
(2007) 10 BOM CK 0027

In the Bombay High Court

Case No : Writ Petition No. 3008 of 1997

Pracheta J. Ladhake (Dr.)

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 25-10-2007

Acts Referred:

Citation : (2008) 2 MhLj 594

Hon'ble Judges : R.C. Chavan, J;A.H. Joshi, J

Bench : Division Bench

Advocate : M.P. Munshi, for the Appellant; B.H. Dangre, Additional Govt. Pleader for Respondent Nos. 1 and 2 and P. Marpakwar, for the Respondent

Judgement

R.C. Chavan, J.—The petitioner, a Lecturer in respondent No. 3 College on the verge of her retirement and stagnating in the entry level scale of pay for Lecturers, seeks grant of higher scales of pay of senior scale and selection grade.

2. The petitioner was appointed as Lecturer in respondent No. 3 College on 1-12-1978. She did not acquire qualification of Doctor of Medicine (MD), but was awarded Ph.D. on 23-3-1992. By Government Resolution dated 27-2-1989, scales of pay of University Teachers were revised and career advancement scales after completion of 8 and 16 years of service were provided. After 8 years, a Teacher in the scale of Rs. 700-1600 was entitled to be placed in the senior scale of Rs. 3,000-5000 and a Lecturer in the senior scale of Rs. 3,000-5,000 was entitled to be placed in the scale of Rs. 3,700-5,700. The petitioner laments that she has been denied the benefits of both these pay scales in spite of her entitlement, while other Teachers have been granted such scales of pay.

3. In the return filed by respondent No. 3 - petitioner's employer, respondent No. 3, respondent No. 3 has taken the stand that since the petitioner had not obtained the degree of MD (Ayurved), she was not entitled to the benefit of higher pay scale in terms of recruitment rules notified on 9-7-1988, which mandate that a Lecturer must have a Post Graduate Degree in the concerned

Ayurvedic subject for being eligible to be appointed as a Lecturer.

4. On behalf of respondent Nos. 1 and 2, a return has been filed, which takes a similar stand, adding further that the petitioner would not be entitled to claim parity with a Government employee.

5. In lengthy rejoinder, the petitioner contended that since the higher qualifications were prescribed after she was recruited and since the Body, which had the authority to regulate qualifications for Teachers in Ayurvedic Colleges, namely Central Council of Indian Medicines, had specifically held that the Post Graduate qualification had been made compulsory from 1-7-1989, insistence on a degree of MD for getting the higher pay scales was thoroughly unjustified. She further pointed out that several similarly placed Teachers, namely, S/Shri C.N. Katulwar, C.V. Naik, Vaidya, and J.B. Khare, who did not possess the Post Graduate qualifications, had been given promotions to higher posts, while the petitioner was denied even the benefit of higher pay scale.

6. The petitioner had also joined the Central Council of Indian Medicines as respondent No. 5, on whose behalf a counter-affidavit was filed by its Registrar Vaidya P.R. Sharma, which generally supports the petitioner's case.

7. We have heard Smt. M.P. Munshi, learned Advocate for the petitioner; Smt. B.H. Dangre, learned Additional Government Pleader for respondent Nos. 1 and 2; and Shri P. Marpakwar, learned Advocate for respondent No. 3 - employer.

8. The learned Additional Government Pleader for respondent Nos. 1 and 2 opposed grant of reliefs to the petitioner on the ground that the recruitment rules notified on 9-7-1988 prescribe Post Graduation as an essential qualification for appointment as a Lecturer. She, therefore, submitted that unless the petitioner possesses the essential qualification, there was no question of petitioner being entitled to the benefits of higher scales of pay. She pointed out that the Government Resolution dated 27-2-1989, by which new pay scales were prescribed, refers to the requirement of minimum qualifications prescribed in the recruitment rules. She submitted that the Central Council of Indian Medicines had not issued any regulation prescribing any different qualification and, therefore, a mere letter dated 29-3-1996 annexed to the counter-affidavit on behalf of the Central Council of Indian Medicines, would not replace the requirements as to the qualifications in the Government Resolution dated 27-2-1989.

9. We have carefully considered the argument advanced by the learned Additional Government Pleader for respondent Nos. 1 and 2. The argument has to be rejected, because the petitioner was recruited on 1-12-1978, that is long before the recruitment rules were notified on 9-7-1988. Therefore, in this context, the stand of respondent No. 5 - the Central Council of Indian Medicines has to be understood. It is obvious that a person would not be expected to comply with the requirements as to the qualifications before they were prescribed and, therefore, the letter dated 29-3-1996 clarifies that the

regulations by the Central Council of Indian Medicines, which came into force from 1-7-1989, presumably prescribing MD as a qualification, would not affect the appointment or promotion of Teachers before 1-7-1989.

