

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
BHALCHANDRA KHANDERAO JOSHI & ANR.

DATE OF JUDGMENT 27/01/1977

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
GOSWAMI, P.K.

CITATION:
1977 AIR 1241 1977 SCR (2) 782
1977 SCC (4) 598

ACT:

Maharashtra Educational Service Class 11--Amalgamation of History and Political Science lecturers--Proof of amalgamation--Grant of option. to teacher to join History or Political Science service..

HEADNOTE:

After the reorganisation of the States a separate seniority list was prepared by the State of Bombay for History and Political Science teachers. On 20.8.1963, the Director of Education issued a letter conveying the decision of Government to amalgamate the list of lecturers in History and Lecturers in Political Science and to prepare a single seniority list for both the subjects. It was expressly stated in the letter that it was issued in pursuance of the decision of the State Government. Thereafter a revised seniority list was prepared. One Nanekar filed a writ petition in the High Court challenging the said order on the ground that when two separate seniority lists had been prepared for the departments of History & Political Science in accordance with the earlier Government Order of 1960. the new list was invalid. The High Court took the view that the existence of the Government resolution dated 27.2.1963, which was said to be the authority for the issue of Director's letter dated 20.8.1963, had not been proved. It therefore held that there was no such resolution- or. order requiring the preparation of a combined seniority list. It decided that the earlier order of 1960 requiring the preparation of separate list of History and Political Science continued to be operative. It however dismissed the writ petition filed by Nanekar on the ground that he could not claim to be the seniormost person in his department. In the present writ petition filed by B.K. Joshi and P.S. Kane the High Court followed its decision in Nanekar's case and held that there was no order or decision dated 27.2.1963 so that the action of amalgamating the list of 'History and Political Science departments was invalid. A resolution was taken on 15.1.1970 in which it was mentioned that the earlier decision to amalgamate the two categories was given up on account of the difficulties which were experienced and an option was given by the 1970 resolution in order to obviate those difficulties. That resolution was challenged in the

present proceedings. The High Court examined the effect of the Government Resolution dated 15.1.1970 and held that in the absence of the earlier resolution dated 27.2.1963 the Director of Education was not competent to combine or amalgamate the seniority lists of History and Political Science Departments. It assumed that legally there was no amalgamation at all and any action taken on the basis of the amalgamation would also consequently have to fall on that ground. The High Court held that the option given by the 1970 resolution had the effect of perpetuating the effect of the working of the invalid list and amounted to violation of Art. 16 of the Constitution. The High Court held that in Nanekar's case no attempt was made to produce the resolution of 27.2.1963:

Allowing the appeals,

Held: 1: The High Court erred in observing that the resolution of 27.2.1963 did not exist. The High Court lost sight of the intrinsic evidence which was available on the record to prove beyond doubt that Government had passed the resolution on 27.2.1963 to amalgamate the two lists. In the 1970 resolution, the Government itself reiterated the act that a decision was taken by Government in the year 1963 to amalgamate the lists of Lecturers in History and the Lecturers in Political Science into one common list. The reason for taking that decision to amalgamate the two lists was also stated in that resolution. In fact the 1970 resolution made a mention of the difficulties experienced in working the 1963 resolution and that was why it was decided to revert to the decision to split up the combined seniority list which formed the basis of promotion of some of the teachers. As the genuineness of the resolution of 1970 was

not challenged, the High Court ought to have taken notice of its intrinsic evidentiary value for the purpose of proving the earlier resolution of 1963. In fact the Director in his order specifically stated that the decision of the Government to amalgamate the two lists had to be brought to the notice of all concerned. The combined seniority list, was therefore fully authorised and there was nothing wrong if it formed the basis of the subsequent promotions. [787 G-H, 788 A-E]

2. No exception could be taken to the decision of the Government to give option to the Lecturers to elect either of the two departments. The decision to amalgamate the seniority lists of the two departments was not taken in consultation with them and if they were required to teach History or Political Science and were promoted as Professor of History or Political Science on the basis of combined seniority list for which they themselves were not responsible, it would have been unfair if they had been required to serve in another department by a unilateral executive fiat.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1173 to 1175 of 1976.

Appeals by Special Leave from the Judgment and Order dated the 1-3-1975 of the, Bombay High Court (Nagpur Bench) in Special Civil Application No. 695 of 1971.

L.N. Sinha, Sol Genl., M.N. Shroff for the Appellants in CA 1173/76 for R. 3 in C.A. 1174/76 and 1175/76.

M.N. Phadke, V. M. Phadke and ,4. G. Ratnaparkhi for RR. J. and 2 in CA 1173/76 and CAs. 1174-75/76.

