

(2018) 03 BOM CK 0102
In the Bombay High Court
Case No : WRIT PETITION NO.3300 OF 2010

DR. DASHRATH BALIRAM JADHAO

APPELLANT

Vs

STATE OF MAH. THR. SECY.HIGHER AND TECHNICAL EDUCN.
MANTRALAYA, MUMBAI

RESPONDENT

Date of Decision : 15-03-2018

Acts Referred:

Citation : (2018) 03 BOM CK 0102

Hon'ble Judges : B.P.DHARMADHIKARI , J, ARUN D. UPADHYE, J

Bench : Division Bench

Advocate : Devdatta Deshpande, Anand Parchure, Tajwar Khan

Final Decision : Disposed Of

Judgement

B. P. DHARMADHIKARI, J.

1.Heard Shri Deshpande, learned counsel for the petitioners and Ms. Khan, learned A.G.P. for the respondents.

2.We need not delve into specific facts as the same are not in dispute. The petitioners admittedly earlier working as teachers in High School, have

been selected and recruited as lecturers in Junior College on different dates. They at that juncture, already had Ph.D. to their credit and therefore,

claim four increments on its strength, as per Clause-11 of the Government Resolution dated 11 th December, 1999 issued by the Higher and Technical

Education Department of Government of Maharashtra.

3.During arguments, the learned counsel for the petitioners submitted that selection and appointment as lecturer in Senior College is new recruitment

and hence, on 1 st March, 1999, the State Government has consciously resolved and protected the pay of the petitioners in terms of Rule 11 of The

Maharashtra Civil Services (Pay) Rules, 1981. Our attention has also been invited to few instances disclosed in paragraph No.6 of counter

affidavit filed on behalf of the petitioners to show as to how lecturers in Senior College situated similarly have been given that benefit.

4.Ms. Khan, learned A.G.P. has, however, submitted that decision of the State Government dated 11 th December, 1999 cannot be construed

independently and must be understood in backdrop of earlier Government Resolution dated 27/02/1989, particularly Clause-10 therein. She submits that

as mentioned therein, object was to encourage research in continuation of post graduate studies and therefore, three advance increments have been

sanctioned only to those recruits, who complete research and obtain Ph.D. in continuation of post graduate studies. She submits that thus, the

recruitment envisaged in Clause-10 is first job or first entry into service. Here, petitioners had already started working as teachers in Junior College

and thereafter, have improved their qualification. Submission is, therefore, the Clause-10 is not attracted in their case.

5.Inviting attention to a chart placed on record as Annexure-R-II with reply affidavit of the respondents, she points out as to how grant of four

advance increments result, in prejudice to the petitioners. In that event, their fixation as lecturer in pay scale goes below the stage at which it has been

fixed after extending them pay protection, as stipulated in Government Resolution dated 1 st March, 1999. She submits that protection in pay and

advance increments are two distincts and mutually exclusive concepts. The petitioners, therefore, cannot claim both together. Lastly, she has that, in

view of clear stipulation in various Government Resolutions, if in some stray cases, benefit is wrongly released, that by itself, cannot clothe petitioners

with any right.

6.After hearing respective counsel, we find that consideration of controversy again say of beginning with Clause-10 in Government Resolution dated

27/02/1989. Said clause reads as under :-

Clause-10 : In order to encourage research, in continuation of post-graduate studies, candidates, who at the time of their recruitment as

Lecturers/Librarian/Physical Education Staff possess Ph.D. or M. Phil. degree, will be sanctioned three and one advance increments respectively in

the scale of Rs.2200-4000 alongwith the benefit of corresponding years of

service for the promotion. The existing incumbents without research degree and those similarly situated, recruited in future will be eligible for a similar benefit in service for the purpose of promotion as and when they acquire research degrees, but will not be eligible for advance increments. Existing incumbents with research degree will also be eligible for a similar benefit.

7. This clause in its opening part therefore, clearly discloses the object behind sanctioning three increments in advance to those who possess Ph.D. at the time of their recruitment. Object is to encourage research in continuation of post graduate studies. Thus, to encourage post graduate persons to complete research in continuation of their post graduate studies and not to opt for some service or shift to other avenue, the incentive has been stipulated. When this arrangement kept in mind, it is apparent that person recruited has to show that he has completed Ph.D. in continuation of his post graduate studies. A break in studies after post graduation and registering for Ph.D. after some time gap after post graduation is discouraged. Mere Ph.D., therefore, by itself will not qualify incumbent to claim these three increments as advance increments.

