
(2008) 09 BOM CK 0009
In the Bombay High Court
Case No : Writ Petition No. 506 of 2003

B.S. Hanchinal and Others	Vs	APPELLANT
State of Goa and Others		RESPONDENT

Date of Decision : 11-09-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2008) 6 BomCR 258

Hon'ble Judges : Dharmadhikari S.C., J;Chavan R.C., J

Bench : Division Bench

Advocate : Agni and M.S. Prabhudessai, for the Appellant; W. Coutinho, Government Advocate, for the Respondent

Judgement

Dharmadhikari S.C., J.—Short question before us in this petition under Article 226 of the Constitution of India, is whether the petitioners, who have put in 14 years of service before they were regularised w.e.f. 24.6.1997, that service has to be ignored or should be taken into consideration for granting them the benefit of the Time Bound Scale of pay envisaged by a scheme framed in that behalf.

2. It is not in dispute before us that the Government of Goa had introduced a scheme and the same is entitled Revision of pay scale of school teachers. That scheme was initially formulated and introduced by the Central Government and it is undisputed before us that the Government of Goa adopted the same. The scheme states that revised pay scale will be admissible subject to compliance with the conditions stipulated in paragraph 3 of the scheme.

3. Paragraph 3 of the scheme in so far as it is relevant for our purpose reads thus:

3. The revised Pay Scales will be admissible subject to the following conditions:

i) While Senior Scale will be granted after 12 years to Primary School Teachers, Trained Graduate Teachers/Headmasters of Primary Schools and Post Graduate Teachers Headmasters of Middle Schools, the Selection Scale will be granted

after 12 years service in the Senior Scale of the respective cadre. For the Vice-Principals/Headmasters of Secondary Schools, there will be only Senior Scale after 12 years and no Selection Scale.

4. It is the case of the petitioners that each one of them has been working as Physical Education Teachers in different Government Schools in the State of Goa. They were appointed as Physical Education Teachers pursuant to advertisement published in the local newspaper. The qualification then prevailing as per the recruitment rules in force, were applicable to the petitioners. Thus, recruitment rules were duly notified. The advertisement published in the year 1983 envisages compliance with certain conditions including qualifications. The Educational Qualifications came to be relaxed in the light of the circular dated 21.3.1980 (Exh. B). In such circumstances, the petitioners applied before the due date, in terms of the advertisement. They were issued appointment orders and same stated that the services are on ad hoc basis.

5. Thereafter, it is stated by the petitioners that on the recommendation of the National Commission on Teachers chaired by Prof. D.P. Chattopadhyaya, Government of India announced implementation of the pay scale. These pay scales were adopted and implemented by the Government of Goa. The relevant paragraph Nos. 6 and 8 in the petition read thus:

6. The petitioners state that vide order dated 6th August, 1972, 20 posts of physical Education Teachers were created by the Government and applications were invited for appointment for the said 20 posts. The advertisement was published in the Navhind Times inviting applications for physical Education Teachers by the Director of Sports and Cultural Affairs, Panaji giving full details such as name, Age, Educational Qualifications etc. so as to reach the office of the Director of Sports and cultural affairs up to 7th March, 1983. The qualifications such as Degree of a recognized University or equivalent and Degree/Diploma in Physical Education from recognized University/Institute were relax-able in case of a candidate with SSC and certificate in Physical Education who had completed their certificate in Physical Education Training on or before June, 1979. The petitioners accordingly applied for the post of Physical Education Teachers. The petitioners were appointed to the post of Physical Education Teachers in terms of the aforesaid advertisement and the Circular of the Government referred to herein above, thereby relaxing the qualifications as laid down in the recruitment Rules 1980. Hereto annexed and marked Exh.C is the copy of the advertisement dated 19.2.1983.

