

DR. (MRS.) PUSHPA VISHNU KUMAR GURTU

v.

STATE OF MAHARASHTRA AND ORS.

FEBRUARY 14, 1995

[P.B. SAWANT AND N.P. SINGH, JJ.]

Service Law : Seniority - fixation of—Notional Seniority—Conferred with reference to date of eligibility—Person not holding the post on such date—Mere eligibility—No ground to antedate seniority—Seniority list quashed.

The appellant was appointed as Reader in Government Medical College on 11.10.1977 and the respondent was appointed as Reader on 2.7.1979 in Medical College under the Corporation. This medical college was taken over by the State Government on 1.4.1981. The State Government published a seniority list in which the respondent was shifted from serial No. 20 to serial No. 11 and the date of her appointment was changed from 2.7.1979 to 19.1.1977. Subsequently she was promoted to the post of Professor on the basis of the aforesaid seniority list.

The appellant filed a petition before the State Administrative Tribunal challenging the alteration of the position of the respondent in the seniority list. The Tribunal dismissed the petition on the ground that the respondent was rightly given the benefit of continuous service rendered by her under the Corporation prior to the appointed day in terms of Rule 6 of G.R. of 1.4.1981. Hence this appeal.

Allowing the appeal, this Court

HELD : 1.1. Rule 6 of G.R. of 1.4.1981 says that seniority of persons in the posts in which they are absorbed shall be determined on the basis of the period of continuous service rendered by them in the corresponding posts under the Corporation prior to the appointed day i.e. 1.4.1981. The second part of Rule 6 says that for the purpose of the said rule the service rendered in the corresponding posts shall be counted "from the date from which the absorbed persons would have been eligible for appointment to the posts if the recruitment rules of Govt. then in force were to govern their appointment". [61-B-C]

A 1.2. Factually, the respondent was promoted as Reader in the medical college under the Corporation on 2.7.1979. But a notional and fictional date of promotion as Reader for the purpose of her seniority has been given on the basis of the second part of Rule 6 w.e.f. 19.1.1977 saying that on that date she was eligible to be appointed as Reader having fulfilled the qualifications prescribed for appointment. The second part of Rule 6 has not been read in B its proper context and spirit either by the State Government or by the Tribunal. In the said Rule 6 emphasis is not on the eligibility for the post but on the "period of continuous service rendered by them in the corresponding posts." In other words, the period for which the persons who are being absorbed had rendered continuous service in the corresponding post. C Out of such period only that period will be taken into consideration, since when the persons concerned, were eligible to be appointed under the recruitment rules of the Government then in force. [62-E-G]

D 1.3. Rule 6 does not purport to give any notional or fictional seniority as a Reader. If his interpretation of Rule 6 is accepted the teachers of the non-government medical colleges shall affect the seniority of the persons who had already been appointed as Readers in Government Medical Colleges. [63-B]

E *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and Ors.*, [1990] 2 SCC 715, followed.

F 2.1. It is not understood how any notional seniority could have been conferred by the State Government with reference to the date of eligibility, although such person was not holding any such post either by direct recruitment or by promotion. In the present case, there is no dispute that the respondent never held the post of Registrar any time prior to 2.7.1979 when the college was under the Corporation. Hence her mere eligibility on 19.1.1977 to be appointed as Registrar, cannot be a ground to antedate her promotion as a Reader, so as to affect seniority of the appellant, who had been appointed as a Reader in the Medical College on 11.10.1977. [63-E-F]

G 2.2. The object of changing the date of seniority as Reader, so far as the respondent is concerned, appears to be to make her senior to the appellant. This benefit could not have been conferred on her, even if she was from the very beginning in any of the Government Colleges. In the process of absorption, she cannot affect the seniority of those, who were H already in the cadre of the State Government as Readers. [63-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2216-17 of 1995. A

From the Judgment and Order dated 8.7.93 of the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur in T.A. No. 948/91 (Originally W.P. No. 1783/90) and O.A. No. 1355 of 1992.

V.A. Bobde and A.G. Ratnaparkhi for the Appellant. B

K.M. Reddy and S.M. Jadhav for A.S. Bhasme for the Respondent.

R.K. Mehta for the Respondent No. 4.

The Judgment of the Court was delivered by C

N.P. SINGH, J. Leave granted in both the SLPs.

