
(1996) 06 BOM CK 0011

Bombay High Court

Case No: Writ Petition No. 126 of 1991 with W.P. No. 1527 of 1991

G.V. Unkule

APPELLANT

Vs

State of Bombay and
Others

RESPONDENT

Date of Decision: June 28, 1996

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 226, 227, 229

Citation: (1997) 1 BomCR 199 : (1996) 2 MhLj 746

Hon'ble Judges: S.S. Nijjar, J; Ashok Agarwal, J

Bench: Division Bench

Judgement

S.S. Nijjar, J.

This judgment will dispose of Civil Writ Petition No. 126 of 1991 and Civil Writ Petition No. 1527 of 1991. It is admitted by both the sides that both the writ petitions are identical, in that challenge has been made to the selection made on the post of Assistant Registrar, by the same Selection Committee. For the purposes of this judgment, the facts have been taken from Civil Writ Petition No. 126 of 1991.

2. The pleaded case of the petitioner is that he joined the services of respondent No. 1 as a Clerk-cum-Typist with effect from 4th January, 1960. He was confirmed on the said post on 31st January, 1970. He was promoted as Assistant Superintendent on 11th April, 1973. He was confirmed on the said post on 1st April, 1980. In due course he was promoted as Superintendent on 17th August, 1981 and Senior Superintendent on 8th June, 1987. He pleads that he has a clean record of service. However, he was served with a Memorandum by the respondent No. 1, No. ND(A) 043683/7349 dated 21.11.1987 stating therein that there was an adverse remark against him for the year 1986 and calling upon him to show necessary improvement (Exhibit-A). The said adverse remark is as follows :

"Very casual in copying out Court's order on Farad though cautioned on number of occasions. Improve his handwriting."

The sting of this remark, he says, is deemed to be expunged, in view of his subsequent promotion on the post of Senior Superintendent with effect from 8.6.1987. The next post in the cadre is that of Assistant Registrar which, according to the petitioner, is to be filled by promotion, on the principle of seniority-cum-merit. It is further alleged by the petitioner that the promotion on the post of Assistant Registrar from 1973 until the year 1990 had been made by a Selection Committee consisting of 3 Judges. It is asserted by him that the said Committee followed a three fold criteria for making the selection. The said criteria being (i) annual confidential reports of the individual concerned, (ii) special report from the Registrar and (iii) performance at the interview. On the basis of the aforesaid criteria a select list was prepared. This procedure, it is alleged by the petitioner, continued from the year 1973 until the year 1990. For the year 1990, however, a single Member Committee was constituted to make the selection. From the year 1991, till the date again the selections have been made on the basis of a three Member Committee. In the year 1990, six and after following the selection procedure, six persons had been promoted on the post of Assistant Registrar. Fifteen officers were called for interview being.

1. Shri J.B. Bhore, 2. Shri J.S. Koyande, 3. Shri M.S. Bhide, 4. Shri G.V. Unkule, 5. Shri L.N. Naik, 6. Shri J.B. Katre, 7. Shri Y.B. Hardikar, 8. Shri S.S. Sawant, 9. Shri M.L. Shaikh, 10. Shri R.B. Torne, 11. Shri A.S. Pitale, 12. Shri J.T. Potdar, 13. Shri S.B. Palekar, 14. Shri A.T. Gawade, 15. Shri A.T. Pradhan.

The name of the petitioner is at serial No. 4. He has been superseded by officers at serial Nos. 5, 10, 11, 13 and 15 (Respondents Nos. 5 to 9). Respondents No. 4 was senior and was at serial No. 3 of the list of candidates interviewed. Respondents 4 and 9 have died during the pendency of the writ petition. Against the six promotions, the present petitioner has filed Civil Writ Petition No. 126 of 1991. The other aggrieved persons who are mentioned at Sr. Nos. 1, 2, 7, 9 and 14 of the list of candidates who were interviewed have filed Civil Writ Petition No. 1527 of 1991.

