DR. SURESH CHANDRA VERMA AND ORS.

v.

CHANCELLOR, NAGPUR UNIVERSITY AND ORS.

AUGUST 21, 1990

[P.B. SAWANT AND N.M. KASLIWAL, JJ.]

Service Law: Nagpur University Act, 1974: Sections 32, 57(4)(a), 57(5), 67 and 76.

University Teaching staff—Employment notice inviting applications—Reservation category-wise not post-wise/subject-wise—Validity of—Court's interpretation of Rule—Declaration of that interpretation as bad—Effect of—From the beginning—Validity of termination orders.

Administrative Law: Natural justice_Audi alterem partem—Sevices terminated due to change in law—Not on merits and/or misdemeanour—Whether hearing before termination necessary.

Practice and Procedure: Judicial decision—Overruling—Consequences of—Whether operates retrospectively—Value of precedent.

Words & Phrases: "Post"—Meaning of.

The respondent University issued an employment notice inviting applications for the posts of Professors, Readers and Lecturers in different subjects. The notice mentioned the number of reservations category-wise, but not subject-wise. Including the petitioners, a number of candidates belonging to both reserved and non-reserved categories applied. Selection Committees were constituted which recommended 47 candidates for 53 posts; weightage was given to candidates belonging to the reserved category. Thereafter, the Executive Council constituted a sub-Committee to decide which posts should be reserved. On its recommendations and on consideration of the backlog of reservations, the Executive Council decided to set apart 17 posts and gave permanent appointments only to 30 candidates. It also decided that in respect of the 17 posts reserved, temporary appointments would be made pending the availability of suitable candidates from the reserved category.

On receipt of some representations expressing grievances against the employment notice as also the procedure followed in making the appointments, the Chancellor appointed a one-man Committee to in-

A quire into the matter. The Committee submitted its report which was accepted by the Chancellor.

Meanwhile, a batch of writ petitions was filed in the High Court challenging the employment notice on the ground that the non-obtaining of the recommendation from the Board of University Teaching and B Research before issuing the employment notice was bad in law in view of the provisions of Section 32(2)(iii) of the Act. The High Court quashed the employment notice and set aside the appointments made to the posts. It also restrained the University from making any appointment without obtaining the recommendations as aforesaid.

C Taking into consideration the report of the one-man committee and the decision of the High Court, the Chancellor directed the Vice-Chancellor to terminate the services of all the appointees including the appellants. Accordingly, the Vice-Chancellor issued orders of termination of the services of the appellants and other similarly appointed. Although the services were thus terminated, the Vice-Chancellor on the D same day issued another order in exercise of his emergency powers under Section 11(4) of the Act and appointed all the appellants and others to the same posts protecting their pay and allowances and making it clear to the appointments were temporary.

However the matter went before a Full Bench since one Division E Bench took the view that post-wise reservation was not necessary, and another Division Bench differed from it. The Full Bench held that general reservations were in breach of the provisions of the Act and against reservation policy and hence illegal. It also held that since the appointments were not in accordance with law from the beginning, the termination of the appellants' services was legal.

F

Aggrieved, the appellants have preferred the present appeal against the decision of the Full Bench.

Dismissing the appeal, this Court,

G HELD: 1. The employment notice dated July 27, 1984 was bad in law since it had failed to notify the reservations of the posts subject-wise and had mentioned only the total number of reserved posts without indicating the particular posts so reserved subject-wise. [893G]

2. The word "post" used in S. 57(4)(a) of the Nagpur University H Act, 1974 has a relation to the faculty, discipline, or the subject for

which it is created. When therefore, reservations are required to be made "in posts", the reservations have to be postwise, i.e., subjectwise. The mere announcement of the number of reserved posts is no better than inviting applications for posts without mentioning the subjects for which the posts are advertised. When, therefore, Section 57(4)(a) requires that the advertisement or the employment notice would indicate the number of reserved posts, if any, it implies that the employment notice cannot be vague and has to indicate the specific post, i.e. the subject in which the post is vacant and for which the applications are invited from the candidates belonging to the reserved classes. A non-indication of the post in this manner itself defeats the purpose for which the applications are invited from the reserved category candidates and consequently negates the object of the reservation policy. That this is also the intention of the legislature is made clear by Section 57(4)(d) which requires the selection committee to interview and adjudge the merits of each candidate and recommend him or her for appointment to "the general posts" and "the reserved posts", if any, advertised. [891H; 892A-C]

