

(1994) 01 BOM CK 0044
In the Bombay High Court
Case No : Writ Petition No. 786 of 1988

Kazi Moinuddin

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-01-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309
Evidence Act, 1872 — Section 18

Citation : (1994) 4 BomCR 496

Hon'ble Judges : V.V. Kamat, J;B.N. Deshmukh, J

Bench : Division Bench

Advocate : Prashant Deshmukh, for the Appellant; V.B. Ghatge, A.G.P. for respondent Nos. 1 and 2 and M.A. Kulkarni and Pisolkar, for the Respondent

Judgement

V.V. Kamat, J.—Government and/or Zilla Parishad employees, amongst themselves, are equal and alike in similar situations. If there is no dent to the statement that the employees are similar, there is no consequent doubt for application of the principle of treating employees equally situated with equal treatment. In this petition, and others, which would be dealt with by us separately on facts, the question is: The application of the above principle. It is not even necessary to apply it afresh, because this Court in Writ Petition No. 455-A of 1982, decided on January 16, 1989, by the Division Bench, to which one of us (Deshpande, J.,) was a party, has already proceeded and decided, acting on the same principle. There is yet one more feature, which is common to the earlier decision of this Court and this set of petitions coming before us. A lament has to be recorded that in all these petitions, as well as in the petition decided earlier, there is what is known as reticence on the part of the State of Maharashtra to file even a return. In the earlier petition, there was no return, either from the State of Maharashtra, or, from the Zilla Parishad authorities. In some of the writ petitions taken up by us today for hearing, there is a return only to the extent that the basis for giving equal treatment, in the nature of the Memorandum dated August 7, 1974, was a special case. During the hearing of

these petitions, we heard Counsel for the petitioners in these petitions, Counsel for the Zilla Parishad authorities and counsel for the State of Maharashtra, headed by Shri Ghatge. The other counsel for the State of Maharashtra adopted the submissions of the learned Counsel, who addressed us. In spite of questioning more than once, we were not told, by any specific particular, as to how the Memorandum dated August 7, 1974, could be considered as a special case, as was sought to be submitted before us only on the strength of oral submissions. There is no record tendered before this Court in any of these petitions to even consider as to how the Memorandum dated August 7, 1974, could be considered as a special case. We refer to this aspect, because in one of the writ petitions (Writ Petition No. 244 of 1990), it is averred in the affidavit of return of the Educational Inspector, Aurangabad Region, Aurangabad, that the Memorandum was a special case. We note that even in the said affidavit and, that too on behalf of the Zilla Parishad authority, of one Shri T.N. Patil, the Educational Inspector, no particulars are available. Additionally, although we have stated that there was no affidavit of return to Writ Petition No. 415-A of 1982, it is sought to be contended in this affidavit of return that the said decision is not applicable. Not content with stating that the said decision is not applicable. The said affidavit of return states the reason in support thereof, and the reason is that, there was no affidavit of the Zilla Parishad filed in the said petition. We record this at the inception, because, not only that the memorandum is clear and specific with regard to the contents which provides ample intrinsic material to hold that it should govern similar situations, but has a legal force, and we are left with no alternative but to proceed on acceptance of the contentions in the averments of the petitions as admitted and proved in the absence of there being any controversy with regard to the factual matrix contained therein. This is on the well-known maxim that averments which are not denied get accepted and proved in the law of pleadings.

2. By the order dated October 11, 1993, this petition, by condoning the delay and laches, is sent to this Court by the Supreme Court. In view of the reasons in the said order by the Supreme Court, we have entertained the other companion writ petitions in view of the rights involved in the matter, without giving much importance to the question of delay and laches. Moreover, it must be noted that there was no contention on behalf of the contesting parties with regard to the laches on the part of the several petitioners to approach this Court.

