

CASE NO.:
Appeal (civil) 744 of 2007

PETITIONER:
Deepa Gourang Murdeshwar Katre

RESPONDENT:
The Principal, V.A.V. College of Arts. & Ors

DATE OF JUDGMENT: 13/02/2007

BENCH:
Dr. AR. Lakshmanan & Altamas Kabir

JUDGMENT:

J U D G M E N T
(Arising Out of SLP (C) NO. 22356-22358 OF 2005)

Dr. AR. Lakshmanan, J.

Leave granted.

The above three Special Leave Petitions were filed against the judgment and final order dated 13.4.2005 in Writ Petition No. 1914 of 1999, final order dated 5.5.2005 passed by the High Court of Judicature at Bombay in Review Petition No. 65 of 2005 and final order dated 3.8.2005 passed by the High Court of Judicature at Bombay in W.P. No. 4851 of 2005 whereby the High Court dismissed the writ petitions and review petition filed by the Appellant.

Background facts

The Appellant applied for appointment in the college, respondent No.1, on the post of English Lecturer, pursuant to a vacancy which had arisen by leaving of an English Lecturer after the Ist term. The appellant was duly interviewed by the local selection committee and was appointed as full time lecturer in English on 22.11.1993 on temporary basis for 2nd term subject to the approval of the University. The appellant joined as Lecturer and has been working since then.

The College advertised a number of vacant posts for the academic year 1994-1995 on 29.4.1994 by way of newspaper publication. One of the posts was the post of English Lecturer, but the same was reserved for Scheduled Caste candidate. The advertisement, however, provided that in case the backward class candidate was not available, then a candidate from the general category would be considered for appointment on year to year basis. No backward class candidate applied for the said post. Three general category candidates applied out of which the Appellant was selected and recommended for appointment by the Six-Members' Selection Committee on 11.7.1994.

Vide appointment letter dated 15.7.1994, the Appellant was appointed as full time Lecturer in the college for one academic year as per the advertisement.

The problem of non-filling up of reserved seats in Government and Government-aided colleges were subject matter of various decisions by the Government. Earlier there was a Government Resolution of 25.1.1990 which provided that if no backward class candidate is available

for five years then the post should be de-reserved. By way of the Government Resolution dated 19.1.1995, the Government took a decision that in all Government-aided colleges, the reserved post of a Lecturer should be advertised for five years. Thereafter, in the 6th year, an advertisement should be issued with interchangeability clause and only if no eligible backward candidate is available, the post should be de-reserved and the person who has been occupying the post on temporary basis should be considered for regular appointment on the post. The Mumbai University vide order dated 17.7.1996 implemented the said decision as would be clear from para 3 of its order dated 17.7.1996. The said circular was applicable to the existing posts also.

Even in the 2nd academic year i.e. 1995-1996, the post of English Lecturer was advertised for filling up the same from Scheduled Caste Category. No backward class category candidate reported for interview to fill up the said post of the English Lecturer. The Appellant was, therefore, once again appointed on temporary basis on the said post for a period of one academic year.

In the third academic year i.e. 1996-1997 the post of English Lecturer was again advertised as being reserved for Scheduled Caste candidate. Applications were called for. However, no scheduled caste category candidate applied for and reported for interview. Therefore, the Appellant was once again appointed on temporary basis on the said post for one academic year on 19.7.1996.

For the 4th academic year again the post of Lecturer of English was advertised by College as reserved post for Scheduled Caste Candidate on 28.4.1997. However, no scheduled caste category candidate applied for and reported for interview. Therefore, the appellant was once again appointed on temporary basis on the said post for one academic year on 24.7.1997.

For the 5th academic year i.e. 1998-1999, the post of English Lecturer was again advertised as reserved post for Scheduled Caste candidate. It was clearly mentioned in the advertisement that this was the 5th advertisement. However, no Scheduled caste category candidate applied for and reported for interview. Therefore, the appellant was once again appointed on temporary basis on the said post for one academic year on 15.7.1998.