A B C

3.1 It is common knowledge that the vacancies in posts in different subjects occur from time to time according to the exigencies of the circumstances and they arise unequally in different posts. There may not be vacancies in one or some posts whereas there may be a large number of vacancies in other posts. In such circumstances, it is not possible to comply with the minimum reservation percentage of 34 vis-a-vis each post. It is for this reason that the Government Resolution dated 30.3.81 states that although minimum percentage of reserved posts may not be filled in one or some posts, it will be enough if in that year it is filled in, taking into consideration that total number of appointments in all the posts. This, however, does not absolve the appointing authority from advertising in advance the vacancies in each post and the number of posts in such vacancies meant for the reserved category, and inviting applications from candidates belonging to the reserved and unreserved categories with a clear statement in that behalf. In fact, the overall minimum percentage has to be kept in mind, as stated in the Resolution, at the time of issuing the employment notice or the advertisement as the case may be. [892H; 893A-C]

D E F G

3.2 However, the course to be adopted would depend upon the unit of reservations, the period over which the backlog is to be carried, the number of appointments already made in the relevant posts, the availability of candidates from the reserved category etc. [893F]

Dr. Raj Kumar **v.** *Gulbarga University,* **I.L.R. 1990 KAR 2125, referred to.**

H

A 4. In the instant case, there is nothing on record to show that the method of giving weightage to the candidates was not followed in respect of reserved category candidates even if they had not applied for the post in the reserved seats. There is also nothing on record to show whether any candidate belonging to the reserved category had applied for a particular post in a reserved seat, without the prior knowledge B that the post was reserved. It is, therefore, difficult to understand as to how the selection committees proceeded to give weightage to the candidates without knowing whether they had applied for reserved or non-reserved seats. What is more objectionable in the procedure was that its Executive Council proceeded to classify the posts in different subjects between reserved and non-reserved posts after the lists of selected candidates were received from different selection committee. This C method was open to an obvious objection since it gave a scope to eliminate unwanted selected candidates at that stage. [891A-D]

5. When the court decides that the interpretation of a particular provision as given earlier was not legal it in effect declares that the law D as it stood from the beginning was as per its decision, and that it was never the law otherwise. This being the case, since the Full Bench and now this Court has taken the view that the interpretation placed on the provisions of law by the Division Bench in *Bhakre's* case was erroneous, it will have to be held that the appointments made by the University on March 30, 1985 pursuant to that decision were not according to law. E Hence, the termination of the services of the appellants was in compliance with the provisions of section 57(5) of the Act. [894B-D]

6. Since the services of the appellants are to be terminated in view of the change in the position of law and not on account of the demerits or misdemeanour of individual candidates, it is not necessary to hear F the individuals before their services are terminated. The rule of *audi alterem partem* does not apply in such cass, and therefore, there is no breach of the principles of natural justice. [894D-E]

7. It seems, some of the appellants had resigned from their earlier jobs and joined the University. Some of them have become overaged for G making any fresh application, while others will have no chance either because the posts as per the new advertisements of 1987 are reserved or non-reserved and they belong to the other category. It is recommended on compassionate grounds that the University may take into consideration the relevant facts pertaining to each of the appellants, and if it is possible, accommodate them without transgressing the law and the H claim of other eligible candidates. [894F-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1451 of 1988. A

From the Judgment and Order dated 14.3.88 of the Bombay High Court in W.P. No. 1033 of 1987.

M.S. Nesargi, R.C. Mishra and Dr. Meera Agarwal for the Appellants. B

Vinod Bobde, Ms. J. Wad and A.M. Khanwilkar for the Respondents.

V.N. Ganpule for the State. C

The Judgment of the Court was delivered by

SAWANT, J. The two questions raised in this appeal are:

(i) Whether the employment notice issued by the respondent-University on July 27, 1984 ought to have indicated reservations postwise, and D

(ii) Whether, assuming that the said notice was invalid the termination of services of the appellants on April 21, 1987 was valid? E

2. The University issued the employment notice in question inviting applications for a total of 77 posts which included 13 posts of Professors, 29 posts of Readers and 35 posts of Lecturers in different subjects ranging from Economics, Politics and Sociology to Physics, Pharmacy and Geology. The notice mentioned total number of reservations categorywise but not subjectwise as follows: F

Professors – Scheduled Castes-3, Scheduled Tribes-2 and VJ/NT-1

Readers – Scheduled Castes-6, Scheduled Tribes-4 and VJ/NT-2

Lecturers – Scheduled Castes-7, Scheduled Tribes-5 and VJ/NT-4 G

A number of applications were received for the posts from candidates including the petitioners belonging to both reserved and non-reserved castes for all the three categories of posts, viz., Professors, Readers and Lecturers. This advertisement was corrected by Corrigendum of February 1, 1985. Thereafter, a further employment notice H