10. There is yet another reason for rejecting the contention of the respondents that the petitioner must hold the qualification of MD, since it could be said that her qualifications conform to the minimum qualifications prescribed for the appointment as a Lecturer. A copy of degree of Doctor of Philosophy conferred upon the petitioner on 8-8-1992 is annexed by the petitioner as Annexure-7 to the petition. Though the degree is abbreviated as Ph.D. in vernacular it is described as Ayurvediya Waridhee. It is difficult to imagine that a doctorate in Ayurvediya would not be equivalent to Doctor of Medicine in Ayurved. The petitioner has also pointed out a fact, which has not been disputed by the respondents, that she is recognized as a Post Graduate Teacher by the Nagpur University (Annexure-22 to the petition). Thus, she is eligible to guide MD students, but because she does not hold the degree of MD, and instead holds the degree of Ph.D. she had been denied higher pay scales. This logic is indeed beyond our comprehension. Further when the petitioner represented for grant of better pay scales, she had also submitted her various academic achievements with Annexure-21 to her employer, which should normally satisfy the requirements in Government Resolution dated 27-2-1989, Clause 12 whereof prescribes for career advancement. Since the petitioner was appointed on 1-12-1978, in terms of Clause 12(a), she should have been entitled to senior pay scales of Rs. 3,000-5,000 eight years after her appointment on 1-12-1986, which date was before the date of prescription of higher qualification. Therefore, as far as the application of this scale is concerned, there can be absolutely no doubt about the petitioner's eligibility to scale of Rs. 3,000-5,000 from 12-12-1986.

11. Clause 13 of the aforesaid Government Resolution prescribes that a Lecturer in senior scale would be eligible to the scale of Lecturer (Selection Grade) of Rs. 3,700-5,700 either after completing 8 years of service in the senior scale or after completing in all 16 years of service as Lecturer. Thus, the petitioner would have been entitled to selection grade scale of Rs. 3,700-5,700 eight years from 1-12-1986, i.e. from 1-12-1994. It appears from the letter dated 28-9-1994 (Annexure-11) written by the Director, College Development Council, Nagpur University, Nagpur, to the petitioner that her case had been referred to the Assessment committee as per the decision of the Grievance Committee and that the decision was accepted by the Executive Council on 21-5-1994. Page 57 of the petition is annexure to the letter dated 28-9-1994, as may be seen from the list of annexures furnished by the petitioner. This shows that the Assessment Committee of the University had recommended to the Executive Council that the petitioner should be given selection grade with effect from 23-3-1992 instead of being given selection grade from 1-7-1994, since the petitioner had been conferred degree of Ph.D. on 23-3-1992. The petitioner has, therefore, claimed such a relief.

12. Now since Clause 13 of the Government Resolution dated 27-2-1989 itself requires 8 years of service in the senior scale for being conferred with selection grade scale, there is no question of petitioner getting the selection grade on her being conferred with Ph.D. That date is thoroughly irrelevant. All the same, the enclosure to the letter dated 28-9-1994 (Annexure 11) would show that there was no doubt about the petitioner's entitlement for being conferred selection grade from 1-12-1994. The returns, replies, etc., filed on behalf of the respondents also do not show that the petitioner could have been denied this conferment in terms of Clause 13 of the aforesaid Government Resolution.

13. To sum up, the qualification of MD for appointment to the post of Lecturer was prescribed almost 11 years after the petitioner was appointed as a Lecturer on 1-12-1978. Respondent No. 5 - the Central Council of Indian Medicines has categorically clarified that this qualification would apply only to the Teachers recruited after 1-7-1989. The letter of the Council dated 29-3-1996 reiterates this position. The contention of respondent Nos. 1 to 3 that this letter would not be sufficient and there has to be a regulation from the Council cannot be accepted, because this letter merely clarifies the position of entrants in the service prior to prescription of higher qualifications.

14. In any case, the petitioner had obtained the degree of Ph.D., which is not shown to be less than the degree of MD. At the cost of repetition, it may be stated that the degree conferred by the Nagpur University, if read in vernacular, means Doctorate in Ayurveda. The contention of the Additional Government Pleader that the petitioner cannot rely on grant of higher pay scales to other similarly placed Teachers, because they had been promoted to higher posts, has to be rejected, since, if similarly placed Teachers could be promoted in the teeth of rules requiring MD, there is absolutely no reason as to why the petitioner should be denied benefit of even a higher pay scale. In view of this, we find that the petitioner's claim for grant of senior scale of Rs. 3,000-5,000 from 1-12-1986 and selection grade scale of Rs. 3,700-5,700 from 1-12-1994 is indefeasible.

15. Consequently, we direct the respondents to grant to the petitioner senior scale of Rs. 3,000-5,000 from 1-12-1986 and selection grade scale of Rs. 3,700-5,700 from 1-12-1994 and pay to her the entire amount of arrears on account of such refixation within three months from the date of this judgment; failing which, the amount may attract interest at the rate of 12 per cent per annum.

16. Rule is made absolute in above terms. No order as to costs.