Thus as per Government resolution and the University circular, 6th advertisement with interchangeability clause had to be issued. The draft of the said advertisement for the academic year 1999-2000 was forwarded by the College to the University on 3.4.1999. The University duly vetted the said draft advertisement and returned the same to the College on 7.4.1999 for publication. Accordingly, the 6th advertisement was published by the College in Maharashtra Times on 13.4.1999 clearly mentioning that the post was being advertised for the 6th time on interchangeability basis as per Government Rules. However, no Scheduled Caste candidate applied for and reported for interview.

The report of the Selection Committee Meeting was forwarded by the College to the University on 30.7.1999 clearly mentioning that no backward class category candidate had reported for interview in English language. The nil report for appointment to the post of lecturer in English was accepted by the University vide letter dated 1.11.1999.

In the meantime, the appellant had approached the High Court of Bombay by way of Writ Petition No. 1914 of 1999 for confirmation of her services as no candidate from backward class had appeared for even an interview after six years. Vide order dated 12.7.1999, a Division Bench of the Bombay High Court granted interim relief to the appellant i.e. the appellant was not to be terminated from services.

In the meantime, a similar matter of one Mrs. Madhuri Srivastava came up for hearing before the Bombay High Court. The Bombay High Court vide order dated 1.2.2001 observed that since no backward class category candidate had turned up for the interview, in terms of the circular of the University dated 17.7.1996, the lecturer who was working on the post for nine years was liable to be regularized. Just one day before the final hearing of the writ petition, the University filed an affidavit to the effect that the 6th advertisement had yet not been published in terms of the University Circular dated 17.7.1996 and hence the post cannot be de-reserved. Said stand of the University was most unfortunate as not only the draft advertisement had been vetted by the University, but subsequently the report of the Selection Committee was also accepted by the University.

According to the learned counsel appearing for the appellant, the affidavit was made available to the appellant only on the date of the hearing, the appellant could not dispute the correctness of the same and hence, in such circumstances, the Bombay High Court passed the impugned order directing the publication of the 6th advertisement. The directions issued by the High Court read as follows:

"(i) Respondent No.1 within four weeks from today to forward to respondent No.2 a draft advertisement based on interchangeability. On the draft advertisement being received and after verifying the same and if earlier there had been five advertisement already issued by the University to permit the respondent No.1 to issue the advertisement based on interchangeability.

(ii) If on the advertisement being issued no candidate from reserved category is available, respondents to permit the petitioner to continue in the post presently held by her.

(iii) After the sixth advertisement, if no candidate belonging to the backward class is available, respondent No.1 to send representation to respondent No.3 to de-reserve the post. The University after complying with the procedure to forward the same to respondent No.4.

(iv) Respondent No.4 considering the clause for de-reservation and considering the judgment of this court in W.P. No. 1914 of 1999 dated 13th April, 2005 which has taken a view that it is not necessary that after de-reservation, that post must be re-advertised but it is open to the Government to relax the condition, to take the appropriate decision and communicate the same to respondent No.3.

(v) The Petitioner pursuant to the sixth advertisement if no backward class candidate is selected to be continued and the petitioner's services will not be terminated. If the order be

adverse it is not to be acted upon for a period of twelve weeks after the communication of the decision of respondent No.4 by respondent No.1 to the petitioner.

Rule made absolute accordingly. There shall be no order as to costs.

Sd/- F.I. Rebello, J.
Sd/- S.P. Kukday, J."

It is relevant to mention here that on the very same day, the very same Bench of the Bombay High Court disposed of two more writ petitions by two similarly situated lecturers of the very same college. In both the cases, the 6th advertisement had been issued and since the teachers had been working for a number of years, the High Court held that there was no need for fresh advertisement and, therefore, directed that the petitioners in those writ petitions, will be treated as permanent.

When the appellant came to know that an incorrect statement has been made by the University that no 6th advertisement has been published, the appellant filed Review Petition No. 65 of 2005 clearly pointing out the error apparent on the record and the mis-statement by the University.