A for additional posts in all the three categories was issued on August 1, 1985 but we are not concerned with the same. Different selection committees in all 53 in number were constituted and they recommended 47 candidates for 53 posts. It appears that while recommending the selections, the committees also gave weightage to the candidates belonging to the reserved castes. Thereafter, the Executive Council con-
B stituted a sub-committee to decide which posts should be reserved for the reserved castes. On the recommendation of the sub-committee and after taking into consideration the backlog of reservations, the Executive Council decided to keep apart 17 posts and made permanent appointments only to 30 out of 47 candidates by its appointment orders issued on March 30, 1985 for the academic year 1985-86. As regards 17
C posts which were kept apart for reserved candidates, it decided to fill in the same by temporary appointments for those posts pending the availability of the suitable candidates from reserved castes.

3. It appears that against these appointments some social workers and organisations made representations to the Chancellor making
D a grievance both against the employment notice as well as the procedure followed in making the said appointments. By his order dated February 22, 1986, the Chancellor appointed a one-man committee under Section 76 of the Nagpur University Act, 1974 (hereinafter referred to as the 'Act') to inquire into the matter. The committee submitted its report on September 24, 1986 which was accepted by the
E Chancellor.

4. In the meanwhile, a batch of writ petitions was filed in the High Court challenging the employment notice on the ground that the non-obtaining of the recommendation from the Board of University Teaching and Research ('BUTR' for short) before issuing the employ-
F ment notice was bad in law in view of the provisions of Section 32(2) (iii) of the Act. The High Court accepting this contention quashed the employment notice and set aside the appointments to the posts which were challenged in those petitions. In all the petitions the Court also restrained the University from making any appointment without obtaining the recommendations from the BUTR.

G

Taking into consideration both the report of the one-man committee and also the decison of the High Court, the Chancellor directed the Vice-Chancellor to terminate the service of all the appointees including the appellants and accordingly the Vice-Chancellor issued orders of termination of services of the appellants and others similarly
H appointed on April 21, 1987. The termination orders mentioned four grounds as follows:

(a) the reservation policy adopted by the University was contrary to Section 57 of the Act;

(b) the decision of the Executive Council allocating all reserved posts to VIth Plan posts were arbitrary and discriminatory;

(c) the University had failed to comply with the mandatory provisions of Section 32 of the Act since it had not consulted the BUTR; and

(d) that the employment notice was not in accordance with law.

It may be mentioned here that although the services were thus terminated by the said order the Vice-Chancellor on the same day issued another order in exercise of his emergency powers under Section 11(4) of the Act and appointed all the appellants and others to the same posts protecting their pay and allowances at the same time making it clear that the appointments were temporary.

We are concerned in this appeal only with two grounds as stated at the outset. The third ground, viz., whether the recommendations of BUTR were mandatory before the issuance of the employment notice was not pressed before the Full Bench from which the present appeal arises. It appears that on the first ground, viz., whether the general reservation instead of the postwise reservation was illegal, there was a difference of opinion between two Division Benches of the High Court. One Division Bench in Writ Petition No. 1876 of 1984 (hereinafter referred to as the *'Bhakre's case'* (decided on December 7, 1984 took the view that the postwise reservation was not necessary whereas another Division Bench differed with the said view and sent the papers to the learned Chief Justice for referring the matter to a larger Bench and the issue referred to the larger Bench was as follows:

> "Is non-reserving the posts of University teachers subject-wise in the employment notice a breach of letter and spirit of reservation policy contained in Section 77C read with Section 57 of the Act?"

That being the only issue, the Full Bench was really called upon to answer it alone. However, thereafter by the the consent of parties one more issue was raised before the Full Bench which is the second of the two questions which we have to decide in this appeal, viz., whether, notwithstanding the illegality of the general reservation, the services of the appellants were liable to be terminated. On the first

issue, the Full Bench held that general reservations were in breach of the provisions of the Act and against the reservation policy and, therefore, illegal. On the second issue, by majority the Full Bench held that since the appointments were not according to law from the beginning, the termination of the appellants' services was legal.

