

(2005) 08 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 2392 of 2005

Maharashtra Government Polytechnic Teachers Welfare
Association and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Constitution of India, 1950 — Article 143(1)
Maharashtra Civil Services (Pay) Rules, 1981 — Rule 11

Citation : (2006) 2 BomCR 689 : (2006) 1 MhLj 227

Hon'ble Judges : S.P. Kukday, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : P.M. Shah and Ajay S. Deshpande, for the Appellant; V.A. Gangal, Special Counsel and U.K. Patil, A.G.P. for respondent Nos. 1 to 3 and S.T. Shelke, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Kukday, J.—Rule, made returnable forthwith with the consent of parties. Shri V. A. Gangal, learned Special Counsel waives service for respondent Nos. 1 to 3. Respondent Nos. 4 and 5 are formal parties. Shri Shelke, learned Counsel waives service for respondent No. 5.

In this petition, the petitioners have impugned the order dated 9th March, 2005, passed by Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad, in Original Application No. 920/2004, thereby rejecting Original Application filed for quashing the Government Resolution dated 9-9-2004 bifurcating the cadre of Maharashtra Engineering Teachers and Administrative Services Group-A.

2. Briefly stated the relevant facts are that initially there was a single cadre of Maharashtra Engineering Teachers Services, comprising of teachers from the engineering college, polytechnics and administrative cadre. The pay scales prescribed by University Grants Commission were made applicable to the teachers qualified for teaching in engineering colleges w.e.f. 1-1-1973. This

resulted in disparity of pay scale between the teachers of engineering college and others. In order to remove this anomaly, the cadre was bifurcated by Government resolution dated 27-3-1979 and a new cadre known as "Maharashtra Engineering Teachers and Administrative Services Group-A" was created. This cadre consisted of teachers of the polytechnic as well as direct recruits in the administrative services. According to the equivalence, different categories of posts in this cadre were as under :

Director	of	Technical	Education
_____			Joint Director
Board of Technical Education _____			Deputy Director
Principal Polytechnic Secretary			Asstt. Director
			Dept. Head Dy. Secretary
			Inspector Lecturer Asst. Secretary

3. As the equivalence was determined, persons from teaching cadre could be appointed to the administrative posts as per the equivalence and also by way of promotion. In short, vertical as well as horizontal avenues of transfer and promotion were available to the polytechnic teachers. On 26-5-1992, the pay scale recommended by All India Council for Technical Education (AICTE) were made applicable to the polytechnic teachers. This again created disparity with the pay-scales between different groups of Maharashtra Engineering Teachers and Administrative Services Group-A. The comparative pay-scales are as under :

Administrative post	Pay scale	Teaching post	Pay scale
1. Director (Technical Education)	16400-20000	2. Director (Board of Technical Education)	16400-20000
3. Head of Deptt. (Technical Education)	12000-16500	4. Tech.Edn. Lecturer (Selection)	12000-18300
5. Joint Director (Technical Education)	12000-16500	6. Head of Deptt. (Technical Education)	12000-18300
7. Secretary (Board of Technical Education)	10650-15850	8. Lecturer (Sr.) (Technical Education)	10650-15850
9. Dy. Director (Technical Education)	10000-15200	10. Lecturer (Sr.) (Technical Education)	10000-15200
11. Asstt. Director (Tech.)	10000-12000	12. Lecturer (Sr.) (Tech. Edn.)	10000-15200
13. Dy. Secy. (Board of Technical Education)	10000-15200	14. Lecturer (Sr.) (Tech. Edn.)	10000-15200
15. Asstt. Secy. (Technical)	7450-11500	16. Lecturer (Sr.) (Board of Tech. Edn.)	8000-11600