When the said review petition came for hearing on 5.5.2005, the University made another incorrect statement that though the advertisement had been issued, no interviews had been held because of the stay order of the High Court. The High Court found that the 6th advertisement had been issued, but however, wrongly found that the interviews were not conducted. As stated above, the interviews were held on 5.7.1999 much before the interim order of the High Court on 12.7.1999. The University had not taken this stand as the report of the interview was sent to the University and the University accepted the said report. The order dated 5.5.2005 passed by the High Court in Review Petition No.65 of 2005 reads as follows:

"The review is based on the contention that six advertisements for the post of Lecturer in English having interchangeability clause was advertised on 13.4.1999 and considering that directions given by this Court in the Judgment dated 13.4.2005 requires to be reviewed.

We have considered the contention of the learned counsel for the Review Applicant. We find that after advertisement was issued, petitioner approached this Court by way of Writ Petition No. 1914 of 1999 on 12.7.1999 and interim relief was granted in terms of Prayer Clause (g). Prayer clause (g) was to the effect that the services of the petitioner should not be terminated and that she should be allowed to continue. As such the Management could not have proceeded with interview and by letter of 30.7.1999, considering the order of this Court issued letter of appointment in favour of the Petitioner herein. Considering the above, as the interviews could not be conducted in terms of the sixth advertisement, we do not find this to be a fit case to review the order dated 13.4.2005. With the above directions, application stands disposed of. No order as to costs.

Sd/- F.I.Rebello, J.
Sd/- S.P. Kukday, J."

When the appellant came to know even at the time of hearing of the review petition an incorrect statement had been made, the appellant filed fresh Writ Petition No.4851 of 2005. The College filed the counter affidavit bringing the correct facts to the notice of the High Court. However, the High Court refused to entertain the fresh writ petition on 3.8.2005 and passed the following order: "CORAM: A.P. Shah & D.Y. Chandrachud, JJ.

3rd August, 2005

P.C

The present petition is in the nature of a review of the order passed by the Division Bench in Writ Petition No. 1914 of 1999. The Petitioner, in fact, sought review of the said order by filing a review application which came to be dismissed by the Division Bench by order dated 5th May, 2005. It is not permissible for the petitioner to seek the same relief again by filing a fresh petition. Petition is, therefore, dismissed.

Sd/- Judge
Sd/- Judge"

The appellant filed the present appeal by way of three special leave petitions challenging all the three orders passed by the High Court including the first order dated 13.4.2005 passed in W.P. No. 1914 of 1999. This Court vide order dated 24.10.2005 issued notice to the respondent and granted status quo. During the pendency of the special leave petitions, the University vide its letter dated 6.9.2005 acknowledged the facts that it would not be proper to issue a fresh advertisement and, therefore, requested the College to send a proposal for de-reservation of the post. The letter dated 6.9.2005 reads as follows:

" UNIVERSITY OF MUMBAI

No. (29)/6115/2005

Dated: 6th September, 2005

To

The Principal
Annasaheb Vartak College of Arts,
Commerce and Science,
Vasai Road,
District Thane(W)-401 202

Sub : Approval for advertisement

Madam,

This is in reference to your letter No. AVC/Advt/292/2005-06 dated 18th May, 2005.

It is clear from the advertisement annexed to the aforesaid letter for the post of Lecturer (English) was advertised with interchangeability clause on 13th April,

1999 in Maharashtra Times newspaper and accordingly interview was also held on 5th July, 1999.

In view of the above, it would not be proper for issuance of one more advertisement for the post of Lecturer (English). You are, therefore, requested to submit a proposal for de-reservation of the said post in the format enclosed herewith to the University. After receipt of the proposal, the same would be scrutinized and sent to the State Government for further approval.

Yours truly,

Sd/-
illegible
Vice-Chancellor
(Special Branch)"

Thus it is seen that the University has now acknowledged that there is an error in the order of the High Court and that the direction of the High Court to issue 6th advertisement was based on wrong facts. The College vide letters dated 1.10.2005, 22.6.2006 and 24.8.2006 requested for de-reservation of the post which read as follows:

VIDYAVARDHINI'S
Annasaheb Vartak College of Arts,
Kedarnath Malhotra College of Commerce &
E.S. Andrades College of Science
Vasai Road West-401 202, Distt. Thane

No.DIR/7226/2005-2006

Dated 1.10.2005

To

The Addl.Secretary
Special Cell,
University of Mumbai
Mumbai-400 032

Sub: De-reservation of Post : Mrs. D.G.
Murdeswar Katre Lecturer in English

Sir,

That our college had forwarded a proposal for de-reservation of the post held by Mrs. D.G. Murdeswar-Katre, Lecturer in English vide letter dated 6.5.2005 for necessary action at your end. Pursuant to the telephonic conversation held on 30.9.2005 with your office, we were requested to forward the necessary details in Form-A which is enclosed herewith.