3. Actually, the facts are very narrow. The petitioner belonged to ex-Hyderabad State, was qualified as Munshi from the ex-Nizamia University, Hyderabad State; and came to be appointed as Assistant Teacher in 1980 in the scale of Rs. 54-98.50 by the ex-Hyderabad State authorities. On the formation of the State of Bombay, after the reorganisation of States, the services of the petitioner came to be transferred to what is now known as ex-Bombay State on November 1, 1956. In course of time, on and from May 1, 1960, the services came to be allotted to the State of Maharashtra. The petitioner came to be recognised as a deemed trained teacher when this Munshi examination of ex-Nizamia University, Hyderabad State, was considered to be equivalent to matriculation examination

and also by reason of his attaining 35 years of age, or, completion of 15 years of service, whichever was earlier. This was provided for by the letter dated January 10, 1974, of the Government of Maharashtra. The qualification of Munshi examination came to be treated as equivalent with Matriculation qualification, at the time of appointments themselves of such candidates. The petitioner came to be held eligible then for the scale of Rs. 50 -14-65-24-70-S.G.-21/2-90. Not only that, the present petitioner, and the petitioners in these petitions, who are similarly situated to the petitioner in Writ Petition No. 415-A of 1992, approached this Court for similar declaration for benefits on the strength of the Memorandum dated August 7, 1974, which were denied to them inspite of the position that they were similarly situated.

4. In the said decision, this Court has tersely observed as follows:

"The petitioners have stated in the petition that they are entitled to be treated as trained teachers and on that footing they are entitled to pay scales of Rs. 61-140 from 1-4-1962 in view of the memorandum dated 7-8-1974. They have further said that they are also eligible for the pay scale of Rs. 61-140 from 1-4-1962 and on account of Badkee Commission recommendations the same scale is substituted for the pay scale of Rs. 120-220 to which they are entitled and eligible from 1-4-1966."

5. There was no challenge to the basic postulate of similar situation and, therefore, acting on the said memorandum dated August 7, 1974, this Court granted writ according benefits as a consequence of the memorandum dated August 7, 1974 on the basis of similar situation of the petitioners before it.

6. At the hearing, reliance was placed in regard to the revision of pay-scales for Munshi teachers from Marathwada Division on the order dated February 9, 1983, issued u/s 248 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 specifying the scales sanctioned with effect from April 1, 1976. The order gives the following table:

Post	Pay scale	Pay scale already	Revised pay	vide this order	sanctioned
sanctioned	scale	sanctioned with	Scale now	with effect from	prior to effect from
1-4-1976	31-3-1976	1-4-1976	Untrained	110-3-122-	260-10-390-15
290-10-390-15	teachers in	4-17-5-185	420-Extn-15-495	465-Extn-15-540.	

Marathwada region possessing Matriculation/Munshi Qualification 7. The proviso clarifies that the pay scale should be fixed notionally with effect from April 1, 1976, but the employees should be allowed to draw pay in the revised scale with effect from October 1, 1982 only, making it clear that there would not be any entitlement to arrears on account of revision to the period prior to October 1, 1982.

8. It must be stated that in this petition by amendment, dated December 8, 1993, it is urged that the present petitioner should be held entitled to upgradation to the post of the Head Master on and from April 1, 1966, irrespective of the fact as to whether he actually worked as Head Master or not.

On the basis of this contention, it is urged that the present petitioner is entitled to future revised pay scales. Illustratively, it is urged that he retired on August 31, 1986, as per pay scale of Rs. 125-195-250, with effect from April 1, 1966. He should get the benefit of the revised pay scale of Rs. 335-680 with effect from April 1, 1976, and of the further revision of pay scale with effect from January 1, 1986, with consequential benefits. As a result of this, it is stated that respondents Nos. 3 and 4 made recoveries of Rs. 4,495/- in pursuance of the notice of the Education Officer, dated December 31, 1985. Consequently, by the amended prayer, there is a demand for refund of Rs. 4,495 with interest at the rate of 12 per cent per annum. Since we are proceeding on the basis of memorandum dated August 7, 1974, for entitlement of the present petitioner upto April 1976, no separate consideration of this contention introduced by the amendment would be necessary. The ultimate order would be obviously on the basis of adjustment as regards the ultimate dues to which the petitioner would be entitled. It is obvious that once the memorandum is accepted on the basis of the petitioner being similarly situated, he would be entitled to all the benefits on the basis thereof and consequent would continue to be entitled to the subsequent revised pay scales as are granted.