3. The petitioner initially had not made any allegations of prejudice or bias in the writ petition. He also did not implead any private individuals as parties to the writ petition. Subsequently, however, he amended the writ petition and impleaded the promoted persons as respondents 4 to 9. He impleaded Shri S.G. Deshpande, Additional Registrar (Judicial) as respondent No. 2 and Shri S.M. Satghare, Deputy Registrar, respondent No. 3, in their official capacity. The petitioner has amended the writ petition by also including therein Paragraph No. 7A, B, C, D and E. In these paragraphs the petitioner has sought to make out a case that three fold criteria, as stated above, was being followed for selection since 1973. In paragraph 7(B) it is stated that this criteria was abandoned for the year 1990, the selection has been made by a single Member Committee. It is alleged that as a consequence of the change in the constitution of the Selection Committee, the chances of promotion of the petitioner had been adversely affected. It is further alleged

that the persons who have been promoted all belong to the Administrative side of the High Court. Only one person working on the judicial side has been found to be suitable for promotion and has in fact been promoted. Relying on these assumptions it is concluded that the One Member Committee has not been able to make a fair selection. No allegation of any bias or undue favoritism has been made against any individual. Only vague averments have been made to the effect, for example, that the candidature of person at serial No. 3 has been recommended by Shri S.G. Deshpande. This allegation is made on the assumption that the officer at serial No. 3 is in the good books of Shri S.G. Deshpande. Similarly, it is stated that so far as persons at Sr. Nos. 5 and 13 are concerned, since they are working under the control of respondent No. 2, therefore, their case for promotion seems to have been recommended by respondent No. 2.

4. Another plank of the attack as pleaded in the writ petition is that the promotions from the post of Senior Superintendent to the post of Assistant Registrar have to be made on the basis of Rule 4(b)(i) of the High Court Gazetted Officers Recruitment Rules, 1963. The said Rule is reproduced hereunder :

"(b) Appointment to the posts of Deputy Registrar and Assistant Registrar shall be made by the Chief Justice :-

(i) by promotion from amongst the staff working on the Appellate Side of the High Court."

On the basis of the said Rule, it is averred that the provisions of the Rule itself would show that this is a rule of promotion containing within itself the principle of seniority-cum-merit. Therefore, it is averred that any promotions made on the basis of a criteria other than the seniority-cum-merit are beyond the scope of the Rules.

5. The respondents had filed a short affidavit and had controverted the pleas raised in the writ petition. It has been pointed out by the respondents that there was no such practice as has been alleged in para 7 of the petition. The contents of these paragraphs have been emphatically denied. It has been denied that there was any practice to have a three fold criteria as pleaded in the writ petition. It has also been denied that there was any such practice as to have a Committee consisting of three Judges only. It has further been pleaded in paragraph 12 of the affidavit that the promotions and appointments to various post in the High Court are made by the Chief Justice under Article 229 of the Constitution of India. Article 229 of the Constitution of India reads as under :

"229. Officers and servants and the expenses of High Courts. - (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct"

It has been submitted that the Hon"ble the Chief Justice, on the basis of the powers conferred on him under Article 229 of the Constitution of India, had constituted a single Member Committee to make the promotions in the year 1990. It has further been averred that the appointments on the post of Assistant Registrar are made by selection, it being a

selection post. It is further averred that the selection having been made by a duty constituted Committee under Article 229 of the Constitution of India, this Court will not go into the relative merits of the candidates in a petition under Article of 226/227 of the Constitution of India. It has been reiterated that the allegations about favoritism, mala fide, or bias have been made only in desperation. No details, however, have been given of any allegations. Therefore, these deserve to be ignored.

