

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.1123 OF 2016

DISTRICT : MUMBAI

Smt. Meena Bhimanand Sonavane,)
Professor in the Institute of Nursing Education)
situated at within the Campus of Sir J.J. Hospital,)
Byculla, Mumbai 400008 and presently residing at)
A/401, Garden Co-op. Housing Society,)
Govandi, Mumbai 400043)..Applicant

Versus

1. The State of Maharashtra,)
Through the Principal Secretary,)
Medical Education & Drugs Department,)
Mantralaya, Mumbai 400032)
2. Deputy Secretary,)
Medical Education & Drugs Department,)
Mantralaya, Mumbai 400032)
3. The Director of Medical Education & Research,)
Govt. Dental College & Hospital Building,)
St. George Hospital Compound, Mumbai -1)
4. Smt. Reshma Rafiq Desai,)
Presently appointed as Principal, Institute of)
Nursing Education, Campus of Sir J.J. Hospital,)
Byculla, Mumbai)..Respondents

Shri Rajendra Sorankar – Advocate for the Applicant

Miss Savita Suryawanshi – Presenting Officer for Respondents No.1 to 3

Shri M.R. Patil – Advocate for Respondent No.4

CORAM : Shri Justice A.H. Joshi, Chairman
Shri P.N. Dixit, Member (A)

RESERVED ON : 19th December, 2018

PRONOUNCED ON : 4th January, 2018

PER : Shri P.N. Dixit, Member (A)

J U D G M E N T

1. Heard Shri Rajendra Sorankar, learned Advocate for the Applicant, Miss Savita Suryawanshi, learned Presenting Officer for Respondents No.1 to 3 and Shri M.R. Patil, learned Advocate for Respondent No.4.

2. The applicant who has been working as Professor in the Institute of Nursing Education, Mumbai has challenged the appointment of respondent no.4 as Principal of the Institute of Nursing Education, Mumbai issued through impugned order dated 18.6.2016 copy whereof is at page 48 of the OA.

3. According to the applicant as per the recruitment rules the incumbent should possess the experience of working as a Professor for 4 years at the time of consideration for Principal inter alia other conditions. The Ld. Advocate for the applicant has relied on the notification issued by Medical Education and Drugs Department dated 26.6.1990 for this purpose. Rule 3(iii) of the said notification reads as under:

“(iii) Possess at least 10 years teaching experience in a college or in an Institute of Nursing Education affiliated to a statutory University out of which four years of experience shall be in the post of Professor and Head of Department in such college of institute, gained after acquiring the basic degree in Nursing that is B.Sc. (Nursing).”

(Quoted from page 40-41 of OA)

(underlining is done for emphasis)

4. As per the contentions of the Ld. Advocate for the applicant the respondent no.4 did not possess the necessary experience as required.

5. Applicant’s pleadings encompassing her eligibility and that of respondent no.4 as averred in the OA, are as follows:

“I. This is an application by the Applicant abovenamed against the order of permanent appointment of Respondent No.4 for the post of Principal Class I in the Institute of Nursing Education, Mumbai (hereinafter referred to as “the impugned order/appointment order dated 18.6.2016) passed by the Respondent No.1 and issued by Respondent No.2.

It is stated that Respondent No.4 was suspended with effect from 3.2.2010 till 6.7.2015 (5 years and 5 months) on the charge of being arrested in custody in a matter pertaining to Prevention of Corruption Act. During the suspension period, she did not work as Professor neither had gained any experience of teaching as Professor. Prior to the suspension, Respondent No.4 had worked only for 9 months i.e. having only 9 months experience from 8.5.2009 to 2.2.2010. (That is during probation period).

Thus for all practical purposes, respondent no.4 had not worked for minimum required period of experience and/or gained experience i.e. minimum 4 years required for the appointment to the post of Principal as stipulated in the Recruitment Rules of Medical Education and Drugs Department, Mantralaya dated 20.6.1990. After respondent no.4’s suspension was revoked, she was reinstated to her original post from 7.7.2015 to 17.6.2016 i.e. Respondent no.4’s total working experience as a Professor comes to about 1 year 4 months. Thus, (shockingly respondent no.4’s probation period was not over),

Respondent No.4 has an experience as Professor totaling to 1 year 8 months and 15 days and respondents no.1 and 2 erred in appointing respondent no.4 to the post of Principal in clear breach and contravention of Recruitment Rules, Government Resolution and Notification as stipulated by the Medical Education and Drugs Department, Mantralaya, Mumbai which factually states that for appointment to the post of Principal as per clause 3, the person who is required to be appointed for the post of Principal needs to have atleast 10 years teaching experience in college or in any Institute of Nursing Education affiliation to a statutory University out of which 4 years of experience shall be in the post of Professor and Head of the Department in College or Institute. Even the Rules of appointment which are referred to appointment for the post of Principal are also not at all followed or adhered to while appointing respondent no.4 for the post of Principal i.e. Recruitment Rules of State of Maharashtra through the Department of Medical Education and Government Notification dated 26.6.1990.

