
(2014) 01 BOM CK 0264
In the Bombay High Court
Case No : Writ Petition No. 4202 of 2012

Prashant

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 39(d)

Citation : (2014) 5 ABR 76

Hon'ble Judges : R.M. Borde, J;N.W. Sambre, J

Bench : Division Bench

Advocate : Ajay D. Pawar, Advocate for the Appellant; V.H. Dighe, AGP,
Advocate for the Respondent

Final Decision : Allowed

Judgement

N.W. Sambre, J.—Rule. Rule made returnable forthwith. Heard finally with consent of learned Counsel appearing on behalf of respective parties. In the present petition the petitioners Class IV/Group "D" employees of aided Ashram School, have prayed for directions to the respondent to grant them higher pay scale after completion of 12 years of service from the date of their initial appointment and to grant all consequential benefits that might have accrued to them. The petitioners have prayed for consideration of above referred claim in the light of Government Resolutions dated 18th September, 2000, 8th June, 1995 and 27th March, 2000.

2. It is the claim of the petitioners that they were appointed sometime in between 1988 to 1997, on the Class-IV posts in various Primary Ashram Schools. It is further submitted by the petitioners that their appointments are approved by the competent authority i.e. respondent No. 3 - Project Officer under the Tribal Development Department. The petitioners further claim that, the schools where they are working are receiving 100% grant-in-aid.

3. It is the claim of the petitioners in the petition that the Tribal Development

Department has not provided for any accelerated promotion or placement in the higher scale upon completing qualifying service of 12 years to the petitioners. According to the petitioners, the State Government in the Department of General Administration, School Education and the Social Welfare Department have initiated the schemes so as to avoid the stagnation on the same post in the service of, giving accelerated promotion/placement in the higher pay scale upon completion of qualifying service of 12 years. The said benefit of time bound promotion is provided to all the employees except the petitioners who are Group "D" employees of the Private Ashram Schools receiving 100% grant.

4. The petitioners have placed reliance on the Government decision dated 2nd September, 1989 issued by the Department of Education, wherein the Government had an occasion to consider the issue about placing the employees of Department of School Education i.e. Primary Schools, Secondary Schools, Higher Secondary Schools B.Ed. Colleges and M.C.V.C. Courses run by the Secondary Colleges, in specific pay scales. By the said resolution, the Department of Education has reiterated about the earlier scheme dated 12th August, 1987 whereby the higher pay scale and selection grade are made applicable to the teaching and non-teaching employees of the Department of School Education based on the recommendations of the Central Government. (Prof. Chattopadhyaya Committee Recommendations).

5. The Counsel for petitioners further brought to the notice of this Court that the Central Government based upon the recommendations made by the National Commission for teachers headed by Professor - D.P. Chattopadhyaya, has issued certain recommendations by communication dated 12th August, 1987. The said recommendations were implemented by the Central Government by conferring selection grade and senior scale to teachers. So as to benefit the employees of the State Government in view of the above referred recommendations of Chattopadhyaya Committee, the State Government has also taken decision to apply corrected pay scales to the teaching and non-teaching employees of aided - Primary Schools, Secondary Schools, Higher Secondary Schools, Technical schools and D.Ed. Colleges.

6. The petitioners have further placed reliance on the Government decision dated 27th March, 2000 so as to demonstrate that the benefits of the recommendation of 5th Pay Commission are extended to the teaching and non-teaching employees of Primary, Secondary Ashram Schools.