4. In view of this disparity, Sukhtankar Committee was appointed to make suggestions in respect of a policy to be adopted. The Committee did not recommend higher pay scales for administrative recruits, who were directly appointed to the administrative posts. Two of the direct recruits, namely, Shri Kadam and Shri Maulikar, filed Original Application No. 95/1997 seeking relief in the nature of direction that the post of Joint Director of Technical Education should not be filled in by transfer/promotion from amongst the Principals of polytechnic as these officers were drawing higher pay scales and cannot be promoted to work on a post drawing lower pay scale. Original Application No. 95-1997 was allowed by the Tribunal by its Order dated 3-10-1997. Two other Original Applications, being O. A. Nos. 185/1997 and 291/1997 were also decided on 3-10-1997. Shri Ganpat Shankarrao Patil and six others filed Writ Petition No. 158/1998, challenging the Order dated 3-10-1997 passed by the Tribunal in these Original Applications. During the pendency of this petition, the

parties tendered consent terms. Thus, the petition was disposed of in terms of the said consent terms on 19-2-1998, relegating the parties to their original position and keeping all the contentions/questions open with liberty to parties to adopt fresh proceedings before the Tribunal. After disposal of the Writ Petition No. 158/1998, respondent No. 1 took a policy decision and issued Government Resolution dated 9-9-2004, bifurcating the cadre of Maharashtra Engineering Teachers and Administrative Services Group-A into Maharashtra Polytechnic Teachers Services Group-A and Maharashtra Engineering Administrative Services Group-A. Options were given to members of the administrative services coming from the teaching cadre for remaining in the administrative service or opting for the teaching cadre. The Government Resolution effected separation of the teaching cadre from the administrative cadre. The petitioners challenged the validity of this Government resolution by filing Original Application No. 920/2004 on the ground that the decision regarding bifurcation of the cadre was taken by the bureaucrats, by making non-existing distinction between purely administrative posts and the teaching post and by showing unhealthy haste of issuing G. R. during the subsistence of the Code of Conduct in view of the General Elections of the Maharashtra State Legislative Assembly in the year 2004. To achieve this purpose, reference was made to the earlier decision in O. A. No. 95/1997 rendered by Tribunal in the preamble of the impugned Resolution though this decision was quashed by the High Court in Writ Petition No. 158/1998 on 19-2-1998. Option was given only to those persons belonging to teaching cadre, who were on administrative post. According to the petitioners, the purpose of the formation of the combined cadre was to have benefit of the experience and expertise of persons from the teaching cadre by appointing them to the administrative posts was wholly defeated by this bifurcation. Though there was disparity in the pay scales, pay of the persons from the teaching cadre was protected by Rule 11 of the Maharashtra Civil Services (Pay) Rules, 1981 [hereinafter referred to as the MCSR (Pay) Rules]. Not only that this policy resulted in hostile discrimination depriving the members of the teaching cadre of the promotional avenues on the administrative side. Thus, validity of Government Resolution dated 9-9-2004 was challenged by the petitioners by filing O. A. No. 920/2004. The Tribunal however found that the Government was competent to take policy decision; that the decision is not actuated by mala fides and has not been taken by showing undue haste. The Tribunal, therefore, dismissed the O. A. by judgment and Order dated 9-3-2005. This order passed by the Tribunal has been impugned in this petition by the petitioners.

5. We have heard both the parties. Learned Sr. Counsel appearing for the petitioners has made reference to the developments in respect of bifurcation of the cadre from the year 1979. According to the learned Counsel, some of the persons, who were eligible to opt for the higher UGC pay scales, did not do so to remain in the newly formed cadre of Maharashtra Engineering Teachers and Administrative Services Group-A. These teachers had experience on the teaching side as well as on the administrative side. Learned Counsel made reference to

the recommendations of the Commission appointed by the Central Government in the year 1964, known as "Kothari Commission". This Commission contemplated formation of I.E.S. Cadre. In this context the Commission categorically observed that the character of I.E.S. will have to be different from the I.A.S. or other Central services, Insofar as in education, administration in a service agency to teaching and research. The Commission further observed that one cannot be a good educational administrator unless one is also a good teacher and that there is always a possibility for an educational administrator to come back to teaching and research and for a teacher to go over to administrative side on a tenure assignment. The Commission recommended that the scales of pay of departmental staff should be co-related with the UGC scales of pay for university. According to learned Counsel this aspect is totally ignored by the respondent while taking decision in respect of bifurcation of the cadre. Learned Counsel has pointed out that the decision favours only few of the direct recruits and deprives about 1500 teachers from the polytechnics in the State, of their legitimate promotional avenues. The Government Resolution unilaterally changes conditions of service of the petitioners. In this behalf, reference is made to the advertisement given for the recruitment by the Maharashtra Service Public Commission (respondent No. 5) Making reference to the statement in the advertisement that there are prospects of promotion to the post of Joint Director of Technical Education or equivalent to the post admissible under the relevant rules, learned Counsel contends that at the time of recruitment also, it was made clear that the candidates have this prospects of promotion. Therefore, persons, who applied for the post had legitimate expectations regarding promotions available to them. It was, therefore, not proper on the part of the Government to deny these promotional avenues to the petitioners.