6. The first contention of the learned Counsel for the petitioner is that the selection is arbitrary in that there has been a change in the mode of selection on the post of Assistant Registrar. It has been averred that except for the year 1990, the Selection Committee always consisted of 3 Hon"ble Judges of the High Court. It is only in the year 1990, that the Selection Committee was constituted of only one Hon"ble Judge. In view of the fact that it was a single Member Committee, it has been argued that this has caused prejudice to the consideration of the case of the petitioner. Had there been a three Member Committee, it is submitted, there would have been effective consultation and a consensus about the relative merit of the candidate would have emerged. Since it was a single Member Committee, the whole exercise was arbitrary, as the element of consultation with the other members of the Committee was lacking. We are not inclined to accept the contention put forward by the learned Counsel. As has been noticed above, even according to the Counsel for the petitioner, the criteria for selection consisted of three parameters viz annual confidential report, Registrar"s report and interview. This, however, is not factually correct as has been pointed out by the respondents. The selection procedure consisted in fact only of the evaluation of the annual confidential reports and interview. This seems to us to be a criteria which cannot be said to be arbitrary or violative of Article 229 or Rule 4(b)(i) of the 1963 Rules. No challenge whatsoever has been made to Selection criteria as such. It is only sought to be attacked on the ground that persons selected seems to belong mostly from the Administrative side of the High Court. It was also argued on this very point that most of the persons who have been selected seem to have been recommended by the Additional Registrar/Deputy Registrar. These facts have been totally denied. Even otherwise it seems inconceivable that Additional Registrar/Deputy Registrar would have the audacity to actually make a recommendation to one of the Senior most Judges of the High Court which constituted the Committee. Apart from that, as stated above, it has been factually denied that any recommendations had been made by anybody to the Selection Committee. We have also gone through the record and see that no such recommendations are on the record also. Without challenging the procedure followed in the interview, demonstrating the same to be wholly arbitrary, the assessment of the Selection Committee cannot be held to be invalid. Even otherwise, it appears that the petitioner had himself accepted the constitution of the Selection Committee, as he choose to appear before the said Selection Committee. It is only after he realised that he had not been selected that he chose to challenge the constitution of the Selection Committee. In these circumstances it would not be permissible for him to raise a challenge to the constitution of the Selection Committee.

7. The other argument raised by the petitioner is that Rule 4(b)(i) envisages only promotion on the basis of seniority-cum-merit. This argument is against the pleadings of the petitioner himself. In paragraph 4 of the petition, the petitioner states that "the petitioner had become due for further promotion to the cadre of Assistant Registrar, which cadre was a selection cadre and in view of the petitioner's promotion with effect from 8th June, 1987 to the cadre of Senior Superintendent and in view of the petitioner's long standing meritorious service the petitioner was confident of getting selection to the cadre of Assistant Registrar, he being pretty senior in the cadre of Senior Superintendents". Thus, it is accepted by the petitioner that the promotion is to be based on selection and that the process of selection has been followed since 1973. In the face of the aforesaid pleadings, it would not be open to the petitioner to submit that the promotions/appointments on the post of Assistant Registrar are to be made on the basis of seniority-cum-merit. Furthermore, the claim of the petitioner has been denied totally by the respondents in their affidavit. It has been categorically stated that the post of Assistant Registrar is to be filled by selection. If this position is to be accepted then law is clear that in the case of selection, seniority alone does not give a right to be promoted. In a selection post, junior persons are often promoted earlier than the senior persons, and such a promotion cannot be termed as supersession. Reference in this connection has been made by the Advocate General to a judgment of the Supreme Court reported as [R.S. Dass Ors. Vs. Union of India \(UOI\) and Others](#), wherein it is observed as under :

"The amended Regn. 5 which dispenses with the necessity of recording reasons in cases of supersession of senior members do not violate Article 14 or 16 of the Constitution. The plea that reasons if recorded ensure objectivity and impartiality and in the absence of reasons the Committee may act in arbitrary manner to supersede senior officers which would be violative of Article 14 and Article 16 is not sustainable. Article 16 ensures equality in matters relating to appointment and promotion to an office or post under the State. It enjoins State not to practise discrimination in matters relating to appointment and promotion. A member of the State Civil Service eligible for selection for promotion to the I.A.S. has right to be considered along with others for selection for promotion. If eligible officers are considered on merit, in an objective manner no Government servant has any legal right to insist for promotion nor any such right is protected by the Article 14 or 16 of the Constitution."