(Quoted from page 2-3 of OA)

“12(a) Further it is important to note from the facts gathered by the applicant that the service rule has been breached in the case of respondent no.4 and the entire system started functioning at accelerated rate so as to favour respondent no.4.”

(Quoted from page 20-A of OA)

“12(e) It is respectfully submitted that respondent no.4 who was suspended on 3.2.2010 upon her arrest under the charge of corruption/graft by the Anti Corruption Bureau, was later on reinstated on 7.6.2015. Immediately after respondent no.4’s reinstatement as a Professor, the respondent no.4 filed application to respondents no.1, 2 and 3 to appoint her as a Principal. Upon the respondent no.4’s application, the Departmental Promotion Committee (DPC) was constituted on or about 20.4.2016, who considered the seniority by including suspension period as “Experience” and on recommendation of DPC, the Respondent no.4 was appointed on post of Principal on 18.6.2016. To the knowledge of the applicant, the respondent no.4 was appointed by the respondent no.1, 2 and 3 based on her representation and upon pulling her political contacts. In column 6 of Exhibit “O” i.e. DPC recommendation, 6 years and 11 months have been shown as experience while recommending respondent no.4 for

the post of Principal, based on General Seniority list dated 1.10.2016. However, in column no.13, the suspension period of respondent no.4 was shown as not written in confidential report of respondent no.4 and there is nothing about consideration of suspension period. Thus at the time of DPC meeting on 20.4.2016 it is admittedly clear that the respondent no.4 was not fit or qualified under the rules for the appointment for the post of Principal.”

(Quoted from page 20-B of OA)

(underlining is done for emphasis)

6. The applicant has sought the following reliefs:

- “(a) That this Hon’ble Tribunal be pleased to call for records and proceedings which led to the passing of the impugned appointment dated 18.6.2016 and after going through the validity, propriety and legality thereof, quash and set aside the same.
- (b) That this Hon’ble Tribunal be pleased to direct the respondents no.1 to 3 to consider and/or pass necessary order pertaining to the appointment of the applicant to the post of Principal of the Institute of Nursing Education, Mumbai.
- (c) That this Hon’ble Tribunal be pleased to call for record and proceeding relied upon by Departmental Promotion Committee and Respondent no.1 to 3 while passing appointment order dated 18.6.2016 and after going through legality, propriety and validity of recommendation of Departmental Promotion Committee be pleased to set aside the appointment dated 18.6.2016.
- (d) Pending the hearing and final disposal of the above Original Application, this Hon’ble Tribunal be pleased to stay operation of the impugned order of appointment of respondent no.4 to the post of Principal in the Institute of Nursing Education, Mumbai.
- (e) That pending the hearing and final disposal of above application, the respondent no.1 to 3 be directed to consider applicant’s appointment to the post of Principal, Institute of Nursing Council, Mumbai.”

(Quoted from page 35-36 of OA)

7. The respondents no.1 to 3 on one hand and respondent no.4 on other hand have filed separate affidavit in replies.

8. The reply of respective respondents can be described as full of generic averments.

9. Specific averments of the applicant are quoted in foregoing para no.5. The averments contained in para I of OA as well as those contained in para 12(e) which are underlined are emphasized.

10. Summary of challenge described in OA which are quoted and are underlined as below:

- (i) *Respondent No.4 has not actually served as Professor for 4 years.*
- (ii) *Respondent No.4 has actually served as a Professor only for one year 8 months and 15 days.*
- (iii) *Respondent No.4's period of suspension is for 5 years 5 months out of her total duration of service as a Professor have not been answered by the respondents in their reply.*
- (iv) *It would be convenient to quote averments in reply to the paras of OA quoted in foregoing para no.4. However, it would serve no other purpose than consuming space and it shall suffice to say that respondents' pleading in answer to applicant's pleadings are evasive and argumentative and impliedly admitting the facts that respondent no.4's tenure as a Professor including period of suspension is more than 6 years. However, her actual experience of teaching as Professor is only one year 8 months and 5 days.*

11. Record shows that respondent no.4 who was under suspension was reinstated vide GR dated 6.7.2015 issued by the Government. The relevant text of the said GR dated 6.7.2015 reads as under:

“श्रीमती रेश्मा रफिक देसाई, तत्कालीन प्राध्यापक, यांना विशेष न्यायाधिश यांच्याकडे लाचलुचपत प्रतिबंधक विभागाने दाखल केलेल्या विशेष खटला क्र.१५/२०१२ च्या संदर्भात मा. न्यायालयाच्या निर्णयाच्या अनुषंगाने तसेच संदर्भाधीन क्र.२ येथील शासन निर्णयातील परिच्छेद क्र.६ मधील तरतुदीनुसार श्रीमती देसाई प्राध्यापक यांचे निलंबन रद्द करुन विशेष खटला क्र.१५/२०१२ मधील न्यायनिर्णयाच्या विरुद्ध अपिलाच्या अधीन राहून, त्यांना शासन सेवेत पुनःस्थापित करण्यात येत आहे. पदस्थापनेनंतर त्यांची नियुक्ती परिचर्या शिक्षण संस्था, मुंबई या संस्थेतील प्राध्यापक या पदावर करण्यात येत आहे. हे आदेश तात्काळ अंमलात येतील.”

(Quoted from page 106-107 of OA)

12. According to the applicant the process of promotion began after respondent no.4 was reinstated by revoking the suspension. Accordingly, the Government has constituted a Departmental Promotion Committee (DPC) on 28.1.2016. In pursuance of the same the meeting of the committee was held on 13.6.2016. The committee recommended the appointment of respondent no.4 and the same was approved by the Government.

13. The applicant has placed on record along with OA various documents to demonstrate that when the case of respondent no.4 was considered for promotion, it was done on the basis of representation of respondent no.4 and copies of office note. The applicant has placed on record along with rejoinder the office note indicating that office note dated 16.1.2016 put up by Deputy Secretary thereby proposing consideration of the representation of respondent no.4 averring that respondent no.4 fulfills the eligibility and her claim for promotion be considered. The relevant text of recommendation is seen at page 396 of OA which reads as under:

“१९. वर नमूद केलेली वस्तुस्थिती पाहता तसेच परिचर्या शिक्षण संस्था, मुंबई या संस्थेमध्ये बऱ्याच कालावधी पासून प्राचार्य या पदाच्या प्रचलित सेवा प्रवेश नियमानुसार सरळ सेवेने पात्र उमेदवार उपलब्ध होत नसल्याने रिक्त असलेले पद एकाकी असल्यामुळे सदर पदास आरक्षण

लागू नाही याशिवाय सदर पद रिक्त असल्यामुळे संस्थेची संलग्नता अबाधित राखण्याच्या प्रयोजनार्थ खालीलप्रमाणे प्रस्ताव सादर करण्यात येत आहे :-

- अ) प्राचार्य या पदाच्या सेवा प्रवेश नियमानुसार सदर पदाचे निकष परिच्छेद ३ येथे नमूद केले आहेत.
- ब) सदर पदावर सरळ सेवेने पात्र उमेदवार मिळाले नसल्यामुळे सदर पद दि. १/२/२००३ पासून रिक्त आहे.
- क) महाराष्ट्र लोकसेवा आयोगाने सरळ सेवेने पात्र उमेदवार उपलब्ध होत नसल्याचे स्पष्ट केले असल्यामुळे याशिवाय एका पदासाठी आयोगाकडे मागणीपत्र देणे, जाहिरात देणे व परीक्षा आयोजित करणे यामध्ये बराच कालवधी जाण्याची शक्यता आहे शिवाय एका पदासाठी एवढी सर्व यंत्रणा वापरणे प्रशासकीयदृष्ट्या व्यवहार्य ठरण्यासारखे नाही.
- ड) सदर पद दीर्घ कालापासून रिक्त असल्यामुळे परिचर्या शिक्षण संस्था, मुंबई या संस्थेची संलग्नता धोक्यात आली आहे.
- इ) श्रीमती रेश्मा देसाई, प्राध्यापक यांनी धारण केलेली शैक्षणिक अर्हता (पी.एच. डी.) लक्षात घेता, प्राचार्य पदासाठी सेवाप्रवेश नियमानुसार आवश्यक असलेल्या निकषाची पूर्तता करित आहे.
- फ) प्राचार्य हे पद एकाकी असल्यामुळे सदर पदास आरक्षण लागू नाही. तसेच सदर पद दीर्घ कालावधीपासून रिक्त असल्यामुळे या रिक्त पदी एक विशेष बाब म्हणून पदोन्नती देण्याबाबतचा प्रस्ताव विभागीय पदोन्नती समोर सादर करण्यास हरकत नसावी.

वरील प्रस्ताव मान्य झाल्यास विभागीय पदोन्नती समितीपुढे ठेवण्यासाठी मा. अध्यक्ष तथा अपर मुख्य सचिव (वै.शि.) यांनी बैठकीचा दिनांक व वेळ द्यावा, ही विनंती.