The appeal arising out of SLP(C) No. 1628 of 1994 has been filed against an order dated 8.7.1993 passed by the Maharashtra Administrative Tribunal, Nagpur Bench, dismissing the Writ Petition filed on behalf of the appellant, before the Nagpur Bench of the High Court of Bombay which was later transferred to the aforesaid Tribunal. By the petition aforesaid, the appellant questioned the validity of the seniority list dated 29.4.1989, so far as it changed the position of respondent No. 4 (hereinafter referred to as 'the respondent') from Serial No. 20 to Serial No. 11. The appellant also sought quashing of the order dated 5.7.1989 promoting the respondent to the post of Professor, Department of Obstetrics and Gynaecology, on the basis of the seniority list aforesaid by another application filed before the Tribunal. D E

The appellant passed the M.B.B.S. examination in the year 1967. She obtained her Post-Graduate Degree in Obstetrics Gynaecology from Allahabad University in April, 1972. She was appointed as Lecturer in the Department of Obstetrics and Gynaecology by a Government Order dated 19.1.1977, at Government Medical College, Nagpur, after she was selected by the Maharashtra Public Service Commission. She joined the said post on 11.2.1977. She was appointed by a Government Order dated 6.10.1977, as Reader in the Department of Obstetrics and Gynaecology at Government Medical College, Nagpur, after her selection by the Maharashtra Public Service Commission. She joined the post of Reader on 11.10.1977 and continued on the said post till 21.10.1981. In the meantime, by a F G H

A Government Order dated 15.10.1981, the appellant was appointed as Associate Professor in the Department of Obstetrics and Gynaecology at the aforesaid Medical College, Nagpur, which post she joined on 22.10.1981. She was the senior most Associate Professor in the said college, in the department aforesaid.

B So far as the respondent is concerned, she passed her M.B.B.S. examination in the year 1967 but obtained her Post-Graduate Degree in Obstetrics and Gynaecology in 1975. She was promoted as Reader on 2.7.1979 in the Indira Gandhi Medical College, Nagpur, which was then under the control and management of the Nagpur Municipal Corporation.

C However, the State Government took over management and control of the Indira Gandhi Medical College w.e.f. 1.4.1981 from the Nagpur Municipal Corporation.

D A provisional seniority list of Readers was published on 21.11.1986 and objections were invited. In this seniority list, the appellant was placed against Serial No. 13, whereas the respondent was placed against Serial No. 20. The date of appointment of the appellant as Reader was shown as 11.2.1979, whereas that of respondent as 2.7.1979. In the final seniority list, the position of the appellant was shown against Serial No. 14, whereas that of respondent against Serial No. 20. It is said that in both the draft and

E final seniority lists, it was mentioned against the name of the respondent that he belonged to the then Non-Government Institution viz. Indira Gandhi Medical College under Nagpur Municipal Corporation and her date of appointment as Reader was accepted as 2.7.1979 because it was on that day, she had been promoted as Reader in that Institution. However,

F the State Government published another seniority list on 29.4.1989 in which the name of respondent was shifted from Serial No. 20 to Serial No. 11 and the date of appointment of respondent was changed from 2.7.1979 to 19.1.1977. Thereafter by an order dated 5.7.1989, the respondent was promoted to the post of professor of Obstetrics and Gynaecology on the basis of the aforesaid seniority list. The alteration of the position of the

G respondent in the seniority list was challenged by the appellant, before the High Court, by a Writ Petition which as already mentioned above, was transferred to the Tribunal.

H The Indira Gandhi Medical College, Nagpur, which was under the control and management of the Nagpur Municipal Corporation, had been

taken over by the State Government w.e.f. 1.4.1981 and thereafter the State Government was required to refix the seniority of Lecturers, Readers and other teachers of the said college, in terms of Rule 6 of G.R. of 1.4.1981. Rule 6 is as follows :-

"The seniority of persons in the posts in which they are absorbed shall be determined on the basis of the period of continuous service rendered by them in the corresponding posts under the Corporation prior to the appointed day. For this purpose, the service rendered in the corresponding posts shall be counted from the date from which the absorbed persons would have been eligible for appointment to the posts if the recruitment rules of Govt. then in force were to govern their appointment."

The recruitment rules for the post of Reader issued in the year 1972 provides the qualification for the post, the relevant part whereof has been reproduced in the order of the Tribunal as follows :-

"A post graduate degree in Obstetrics and Gynaecology such as M.D., M.S., M.O. of a statutory University or M.R.D.O.G. or the qualification awarded by the Speciality Board of Obstetrics and Gynaecology (U.S.A.) or F.R.C.S./M.R.C.P. with Obstetrics and Gynaecology as a Special subject or a post graduate degree in medicine or Surgery of the M.R.C.P./F.R.C.S. qualification with D.G.O. for the post of Reader in Obstetrics and Gynaecology; and possess experience for not less than three years of teaching the subject concerned as Registrar or Lecturer or in an equivalent post in a teaching institution."