8. However, after this, the State Government has issued another Government Resolution dated 11th December, 1999. This Government Resolution in its opening part makes reference to the Government Resolution dated 27/02/1989 (supra) at Sr.No.1. The purpose of this Government Resolution is revision of pay scales of teachers and other measures for maintenance of standards in higher education in Clause-11. Again, there is reference of advance increments conferred upon the teachers with Ph.D. or M.Phil. Degree. This clause reads as under :-

Clause-11 : Incentives for Ph.D. / M.Phil.

Four and two advance increments will be admissible to those who hold Ph.D. and M. Phil degrees respectively at the time of recruitment as

Lecturers. Candidates with D./Litt/D.Sc. should be given benefit on par with Ph.D. and M. litt on par with M. Phil. One increment will be admissible

to those teachers with M. Phil. who acquire Ph.D. within two years of recruitment.

A Lecturer with Ph. D. will be eligible for two advance increments when she/he moves in to selection Grade/Reader.

A teacher will be eligible for two advance increments as and when she/he acquires a Ph.D. degree in her / his service career.

9. Perusal of this clause, therefore, shows that those who hold Ph.D. at the time of recruitment as lecturer, are eligible for four advance increments.

We need not refer to other part but then one increment is admissible to those who already have acquired Ph.D. within two years of recruitment.

Later, two paragraphs not re-produced since not relevant for our purpose, show that a teacher is made eligible to two advance increments as and

when he/she acquires Ph.D. Degree in her / his service career. Together therefore, intention to give benefit to those who secure Ph.D. is apparent. If

Ph.D. is procured while in service, two advance increments are conferred. A teacher entering in service with M.Phil. Degree, if he acquires Ph.D.

degree within two years of recruitment, gets one increment. Similarly, those who enter in service as lecturer with Ph.D. are given four advance

increments. One apparently notices an anomaly because a teacher entering with M.Phil Degree and obtaining Ph. D. within two years, gets only one

advance increment, while his counterpart who may obtain Ph.D. at any time during his service career, gets two advance increments. We are not

concerned with this controversy and hence, we are not recording any finding about the correctness or propriety of this scheme but then word

recruitment"" here expressly means recruitment as lecturer. The recruitment as lecturer as per the Government Resolution dated 11 th December,

1999 has to be in a Senior College.

10. This Government Resolution deviates materially from earlier Government Resolution dated 27/02/1989. Earlier Government Resolution dated

27/02/1989 in Clause-10, confers only three advance increments on those who upon recruitment, join as lecturer with Ph.D.

This Government Resolution has been referred to in later Government Resolution and improvement made is instead of three increments, four

increments have been prescribed. We have also briefly referred to its scheme. Government Resolution dated 11 th December, 1999 therefore, cannot

be understood in the backdrop of earlier Government Resolution dated 27/02/1989. Clause-11 in later Government Resolution, therefore, cannot be

construed in the light of Clause-10 of earlier Government Resolution dated 27/02/1989.

11. The perusal of third Government Resolution with which we are concerned i.e. Government Resolution dated 1 st March, 1999 is necessary. It

reveals an effort to protect pay of teacher in Junior College after his appointment as a lecturer in Senior College. The State Government has taken

note of fact that this appointment in Senior College as a lecturer is new appointment and hence, they are fixed at the beginning of pay scale applicable

to the post of lecturer. Because of this, State Government has thought it proper to extend benefit of pay protection to such teachers and in paragraphs

No.2 has pointed out procedure as stipulated in Rule 11 of The Maharashtra Civil Services (Pay) Rules, 1981 to be adopted for this purpose. This

Government Resolution therefore, specifically takes note of fact that selection and appointment of teacher in Junior College as lecturer in Senior

College is new recruitment.

12. After this Government Resolution, the Government Resolution dated 11th December, 1999 (supra) has been issued by very same Department of the

State Government. This Government Resolution in Clause-11 only uses the words ""recruitment as lecturer"". It does not speak of a need of procuring

Ph.D. in continuation of post graduate studies. Language employed therein is very clear and those recruited with Ph.D. are made entitled to four

advance increments. This clear language therefore, cannot be curtailed and its sweep cannot be narrowed by taking help of Clause-10 of the

Government Resolution dated 27/02/1989.

13. In view of this discussion, pay protection becomes an independent exercise which has got no bearing of advance increments. Advance increments

are to be granted only to a teacher in Junior College, who is recruited as lecturer with Ph.D., while pay protection is admissible to even a teacher

without such Ph.D.

14. We, therefore, find that the petitioners before us are entitled to four advance increments as per the Government Resolution dated 11th December,

1999. We accordingly, direct the respondents to release the same with consequential benefits to the petitioners, within six months from today.

Needless to add that last pay of such of the petitioners who have retired during pendency of petition, shall also be revised accordingly and they shall

also be entitled to revised pension with arrears.

15. The writ petition is thus allowed and disposed of. No costs.