6. The core issue is bifurcation of Maharashtra Engineering Teachers and Administrative Services Group-A into Maharashtra Polytechnic Teachers Services Group-A and Maharashtra Engineering Administrative Service Group-A. The petitioners contend that the bifurcation is not based on rational classification, therefore, the decision of the Government to bifurcate the cadre by Government Resolution dated 9-9-2004, cannot be sustained.

7. Learned Senior Counsel Shri P. M. Shah for the petitioners has contended that when the UGC scale was implemented, many of the polytechnic teachers, who could have opted for UGC scale, sacrificed the monetary benefits to remain in the Maharashtra Engineering Teachers and Administrative Services, Group-A cadre. According to learned Counsel, polytechnic teachers had the expertise and experience of teaching, therefore, they were well equipped to man the administrative post and to run the administration effectively and efficiently. In support of this contention, reference is made to some of the observations from the report of Kothari Commission appointed by the Central Government in the year 1964. At this juncture, it would be pertinent to mention here that Kothari Commission was appointed for evolving recruitment procedure. The observations of Kothari Commission referred to by the learned Counsel, therefore, will have to

be appreciated in this perspective. The observations to which reference is made show that the Commission visualized Indian Engineering Services (IES) on the lines of the Indian Administrative Services (IAS). Noting the difference between the two service agencies, the Commission observed that: "a good teacher can be a good educational administrator and that there is always a possibility for an educational administrator to teach and research and for a teacher to go over to administrative side on a tenure assignment, if teaching and administrative cadres are combined together. There can be no dispute about the principle enunciated. However, as is already pointed out, the Commission was concerned with the recruitment procedure and not with the composition of a cadre. After the first bifurcation in the year 1979, when a separate cadre was formed for engineering teachers, the resultant cadre of Maharashtra Engineering Teaching and Administrative Services, Group-A comprised of direct recruits to man the administrative post and the persons belonging to the teaching cadre who were allowed to migrate from one cadre to the other. Promotional channels and the equivalence of the post available in this cadre was determined. So far as teachers are concerned, they were permitted to migrate to the administrative post as well as secretarial post. However, this advantage was not available to the persons directly recruited to the administrative or the secretarial post. The history repeated itself in the year 1992 when A.I.C.T.E. scales were made applicable to the polytechnic teachers. This enhanced the salary of persons belonging to the teaching cadre creating an imbalance within the cadre. As can be seen the composite cadre comprised of the persons from the teaching cadre and administrative secretarial cadre. This fact itself shows that Maharashtra Engineering Teachers and Administrative Services Group-A was in fact a heterogeneous cadre. Thus, contention of learned Sr. Counsel that the cadre was heterogeneous cadre even after avilment of A.I.C.T.E. pay scales by the persons from the teaching cadre, cannot be sustained. A theory propounded by learned Sr. Counsel that though the pay scales of members of the teaching cadre were on the higher side whenever they were appointed to any administrative post carrying lower pay scales, the pay of the incumbent was protected in view of Rule 11 of Maharashtra Civil Services (Pay) Rules, 1981, shows that the appointment of a member of teaching cadre to equivalent post carrying a lower pay scale on the administrative side, created an anomaly. Therefore, the contention of learned Counsel that there were no purely administrative post and that the cadre of Maharashtra Engineering Teachers and Administrative Services, Group-A was not a heterogeneous cadre, cannot be sustained.