8. The petitioners further state by order dated 29th December, 1987, the question of implementation of the pay scale as announced by the Government of India on the recommendations of National Commission on Teacher's chaired by Prof. D.P. Chattopadhyaya was under the consideration of the Government of Goa. The Government of Goa sanctioned the implementation of the pay scales as approved by the Government of India, on the recommendations of the National Commission to all Primary School Teachers, Trained Graduate Teachers, Post

Graduate Teachers etc. of all Government and Non Government Aided High Schools and Higher Secondary Schools with effect from 1st January, 1986 onwards. The pay scales were accepted with the various conditions laid down by the Government of India vide their order dated 12th August, 1985. The implementation of the pay scale would be further subject to the modifications of any other service conditions and norms for working hours etc. as approved by the Government from time to time. All Government and aided institutions were required to refix the pay of Teachers and admit the fixation statement. In terms of the said scheme, the revised pay scales in respect of various categories of pay scales were as set out in para 3 of the said scheme. While senior scale would be granted after 12 years of service to the Teachers, the selection scale would be granted after 12 years of service in the senior scale in the respective cadre. The number of posts in the selection scale would be restricted to 20 % of the number of posts in the senior scale and the senior scale and selection scale would be given after screening regarding the satisfactory performance of the concerned teachers by an appropriate DPC and every teacher would be required to participate in an in-service training programme of at least 3 weeks duration before he/she crosses an efficiency bar or is promoted to senior scale or selection scale i.e. once in 6 years provided that where arrangements for such training cannot be made the appointing authority may exempt a category of teachers for a specific time. Hereto annexed and marked Exh.E is the copy of the order dated 29.12.1987 along with the scheme.

6. The petitioners contended that although their services were regularised with effect from 24.6.1997, it is apparent that they were entitled to the benefit of revised pay scales in terms of above mentioned scheme. It was their case that scheme does not make any distinction with regard to the label attached to service or the nature of the same. In other words, the words "ad hoc", "temporary" etc. cannot be read into the scheme. The scheme only contemplates completion of 12 years of service. The petitioners, therefore, requested that the revised pay scales be made admissible to them. They had given several instances of persons, who were granted the benefit of revised pay scales by computing the period of ad hoc services rendered by them. In such circumstances, the period from 1983 to 24.6.1997 could not have been ignored by the respondents but the benefit of the revised pay scales is denied to the petitioners. The instances are set out in paragraph Nos. 11 and 13 of the petition.

7. The petitioners made repeated representations and requested that the benefit be extended to them, but there was no response. Even the legal notice was not replied nor requisition contained therein complied with.

8. It is in such circumstances that the petitioners have approached this Court in its writ jurisdiction under Article 226 of Constitution of India praying that a writ of Mandamus or any other appropriate writ order, direction be issued directing and commanding the respondents to grant senior scale to the petitioners.

9. Mrs. Agni, learned Counsel appearing for the petitioners contended before us

that the respondents have wrongly and illegally denied the benefit of the scheme to the petitioners. Taking us through the scheme, she contended that it does not postulate rendering of any regular service as is now contended by the respondents. She submits that all that is required is rendering of 12 years of service. In such circumstances by denying the benefits to the petitioners, the respondents have violated the mandate of Articles 14 and 16 of the Constitution of India. She submits that by extending the benefit to some of the teachers and denying them to the petitioners makes out a clear case of discrimination and arbitrariness on the part of the respondents. She submits that further distinction between Trained Teachers and Graduate Teachers in so far as the petitioners are concerned, also does not hold substance in the light of the scheme itself. In such circumstances, the relief as prayed for, be granted in her submission.

10. In support of her contention Mrs. Agni relies upon the following Decisions.

- i) Union of India (UOI) and Others Vs. M. Mathivanan, .
- ii) The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, .
- iii) Raj Kishore Vishwakarma and Ors. v. Union of India and Ors .

11. On the other hand, Ms. Coutinho, learned Government Advocate has contended that the Affidavits filed by the respondents demonstrate that only such of the teachers, who have fulfilled the requirement of the scheme get benefit. The petitioners have been admittedly appointed as temporary or ad hoc employees. They were regularised in the year 1997. In such circumstances, the benefit of revised pay scales cannot be claimed by them on the basis of their ad hoc service. She submits that it is not the case of attaching a label as contended but this is the admitted factual position. For all these reasons, she submits that the petition be dismissed. She submits that the issue is squarely covered by the decision of the Supreme Court in the case of State of Haryana Vs. Haryana Veterinary and A.H.T.S. Assn. and Another, and in the case of (State of Punjab v. Ishar Singh) reported in AIR 2002 S.C.W. 652.

