

(2015) 09 BOM CK 0208
In the Bombay High Court
Case No : Writ Petition No. 8386 of 2015

Motiram

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Citation : (2015) 09 BOM CK 0208

Hon'ble Judges : S.S. Shinde and A.M. Badar, JJ.

Bench : Division Bench

Advocate : V.A. Dhakane, Advocate, for the Appellant; S.G. Chincholkar, AGP, for the Respondent

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith and heard finally by consent of the learned counsel appearing for the parties.

2. The petitioner has filed the present Petition with the following prayers :-

"B) To direct the respondents to pay the pay scale of trained Hostel Superintendent i.e. Rs. 4500-7000 to the petitioner from the date of his initial appointment along-with the arrears of salary with all consequential benefits, by issuing writ of mandamus or any other appropriate writ, order or directions as the case may be.

C) To direct the respondents to consider the claim of the petitioner for extending monetary benefits of difference in the pay scale from the date of initial appointment as well as to grant higher grade and selection grade pay scale in the light of the law laid down by the Division Bench of this Hon'ble Court in the judgment dated 4.11.2009 in Writ Petition No. 1491 of 2001 as well as in the judgment dated 25.06.2014 in Writ Petition No. 4090 of 2014, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be.

D) To hold and declare that, the Government Resolution dated 03.06.2008 issued

by Tribal Development Department, Mantralaya, Mumbai is unreasonable, arbitrary, discriminatory and unconstitutional to the extent of depriving the Hostel Superintendents like the petitioner from the monetary benefits from the date of initial appointment, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be."

3. It is the case of the petitioner that, he is working as Hostel Superintendent in Sant Tukdoji Maharaj, Anudanit Tribal Ashram School, Kherda, Tq. Kinwat, Dist. Nanded since 01.08.1994. The petitioner belongs to "Gond" scheduled tribe and possesses B.Com. B.P. Ed. qualification. It is the case of the petitioner that, every year, the services of the petitioner were approved as untrained Hostel Superintendent by the respondent No. 3, as he does not possess D.Ed. qualification.

4. It is further case of the petitioner that, on 05.02.2000, the State Government issued a Resolution relaxing the condition of holding D.Ed. qualification and further laid down that, the persons holding H.S.C. qualification are eligible for the appointment as Hostel Superintendent. Despite that, the services of the Hostel Superintendents like the petitioner, working under the Tribal Development Department, were not approved as trained Hostel Superintendent by the respondent No. 2. It is the case of the petitioner that, thereafter, the Tribal Development Department issued a Resolution on 03.06.2008, relaxing the condition of holding D.Ed. qualification to the Hostel Superintendents and directing to grant them the pay scale of trained Hostel Superintendent i.e. Rs.4500-7000/- with effect from 01.06.2008.

5. It is the case of the petitioner that, in the cases of similarly placed persons, who do not possess D.Ed. qualification working under Social Justice Department, the Government of Maharashtra issued Government Resolution dated 04.11.2009 directing to pay the pay scale of Rs.4500-7000/- to them from the date of initial appointment in view of the judgment passed by this Court in the case of Sahebrao Karbhari Gunjal Vs. The State of Maharashtra in Writ petition No. 1491 of 2001.

6. It is the case of the petitioner that, the Hostel Superintendent of both Departments were given equal emoluments up to IV Pay Commission and the nature of duties and responsibilities allotted to Hostel Superintendent of both Departments are absolutely same and even the qualification, eligibility, pay scale and other service conditions of the teaching and non-teaching staff of both Departments are same. Therefore, it is utmost necessary to have parity of the pay scale between the Hostel Superintendent working under the Social Justice Department and the Tribal Development Department. Thus, the discrimination and disparity between the Hostel Superintendent working in the Ashram Schools in the Tribal Development Department and the Social Justice Department is unreasonable and unconstitutional. Therefore, the petitioner is entitled to the monetary benefits on par with Hostel Superintendent working in Social Justice Department.

7. It is further the case of the petitioner that, on 15.03.2014, even the respondent No. 2 Additional Commissioner has granted the pay scale of trained Hostel Superintendent to similarly placed persons like the petitioner working under the Tribal Development Department from the date of their initial appointments with the arrears of salary in pursuance to Judgment and Order passed by this Court in their matters. However, at the same time, the respondent No. 2 has failed to consider the claim of the petitioner for granting the pay scale of trained Hostel Superintendent from his initial appointment without any valid reason.

8. The prayers in the Petition are vehemently opposed by the learned A.G.P. appearing for the State. According to the learned A.G.P. there is no policy framed by the Tribal Development Department, so as to extend the benefit as claimed by the petitioner, working as Hostel Superintendent under the Tribal Development Department, at par with the Hostel Superintendent working in the Social Justice Department.

9. We have given due consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned A.G.P. appearing for the Respondent/State and also perused the documents placed on record.

10. The Division Bench of this Court in Writ Petition No. 8737 of 2011 in the case of Maroti S/o Datta Dharshanwad and others V/s The State of Maharashtra, decided on 15th October, 2013, while considering the similar fact situation, has partly allowed the Writ Petition and issued certain directions, we propose to issue similar directions in this Writ Petition.

11. In this view of the matter, we dispose of the petition with following directions :

Respondents are directed to consider claim of the petitioner in the light of the law laid down by the Division Bench of this Court in the judgment dated 4th November, 2009, in the case of Sahebrao Karbhari Gunjal & others Vs. The State of Maharashtra and others (Writ Petition No. 1491 of 2001) and decide the same, as expeditiously as possible and, in any case, within a period of four months from today. It is further made clear that, if the petitioner is found to be entitled to receive monetary benefits, the payment shall be made within a period of three months from the date of such decision. However, the Authorities will be entitled to verify the basic qualification required for the post of Hostel Superintendent.

12. Rule is made absolute in aforesaid terms. However, there shall be no order as to costs.