It is requested that appropriate steps may be taken for de-reservation of the post of Mrs. D.G. Murdeswar Katre.

Thanking you,

Yours truly,
Sd/-illegible
Principal

Encl:- Form A"

"AVC/DER/202/2006-07

22/6/06

To

The Registrar,

University of Mumbai,
Mumbai-400 032

Sub: De-reservation of post-Mrs. D.G. Murdeshwar-
Katre, Lecturer in English

Sir,

I am forwarding herewith application along with
enclosures of Mrs. Deepa G. Murdeshwar Katre,
Lecturer in English for De-reservation of post.
I request you to look into the matter and do the
needful.

Thanking you,

Yours faithfully,

(Dr. S.S. Kelkar)
Principal

Encl. As above

"VIDYAVARDHINI'S
Annasaheb Vartak College of Arts,
Kedarnath Malhotra College of Commerce &
E.S. Andrades College of Science
(Affiliated to the University of Mumbai)

AND Junior Colleges
Vasai Road West-401 202, Distt. Thane

Ref.No.AVC/DER/1100/2006-07 Date: 24/8/2006

To

The Dy. Registrar
Spl. Cell,
University of Mumbai,
Mumbai-400 001.

Sub: De-reservation of post: Mrs. D.G. Katre-
Lecturer in English

Sir,

I have to inform you that our Proposal for
De-reservation of post of Mrs. D.G. Murdeshwar
\026 Katre, Lecturer in English has been forwarded
to your office vide out letter No. AVC/DE-
R/257/2005-06 dated 6/5/2005. The
information in Proforma 'A' has been forwarded
vide our letter No. AVC/DER/1226/2005-06 dt.
1/10.2005. Zerox copies are enclosed herewith.
I request you to look into the matter and
do the needful.

Thanking you,

Yours faithfully,

Sd/-
(Dr. S.S. Kelkar)
Principal

Encl. As above"

However, because of the directions of the High Court in the impugned order regarding issuing of 6th advertisement, the University has not forwarded the proposal any further and is maintaining status quo. We heard Mr. Gaurav Agrawal, learned counsel appearing for the appellant and Mr. Ravindra K. Adsure, learned counsel appearing for the University and Mr. Prashant Kumar, learned counsel appearing for the College.

Mr. Gaurav Agrawal, learned counsel appearing for the appellant submitted that the High Court failed to consider that its first order dated 13.4.2005 had been passed by relying upon a fraudulent mis-representation of the respondent-University contained in the affidavit dated 12.4.2005 that the 6th advertisement had not been issued, when the indisputable fact was that the said advertisement had been issued as per the approval of the University itself on 13.4.1999. Therefore, learned counsel submitted that on this ground alone, the order dated 13.4.2005 ought to have been recalled and the factum of issuing the advertisement was in terms admitted at the time of hearing of the review petition. It was further submitted that the High Court failed to notice that pursuant to the advertisement dated 13.4.1999 interviews for the reserved post of English Lecturer in the College (respondent No.4) were held on 5.7.1999 and no candidate from the backward class had turned up for the interview. Likewise, the High Court has not noticed that the College vide letter dated 30.7.1999 had given a non-availability report in relation to interviews for the post of English Lecturer and this report was accepted by the University on 1.11.1999. Therefore, the submission that the interview could not be proceeded with in view of the interim order of the High Court was patently not correct. It was also submitted by learned counsel appearing for the appellant that the High Court at the time of hearing the review petition was also misled by the respondent-University as an impression was given that no interviews had been held pursuant to the advertisement dated 13.4.1999 which was clearly belied by the documents of the University itself. It is clear that even the Bench hearing the review petition had been misled by the respondent-University by making a false statement, the review order dated 5.5.2005 was vitiated by fraud and was liable to be recalled by the High Court. It was also contended that the High Court erred in dismissing the writ petition in a cursory manner by the impugned order dated 3.8.2005 without appreciating the contentions raised by the appellant which were fully supported by indisputable documents on record, which documents emanated from the College and the University. The writ petition clearly indicates how the High Court had been misled by the false statements made by the University and the High Court ought to have considered the submissions made by the appellant. The High Court, in our opinion, has erred in law rejecting the writ petition without considering the merits of the matter though the merits of the matter were specifically argued by the appellant and the mis-representations made by the University were brought to the notice of the High Court.

