

(2002) 10 BOM CK 0109
In the Bombay High Court
Case No : Writ Petition No. 406 of 1992

Narayan Chunkhade

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Universities Act, 1994 — Section 77B

Citation : (2003) 2 MhLj 460

Hon'ble Judges : V.K. Tahilramani, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : A.N. Kakde, for the Appellant; P.B. Patil, Assistant Government Pleader for respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—In this petition filed under Article 226 of the Constitution of India, the petitioner has sought Writ of Mandamus against respondents No. 1 to 3 for revision of his pay-scale to the selection Grade for the post of Lecturer i.e. Rs. 3700-5700 with effect from 1-7-1986 on the basis of Government Resolution dated 27-2-1989.

2. The petitioner, after passing his M.A. (Sociology) in 1968 from the Marathwada University at Aurangabad, came to be appointed as a Lecturer in Rajashri Chhatrapati Shahu Maharaj Vidyalaya at Kolhapur on 16-6-1969. He continued in the said post till 9-10-1975. Thereafter, he joined in the said post at Sadguru Gadage Maharaj College, Karad District Satara from 11-10-1975 and continued in the said college till 15-12-1975 (for about two months). From 16-12-1975 to 18-7-1976 he remained unemployed and from 19-7-1976 to 30-6-1998 he was appointed on part-time basis in the New Arts, Commerce and Science College at Ahmednagar. In the said college he came to be appointed on regular basis from 1-7-1977 onwards and that too, in the capacity of the Head of the Department. He retired from service on reaching the age of superannuation on 1-3-2002.

3. The Government of Maharashtra through the Department of Education and Employment, issued Resolution dated 27-2-1989 and came out with a scheme of Career Advancement for Teaching as well as some non-teaching staff like the Assistant Librarian/Librarian, Director/Instructor of Physical Education, etc. If a Lecturer had completed eight years of service in senior pay-scale and obtained Ph.D. or equivalent published work he was eligible to be considered for selection grade i.e. Rs. 3700-5700. These scales were made applicable from 1-1-1986. The College where the petitioner worked i.e. New Arts, Commerce and Science College, Ahmednagar, recommended his case for selection grade vide letter dated 26-2-1987 and the Joint Director of Higher Education, Pune, by his letter dated 7/14th May, 1987 turned down the said request on the ground that the petitioner had brake in service for more than six months. Hence, this petition after about four years thereafter.

4. The petitioner, in support of his entitlement for grant of selection grade, places reliance on the clarificatory note issued by the respondent No. 4 vide its Circular dated 12-12-1989. In the said clarification it has been stated that the part-time service put in by a teacher, irrespective of whether it is in one or more colleges, be counted for calculating the length of service.

5. The petitioner has dual handicaps. He was on part-time basis from 9-7-1976 to 30-6-1977 (close to one year) and he was unemployed from 16-12-1975 to 18-7-1976 i.e. more than six months continuously. Government Resolution dated 27-2-1989 does not provide any power either with the University or with the Director of Education to condone such a gap in service and also to treat the part-time service also as regular service. The clarifications given by the University are not based on the correct interpretation of the said Resolution issued by the State Government for Career Advancement. As at present, the provisions of Section 77B of the Maharashtra Universities Act, 1994, do not envisage such a power with the University. It was the State Government alone which was competent to give any clarifications, if required. If the scheme on which the petitioner has placed reliance does not provide for regularisation of gap in service as well as for treating the part-time service as regular service, the petitioner's claim cannot be entertained for issuing a writ against the respondents and therefore, the claim made in this petition is devoid of merits.

6. In the result, the writ petition is dismissed. Rule is discharged. No order as to costs. The amount of Rs. 1,000/- deposited earlier in this Court be credited to the Treasury.