REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.843 OF 2012

U.V. MAHADKAR Appellant(s)

Versus

SUBHASH ANAND CHAVAN AND OTHERS Respondent(s)

W I T H

CIVIL APPEAL NO.844 OF 2012

MAHARASHTRA COUNCIL OF AGRICULTURAL EDUCATION AND RESEARCH, PUNE Appellant(s)

Versus

DR. SUBHASH ANAND CHAVAN AND OTHERS Respondent(s)

JUDGMENT

We have heard learned counsel for the parties.

Civil Appeal No. 843 of 2012:

2. Aggrieved by the judgment and order dated 24.11.2009 passed by the High Court of Judicature at Bombay in Writ Petition No. 5231 of 2008 setting aside the selection of the present appellant to the post of Head of Department of Agronomy of Respondent

No.2 - Maharashtra Council of Agricultural Education and Research, the present appeal has been filed.

3. The facts are not much in dispute.

4. In the year 1986, the appellant was appointed as Assistant Professor, College of Agriculture, Dapoli under Dr. Balasaheb Sawant Konkan Krishi Vidyapeeth Dapoli. He was selected and promoted as a Professor of Agronomy in Mahatma Phule Krishi Vidyapeeth, Rahuri on 17.8.2001. For the purpose of appointing a Head of Department of Agronomy, a Selection Committee was constituted in the year 2008. The Committee, considered Statute 41 of the Maharashtra Agricultural Universities Statutes, 1990. The Committee after assessing the merit and other criteria of the appellant vis-a-vis contesting respondent selected the appellant to the post of Head of Department of Agronomy in the University.

5. Respondent No.1 challenged the said decision of

the Committee by filing a writ petition being Writ Petition No. 5231 of 2008. Although the High Court noticed the proviso of Statute 41 of the aforesaid Statute, set aside the selection on the grounds noted in para 4 of the impugned order. For better appreciation, para 4 of the impugned order passed by the High Court is quoted herein below :-

> "4. Further it is to be seen that after having found that on the basis of service record, both the petitioner and the respondent No.3 are equal and that the respondent No.3 is more meritorious because he had more experience in the post of Professor, the second aspect which requires consideration in view of the provision of sub-rule (5) of Statute 41 was the aspect of seniority. In the seniority list, the petitioner was at serial No.1 whereas the respondent No.3 was at serial No.2. Perusal of the minutes of the Selection Committee shows that the Selection Committee has not at all allowed this consideration to enter in their mind. In our opinion, the submission of the learned counsel that seniority is not relevant when the criteria for promotion is merit cum seniority for carving out zone of consideration is not well founded especially because in the present case so far as the aspect of merit is concerned, on the basis of service record, both the candidates

> are found to be equal and the respondent No.3 has been found more meritorious only because his experience in the post of Professor, therefore, the next consideration that should have entered in the mind of the Selection Committee was their placement in the seniority list. We do not want to suggest that the Selection Committee could not have selected the respondent No.3 because he was junior to the petitioner. The Selection Committee should have applied its mind to that aspect of the matter and given reasons why though the petitioner is senior according to them, selection of respondent No.3 is necessary. We thus find that in selecting the respondent No.3 for the post of Head of Department of Agronomy, the Selection Committee has ignored or has not taken into consideration relevant aspects which are required to be considered in accordance with law and therefore, in our opinion, the selection and consequent appointment of the respondent No.3 as Head of Department of Agronomy will have to be set aside. In our opinion, following order would meet the ends of justice."

6. While setting aside the selection of the appellant, a direction was issued to the Maharashtra Council of Agricultural Education and Research to hold a fresh meeting for consideration of the

candidates for selection to the post of Head of Department of Agronomy.

7. It has been brought to our notice by the learned counsel appearing for the parties that during the pendency of this appeal, a fresh Committee was constituted by the Maharashtra Council of Agricultural Education and Research and the Committee reconsidered the candidature of all the candidates including the appellant and finally selected him to the post of Head of Department. The said appointment has again been challenged by the respondent in the High Court, which is pending.

8. At the very outset, we are of the view that in the matter of selection and promotion to the higher post, if a Committee of experts is constituted then normally, the Court should not interfere in such decision unless mala fide is attributed or allegations of arbitrariness is proved.

9. Statute 41 under which selections are made is reproduced herein below:-

> "**Statute 41**:- The post of Director (other than Director of Students Welfare), Dean of Faculties and other equivalent posts shall be filled in the nomination or transfer by the Pro-Chancellor. The posts of Associate Deans, Head of Departments, Professors and other equivalent post shall be filled in by promotion and nomination in the ratio of 50 : 50 percent of the vacant post as the Vice Chancellor may, from time to time determine.
> Provided that, such posts shall be filled in by promotion through the recommendation of the Selection Committee on the basis of merits and seniority in the discipline or group of disciplines, departments or sector and minimum academic qualifications and experiences, as prescribed by the statutes."