7. The petitioners have further brought to the notice of this Court that the Department of Education has issued Government Resolution dated 13th May, 1999 and 6th September, 1999 whereby the Department of Education has extended corrected pay scales to the teaching and non-teaching employees of the non-Government schools. The Department of Tribal Development has accepted both the Government resolutions (referred supra) issued by the Department of Education and has extended the benefits of 5th pay commission. The petitioners further relied upon the similar decisions taken by the Department

of Social Welfare vide its decision dated 18th September, 2000 and 18th April, 1995 issued by the Department of General Administration, for extending benefits of accelerated promotion/pay scale to the employees working in Group "C and Group "D" (Class-III and Class-IV) of the State Government. Based upon the above referred Government decisions, the petitioners have further sought to canvass that it is only the Tribal Development Department of the State Government which has discriminated the employees of Group "D" (Class-IV) of aided primary and secondary ashram schools, by not extending the benefit of the higher pay scale. The petitioners have further placed reliance on the decisions taken by the Principal Seat of this Court in Writ Petition No. 4346 of 2000 on 14th September, 2000 and in Writ Petition No. 4992 of 2003.

8. In light of above submissions, the petitioners have prayed before this Hon'ble Court that the directions be issued to the respondent-State Government to grant higher pay scale in favour of the petitioners immediately after completing their 12 years' qualifying service from the date of their initial appointment and to grant consequential benefits that might have accrued to them.

9. The respondent Nos. 2 and 3 i.e. Additional Commissioner, Tribal Development Department and the Project Officer have filed reply in the matter objecting to the above referred contentions of the petitioners and sought rejection of the writ petition. According to respondents, the reliance placed by the petitioners on the Government resolutions are, that of Social Welfare Department and as such the same are not applicable to the Department of Tribal Development. However, the respondent Nos. 2 and 3 have admitted that as per the Government Resolution dated 2nd September, 1989 Government has made applicable revised pay scale to the teaching and non-teaching staff in non-Government schools i.e. Primary, Secondary and Higher Secondary Schools. The said revised pay scales are made applicable to the Department of Tribal Development by the Government Resolution dated 27th March, 2000. The respondent further pointed out that so far as Government Resolution dated 27th March, 2000 is concerned, the higher pay scales are not made applicable to Class-IV employees like petitioners of same department though same is made applicable to class-IV employees of the Government Ashram Schools.

10. The respondents further pointed out that even though there is no scope for promotion to the employees like petitioners, the employees will be entitled for revised pay scale as per Government norms.

11. The respondents further pointed out that the Government Resolution of the Education and Youth Services Department dated 2nd September, 1989 has made it clear that the Ashram Schools on grant-in-aid under 4th Pay Scale, Class-IV employees are not entitled to senior pay scale after completion of 12 years of service. G.R. dated 27th March, 2000 is silent about extending aforesaid benefits.

12. In short, the contentions of respondents Nos. 2 and 3 is that in absence of any express provision for extending the higher pay scale after completing 12

years service to Class-IV employees, such benefits cannot be extended to the employees of the Ashram Schools, who are admissible to 100% grant-in-aid.

13. Having considered rival contentions of the parties, it is noticed that, the Tribal Development Department by a communication dated 29th October, 2009 has extended benefits of 6th pay commission to teaching and non-teaching employees of aided Ashram Schools with certain riders.

14. From the above referred contentions, it is apparently clear that but for the employees from Ashram Schools, more particularly, Class IV employees of the Ashram Schools which are admissible to grant-in-aid, all the employees in Class-III and IV category of that of State Government, Social Welfare Department and School Education Department are made admissible to accelerated promotion/higher pay scale after completion of qualifying service of 12 years. The said benefit of higher pay scale to Class-III and IV employees is extended so as to avoid stagnation of such employees at one place for years together in view of absence of promotional avenues.

15. As narrated herein before, the decision of the State Government dated 2nd September, 1989, making applicable 4th pay commission to Class-IV employees of the Ashram School, has expressly incorporated a clause that after completion of 12 years of service, they shall not be entitled for higher pay scale whereas; the Government Resolution dated 27th March, 2000 issued by the Department of Tribal Development does not contain any such express provision carving out an exception to the applicability of the higher pay scale after completion of 12 years service. The specific query about non-inclusion of said condition in the Government Resolution dated 27th March, 2000 while extending 5th pay commission is not responded to by the State Government. Neither any explanation nor any reason for not incorporating any express condition of excluding Class-IV employees of the aided Ashram School of the Tribal Development Department is given by the State Government. There is also no explanation to the fact that as to why Government Resolution dated 27th March, 2000 issued by the Tribal Development Department is implemented in such a fashion so as to exclude higher pay scale after completion of 12 years of service by the Class-IV employees of the aided Ashram School of the Tribal Development Department.