6. As regards the first question, we have narrated earlier the method which was adopted by the University for reserving the posts. It announced the posts categorywise as Profesors, Readers and Lecturers in different subject and made a blanket declaration that 6 of the posts of Professor, 12 of the posts of Readers and 16 of the posts of Lecturers would be reserved for backward castes. Neither the University nor the candidates knew at that time as to for which of the subjects and in what number the said posts were reserved. The result was that the candidates belonging to the reserved category in particular, who wanted to apply for the reserved posts did not know for which of the posts they could apply and whether they could apply at all for the posts in the subjects in which they were qualified. That this could be the expected consequence of such an employment notice can legitimately be inferred and need not be and indeed cannot be, demonstrated by evidence of what actually happened, for there may be number of candidates who on account of the said uncertainty might have refrained from applying for the posts as against those who applied to take a chance. What is further, the selection committees which were appointed to interview the candidates for the respective posts did not also know whether they were interviewing the candidates for reserved posts or not, and to assess merits of the candidates from the reserved category as such candidates. The contention advanced on behalf of the appellants that the selection committees even without know whether the posts concerned were reserved or not, had given weightage to the candidates from the reserved category and, therefore, it cannot be said that any injustice had resulted to them is without merit. In the first instance, the contention proceeds on the footing that all those belonging to the reserved category who wanted to apply for all the said posts had done so even without knowing that the concerned posts were reserved. Secondly, it also presumes that all eligible candidates from unreserved category had applied for the posts without knowing whether the posts were reserved or not. The possibility that many eligible candidates belonging to both reserved and unreserved categories might not have taken the risk and chosen to gamble cannot be ruled out. This argument further ignores the fact that the suitability of a candidate from a reserved category to the particular post has to be adjudged by taking into consideration various factors and the desired

result cannot be obtained by merely giving uniform weightage marks to the candidates concerned which was the only method followed by the selection committees while selecting the candidates. Further, there is nothing on record to show that this method of giving weightage to the candidate was not followed in respect of reserved category candidates even if they had not applied for the post in the reserved seats. What is more, there is also nothing on record to show whether any candidates belonging to the reserved category has applied for a particular post in a reserved seat, without the prior knowledge that the post was reserved. It is, therefore, difficult to understand as to how the selection committees proceeded to give weightage to the candidates without knowing whether they had applied for reserved or non-reserved seats. What is more objectionable in the procedure was that its Executive Council proceeded to classify the posts in different subjects between reserved and non-reserved posts after the lists of selected candidates were received from different selection committees. This method was open to an obvious objection since it gave a scope to eliminate unwanted selected candidates at that stage. Whether it occurred in the present case or not is immaterial for testing the validity and the propriety of the method followed by the University. As has been stated earlier, in fact, after the receipt of the list of selected candidates not only the Executive Council constituted yet another committee to decide which of the subjectwise posts should be reserved or not but the Executive Council also decided that although candidates for 47 posts were selected only 30 of them should be appointed permanently. The latter included some backward class candidates for reserved posts so categorised later. But 17 of the posts were set apart although the candidates were selected for them, and they were so set apart for being filled in afresh by candidates belonging to the reserved category. Interestingly, however, the employment notice issued subsequently for these 17 posts mentioned reservations postwise (subjectwise).

7. The argument based on Section 57(4)(a) of the Act to support the procedure adopted by the University is, according to us, not well-merited. The contention is that since Section 57(4)(a) requires the University to state in the advertisement only the total number of posts and the number of reserved posts and not postwise, i.e., subjectwise, the employment notice in question was not bad in law. According to us, the word "post" used in the context has a relation to the faculty, discipline, or the subject for which it is created. When, therefore, reservations are required to be made "in posts", the reservations have to be postwise, i.e., subjectwise. The mere announcement of the number of

A reserved posts is no better than inviting applications for posts without mentioning the subjects for which the posts are advertised. When, therefore, Section 57(4)(a) requires that the advertisement or the employment notice would indicate the number of reserved posts, if any, it implies that the employment notice cannot be vague and has to indicate the specific post, i.e., the subject in which the post is vacant B and for which the applications are invited from the candidates belonging to the reserved classes. A non-indication of the post in this manner itself defeats the purpose for which the applications are invited from the reserved category candidates and consequently negates the object of the reservation policy. That this is also the intention of the legislature is made clear by Section 57(4)(d) which requires the selection committees to interview and adjudge the merits of each candidate and recom- C mend him or her for appointment to "the general posts" and "the reserved posts", if any, advertised.

8. A support was also sought to be derived by the appellants to their contention from the policy of reservation as enunciated in D Government Resolution dated March 30, 1981 wherein instructions were issued in the matter in exercise of the power conferred on the Government under Section 77(c) of the Act. The contention was that since in para 3(b) of the said Resolution it is stated that "similarly, at any given time of recruitment to the teaching posts, only the total number of reserved vacancies and the sections from which they are to E be filled in should be determined. It would be enough if the required percentage is fulfilled as a whole and not with reference to any particular post. If the reserved vacancies cannot be filled, then so many posts as cannot be filled in, may be kept vacant for six months and should be again advertised thrice. If, even after readvertising the posts three times, suitable candidates belonging to the reserved category do not F become available, they may be filled in by candidates belonging to the "open category". We are afraid that this interpretation placed on the aforesaid contents of the Government Resolution stems from their misreading. Read in the context in which the said contents appear, it is clear that what is soought to be conveyed by them is that although at any given time the total percentage of reservation, viz. 34 is not made G up vis-a-vis particular post or posts, it would be an enough compliance with the Resolution if the total number of vacancies filled in all the posts together conform to the said percentage. It is common knowledge that the vacancies in posts in different subjects occur from time to time according to the exigencies of the circumstances and they arise unequally in different posts. There may not be vacancies in one or H some posts whereas there may be a large number of vacancies in other