9. In view of the said contention, both in the oral submissions and in the affidavit of return referred to above, that the memorandum is a special case, the said contention would require examination. The submission is incapable of standing the test of scrutiny on the bare reading of the memorandum itself. The memorandum reveals in no uncertain terms that it is a product of policy decisions on so many aspects. It reveals that after taking certain decisions, it was applied to the demands of Shri M.A. Rasheed, Assistant Master, Central Primary School, Peth, Beed, Zilla Parishad, Beed. It is for this it is not necessary to wait for examination of the contents of the memorandum. The subject itself records that it relates to grant of revised scale of pay as on July 1, 1962 and April 1, 1966, to Shri M.A. Rasheed, Assistant Master, Central Primary School, Peth, Beed. The memorandum is in the nature of directions of the State Government to the Zilla Parishad, Beed. It is stated that Shri Rasheed was initially appointed in 1950 by the ex-Hyderabad State authorities and came to be allotted to ex-Bombay State and then to the State of Maharashtra. He did not possess specific minimum qualification, having passed Munshi examination of ex-Nizamia University, Hyderabad State. A decision to treat him as deemed trained teacher on the basis of such decision with effect from the date on which he had attained the age of 35 years or on the date of completion of 15 years of service, whichever is earlier, is recorded. This is on the basis, it is specified, that the Munshi qualification awarded by the ex-Nizamia University, Hyderabad State, has been treated on par with Matriculation qualification at the time of appointment of such candidates.

10. Again, with regard to the grant of scale of Rs. 50 - 11/2 - 65 - 21/2 - 70 - S.G. - 21/2 - 90, the said teachers are also held eligible to be S.S.C. and Junior P.T.C. It is also recorded that Shri Rasheed was eligible as an Assistant Master for

selection grade which was available on July 1, 1962, having been treated as a trained teacher in the past. It is also recorded that he had completed 35 years of age on December 9, 1963, and, therefore, on his completion of the age of 35 years, on the said date (December 9, 1963), he is to be treated as a deemed trained teacher. It is specified that this scale should be sanctioned to him with effect from December 9, 1963 only. He had already exercised the option for the old scale of Rs. 61-140. He was given the opportunity of exercising the option and, on that, it is ordered that he should be held to be eligible for the grant of scale of Rs. 120 - 4- 140 - 5 - 165 - EB - 5 - 190 - 6 - 220. This was on the basis of the Government's decision dated March 14, 1972. The order dated March 14, 1972, was with reference to the Craft Teachers in the Junior Colleges of Education, who were already treated on par with the trained primary teachers for the grant and sanction of the said scale. On the basis, it is recorded that Shir Rasheed should be treated as an upgraded employee with effect from December 9, 1963, in the scale of Rs. 61 - 140 and be allowed to exercise the option for the revised scale of Rs. 120 - 4- 140 - 5 - 165 - EB - 5 - 190 - 6 - 220 with effect from April 1, 1966. Not only that, it is also recorded that if the option is not received, even then he should be treated as eligible for the said scale in the grade of Rs. 120 - 220 with effect from April 1, 1966.

11. As stated above, the bare reading of the Memorandum specifies that it is based on the following policy decisions:

(1) Teachers, who came to be appointed in the ex-Hyderabad State on the basis of qualification of Munshi examination of Ex-Nizamia University, on their allotment, came to be appointed as Assistant Teachers.

(2) The qualification, Munshi examination, came to be considered as qualification equivalent to matriculation examination.

(3) The fact that a teacher has attained either 35 years of age or has put in 15 years of service as teacher, whichever is earlier, shall be treated as deemed trained teacher, although he had passed Munshi examination of the ex-Hyderabad State.

(4) Such teachers were held eligible for selection grade on and from July 1, 1962, and, thereafter, on attaining of the age of 35 years, were recognised to be eligible for selection grade on the basis of being deemed trained teachers. This would depend on the dates of birth of the petitioners before us.

(5) The entitlement of the pay scale initially would be with effect from December 9, 1963, and thereafter with effect from April 1, 1966, depending on exercise of option at that time, but even in the absence of exercise of option, on and from April 1, 1966.

These decisions, which are taken in the memorandum in question, are a product of policy decisions and they are applied to Shri M.A. Rasheed.

12. Reading the memorandum in question, the conclusion comes to the fore that

the Memorandum can never be considered as a special case as sought to be contended, although in the absence of specific return providing this Court with any factual material. These petitioners are asking for nothing else than what is already decided by this Court in Writ Petition No. 415-A of 1982. Discussion became necessary when it was urged that the Memorandum is a special case.