अवर सचिव (श्री.ढगे)

उपसचिव (श्री. बेनके)

मा.अ.मु.स. (श्रीमती गाडगीळ)”

(Quoted from page 396 of OA)”

14. Thereafter the matter was processed and the DPC was constituted in which decision to promote respondent no.4 on temporary basis was reached which was approved by the Hon'ble Minister, Medical Education on 18.6.2016 and consequent thereto the impugned order has been issued.

15. It is seen that by GR issued by the Government on 23.6.2016 period of suspension of respondent no.4 has been treated as duty period. Relevant portion of the GR dated 23.6.2016 reads as under:

“शासन निर्णय:- श्रीमती देसाई यांचे निलंबन रद्द करून त्यांना संदर्भ क्र.(३) अन्वये सेवेत पुनःस्थापित केले. श्रीमती देसाई, प्राध्यापक यांचा प्रत्यक्ष निलंबन कालावधी दि.०३/०२/२०१० ते ०६/०७/२०१५ असा आहे. श्रीमती देसाई, प्राध्यापक यांच्या विरुद्ध दाखल केलेल्या खटल्यामधून मा. न्यायालयाने दोषमुक्त ठरविल्यामुळे त्यांचे निलंबन असमर्थनीय ठरते. सबब, श्रीमती देसाई यांचा दि.०३/०२/२०१० ते ०६/०७/२०१५ हा निलंबन कालावधी म.ना.से. (पदग्रहण अवधी, स्वीयेत्तर सेवा आणि निलंबन बडतर्फी व सेवेतून काढून टाकणे यांच्या काळातील प्रदाने) नियम, १९८१ मधील नियम ७२ (३) व (४) नुसार त्यांचा निलंबन कालावधी हा कर्तव्य कालावधी नियमित करण्यास मंजूरी देण्यात येत असून त्या कालावधीतील संपूर्ण वेतन व भत्ते अनुज्ञेय ठरतात.”

(Quoted from page 347 of OA)

16. The Ld. Advocate for the applicant has urged that on the date of DPC viz. 13.6.2016 respondent no.4 did not complete required length of necessary experience (4 years as Professor) for want of actual working due to her suspension, which was later on regularized by GR dated 23.6.2016.

17. The aspect of malafides need not be gone into since jurisdictional issue is about eligibility of the respondent no.4 as regards Recruitment Rules.

18. The issue, therefore, for consideration is whether the respondent no.4 fulfills the criteria for eligibility viz. having experience of 4 years as Professor on the date of DPC?

Findings and discussion:

19. The Ld. PO does not challenge the factual position.

20. We have examined necessary record furnished by the respondents along with reply. Respondent no.4, who was under suspension was reinstated and the period of suspension was regularized subsequently to the date of holding of DPC. As mentioned above the DPC was held on 13.6.2016 and the GR regularizing her suspension was issued on 23.6.2016. Thus, the record shows that respondent no.4 did not possess the necessary experience on the date of DPC.

21. Due to the order of acquittal and consequent reinstatement of respondent no.4 her period of suspension is treated as duty which will mean she will be entitled to all benefits of salary and allowances except for gaining virtual and actual experience of teaching as a Professor because admittedly during the period of suspension respondent no.3 had no occasion or opportunity to engage herself in teaching as a Professor.

22. In view of the facts which are noted namely applicant had actually engaged herself for teaching as a Professor for 1 year 8months and 15 days respondent no.4 did not possess requisite qualification laid down by the recruitment rules as on the date of DPC i.e. 13.6.2016, it is duly proved that the respondent no.4 did not possess eligibility for consideration being a qualified candidate for the post of Principal.

23. In the result the claim of the applicant that respondent no.4 could not have been considered because she lacked eligibility has to be accepted as duly proved.

24. Office notes placed along with rejoinder by the applicant discloses that while case of respondent no.4 was considered for promotion, it was in fact examined in isolation. Minutes on record which are at pages 399-400 of OA do not disclose consideration of applicant's candidature. Hence, it

is considered necessary that by conducting fresh DPC applicant's eligibility as on the date of impugned decision of DPC be considered afresh.

25. In the result, present Original Application is allowed as follows:

- (A) The impugned order of appointment of respondent no.4 dated 18.6.2016 is quashed and set aside.
- (B) The respondents are directed to hold fresh DPC to consider the case of the applicant on merits for issuing appropriate orders.
- (C) Parties are directed to bear own costs.

Sd/-
(P.N. Dixit)
Member (A)
4.1.2019

Sd/-
(A.H. Joshi, J.)
Chairman
4.1.2019

Dictation taken by: S.G. Jawalkar.