(2006) 02 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 2600 of 1996

Adinath Pathade and Others APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 06-02-2006

Acts Referred:

Maharashtra State Electricity Board (Classifications and Recruitment) Regulations, 1961 — Regulation 21, 29

Citation : (2006) 4 ALLMR 559 : (2006) 3 MhLj 73

Hon'ble Judges : S.P. Kukday, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : N.K. Kakade, for the Appellant; S.K. Kadam, A.G.P. for respondent No. 1 and H.T. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Kukday, J.—In the present petition, the petitioners are seeking direction to respondent Nos. 2 and 3 for placing them in the time scale of Rs. 1375-3050.

2. The petitioners are the employees of the Maharashtra State Electricity Board (for short "the Board")- The Board had different cadres including non technical cadres of Typist, Lower Division Clerk (LDC), Head Clerk and Upper Division Clerk (UDC). Service conditions of employees of the Board are governed by Rules and Regulations of the Board, including General Orders (Personnel) (hereinafter referred to as "the G.O."), MSEB Employees'' Service Regulations, Classifications and Recruitment Regulations, 1961.

3. G.O. No. 74 of GO (Personnel) provides incentives in the form of higher pay scale for those who either do not get promotion after prolonged period of service in view of the unavailability of the promotional post and also to those who do not have promotional avenues. In the beginning, this benefit was available after 10 years of continuous service. This provision was amended in the year 1983, by Corrections Slip No. 9 dated 6-5-1983 to GO 74 dated 30-4-1974. By the amendment, the duration of tenure was reduced to six years and the facility was

made available to the employees twice during the course of their service. First availment is available after completion of 6 years and second, after nine years from the date of availing the first incentive.

4. The cadre of Typist is one of the cadres for which no promotional avenues are available. The petitioners belong to this cadre. The petitioner Nos. 1 and 2 were appointed as Typist in the year 1980; whereas petitioner Nos. 3 and 4 were appointed in the year 1981. Having regard to the fact that the cadre of Typist do not have promotional avenues, respondents 2 and 3 decided to offer them an opportunity of absorption in the cadre of LDC by Circular No. 244 dated 28-7-1980. This facility was also extended to other cadres, such as, Telephone Operators, Teleprinter Operators, Telex Operators, Time Keepers etc. All these cadres any same pay scale. The facility was made available to those who fulfil the criteria for appointment to the post of UDC and pass requisite entrance examination. Taking advantage of the policy of absorption in the cadre of LDC, the petitioners appeared and passed entrance examination held on 31-5-1987; in spite of passing the examination they were not absorbed in the cadre of LDC. Thus, they made a representation for absorption. However, this representation was not favourably considered. The petitioners, again, appeared at the entrance examination held on 1-8-1993 at Ahmednagar. After passing the examination, the petitioners moved respondents 2 and 3 for absorption. On this occasion, the absorption was allowed on conditions that the petitioners would be placed at the end of seniority list and that their pay would be fixed according to Regulation 29(b) of the Service Regulations. The petitioners had availed two stagnation increments provided by GO 74. On the first occasion, they were benefited by the pay scale of Rs. 1250-35-1425-40-1825-45-2725 and on the second occasion, their pay was fixed in the scale of Rs. 1375-45-1600-55-2150-60-3050. On absorption their pay was to be fixed in the pay scale of UDCs, namely, Rs. 1.175-25-1300-30-1600-35-2230, as per the Regulation 29(b). The salary which the petitioners were drawing at the time of absorption was protected. However, they were to be brought on par with others, at the time of drawing next increment. Aggrieved by this reduction of pay, the petitioners made representations to respondents 2 and 3 claiming that the benefit under G. O. 74 is a personal benefit and can be withdrawn only in conformity with the provisions of G.O. 74. Therefore, this personal benefit cannot be withdrawn while absorbing them in the cadre of Lower Division Clerk and their pay in the scale of Rs. 1375-3050 should have been protected all throughout. As respondents 2 and 3 did not grant the relief claimed, the petitioners have filed this petition for a direction to respondents 2 and 3 for their continuation in the pay scale of Rs. 1375-3050.

5. Referring to G.O. 74, learned Counsel contends that the benefits secured in pursuance to G.O. 74 are personal benefits. These benefits cannot be withdrawn on absorption to the cadre of LDC. It is further contended that as the pay scale of LDC and Typist are the same, Regulation No. 29(b) of the Regulations do not apply to the case of the petitioners.

6. To resolve the controversy, it would be beneficial to refer to the relevant Circular No. 244 dated 28-7-1980. This circular permits employees from cadre of Typist to appear at the entrance examination held for the recruitment of LDCs, as both the cadres were carrying the same pay scale. On passing of the examination, the Typists were to be absorbed in the cadre of LDC, on condition that these employees would be placed at the bottom of the seniority list. By way of concession, the absorbers were not required to appear for interview before the Selection Board. However, employees from other Circles were not permitted to avail the facility on absorption in the cadre of another Circle. The facility was restricted to the persons from the same Circle. The petitioners did appear and passed examination in the year 1987. However, they were not absorbed in the cadre of LDC, on that occasion, because 12 available posts were filled in to reduce backlog of SC and ST. The petitioners again appeared and passed the examination in the year 1993. Thus, an option was given to them to join LDC cadre on certain terms and conditions incorporated in the appointment order No. 9211 dated 21-10-1993, namely, (i) that the pay of those who opt for the cadre of LDC would be fixed in conformity with Regulation No. 29(b) by protecting their present pay, drawn after availing the benefit under G.O. No. 74; and, (ii) employees were to give an undertaking that if they had already availed benefit under GO 74, this benefit would not be available to them. However, if they have not availed the said benefit they can avail the same after joining the cadre of LDC. An option was given to the concerned employees for accepting the absorption on these conditions or to continue in the present cadre of the Typist. The petitioners opted for joining the cadre of LDC and furnished the required undertaking. After joining the cadre, the petitioners claimed that the benefit under GO 74 is personal benefit and, therefore, they should be continued in the pay scale of Rs. 1375-3050.