Nilofer (Mrs.).Bhagwat, S.C. Agrawal and V. J. Fran-

cis for R. 5 in C.A. 1174 and 1175/76.
V.J. Francis for RR. No. 6 in CA 1175/76.
The Judgment of the Court was delivered by

SINGHAL J.--These appeals arise out of a judgment of the Bombay High Court dated March 11, 1975, by which the High Court quashed that part of Government resolution dated January 15, 1970, "which holds that the respondents Nos. 3 to 5 should not be compelled to go back to their respective lists. and which gives a further option to these three respondents to indicate whether they wanted to go back to the department of History." The High Court has further held that the writ petitioners will be entitled to be considered for promotion to Class I posts in the department of Political Science and the seniority of respondents Nos. 3 to 5 "will be considered in the seniority list relating to the Department of History".

The controversy arose because of a writ petition filed by Bhalchandra Khanderao Joshi and Padmakar Siddhanath Kane. Both of them were members of the Maharashtra Educational Service, Class II (Collegiate Branch). Bhalchandra Khanderao Joshi was M.A. in Political Science as well as in History. He was appointed Lecturer in Political Science in 1958, and was confirmed in that capacity. Padmalnar Siddhanath Kane passed M.A. Examination in Political Science in 1956 and was appointed Lecturer in Political Science in 1958. He was also confirmed on that post. Both of them filed a writ

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petition and challenged the resolution of the State Government, in the Education and Social Welfare Department, No. SCP No. 1064-D dated January 15, 1970, in pursuance of which respondents Smt. K.A. Parekh, S.A. Bari and Smt. R.S. Dossal were promoted as Professors of Political Science and were given the option to opt for the History or the Political Science department.

It may be mentioned that after the reorganisation of States, a combined seniority list was prepared on November 1, 1956, for History and Political Science teachers. In that list respondent No. 3 was; shown at serial No. 3, and respondent No. 4 at serial No. 5. One S.R. Nanekar was appointed as Lecturer in Political Science on June 26, 1954. Respondents Nos. 3 and 5 were M.A. in History. It was not disputed in the High Court that Political Science was not a separate subject until 1956, in Bombay, because out of the eight papers for post graduation in History, four were in Political Science. Smt. K.A. Parekh was M.A. in History and was recruited as Lecturer on August 5, 1946. She however taught both History and Political Science upto 1963, when she was appointed officiating Professor of Political Science on February 27, 1963. Dr. S.A. Bari was recruited as Lecturer in History on October 1, 1947. He was thereafter promoted as Professor in that subject. Smt. M.G. Sonnal, who. was M.A. in History, was appointed as Professor of Political Science. Smt. R. S, Dossal was recruited as Assistant Lecturer in History on August 5, 1946, and taught both History and Political Science upto 1956. Thereafter she taught only Political Science, and was promoted as Professor in that subject in 1968. She was confirmed in that capacity in 1972. These facts are quite sufficient for purposes of the present appeals.

The controversy relates to the question whether the Director of Education, Maharashtra State, had the authority to issue the letter dated August 20, 1963, which was addressed to all the Principals of the Government Colleges. It was stated by the Director in that letter as follows,--

"It has been decided to amalgamate the two lists of lecturers in 'History' and 'Political Science' and to combine the two lists under the common subject of 'History' and 'Political Science'. The revised seniority list so prepared is enclosed herewith. Please bring this decision of Government to the notice of the officers concerned."

The Director thus conveyed the decision to amalgamate the lists of Lecturers in History and Political Science and to prepare a single seniority list for both the subjects. It was expressly stated in the letter that it had been issued in pursuance of the decision of the State Government. A revised seniority list was therefore prepared in which respondent No. 3 was placed at serial No. 4, respondent No. 4 at serial No. 5, and S.R. Nanekar at serial No. 7. Nanekar challenged that order in the High Court by Special Civil Application No. 120 of 1964, mainly on the ground that when two separate seniority lists had been prepared for the departments of History and Political Science, 785

in accordance with the earlier Government Order of 1960, the new list was invalid. The High Court however took the view that the existence of the Government resolution dated February 27, 1963, which was said to be the authority for the issue of the Director's letter dated August 20, 1963, had not been proved. It therefore held that there was no such resolution or order requiring the preparation of a combined seniority list. It decided that the earlier order of 1960, requiring the preparation of separate lists for History and Political Science, continued to be operative and that as Nanekar could not claim to be the senior-most person in his department, he had no cause of action. It therefore dismissed the writ petition.