16. During course of hearing, this Court has noticed that in Writ Petition No. 4346 of 2000, preferred at Bombay on appellate side, the High Court vide its Judgment dated 14th September, 2000, had an occasion to consider the extension of such benefits i.e. senior pay scale and selection grade to the teachers in non-Government schools. The Court while interpreting the terms of the relevant Government Resolutions reflected in the said writ petition i.e. G.R. dated 2nd September, 1989 was pleased to extend the benefit of the higher pay scale to the employees, who have completed 12 years of service in non-aided and aided school.

17. A similar issue felt for consideration in Writ Petition No. 4992 of 2003 at Aurangabad Bench, wherein the Court had an occasion to consider the issue about time bound promotion after completion of 12 years" qualifying service or placement in higher pay scale. The writ petition Nos. 2358 of 2013, 650 of 2013, 6431 of 2012 and 11711 of 2012 were heard at Principal Seat in Civil Appellate Jurisdiction wherein the issue about Ashram School in which the said petitioners were employed and who are getting grant-in-aid were denied the similar benefits. The fact remains that the petitioners therein were from Group "C and Group "D" category.

18. In paragraph "11" while considering the submissions of the Counsel for the petitioners based upon the Judgment in Sahebrao Karbhari Gunjal, Asaram Premchand Bhukkan, Gahininath Namdeo Ghodke and Ramnath Madhav Tanwade Vs. The State of Maharashtra and The District Social Welfare Officer, has taken a note of the fact in paragraph No. 9 as under:--

"All the activities pertaining to Ashram Schools were initially being looked after by the Education Department and subsequently Social Welfare Department came to be established for looking after these activities. It is stated that after 10th March, 1999 Social Welfare Department was carved out from the Education Department so also Triable Development Department."

19. The Court further reproduces para. 13 of the said judgment which reads thus:--

"13. Equality" has been guaranteed under Article 14 of the Constitution of India. Equals have to be treated equally and un-equals ought not to be treated equally. However, reasonable classification is permissible under Article 14 of the Constitution. The classification must be founded on the basis of an intelligible differentia, which distinguishes those that are grouped together from others and differentia must have a rational relation to the object sought to be achieved. We have also considered Article 39(d) of the Constitution with reference to the facts and circumstances of the present case, which are not seriously disputed, even on behalf of the State. The classification which has been reflected from the Government Resolution dt. 3.4.2007, in our view, does not have any rational basis. The group of the persons holding the position as Hostel Superintendents, with qualification S.S.C./D.Ed. and appointed prior to 5.2.2000, have been grouped together and pay scale of Rs. 4500-7000/- has been sanctioned to them. Other persons holding the same position i.e. Hostel Superintendents working in aided Ashram Schools and post Basic Ashram Schools have been sanctioned pay scale of Rs. 4,000-6,000/-. In the second group, details of which have not been furnished, but then from this Government Resolution it appears that the Hostel Superintendents who are not coming within the sweep of first group of Hostel Superintendents holding S.S.C., D.Ed. qualification and appointed prior to 5.2.2000 have been grouped together. All other Hostel Superintendents even appointed prior to 5.2.2000, confirmed in the service, in view of the policy of the State Government holding the field at the relevant time, have been left out

for no rational and such an un-equal treatment has been tried to be supported. The nature of the duties, conferred upon the Hostel Superintendents in the first group and the nature of the duties to be performed by the left outs are similar, virtually, can be said to be same. There is no difference or distinction in the responsibilities saddled on the first group and the Hostel Superintendents left out. There is no statute and/or subordinate legislation in relation to the pay scales of two groups. However, action of the State needs to be within the parameters of Article 14 and Article 39(d) of the Constitution of India."