The justification, which has been given on behalf of the State, for altering the date of promotion of the respondent as a Reader from 2.7.1979 to 19.1.1977, is Rule 6. The Tribunal on the basis of Rule 6 aforesaid has come to the following conclusion :

"We, therefore, hold that the interpretation of rule 6 by the Govt. is in order and correct and are unable to agree with the interpretation of the learned Advocate for the petitioner. Clearly on the appointed day, Dr. Guhe was a Reader and was absorbed as such, her seniority has to be fixed on the strength of rule 6 read with the recruitment rules of Govt. for the post of Reader, then in

A force. She has rightly been given the benefit of her acquisition of requisite qualifications (M.D. in the year 1975) and continuous service in the post from which she could have been promoted as a Reader. It is obvious that, second part of Rule 6 is clearly intended to give benefit of continuous service in the eligibility grade for the determination of seniority in the absorbed grade.

B These rules are the rules of merger and absorption and binding on the Govt. Because, it is only on the foundation of these rules that merger could take place. We therefore, find no substance in the arguments of the petitioner on this count. Otherwise, the edifice of merger crumbles."

C

D Rule 6 says that seniority of persons in the posts in which they are absorbed shall be determined on the basis of the period of continuous service rendered by them in the corresponding posts under the Corporation prior to the appointed day i.e. 1.4.1981. There is no dispute so far as the first part of Rule 6 is concerned. The dispute is in respect of the second part which says that for the purpose of the said rule the service rendered in the corresponding post shall be counted "from the date from which the absorbed persons would have been eligible for appointment to the posts if the recruitment rules of Govt. then in force were to govern their appointment." Factually, respondent was promoted as Reader in the Indira Gandhi

E Medical College, Nagpur, then under the management and control of the Nagpur Municipal Corporation on 2.7.1979. But a notional and fictional date of promotion as Reader for the purpose of her seniority has been given on the basis of the second part of Rule 6 w.e.f. 19.1.1977 saying that on that date she was eligible to be appointed as Reader having fulfilled

F the qualifications prescribed for appointment of the Reader referred to above. According to us, the second part of Rule 6 has not been read in its proper context and spirit either by the State Government or by the Tribunal. In the said Rule 6 emphasis is not on the eligibility for the post but on the "period of continuous service rendered by them in the corresponding posts." In other words, the period for which the persons who

G are being absorbed had rendered continuous service in the corresponding posts. Out of such period only that period will be taken into consideration, since when the persons concerned, were eligible to be appointed under the recruitment rules of the Government then in force. This can be illustrated by giving an example. In one case, a person without a post-graduate degree

H might have been appointed as a Reader in a Non-Government College and

he obtains the post-graduate degree later. Similarly, in another case a person might have been appointed as a Reader without three years' experience, as a Registrar or Lecturer in a private institution. While absorbing such person after the take over, only the continuous service rendered by him in the corresponding post shall be taken into account, which commences from the date he fulfilled all the requisite qualifications for being appointed to the post of Reader. Rule 6 does not purport to give any notional or fictional seniority as a Reader. It need not be pointed out that if this interpretation of Rule 6 is accepted the teachers of the non-government medical colleges shall affect the seniority of the persons who had already been appointed as Readers in Government Medical Colleges. In a series of judgments of this Court, fixation of seniority by conferring notional seniority has been deprecated. In this connection, it will be suffice to refer to the judgment of the Constitution Bench in the case of *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others*, [1990] 2 SCC 715, where it is stated that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment. Even the claim that seniority was linked to the date of confirmation was negated. We do not, therefore, understand how any notional seniority could have been conferred by the State Government with reference to the date of eligibility, although such person was not holding any such post either by direct recruitment or by promotion. In the present case, there is no dispute that respondent never held the post of Registrar in the Department of Obstetrics and Gynaecology any time prior to 2.7.1979 when the college was under the management of the Corporation. Hence her mere eligibility on 19.1.1977 to be appointed as Registrar, cannot be a ground to antedate her promotion as a Reader, so as to affect seniority of the appellant, who had been appointed as a Reader in the Department of Obstetrics and Gynaecology at Government Medical College, Nagpur, by the Government Order dated 6.10.1977 which post she had joined on 11.10.1977. The object of changing the date of seniority as Reader, so far as respondent is concerned, appears to be to make her senior to the appellant. This benefit could not have been conferred on her, even if she was from the very beginning in any of the Government Colleges. In the process of absorption, she cannot affect the seniority of those, who were already in the cadre of the State Government as Reader.

Hence, the appeal is allowed and the impugned seniority list, so far it fixes the seniority of the respondent w.e.f. 19.1.1977, if quashed.

- A The appeal arising out of SLP (C) No. 1629 of 1994 which had been filed on behalf of the appellant, questioning the validity of the Order promoting the respondent as Professor in the Department of Obstetrics and Gynaecology, on the basis of the aforesaid seniority list is also allowed. The State Government directed to work out the promotion to the post of Professor of Obstetrics and Gynaecology taking into consideration the case of the appellant and the respondent with reference to their *inter se* seniority as determined above. In the facts and circumstances of the case, there will be no order as to costs.
- B

V.S.S.

Appeal allowed.