Once it is accepted that the post of Assistant Registrar is to be filled on the basis of selection then this Court will not enter into a comparison of the relative merit of the candidates. This position of law has been enumerated and reiterated by the Supreme Court of India on numerous occasions. In this connection reference may be made to the observations of the Supreme Court to [Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others](#), .

"It is not unimportant to point out that in matters of appointment in the academic field the Court generally does not interfere. In the [The University of Mysore and Another Vs. C.D. Govinda Rao and Another](#), , this Court observed that the Courts should be slow to

interfere with the opinion expressed by the experts in the absence of mala fide alleged against the experts. When appointments based on recommendations of experts nominated by the Universities, the High Court has got only to see whether the appointment had contravened any statutory or binding rule or ordinance. The High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which Chancellor has acted. See also the decision in [Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others](#), and [Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others](#),
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The same position of law was enunciated by the Supreme Court in the case of Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan etc. etc. reported in 1990 1 CLR 3 . The same reads as under :

"It is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection etc. It is not disputed that in the instant case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates for going through all the relevant material before it. Therefore, setting aside the selection on the ground of the cycled comparative merits of the candidates, as assessed by the Court while sitting in appeal over selection so made would not be permissible."

The aforesaid enunciation of law is clear. It is not the function of the Court to hear appeals over the decision of the Selection Committees and to scrutinize the relative merits of the candidates. In the present case, it will be noticed that the selection has been made by a very senior Judge of the High Court. It is only when the constitution of the Selection Committee is patently illegal or the bias is proved indubitably, that the Court may interfere. In the present case no such infirmity has been pointed out.

8. An argument was sought to be raised to the effect that the constitution of a single Member Committee was not in conformity with fair play. But when provisions of Article 229 of the Constitution of India are kept in view it becomes quite evident that it is purely the prerogative of the Hon"ble Chief Justice of the High Court to constitute the Selection Committee. Article 229 is couched in very wide terms and provides that appointments of officers and servants of a High Court shall be made by the Chief Justice of the High Court or such other Judge or Officer of the Court as he may direct. It clearly shows that there is no limit or any procedure which has been prescribed to enable the Chief Justice to make appointments. He can either himself make the appointments or he can ask for other Judge of the High Court to make the appointment. He can even ask any other officer of

the High Court to make the appointment. No challenge has been made to the Rules in view of the fact that the said Rule was challenged in a writ petition which was upheld by the Single Judge (Bharucha, J.) on 8th April, 1983. Letters Patent Appeal against the said judgment was dismissed on 15th June, 1983 by Kania and Lentin, JJ. The matter was further taken to the Hon"ble the Supreme Court where the SLP was summarily rejected on 16th April, 1984. In these circumstances the Court can only examine whether the procedure followed is fair and known to law, in that it is within the ambit of the Rules. It has been accepted since the case of Sant Ram Sharma v. State of Rajasthan 1967 SLR 906 that a system of promotion on the basis of seniority alone is fair to all except the best ones. The Five Judges' Bench of the Hon"ble Supreme Court has held :

"We pass on to consider the next contention of Mr. N.C. Chatterjee that if the executive Government is held to have power to make appointments and lay down conditions of services without making rules in that behalf under the proviso to Articles 14 and 16 because the appointments would be arbitrary and capricious. In our view, there is no substance in this contention of the petitioner. If the State of Rajasthan had considered the case of the petitioner along with the other eligible candidates before appointments to the selection posts there would be no breach of the provisions of Articles 14 and 16 of the Constitution because everyone who was eligible in view of the conditions of service and was entitled to consideration was actually considered before promotion to those selection posts were actually made. It was said by Mr. C.B. Agarwala on behalf of the respondents that an objective evaluation of the merit of the officers is made each year and promotion is made on scrutiny of the record sheets dealing with the competence, efficiency and experience of the officers concerned. In the present case, there is no specific allegation by the petitioner in the writ petition that his case was not considered along with respondents 3 and 4 at the time of promotion to the posts of Deputy Inspector General of Police in 1955 or to the rank of Inspector General of Police in 1966. There was, however, a vague suggestion made by the petitioner in paragraph 68 of the rejoinder petition dated July 17, 1967 that "the State Government could not have possibly considered my case, as they considered and even in this counter affidavit consider Shri Hanuman Sharma and Shri Sultan Singh senior to me by the new type of seniority they have invented for their benefit." Even though there is no specific allegation by the petitioner that there was no consideration of his case, respondent No. 1 has definitely asserted in paragraphs 23, 25, 40 and 44 of the counter-affidavit that at the time of promotion of respondents 3 and 4 to the selection post of Deputy Inspector General of Police and of Inspector General of Police the case of the petitioner was considered. We are, therefore, of the opinion that the petitioner is unable to substantiate his argument that there was no consideration of his case at the time of promotion of respondents 3 and 4 to the selection posts. We must, therefore proceed on the footing that respondent No. 1 had considered the case of the petitioner and taken into account the record, experience and merit of the petitioner at the time of the promotion of respondents 3 and 4 to the selection grade posts. It is therefore not possible to accept the argument of Mr. N.C. Chatterjee that there was any violation of the constitutional guarantee under Articles 14 and 16 of the Constitution in the present