7. The question of fixation of seniority is also involved. However, the petitioners do not make a grievance in this behalf.

8. As per mandate of the service jurisprudence whenever an employee changes his cadre, he is governed by the Service Conditions of the cadre in which he is absorbed and is entitled to the pay scale available for others from the cadre. Such absorbers are always placed at the bottom of the seniority list in the new cadre. In this behalf, reference can be made to the decision of the Apex Court in the matter of MSEB v. Rama Rajaramji Wadekar, (2002) 10 SCC 254 . In this case, a Sub-Engineer employed under the Maharashtra State Electricity Board was transferred from one Circle to another Circle. This transfer was held to be ex-cadre transfer as it was made prior to 21-10-1980, that too at the request of the employee. In this background, it was held that the transferee in the new Circle would be governed by Regulation 21(a) and his service in the previous Circle would not counted towards the seniority. Thus, whenever an option is exercised, the employee is bound by the consequences flowing from the change in service conditions. It is, therefore, apparent on the change of the cadre, previous service will not be counted for the purpose of seniority and the absorbee would be placed

at the bottom of the seniority list. Apart from the seniority, he would be drawing the scale of pay admissible to the said cadre. It sometime happens that there is a downward revision of pay. However, if the employee opts for the change of cadre with the knowledge that there would be such a downward revision, he cannot subsequently make a grievance in respect of such downward revision of pay. In such cases, existing pay of the employee is protected in conformity with the Regulations applicable to him.

9. In the present case, Regulation No. 29(b) and Note 1 which is attracted on the change of cadre reads as under:

29(b) : When an employee holding a post substantively is appointed in another post which does not entail higher responsibility or if the scale of pay the post is changed, the incumbent shall draw the same pay that he was drawing immediately prior to the appointment to the new post or immediately prior to the change of the scale of pay as the case may be, if that is a stage in the scale of pay of the new post, or in the new scale of pay or if there is no such stage the stage next below pay plus personal pay equal to the difference to be merged in subsequent increment. Note 1 : The holder of the post, the scale of pay of which is changed, may at his option retain his pay in the old scale until the date on which he may earn his next increment or any subsequent increment on the old scale or until he vacates his post or ceases to draw pay on that time scale. The option once exercised shall be final.

10. The petitioners were absorbed in the cadre of LDC by order No. 9211 dated 21-10-1993 which had given option to the petitioners for accepting the condition of absorption and joining the cadre or to continue in the cadre of Typist. Having once exercised their options, now the petitioners cannot turn back and claim that their pay cannot be fixed in conformity with Regulation No. 29 (b) of the Regulations. It is contended by learned Counsel for petitioners that both the cadres have the same pay scale and, therefore, Regulation 29(b) is not applicable to the present case. Per contra, learned Counsel for respondents 2 and 3 has referred to all the relevant Circulars to point out that Regulation 29(b) is applicable to this case. The contention of learned Counsel for the petitioners is devoid of substance and cannot be sustained as Regulation 29(b) is applicable to a case where an employee holding the post substantively is appointed in another post which does not entail higher responsibility and not only to the case where the scale of pay of the post is changed.

11. In the present case, the petitioners were appointed to another post which does not entail higher responsibility and, therefore, Regulation No. 29(b) would be applicable to their case. Regulation 29(b) provides that the incumbent shall draw the same pay that he was drawing immediately prior to the appointment to the new post or immediately prior to change of the scale of pay. If there is no corresponding stage then the pay would be fixed at the stage next below the pay which the incumbent is drawing. The difference would be considered as personal pay, and would be merged in the pay subsequently at the time of drawing

increments. In the present case, petitioners had availed the benefit under G.O. 74 twice, therefore, they were drawing pay scale of Rs. 1350-3050. However, when they changed the cadre, this benefit was not available to them as they had not completed requisite length of service in the cadre of LDC. The petitioners opted for the cadre of LDC as the promotional avenues to the posts of UDC in the pay scale of Rs. 1250-2725 and subsequent promotion as Head Clerk/Assistant Accountant, having pay scale of Rs. 1375-3050 are available for this cadre. The option given to the petitioners indicated that the benefit available under G.O. 74 availed earlier will not be available in case of absorption in the new cadre. As the petitioners had accepted this condition, they cannot now turn back and stake their claim for higher pay scale.

12. The petitioners desired to enter the cadre having promotional facilities. At the time of absorption they have exercised their option accepting the condition that they would not be entitled to the benefit of G.O. 74 availed earlier and that their pay would be fixed as per Regulation 29(b) of the Regulations. The petitioners are, therefore, not entitled to any relief claimed for. The petition, thus, fails and is dismissed. Rule discharged. However, in the facts and circumstances of the case, there shall be no order as to costs.