10. From bare perusal of the aforesaid provision, it is manifest that the proviso to Statute 41 make it clear that recommendation of the Committee shall be on the basis of "merit and seniority".

11. In the instant case, we found that the Committee was constituted of the following members:-

(i) The Vice Chairman of the State Council
(ii) The Vice Chancellor of the University concerned
(iii) One non-official to be nominated by the Pro-Chancellor, from amongst the non-official members of the Executive Councils of the agricultural Universities in the State
(iv) Two experts to be nominated by the Chancellor
(v) Two representatives of the Indian Council of Agricultural Research to be appointed by the State Government, one of whom shall be a Specialist in the particular field for which the recruitment is to be made.

12. The members of the said Committee, in compliance of the High Court's order, reconsidered the merit of the appellant vis-a-vis Respondent No.1 and again selected the appellant to the post of Head of Department.

13. It is well settled that there is a sharp distinction between "merit-cum-seniority" and "seniority-cum-merit". In the former case, the merit shall have to be given preference over the seniority. It is only when the senior-most

candidate has no merit and he is not suitable to be appointed on the selection post, merely because of seniority, then the Committees have to select a meritorious candidate. The question as to the distinction between the two is no longer *res integra.*

14. In the case of ***B.V. Sivaiah vs. Addanki Babu,*** (1998) 6 SCC 720, while considering the principle of promotion on merit-cum-seniority and seniority-cum-merit, this Court held that the principle of merit-cum-seniority lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal.

15. The Constitution Bench of this Court in the case of ***Guman Singh vs. State of Rajasthan,*** (1971) 2 SCC 452, was considering a question as to whether promotion based on merit, as embodied in the

Rajasthan Administrative Service Rules, 1954, is violative of Articles 14 and 16 of the Constitution. This Court held that:

> "33. We are unable to accept this contention. The State Government has taken a decision in 1965 that selection to the service and promotion have to be on the basis of merit and seniority-cum-merit. There can be no controversy that the main object in such matters is to serve public interest and not the personal interest of the members of the official group concerned. As stated by Leonard D. White in his Introduction to the Study of Public Administration, 4th Edn., p. 380: "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".

16. In the case of ***Ayurveda & Siddha vs. K. Santhakumari (Dr),*** (2001) 5 SCC 60, this Court, considering the similar question, held

> "6. The principle of merit-cum-seniority is an approved method of selection and this Court in *Sant Ram Sharma* v. *State of Rajasthan, AIR 1967 SC 1910,* held that promotion to "selection grade posts" is not automatic on the basis of ranking in the gradation list and the promotion is primarily based on merit and not on seniority alone. At

p. 1914 of the judgment, it is stated as under: (AIR para 6)

> "The circumstance that these posts are classed as 'selection grade posts' itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the gradation list but the question of merit enters in promotion to selection posts. In our opinion, the respondents are right in their contention that the ranking or position in the gradation list does not confer any right on the petitioner to be promoted to selection post and that it is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is, therefore, available."

17. Reference may also be made to a decision of this Court in the case of ***K. Samantaray vs. National Insurance Co. Ltd.,*** (2004) 9 SCC 286, observed as under:

> "7. The principles of seniority-cum-merit and merit-cum-seniority are conceptually different. For the former, greater emphasis is laid on seniority, though it is not the determinative factor, while in the latter, merit is the determinative factor. In *State of Mysore* v. *Syed Mahmood* it was observed that in the background of Rule 4(3)(*b*) of the Mysore State Civil Services (General Recruitment) Rules, 1957 which required promotion to be made by selection on the basis of seniority-cum-merit; that the rule required promotion to be made by selection on the basis of "seniority subject to the fitness of the candi-

> date to discharge the duties of the post from among persons eligible for promotion". It was pointed out that where the promotion is based on seniority-cum-merit the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted. But these are not the only modes for deciding whether promotion is to be granted or not."

18. After giving our anxious consideration in the matter, we are of the definite opinion that the High Court should not have entered into the arena of the experts and to reassess the merit of the candidates when it is finally decided by a duly constituted Committee of experts in the same field.

19. In that view of the matter, the impugned order cannot be sustained in law. Therefore, for the aforesaid reasons, this appeal is allowed and the impugned order passed by the High Court is set aside.

Civil Appeal No. 844 of 2012:

20. In view of the order passed in Civil Appeal No. 843 of 2012, this appeal is also allowed.

.....J.
(M.Y. EQBAL)

.....J.
(C. NAGAPPAN)

New Delhi,
September 02, 2015