It is not in dispute that the appellant has been in service of the respondent-College for the last 12 years. No candidate from the reserved category was available for

six years. The appellant continued on the temporary basis year to year and hence it is a fit case where the appellant should be regularized on this post after de-reserving the same and if the appellant is now thrown out, the appellant would be age barred for any other service.

We are of the opinion that the case on hand is a fit case for interference by this Court in exercise of the jurisdiction under Art. 136 of the Constitution of India in view of the misrepresentations made by the respondent-University and considering the long service rendered by the appellant to the respondent-College at a time when no other candidate was willing to take the assignment. This apart, the appellant would be deprived of her livelihood if she is thrown out of her employment and irreparable injury would be caused to the appellant if the prayer made in the appeal is not granted. On the other hand, the respondents would not suffer any prejudice by granting the prayer made in the appeal as the appellant is fully qualified to teach English and has been doing so for the last 12 years.

It is well settled by catena of decisions of this Court that if a case of fraud or mis-representation of such a dimension is discovered that the very basis of the order passed by a Court of law is affected, the Court can recall its order. The power to recall an order founded upon fraud and mis-representation is an inherent power of the Court.

The present case is one such instance where the High Court has mislead by incorrect representations made by the University at the time of hearing of the writ petition and the review petition. The question was whether the post occupied by the appellant was entitled to be de-reserved as for six years no backward class candidate was available.

We have already noticed that the statement made before the Court was not correct. The records also reveal that the interviews for the post of English Lecturer pursuant to the 6th advertisement were made on 5.7.1999 and no candidate belonging to the backward class turned up for interview. The University was fully aware of this as the University had on 1.11.1999 accepted the non-availability report. However, it mislead the Review Bench of the High Court by sating that no interviews were held. The review order dated 5.5.2005 was totally vitiated due to fraud which compel the appellant to file a fresh writ petition challenging the order of the University of Bombay calling for the 6th advertisement. However, the High Court by the impugned order dated 7.8.2005 dismissed the writ petition by relying on the dismissal of the earlier writ petition and review petition without appreciating that the previous orders had been founded upon fraudulent mis-representations made by the University and the said orders were liable to be recalled.

When fraud was clear on the fact of the record, the High Court erred in law in dismissing the writ petition of the appellant.

Learned counsel appearing for the respondents was not able to controvert the factual statements made by the learned counsel appearing for the appellant at the time of hearing. The arguments made by the learned counsel appearing for the appellant are fully supported by the records filed before the High Court and also the annexures and material placed before us. We, therefore,

have no hesitation in accepting the arguments advanced by the learned counsel appearing for the appellant and allowing the appeal.

In view of the letter of the University dated 6.9.2005 in which the University had acknowledged that the 6th advertisement had indeed been issued and it would not be proper to issue a 6th advertisement, the basis of the impugned order is incorrect and, therefore, the same is liable to be set aside on this ground. In such circumstances, the case of the appellant would be similar to that of Mrs. Bina Patil and Mrs. Madhuri Srivstava and since the appellant has worked continuously for the last 13 years, it is a fit case for this Court to pass a similar order as in the matter of aforesaid two persons. We, therefore, allow the appeal and set aside the orders passed by the High Court with a direction to the respondents to regularize the services of the appellant on the post in question after de-reserving the same. However, there shall be no order as to costs.