8-9. Second plank of argument of learned Sr. Counsel criticizing bifurcation of the cadre is that the decision is discriminatory insofar as it favours few of the persons from the administrative cadre, but adversely affects about 1500 persons from the teaching cadre and alters their conditions of service to their detriment. For appreciating this contention, it has to be borne in mind that the disparity arose in the year 1992 when A.I.C.T.E. pay scales were implemented. Since then, efforts were being made to evolve a formula for rectifying the anomaly. For this

purpose. One-man Commission of Shri Sukhtankar was appointed. The report of the Sukhtankar Commission was received by the Government after Writ Petition No. 158/1998 and allied matters were disposed of in conformity with the consent terms filed by the parties on record. Learned Special Counsel Shri Gangal appearing for respondent Nos. 1 to 3 has rightly referred to these developments for contending that the subject regarding bifurcation of the cadre was under consideration for a long time. The report was received after the consent terms were filed in Writ Petition No. 158/1998. On receipt of the said report, subject regarding bifurcation of cadre, which was overdue, was taken up. Sukhtankar Commission made it clear that it would not be proper to increase the pay scales of the members of the administrative cadre for bringing them, on par with AICTE pay scales. Therefore, the only option available was to bifurcate the cadre. In this view of the matter, the decision was taken and Government Resolution dated 9-9-2004 was issued. Thus, it can be seen that decision to bifurcate the cadre is taken after considering all the pros and cons. Administrative posts are less and the teaching posts are more. Thus, number of posts cannot be a criteria. As all the relevant factors are considered, the contention that policy decision taken by the government suffers from the vice of discrimination cannot be sustained on this ground.

10. Learned Sr. Counsel Shri Shah further contends that in view of this decision, members of the teaching cadre have lost promotion avenues which adversely affects their prospects. In this behalf reference is made to the judgment of the Supreme Court, reported in AIR 1988 1033 (SC) . In this case, the Apex Court was dealing with the controversy in respect of bifurcation of the cadre of the police force. After dealing with the subject, it is observed in para 4 of the report that : "Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly." With these observations, directions were given to Bihar Government to evolve a policy ensuring promotional avenues to the members of the Wireless Cadre of the police department. These observations, however, do not apply to the facts of the present case because from the entry level post of lecturer, promotional avenues upto to the post of Principal is available to the members of the cadre. From the structure of pay scale of the two cadres, it can be seen that previously post of the Principal was equivalent to the post of Dy. Director/Secretary. However, if the present pay scale are considered, the post of principal has rapidly climbed in the equivalence and can now be equated to the post of Director of Technical Education. It is therefore, apparent that the members of the teaching cadre are not entirely deprived of the promotional avenues though promotion to the post of Jt. Director, Director, Board of Technical Education and Director of Technical Education are not now available to them. It is pertinent to note that the service conditions are amenable to the changes whenever such a necessity arises. A cadre cannot remain stagnant

forever. There is bound to be some reforms or suitable modifications with the passage of time. It must also be borne in mind that it is not within the province of the Court to insist that the executive policy must always remain static, even if its reformation is fair and reasonable. What is relevant is to ascertain whether the action is mala fide, unreasonable or irrational as a criterion. The Court cannot, substitute its wisdom for Government's except to see that unreasonable perversity, mala fide manipulations and indefensible arbitrariness do not define the equation for integration. For this purpose, reference can be made to the ruling of the Supreme Court, reported in State of Himachal Pradesh and Another Vs. Padam Devi and Others, . In that case, the Apex Court was dealing with two different schemes formulated by the Government for growth of dairy and veterinary, pharmacists. Considering the Schemes, the Apex Court observed in para 14 of the report that: "The framing of administrative policy is within the exclusive realm of the executive and its freedom to do so is, as a general rule, not interfered with by Courts unless the policy decision is "demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution." The Tribunal has also considered these principles by referring to the ruling of the Apex Court, reported in P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others, .. In this case, the Apex Court has considered various aspect of the policy in respect of pattern, nomenclature of posts, cadre etc. and has observed in para 10 of the report thus :