12. For properly appreciating the rival contentions, it would be advantageous to refer to the scheme itself. The scheme has been perused with the assistance of the both sides. The scheme contemplates that revised pay scale of School Teachers for different grades are made on the basis of recommendation of IVth Central Pay Commission. The petitioners' case falls in the category of Trained/ Graduate Teachers/Headmasters of Primary School. It is undisputed before us that the petitioners are Trained Teachers. It is further undisputed that they have been appointed as Physical Trainee Teachers. The undisputed position is that appointment orders issued to them denote that their services are engaged on ad hoc basis. Further, the scheme read as a whole, does not make any distinction on the basis of nature of service leave alone requiring rendering Regular service. All that it states that senior scale will be granted after 12 years to Primary School Teachers, Trained Graduate Teachers and Teachers of the other categories. There

is another scale known as Selection Scale, which is granted after 12 years of service in the Senior Scale. We are not concerned with that category. The petitioners are claiming benefit of Senior Scale after 12 years of service. From the scheme itself, the learned Government Advocate was unable to point out to us anything, which would enable the respondents to exclude the period of temporary/ad hoc service rendered by the petitioners. It is not her case that even if the scheme is silent with regard to this aspect, the Pay Commission's recommendation or other requirements have to be read into the same. All that the Government would urge in this case is that it sanctioned the scheme but the petitioners are not entitled to the benefits thereunder as their appointments are made on ad hoc basis. Reliance is placed by the respondents on what has been set out in their Affidavit and particularly in paragraphs 9 and 15. However, perusal of the same, would make it clear that the petitioners having not completed 12 years of regular service, is the sole reason for denying the benefit. The word "regular", does not appear in the scheme admittedly. In such circumstances, ignoring 14 years service from the date of appointment in the case of petitioners for the purposes of extending the benefit of the scheme, is ex facie erroneous and illegal.

13. There are instances, which have been set out in the petition of teachers, who have been extended benefit. The petitioners have pointed out the instances of Physical Trainee Teachers, who are similarly placed. The Government in its further affidavit filed in reply has contended that those teachers are not similarly situated. They had attained the qualification of being graduates and, therefore, fell in the category of Graduate Teachers. After the attention of the learned Government Advocate was invited to the fact that the petitioners are Trained Teachers and even Trained Teachers are entitled to the benefit, she had nothing to say.

14. Reliance placed upon the decision in the case of Punjab v. Ishar Singh reported in AIR 2002 S.C.W. 2652 is misplaced. On facts, the respondents before the Supreme Court were disentitled to the benefit of the Scheme which mandated Regular service. Their appointments were made on ad hoc basis and without following procedure laid down in the recruitment rules. In the instance case, there is clear averment in the petition that appointment was made pursuant to the advertisement and under the recruitment rules. That aspect has not been denied. If the appointment was ad hoc but under the rules and after following the procedure, then, one fails to understand how the Supreme Court decision would be of any assistance.

15. The Supreme Court in this case, relied upon its earlier view i.e. in the case of State of Haryana Vs. Haryana Veterinary and A.H.T.S. Assn. and Another, . There, the Supreme Court took the view on the basis of the factual position emerging from the record. There, the requirement was that the service rendered should be regular. It is, therefore, clear that even this decision of the Three Judges' Bench is inapplicable.