posts. In such circumstances, it is not possible to comply with the minimum reservation percentage of 34 vis-a-vis each post. It is for this reason that the Resolution states that although minimum percentage of reserved posts may not be filled in one or some posts, it will be enough if in that year it is filled in taking into consideration the total number of appointments in all the posts. This, however, does not absolve the appointing authority from advertising in advance the vacancies in each post and the number of posts in such vacancies meant for the reserved category, and inviting applications from the candidates belonging to the reserved and unreserved categories with a clear statement in that behalf. In fact, the overall minimum percentage has to be kept in mind, as stated in the Resolution, at the time of issuing the employment notice or the advertisement as the case may be.

On behalf of the appellants reliance was also sought to be placed on a Full Bench decision of the Karnataka High Court in *Dr. Raj Kumar* v. *Gulbarga University,* AIR 1990 KAR 2125. We do not see how the decision in question helps the appellants, for the Full Bench has observed there that general reservation has to be cadrewise and subjectwise. But an exception could possibly be made in cases like the one of professors in which post available in each of the subjects is only one while grouping all of them together for purposes of reservation so that at least in the subjects in which the candidates belonging to the reserved category are available, they could be accommodated. It is not necessary for us in this case to express our opinion on the correct course to be adopted when only one post is available in a particular subject at a given time. The course to be adopted would depend upon the unit of reservations, the period over which the backlog is to be carried, the number of appointments already made in the said posts, the availability of candidates from the reserved category etc. What is material from our point of view in this case is to point out that even the Karnataka Full Bench has taken the view that generally reservation had to be cadrewise and subjectwise. It was also a case of the filling in of the vacancies in teaching posts in a University.

We are, therefore, in complete agreement with the view taken by the Full Bench that the employment notice dated July 27, 1984 was bad in law since it had failed to notify the reservations of the posts subjectwise and had mentioned only the total number of reserved posts without indicating the particular posts so reserved subjectwise.

9. The second contention need not detain us long. It is based primarily on the provisions of Section 57(5) of the Act. The contention

A is that since the provisions of that section give power to the Chancellor to terminate the services of a teacher only if he is satisfied that the appointment "was not in accordance with the law at that time in force" and since the law at that time in force, viz., on March 30, 1985 when the appellants were appointed, was the law as laid down in *Bhakre's* case (supra) which was decided on December 7, 1984, the termination B of the appellants is beyond the power of the Chancellor. The argument can only be described as naive. It is unnecessary to point out that when the court decides that the interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise. This being the case, since the Full Bench and now C this Court has taken the view that the interpretation placed on the provisions of law by the Division Bench in *Bhakre's* case (supra) was erroneous, it will have to be held that the appointments made by the University on March 30, 1985 pursuant to the law laid down in *Bhakre's* case (supra) were not according to law. Hence, the termination of the services of the appellants were in compliance with the D provisions of Section 57(5) of the Act.

When, therefore, the services of the appellants are to be terminated in view of the change in the position of law and not on account of the demerits or misdemeanour of individual candidates, it is not necessary to hear the individuals before their services are terminated. The E rule of *audi altrem partem* does not apply in such cases and, therefore, there is no breach of the principles of natural justice. In the result, we are of the view that there is no merit in this case. The appeal, therefore, stands dismissed. In the circumstances of the case, however, there will be no order as to costs.

10. However, it is pointed out to us that some of the appellants F had resigned from their earlier jobs and joined the University, some of them have become overaged for making any fresh application while others will have no chance either because the posts as per the new advertisement of 1987 are either reserved or non-reserved and they belong to the other category. We can, therefore, only recommend that the University may take into consideration the relevant facts pertain- G ing to each of the appellants, and if it is possible, accommodate them without transgressing the law and the claims of other eligible candidates. We make it clear that this recommendation is not a direction and is made purely on compassionate grounds. It is to be followed only if it is possible for the University to do so without giving rise to further litigation by candidates who may be aggrieved on that account.

H

G.N. Appeal dismissed.