case. Mr. N.C. Chatterjee argued that the introduction of the idea of merit into the procedure of promotion brings in an element of personal evaluation, and that personal evaluation, opens the door to the abuses of nepotism and favouritism and so, there was a violation of the constitutional guarantee under Articles 14 and 16 of the Constitution. We are unable to accept this argument as well founded. The question of a proper promotion policy depends on various conflicting factors. It is obvious that the only method in which absolute objections to be made entirely on grounds of seniority. That means that if a post falls vacant it is filled by the person who has served longest in the post immediately below. But the trouble with the seniority system is that it is so objective that it fails to take any account of personal merit. As a system it is fair to every official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. But, though the system is fair to the officials concerned, it is a heavy burden on the public and a great strain on the efficient handling of public business. The problem, therefore, is how to ensure reasonable prospect of advancement to all officials and at the same time to protect the public interest in having posts filled by the most able man ? In other words, the question is how to find a correct balance between seniority and merit in a proper promotion policy. In this connection Leonard D. White has stated as follows :-

"The principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole organisation. The main interest to be served is the public interest, not the personal interest of members of the official group concerned. The public interest is best secured when reasonable opportunities for promotion exist for all qualified employees, when really superior civil servants are enabled to move as rapidly up the promotion ladder as their merits deserve and as vacancies occur, and when selection for promotion is made on the sole basis of merit. For the merit system ought to apply as specifically in making promotions as in original recruitment...Employees often prefer the rule of seniority, by which the eligible longest in service is automatically awarded the promotion. Within limits, seniority is entitled to consideration as one criterion of selection. It tends to eliminate favouritism or the suspicion thereof; and experience is certainly a factor in the making of a successful employee. Seniority is given most weight in promotions from the lowest to other subordinate positions. As employees move up the ladder of responsibility, it is entitled to less and less weight. When seniority is made the sole determining factor, at any level, it is a dangerous guide. It does not follow that the employee longest in service in a particular grade is best suited for promotion to a higher grade; the very opposite may be true.

(Introduction to the Study of Public Administration, 4th Edn. pp. 380, 383).

As a matter of long administrative practice promotion to selection grade posts in the Indian Police Service has been based on merit and seniority has been taken into consideration only when merit of the candidate is otherwise equal and we are unable to accept the argument of Mr. N.C. Chatterjee that this procedure violates, in any way, the guarantee under Articles 14 and 16 of the Constitution.

Article 16(1) only guarantees that the claim of the officer must be considered. He has no right to demand promotion. It is also an accepted position of law that selection can be made purely on the basis of interview. The present, however, is a case when the records of the candidates had been considered along with interview. Thus we find that the selection made on the basis of the above criteria is just and fair. No injustice has been done to the petitioner in both the writ petitions.

9. For the reasons stated above, we find no merit in the above writ petitions and the same are accordingly dismissed. Rule is discharged in both the writ petitions. There will, however, be no order as to costs.

10. Writ petitions dismissed.