"We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State of claim that rules governing conditions of his service should be forever the same as the one

when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

It is therefore apparent that unless arbitrariness or mala fides are established, interference with the policy decision taken by the Government is not called for. In the present case, it is pertinent to point out that first bifurcation has taken place in the year 1979 precisely for the same reason. On that occasion also there was an increase in pay scales of the teachers belonging to Engineering colleges which pre-empted the bifurcation. In fact, this bifurcation ought to have taken place long back when A.I.C.T.E. pay scales were made applicable to the polytechnic teachers. Be that, as it may; now the Government in its wisdom has deemed it fit to bifurcate the cadre. It can be seen that bifurcation is based on the recommendations of Sukhtankar Commission and on account of increase in pay scale of the teachers from polytechnic. Having regard to these facts, contention of learned Sr. Counsel for the petitioner that bifurcation has resulted in hostile discrimination so far as petitioners are concerned, cannot be sustained. The petitioners on whom the onus to prove hostile discrimination lies have failed to establish existence of such a discrimination. On the contrary, material placed on record shows that the decision regarding bifurcation of the cadre is based on the recommendations of Sukhtankar Commission and disparity in the pay scales. So far as utilization of expertise and experience is concerned, it is pertinent to bear in mind that appropriate recruitment policy can be evolved and the persons from the teaching cadre can be permitted to aspire for the post of Joint Director, Director of Board of Technical Education if it is deemed fit. However, in the absence of arbitrariness, no interference in the decision of the government regarding bifurcation is called for.

11. In a bid to establish mala fides it is contended that the decision to bifurcate the cadre has been taken by the bureaucrats for favouring direct recruits. To substantiate this theory, it is pointed out that though Judgment in O.A. No. 95/1997 was annulled by consent decree in Writ Petition No. 158/1998, reference is made to the decision of the Tribunal in the preamble of Government Resolution dated 9-9-2004 not only that this Government Resolution was hastily issued during subsistence of the Code of Conduct in the wake of Maharashtra State Legislative Assembly elections of the year 2004. Learned Special Counsel for the respondents has rightly conceded that the preamble is not happily worded. However, it is pointed out that the preamble does not govern the decision. For this purpose, reference is made to the ruling of the Apex Court reported in *In Re: The Berubari Union and Exchange of Enclaves Reference Under Article 143(1) of The Constitution of India*, in the matter of reference made by President of India under Article 143(1) of the Constitution. In para 28 of the report, the Apex Court has observed that : "There is no doubt that the declaration made by the people of India in exercise of their sovereign will in the

preamble to the Constitution is, in the words of Story, "a key to open the mind of the makers" which may show the general purposes for which they made the several provisions in the Constitution; but nevertheless the preamble is not a part of the Constitution, and, as Willoughby has observed about the preamble to the American Constitution, "it has never been regarded as the source of any substantive power conferred on the Government of the United States, or on any of its departments. Such powers embrace only those expressly granted in the body of the Constitution and such as may be implied from those so granted". It must also be borne in mind that the consent decree cannot be regarded as an adjudication by the Court. If all the facts are considered too much importance cannot be attached to the reference of the decision of the Tribunal in the preamble.

12. So far as transaction of business during subsistence of the Code of Conduct is concerned, copy of directions issued by the Election Commissioner was placed on record of the Original Application to show that there was no prohibition in taking routine decisions by the Government during subsistence of Code of Conduct. It is pertinent to bear in mind that there was no prohibition for taking routine administrative decisions. Only the populous decisions which are politically motivated were prohibited during this period. The decision regarding bifurcation of the cadre was overdue since implementation of A.I.C.T.E. pay scale for the polytechnic teachers in the year 1992. Therefore, contention that there was undue haste, in taking decision during subsistence of Code of Conduct, cannot be sustained.

13. From the overall view of the material placed on record, it can be seen that the decision regarding bifurcation was taken after due contemplation, as there was no other viable alternative. The material on record further shows that on account of implementation of A.I.C.T.E. pay scales for the teachers in polytechnic, anomalous situation arose because the pay scales of the teachers were higher than the pay scales of direct recruits. Therefore, to sort out the problems, Sukhtankar Commission was appointed. After receipt of the report, decision to bifurcate the cadre was taken on consideration of all pros and cons. There is absolutely no material on record to attribute arbitrariness or mala fides to the Government in taking this policy decision. Thus, no interference by the Court is called for. In the light of these facts, judgment of the Tribunal cannot be faulted on any count. Hence, the petition must fail. Accordingly, the petition is dismissed. However, there shall be no order as to the costs.