20. In case of *Yadav Ganpat Bhamare Vs. The State of Maharashtra, The Commissioner, Tribal Development Division and Education Officer (Secondary) Zilla Parishad*, the Division Bench of this Court had an occasion to consider the prayer of the petitioner therein for extending the benefit of the reimbursement of medical expenses which was made admissible to the employee of Post Basic Ashram School. While dealing with the issue involved therein, the Court noticed that the reimbursement of the medical expenses was admissible to the teaching and non-teaching staff of the private schools, recognized and admitted to grants, from the State exchequer in the light of Government Resolution dated 21st May, 1989, however, the same was not made admissible to the Post Basic Ashram Schools. Paragraphs 20 and 21 of the said judgment reads thus:

"20. We must also refer to *Murlidharan's* case (*supra*). In that case the petitioner had worked in *Abhinava Kala Mahavidyalaya*. It was an art school. It was a private but aided institution. This Court found that the said school was covered by the definition of "school" as found in Section 2(24) of the MEPS Act. The question was whether pensionary benefits available to any aided private school, should be made available to the employees of the said school. This Court held that all benefits which are otherwise available to employees, who had served in any aided private school, must also be made available to employees of the said school.

21. In our opinion, in the present case also once it is held that the Post Basic Ashram School is an aided private school covered by the MEPS Act, all benefits which are otherwise available to teaching and non-teaching staff of recognised, aided private schools must be made available to the employees of Post Basic Ashram School. On a plain reading of the Government Resolution dated 21-5-1989 it is clear that the facilities and benefits extended thereunder are in fact extended to the members of teaching and non-teaching staff working in private schools, recognized and admitted to grants, from the state exchequer. As the Full Bench judgment holds that the employees working in Post Basic Ashram School are covered by the definition of private school the petitioner is very much entitled to the benefits/facilities extended by the Government Resolution dated 21-5-1989."

21. The above referred Judgment was further considered by the Division Bench of this Court in Writ Petition Nos. 7256 of 2010 and 9270 of 2012, wherein the benefit of placement in higher pay scale was extended to the employees from the

private ashram schools under the Social Welfare Department.

22. Having regard to the above, it is clear that the Government is not in a position to justify its stand about non-applicability of higher pay scale after completion of 12 years service of Class-IV employees of aided ashram schools of the Tribal Development Department receiving grant-in-aid from the State Exchequer, are disentitled for. It is further clear that the employees from the Social Welfare Department, GAD, School Education, are extended the same benefits, however, the same is not extended to the petitioners, who are Class-IV/ Group "D" employees of the aided Ashram Schools. It is also noted the conduct of the State Government in making applicable the higher pay scale after completion of 12 years service to the employees of the Government Ashram Schools but not to the Group "D" employees of the aided Ashram Schools of the Tribal Development Department, who perform similar work is arbitrary. The service jurisprudence as is evolved by the Hon"ble Apex Court from time to time, it is held that all the similarly situated persons shall be treated equally. So far as the case in hand is concerned, it is clear case of violation of Article 14 of the Constitution of India, as the petitioners, though similarly placed, are not extended the benefit of higher pay scale having completed the 12 years of service in the cadre.

23. In that view of the matter, it is held that, the action on the part of the Government in not extending the benefit of higher pay scale after completion of 12 years" service by the Class-IV/Group "D" employees" is violative of Article 14 of the Constitution of India. As such respondent/State is directed to extend the benefit of higher pay scale in favour of Group "D" employees of Private Ashram Schools receiving 100% grant, after completion of 12 years" of qualifying service. The financial benefits arising from aforesaid direction be extended to petitioners & similarly placed employees as expeditiously as possible, preferably within period of 9 months from date of this order. Rule made absolute in above terms. There shall be no order as to costs.