16. On the other hand, the view taken in the recent decision in the case of Union of India (UOI) and Others Vs. M. Mathivanan, , is directly applicable. After setting out the scheme, this is what the Supreme Court observes in paragraph Nos. 13 and 14, which read as under:

13. Reading of the above two paragraphs makes it abundantly clear that so far as placing of an officer in the "next higher grade" is concerned, what is relevant and material is that such official belonging to basic grades in Groups "C" and "D" must have completed "sixteen years of service in that grade". The said paragraph nowhere uses the connotation "regular" service. Para 2 which provides for the Departmental Promotion Committee and consideration of cases of officials for "promotion", provides for sixteen years of "regular" service. The Tribunal, therefore, rightly considered para 1 as relevant and held that basic eligibility condition for being placed in the next higher grade is that the officer must have completed sixteen years of service in the basic grade in Group "C" and Group "D". Though in other paragraphs, the service was qualified by the adjective "regular", the said qualification was not necessary for the purpose of para 1. Since the employee wanted the benefit of placement in "next higher grade", what was required to be established by him was that he had completed sixteen years of service in the grade and the said requirement had been complied with in view of the fact that with effect from 30.9.1983 he was appointed as Warrant Officer. He was, therefore, entitled to the benefit of "next higher grade" under para 1 from 1999. The authorities were, therefore, not justified in rejecting the claim and accordingly the petition was allowed. The High Court rightly upheld the direction of CAT.

14. The learned Counsel for the respondent is also right in placing reliance on the decision of this Court in Dwijen Chandra Sarkar and Another Vs. Union of India and Another, . Almost in similar circumstances, the Court considered the extent and applicability of Time-Bound Promotion Scheme and held that the benefit of the said Scheme would be available to a person, who had completed "sixteen years of service" in the grade. In that case, two appellants were working in the Posts and Telegraphs Department and they had claimed the benefit of the Scheme. Initially, they were serving in the Rehabilitation Department of the Government of India, but were transferred to the Department of Posts and Telegraphs afterwards. The question before the Court was whether the appellants were entitled to count the services rendered by them earlier in the Rehabilitation Department of the Government of India and whether they would be entitled to the benefit of the Scheme by taking into account past services. The Court considered the scheme of December 1983 and held that what was required under the Scheme was completion of sixteen years of service in that grade. If the said requirement is complied with, an employee would be entitled to be placed in the next higher grade. It was observed that two concepts, namely, (i) "time-bound promotion", and (ii) "regular promotion" were different. So far as the "time-bound promotion" was concerned, the Court observed that since there were large number of employees who were not likely to get promotion in the near future

because of their comparatively low position in the seniority, the Government thought it necessary that in order to remove frustration, the employees should be placed in the "next higher grade" in terms of emoluments while retaining them in the same cadre. This is what is generally known as the "time-bound promotion". Such "time-bound promotion" does not affect seniority of those higher up.

17. Thus, the consistent view is that the object of such scheme is to remove frustration on account of stagnation. That there is frustration on account of stagnation is not disputed. That large number of employees, who are not likely to get promotion in near future because of their comparatively low position in seniority, were frustrated and, therefore, they ought to be placed in "next higher grade" in terms of emoluments. This is only to encourage them to render proper service in public interest. Such being the object of the scheme, we fail to understand as to why the Government of Goa has denied the benefit under it to some of the Physical Trainee Teachers. If the State is of the view that some of the teachers at least were frustrated on account of stagnation and extended benefit to them, the same beneficial view ought to have been taken in the cases of the petitioners as well.

18. For the above reasons, we are of the view that denial of the benefit of the scheme to the petitioners by the respondents violates the mandate of Articles 14 and 16 of the Constitution of India. The denial is wholly unreasonable, unfair and unjust. In such circumstances, the petition deserves to succeed.

19. Rule is made absolute in terms of prayer Clause (a). It is directed that the petitioners are entitled to the same benefits, as are made admissible to two teachers i.e. Vilas More and Mr. Arvind Dessai, upon the petitioners completing 12 years service in terms of the para 3 of the scheme, from the dates of completion of such period by each one of them. The petitioners are entitled to the benefits from the date of completion of 12 years of service and all arrears be released to them as expeditiously as possible and within a period of 3 months from today. Needless, therefore, to add that their pay will have to be re-fixed after the benefits are made admissible to them and even that exercise be completed within above period. In the circumstances, however, there would be no costs.