The High Court, in the present case, went by the decision in Nanekar's case, and held that there was no order or decision dated February 27, 1963, so that the action of amalgamating the lists of History and Political Science departments was invalid. The High Court made a reference to the Director's letter dated July 27, 1967 asking the Principals to forward information in the prescribed proforma in respect of those Professors and Lecturers of History in their respective colleges who were qualified to teach Political Science and had been recognised therefore. It also made a reference to the impugned resolution dated January 15, 1970 which reads as follows,--

"A decision was taken by Government in the year 1963 to amalgamate the lists of Lecturers in 'History' and Lecturers in 'Political Science' into one common list of Lecturers in 'History and Political Science'. Accordingly, a combined seniority list was prepared with reference to the date of appointment of the officer concerned in the M.E.S. Class 11, irrespective of the fact as to whether the Lecturers are qualified in both the subjects of "History" and "Political Science" or in any one of the two. The decision to amalgamate the two lists into one was taken because it was noticed that some of the Lecturers in the seniority list of the subject "History" also possessed the qualifications in the subject "Political Science". Similarly, some of the Lecturers in "Political Science" possessed the qualifications in "History". But they were

not considered eligible for appointment to a post of Professor in a subject other than the subject under which their names were included in the seniority list of their subject. In order to remove this anomaly, decision to amalgamate the seniority lists of Lecturers in "History" and "Political Science" and to make appointment to the posts of Professors on the basis of the combined seniority list in the subjects of "History" and "Political Science" was taken by Government. However, in view of the difficulties experienced with regard to the implementation of the decision of Government referred to above, Government on reconsideration decided in the year 1967 to revert to the old practice of having separate seniority lists of Lecturers for the two subjects., 'History' and 'Political Science'.
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2. Some of the teaching members of the Department of History brought to the notice of Government that in the western Maharashtra formerly there were no separate posts for Political Science as "Political Science" did not exist as distinct subject. All teachers were designated as Lecturers/ Professors in History, but they used to teach the subject "Political Science" also. The question of giving option to those Lecturers/Professors, who were qualified to teach both, the subjects, viz., "History" and "Political Science" and recognised as such, to elect either of the two subjects, was under consideration of Government for some time past. While reverting to the decision to split up the combined seniority list of "History and Political Science", Government considers that those who were promoted to the posts of professors on the basis of the combined seniority list should not be compelled to go back to their respective .lists. Government has now decided that an option should be given to those Lecturers/Professors of the Old Bombay State, who were recruited as Lecturers/Professors of History but have been recognised as teachers of Political Science and also those who have been promoted to the posts of Professors in M.E.S.C. II (Collegiate Branch) on the basis of the combined seniority list, to elect either of the two Departments, viz. 'History' or 'Political Science'. Accordingly the concerned Lecturers/Professors were asked to exercise" their option. The following officers have opted for their being treated as belonging to the Department of Political Science:--

(i) Smt. K.A. Parekh, Officiating Professor of Political Science, I. Y. College, Jogeshwari.

(ii) Shri S.A. Bari, Officiating Professor of History, Government Arts and Science College, Aurangabad.

(iii) Smt. R.S. Dossal, Officiating Professor of Political Science, Elphinstone College, Bombay.

The option exercised by these officers have been accepted by Government and their seniority in the Department of Political Science should be as shown in the accompanying statement." (Emphasis added).

It therefore gave option to respondents Nos. 3 to 5 to go back to the department of History or not, and stated further that the option had been accepted and their seniority finalised in the Political Science department. It is this resolution of the Government dated January 15, 1970 which has been challenged in the present petition. The reason is that if respondents Nos. 3 to 5 had not been, given the option to continue in the Political Science department, the petitioners would have been promoted to a Class I Post. They have stated that they would then not have been deprived of that chance in violation of article 16 of the Constitution.

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Respondents Nos. 4 and 5 did not enter appearance in the High Court, but it was urged on behalf of respondent No. 3 that in view of the curriculum for the Master's degree in History, upto 1956, a person obtaining the Master's degree in History was equally qualified to teach Political Science. It was also urged that the respondent taught Political Science and had been recognised by the University as a teacher of Political Science. The High Court examined the effect of the Government resolution dated January 15, 1970, and held that in the absence of the earlier resolution dated February 27, 1963, the Director of Education was not competent to combine or amalgamate the seniority lists of the History and Political Science departments. It assumed that "legally there was no amalgamation at all and any action taken on the basis of such amalgamation would also consequently have to fall on the ground." In that view of the matter, the High Court held that promotions were not permissible on the basis of the combined list. It accordingly held that the Government resolution dated January 15, 1970 proceeded on a "misapprehension" that the respondents had been promoted as Professors on the basis of the combined seniority list, which was itself invalid. The High Court 'held' that there was "no valid reason why persons who were qualified in the Department of Political Science itself could be prevented from having their names considered for the post 'of Professor in Class I.'" That led: the High Court to hold further that the option which was given by the resolution dated January 15, 1970 had the effect of perpetuating the effect of the working of the invalid list, and amounted to violation of article 16 of the Constitution. This is why the State of Maharashtra, Smt. K.A. Parekh and Smt. R.S. Dossal have come up in appeal by special leave to this Court.