13. Shri Joshi, learned Counsel appearing for the Nanded Zilla Parishad in one of these petitions, urged with reference to the Memorandum, with reference to the selection grade, holding Rasheed as eligible for the grant of scale of Rs. 50 - 11/2 - 65 - 21/2 - 70 - S.G. - 21/2 - 90, that the grade could be available only to 15 per cent. personnel of the cadre after 15 years of service. He urged that it should be left for consideration as to whether the petitioner falls in this 15 per cent. personnel of the cadre. This was a submission only on the text of the Memorandum, without there being any contention in regard thereto. We have already observed that the petitioner has approached this Court on the ground of a situation of similarity. No material is placed before us in any nature to enable making of a submission that any of the petitioners before us is not similarly situated. We make it clear that no material is placed before us in any of the petitions before us even by way of a pleading that some of the petitioners are not similarly situated. This is inspite of a specific contention that all these petitioners are similarly situated. It is not possible to consider this submission, which is placed only on reading of the contents of the Memorandum, without there being any material on record cared to have been placed in the pleadings, which are necessary.

14. Reliance was placed on the order dated February 9, 1983, and it was urged that the whole question is under consideration in the light of the said order dated February 9, 1983. The learned Counsel for the authorities and the State Government urged that the consideration is in the process. We wonder as to what is to be considered; what is to be decided; and we answered the learned Counsel that there is nothing to be considered; there is everything to be followed; and it ought to have been followed on the basis of the earlier judgment which is now being reinforced with reasons, answering the contention that Mohamed Rasheed's case was a special case.

15. Apart therefrom, the said order dated February 9, 1983, although in one breath sanctions the scales referred to above with effect from April 1, 1976, by a proviso, permits its implementation with effect from October 1, 1982, only, making it clear that there would be no entitlement with regard to the arrears for the period prior to October 1, 1982. This would require consideration in the context.

16. Reading the order dated February 9, 1983, although it is clearly stated that the scale is to be sanctioned with effect from April 1, 1976, by a proviso, it would appear that it has been made applicable with effect from October 1, 1982 only, with a clarification that there would not be entitlement of arrears or pay on account of revision of pay scales prior to October 1, 1982. This is clearly

unjustifiable. It cannot be left out of consideration that this is the payment to which the petitioner is entitled because he has served. When the order sanctions revised pay scale on and from April 1, 1976, its withdrawal upto October 1, 1982, by a proviso, would not be understandable on any count. The petitioner is entitled to this revised pay scale on and from April 1, 1976, and would not be governed by its withdrawal as provided in the order by the proviso.

17. The legal right of the petitioner is governed by the memorandum. As a result thereof, certain positions get crystallised They are:-

(i) The Munshi examination of ex-Nizamia University, Hyderabad State, is equivalent to Matriculation examination ;

(2) The petitioner on the attainment of the age of 35 years would be deemed to have been a "deemed trained teacher";

(3) On and from July 1, 1962, having been treated as a trained teacher, the petitioner would be entitled to the selection grade on and from that date ;

(4) The petitioner is eligible for the grant of scale of Rs. 50 - 11/2 - 65 - 21/2 - 70 - S.G. - 21/2 - 90 on and from April 1, 1966;

(5) On attainment of the age of 35 years, the petitioner would be entitled to promotion and the exercise of option would not be necessary;

(6) In pursuance of the order dated March 14, 1972, regarding revision of scale of Rs. 120-4-140-5-165-EB-5-196-6-220, the petitioner would be eligible for the grant of the said scale on and from the said date and this would be effective from April 1, 1966, as specified earlier ;

(7) Additionally, in pursuance of the Order dated February 9, 1983, with effect from April 1, 1976, the petitioner would be entitled to the scale of Rs. 290-10-390-15-465-Extn-15-540.

Consequently, the respondents are directed by a writ of mandamus to calculate the arrears and other consequential benefits to which the petitioner is entitled, in view of the foregoing reasons and conclusions.

18. The learned Counsel submitted that the petitioner is entitled to interest in view of the fact that inspite of representations, the payments are not ascertained and, therefore, delayed. Reliance is placed on the decision of this Court, Bhalchandra Chintaman Gadgil Vs. Union of India and others, , to contend that there is an entitlement to claim interest at 12 per cent. per annum on delayed payment. It is true that the petitioners have been making representations and were not given their dues to which they are entitled as a result of the service put in by them. Taking into consideration the facts and circumstances, we direct the respondents to calculate the arrears due to the petitioner. We further direct the respondents to make the payments of such arrears on or before June 30, 1994. In the event of the respondents not making payments to the petitioner, we order that the amount shall continue to carry interest at the rate of 12 per cent. per

annum on and from July 1, 1994.

