
(2013) 03 BOM CK 0148
In the Bombay High Court
Case No : Writ Petition No. 199 of 2005

Anand M. Mandrekar

APPELLANT

Vs

State of Goa and Another

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 5 ALLMR 243 : (2013) 4 BomCR 373 : (2013) 138 FLR 638 : (2013) 4 MhLj 74

Hon'ble Judges : V.M. Kanade, J;U.V. Bakre, J

Bench : Division Bench

Advocate : J. Supekar, for the Appellant; V. Rodrigues, Additional Government Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

V.M. Kanade, J.—Heard learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the State. By this petition which is filed under Articles 226 and 227 of the Constitution of India, the petitioner is seeking following relief's:-

(A) This Hon''ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the respondents to award the petitioner benefit of Time Bound Promotional Scale (TBPS) in terms of office memorandum dated 5-7-1989 by counting petitioner's 12 years with effect from 4-2-1987 along with all consequential benefits;

(B) In the alternate, this Hon''ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the respondents to withdraw the impugned communications dated 29-4-2004 and to award to the petitioner the benefit of First Financial upgradation under the ACPS along with all consequential benefits;

(C) In the alternate, this Hon''ble Court be pleased to issue an order for re-fixation of the petitioner''s pay on par with that of his juniors under F.R. 22 along with all consequential benefits;

(D) Pending the hearing and final disposal of this petition, this Hon''ble Court be pleased to issue directions to the respondents to award to the petitioner the benefit of First Financial up-gradation under the ACPS along with all consequential benefits;

(E) For ad-interim ex parte relief in terms of prayer clause (B) herein above;

(F) For such other and further relief''s that this Hon''ble Court deems fit and proper;

(G) For costs.

2. The brief facts are as under:-

The petitioner was appointed as a police constable in group "D" post as on 4-2-1987. Pay Scale for police constable in group "D" post was Rs. 210-4-250-EB-5-270. However, when the petitioner was appointed on 4-2-1987, he was appointed in the pay scale of Rs. 825-15-900-EB-20-1200/-. The petitioner, however, applied in March, 1990 to the post of Police Constable Driver, group "C" for which pay scale at the relevant time when he had applied, was Rs. 950-1400/- and accordingly he was appointed as Police Constable Driver in the pay scale of Rs. 950-1400/- on 30-7-1990. However, in the meantime after the petitioner had applied for the said post, so far as original post i.e. police constable is concerned, the pay scale had increased on 4-4-1990 to Rs. 950-1400/- as such, when the petitioner joined group "C" post of Police Constable Driver his pay scale and pay scale of police constable was the same namely Rs. 950-1400/-. As a result of this, though he was shown to be promoted in the post of Police Constable Driver in reality his pay scale has not changed nor in that sense he was promoted from group "D" to group "C". The grievance of the petitioner is that pursuant to the scheme of the Government namely Time Bound Promotional Scale (hereinafter referred to as "TBPS" for short) in which a person working in the same post if he is not promoted in 12 years, is entitled to get the promotional pay scale irrespective of the fact that whether he is promoted or not. The grievance of the petitioner, therefore, is that the respondents treated the petitioner as being promoted in April, 1990 to the post of Police Constable Driver and did not give the benefit of promotion neither for the post of police constable nor for the post of Police Constable Driver. The contention of the petitioner, therefore, is that though he was treated as promoted to the post of Police Constable Driver, his pay scale had not changed and, therefore, he was entitled to be promoted in 10 years or at least 12 years from the date of his appointment as Police Constable Driver. Learned counsel for the petitioner has invited our attention to the TBPS and also the memorandum issued by Government wherein anomalies in the scheme were explained. He submitted that his case would squarely be covered under point No. 2 of the said memorandum.

3. On the other hand, learned counsel appearing for the respondents vehemently opposed this submission. He submitted that the order of appointment of the petitioner to the post of Police Constable Driver clearly mentions that he was being promoted to the said post and as such, having been promoted in 1990, he was not entitled to claim the benefit of the TBPS. He has invited our attention to the detailed affidavit in reply filed by the respondents.

4. After having heard both the learned counsel, in our view, the submission made by learned counsel appearing on behalf of the petitioner has to be accepted. It is an admitted position that the petitioner was appointed to the post of police constable on 4-2-1987 in the pay scale of Rs. 825-15-900-EB-20-1200/- and this pay scale was revised to Rs. 950-1400/- on 4-4-1990 and when he took charge as a Police Constable Driver on 30-7-1990, his pay scale was same namely 950-1400/-. That being the position, in view of the TBPS, therefore, it could not be said that the petitioner was promoted to the post of Police Constable Driver though it is treated as group "C" post since the pay scale in both the cadre had changed and as such, therefore, the petitioner was entitled to get the benefit of TBPS either in 10 years as was initially envisaged or in 12 years as subsequently amended. The submission made by learned Additional Government Advocate, therefore cannot be accepted.

5. In the office memorandum which was published in gazette Notification dated 30th September, 2001, it is abundantly clear, therefore, that the petitioner did not get any benefit when he was appointed as Police Constable Driver on 30-7-1990 and it cannot be treated as promotional post since the pay scale was same and, as such, therefore under TBPS the petitioner would be entitled to get next promotional pay scale namely that of Head Constable from 30-7-2002.

6. The petition is allowed and the respondents are directed to give benefits of Assured Career Progression Scheme (hereinafter referred to as "ACPS" for short) to the petitioner from 30-7-2002 along with all consequential benefits. Increment from the said date should be given to the petitioner. The respondents shall accordingly pay the arrears after recalculating the same within a period of 14 weeks from today.

7. Initially the said ACPS was known as TBPS. However, subsequently in 2001 the said scheme was replaced by ACPS and hence, the petitioner would fall in category of ACPS with effect from the date of appointment as a police constable driver from 30-7-1990.

8. With these directions, Rule is made absolute. Writ Petition stands disposed of.