The controversy therefore is whether the State government passed the aforesaid resolution dated February 27, 1963, to amalgamate the lists of Lecturers in History and Political Science, as stated in the Director's aforesaid letter dated August 20, 1963, or whether there was no such resolution and the Director's order was unauthorised? The High Court has taken the view that as no attempt was made to produce the resolution dated February 27, 1963 in Nanekar's case, there was no such resolution at all. On that basis, it held that the Director had no authority to take the decision to amalgamate the lists.

We find however that in taking that view' the High Court lost sight of the intrinsic evidence which was available on the record, to prove beyond doubt that Government had passed

the aforesaid resolution dated February 27, 1963, to amalgamate the two lists. We have extracted the Government resolution dated January 15, 1970 and the underlined portions thereof clearly show that the Government itself reiterated the fact that "a decision was taken by Government in the year 1963 to amalgamate the lists of Lecturers in "History" and Lecturers in "Political Science" into one common list of Lecturers in "History and Political Science"." It has further been stated in that resolution of the Government that "accordingly, a combined seniority list was prepared with reference to the date of appointment of the

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officer concerned in the M.E.S. Class 11, irrespective of the fact as to whether the Lecturers are qualified in both the subjects of 'History' and 'Political Science' or in any one of the two". The reason for taking that "decision to amalgamate the two lists" has also been stated in the resolution. Then it has been stated that in 'view of the difficulties experienced with regard to the implementation of the decision of Government referred to above," the Government "on reconsideration" had decided to revert to the old practice of having separate seniority lists of Lecturers of History and Political Science. It has also been stated that the decision had been taken for "reverting to the decision to split up" the combined seniority list which formed the basis of promotion of some of the teachers. It would thus appear that the resolution dated January 15, 1970, repeatedly refers to the earlier decision of the State Government of 1963 for amalgamating the lists, states the reason for the amalgamation, makes a mention of the difficulties experienced in the implementation of that decision, and gives the reasons for the government's decision to, revert to the old practice of having separate seniority lists. As it was not challenged in the High Court that the resolution dated January 15, 1970 was genuine, the High Court should have taken notice of its intrinsic evidentiary value for the purpose of proving the earlier resolution dated February 27, 1963. If it had done so, it would have inevitably reached the conclusion that the Government had really decided in 1963 to amalgamate the lists, and that the Director had rightly conveyed that decision in his order dated August 20, 1963, and it was therefore an authorised communication. In fact the Director specifically stated in that order that the "decision of Government" to amalgamate the two lists had to be brought to the notice of all concerned. The combined seniority list was therefore fully authorised, and there was nothing wrong if it formed the basis of the promotions which were given to the persons mentioned above. We have no doubt that the High Court did not read the relevant document carefully and that was why it arrived at a contrary conclusion.

The resolution dated January 15, 1970 shows that as the Government had decided to split up the seniority list for the department of 'History and Political Science, it thought it desirable to give an "option" to those Lecturers/Professors of the old Bombay State, who were recruited as Lecturers/Professors of History, but were recognised by the University as teachers of Political Science, to elect for either of the two departments. No exception can be taken to that decision to give the option to the Lecturers/Professors concerned for, in the absence of such an option, they would have been deprived of the opportunity of expressing their desire to serve in the one or the other department on the basis of their experience and prospects of promotion. It was to be appreciated that the decision to amalgamate the

seniority lists of the two departments was not taken in consultation with them, and if they were required to teach History, or Political Science, and were promoted as Professors of History or Political Science, on the basis of a combined seniority list for which they themselves were not responsible, it would have been unfair if they had been required to serve in another department by a unilateral executive fiat.

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It may be mentioned that Mr. Phadke tried to argue that even if the resolution dated January 15, 1970 were held to be valid, it would not be permissible for the teachers concerned to take advantage of it because they did not fulfill its requirements. We do not find any merit in this argument. As has been stated, those teachers were promoted to posts of Professors on the basis of the combined list, they were recognised as such teachers by the University, and were recruited initially as Lecturers in History. They were therefore entitled to take the benefit of the resolution dated January 15, 1970, as there is nothing wrong with it. We have no doubt that in the facts and circumstances mentioned above, there could be no justification for the view taken by the High Court that there was violation of article 16 of the Constitution.

The appeals are allowed, the impugned judgment of the High Court dated March 11, 1975 is set aside and the writ petition is dismissed. The State of Maharashtra will pay the costs of respondents Nos. 1 and 2 (Bhalchandra K. Joshi and Padmakar Sidharath Rao) in Special Leave Petition No. 915 of 1976, as directed by this Court October 8, 1976.

P.H.P.

Appeals allowed

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