19. Rule is made absolute accordingly. However, there shall be no order as to costs.

20. The judgment cannot and without the inevitable post-script. With regard to the persons, who were working in ex-Hyderabad State, or, persons, who were working in that part of the State of Maharashtra, which was formerly a part of the Hyderabad State, it has to be observed that such persons have approached this Court for multifarious reliefs. Persons, who were working in the ex-Hyderabad State, have approached this Court for fixation of their seniority; and pay. Persons working in that part of this State, which formerly formed part of the Hyderabad State, were also required to approach this Court for seniority. Another facet of litigation of this Court was in the nature of applications from their widows for family pension. Yet a third facet of the problem was petitions of their children for employment on compassionate grounds. Illustratively, this Court was required to consider the grievances of this category of petitions. This Court had decided the matters and the decisions were final and conclusive. The experience is that they were not implemented for quite a long time, necessitating the other similarly situated to approach this Court by separate petitions. The Resolutions of the Government also came up for scrutiny and examination in this context, especially in regard to matters of employment of the children of such employees and appointments on compassionate grounds. This Court, as far back as 1987, recognised certain rights. Decisions are given that employees working in that part of the State, which formed part of ex-Hyderabad State, are entitled to all the benefits on the footing that they are the Government servants of the State of Maharashtra. No decisions were taken and others similarly situated were required to approach this Court only to refer to the earlier final and conclusive decisions of this Court. Illustratively, though not exhaustively, this Court had to express its annoyance of the litigants being required to approach this Court inspite of final and conclusive decisions of this Court. In Writ Petition No. 282 of 1994, in this week itself on January 24, 1994, this Bench had to draw upon its earlier decisions and nothing else was required. In Writ Petitions Nos. 2670 of 1993, 2669 of 1993 and 2673 of 1993, decided in common, the Division Bench of this Court (to which one of us - Kamat, J. - was a partner) had to do nothing else than to place reliance on the earlier decision of this Court dated November 12, 1992, to observe that the facts are not different and under circumstances similar, the petitioner therein should not have been required to approach this Court. In Writ Petition No. 2674 of 1993, and other matters, decided on September 28, 1993, although the Resolution denying benefit of grant of family pension to widows of those employees, who worked in that part of this State, which formed part of the ex-Hyderabad State, and by which such widows were driven for redressal of their grievance in regard thereto to the State of Andhra Pradesh, erroneously relying on a decision of the Supreme Court in regard to the States of Tamil Nadu and Kerala, was quashed, yet, similarly placed widows had again to approach this Court for the same relief of grant of family pension. Again, in Writ

Petition No. 1096 of 1993, a reference had to be made to the earlier decision of this Court in Writ Petition No. 870 of 1992. On all these questions, relating to the rights flowing from the position that the Government employees were working either in the ex-Hyderabad State or in that part of the territory which now forms part of the State of Maharashtra, decisions have been given and this Court had to remind itself only of its earlier final and conclusive decisions. This is the position not only with regard to the rights of the employees themselves, but also with regard to the rights available to their kiths and kins as a result of their employment. What is apparent is that the decisions of this Court are allowed to be the matters of record, leaving the parties placed in similar and identical situations to approach this Court individually. It would not be out of place to record that inspite of the decisions, which should be held applicable in the case of freedom fighters involved in a common cause, only on January 24, 1994, this Bench was required to deal with a similar situation. The petitioners who are in similar situations are in the process driven to this Court, which is one of the causes of the flooding litigation-position of this Writ Court. In this petition at hand itself, we have already recorded that the decision dated January 16, 1989, is a final and conclusive decision of this Court for the State of Maharashtra. Even then, as many as 43 petitioners are required to approach this Court by separate petitions, which are 18 in number. They get piled up in this Court and are required to be collected together in the nature of a group. This is desired to be avoided and it can be avoided if, acting on the decisions of this Court, persons similarly situated are dealt with similarly without the requirement of any order of this Court afresh. We are at pains, in this connection, to have the submissions of the Government Counsel that the Government is working on the matter and it would take about six months to re-settle everything. In the petitions of widows' pension, sufficient time was granted and even then applications are made by the State for extension of time, when the orders of this Court are not complied with. This situation is recorded by us in this post-script with a fervent hope of a favourable in future. We are constrained to observe that all is not well and much is desired in the context.