, the Selection Committee recommended both the appellant and the fifth respondent. However, in the order of merit, the appellant was shown at serial no.1 and the fifth respondent was shown at serial no.2. By the letter dated 5th January 1995, the fourth respondent–University approved the appointment of the appellant against the

open post of lecturer. The fourth respondent–University also approved the appointment of the fifth respondent against the post reserved for the Scheduled Caste category on a temporary basis.

13. Thereafter came the fourth advertisement dated 17th June 1996 for the same post reserved for the Scheduled Caste category. Again, the fifth respondent applied. However, the management of the second respondent–College appointed one Mr Gorakh Jagannath Sathe against the reserved post which led to the order of termination of the fifth respondent. As pointed out earlier, the fifth respondent challenged the order of termination by filing an appeal to which, the appellant was not made a party. In the said appeal, a specific stand was taken by the College that the appointment of the appellant was made on the open post regularly and she has been working as a confirmed teacher in the said post. During the pendency of the appeal preferred by the fifth respondent, the second order of termination was passed on the ground that the Commerce faculty was closed. Therefore, one more appeal was preferred by the fifth respondent. On 5th February 1998, the Tribunal by setting aside the order of termination of the fifth respondent, directed her reinstatement. For giving effect to the said order, on 5th January 1999, the appellant was appointed again as a part-time lecturer on the ground that there was approval to only two and a half posts of English lecturers and the fifth respondent cannot be removed. In the writ petition filed by the appellant, there was an order of remand. After remand, the appeal preferred by the fifth respondent was again allowed and that is how the appellant filed a writ petition before the High Court which has been dismissed by the impugned order. The High Court found that when the selection process was conducted against the first advertisement, the appellant was placed below the fifth respondent in the order of merit and in fact, approval was not granted to the appointment of the appellant.

14. The analysis of the aforesaid factual position shows that the appellant has been placed in a very peculiar position. On the basis of the process conducted pursuant to the first advertisement, the appellant was appointed against the open post by the letter of appointment issued on 8th September 1993 which recorded that the appointment of the appellant was temporary subject to the condition of qualifying the NET Examination during the probation period. At that time, though the fifth respondent was appointed against the post reserved for the Scheduled Caste category, she did not protest. Pursuant to the second advertisement, both the appellant and the fifth respondent applied. By the letter dated 26th October 1994, the appellant was appointed subject to clearing the NET Examination during the probation period. By the letter dated 5th January 1995, the appointment of the appellant was approved by the fourth respondent–University against the open post. As stated earlier, the fifth respondent applied pursuant to the third and fourth advertisements without making any grievances about the outcome of the process conducted under the second advertisement under which the appellant was appointed against the open post. Due to the orders passed by the Tribunal, by the order dated 5th January 1999, the appellant was again appointed as a part-time lecturer on a temporary basis. Thus, the appellant worked against the open category post of lecturer in English from 8th September 1993 till 5th January 1999 and in the meanwhile, the fourth respondent–University approved the regular appointment of the appellant by the letter dated 5th January 1995. This situation has arisen as the fifth respondent never objected to the appointment of the appellant pursuant to the first and second advertisements and she participated in the two further processes conducted on the basis of the third and fourth advertisements. In this process, the appellant has become age barred to get the appointment to the post of lecturer elsewhere. Even assuming that there was an error committed by the College Management by appointing the appellant against the open

category of post in the year 1994, the appellant cannot be allowed to suffer, as in the second process, she was the first in the order of merit.

This selection was never challenged by the fifth respondent.

15. The appellant continues to work as a lecturer in English on a half time basis. Therefore, for doing substantial justice, this is a fit case where we should invoke our power under Article 142 of the Constitution of India for continuing her appointment on full time basis. While doing so, we will have to issue directions to the State Government to release grant-in-aid to the first and second respondents for payment of salary to the appellant.

16. Hence, by modifying the impugned order, without disturbing the fifth respondent, we issue the following directions in the exercise of our jurisdiction under Article 142 of the Constitution of India:

a. The appellant shall be reinstated to the post of lecturer in English in the second respondent-College with effect from 5th January 1995 within a period of one month from today;

b. However, the appellant will not be entitled to the salary of the post of lecturer from 5th January 1995 till the date of her appointment in terms of this order;

c. The appellant shall be placed in the seniority list immediately below the fifth respondent and the lecturer appointed on the post reserved for

Scheduled Caste;

d. As clarified earlier, the appellant will not be entitled to salary admissible the post of lecturer from 5th January 1995 till the date of her appointment in terms of this order and this period shall be taken into consideration only for the limited purposes of granting retiral benefits to the appellant;

e. We direct the State Government to release necessary grant-in-aid for payment of salary to the appellant from the date of her appointment to the post of lecturer in English pursuant to this order, if necessary, by creating a supernumerary post;

f. We make it clear that notwithstanding this order, the post and status of the fifth respondent shall remain unaffected;

g. We make it clear that the directions issued under this order are in the exercise of the jurisdiction of this Court under Article 142 of the Constitution and the same shall not be treated as precedent; and

h. The appeals are disposed of on the above terms.