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**(2015) 09 SC CK 0186**

**In the Supreme Court Of India**

**Case No :** C.A. No. 7183 of 2015 (Arising out of SLP(C) No. 20503 of 2006),  
C.A. No. 7184 of 2015 (Arising out of SLP(C) No. 20567 of 2006),  
C.A. No. 7185 of 2015 (Arising out of SLP(C) No. 20568 of 2006) and  
C.A. No. 7186 of 2015 (Arising out of SLP(C) No. 18291 of

State of Maharashtra and others

APPELLANT

Vs

Tara Ashwin Patel and others

RESPONDENT

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**Date of Decision :** 15-09-2015

**Acts Referred:**

**Citation :** (2015) 10 SCALE 57

**Hon'ble Judges :** Madan B. Lokur and S.A. Bobde, JJ.

**Bench :** Division Bench

**Final Decision :** Dismissed

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## **Judgement**

1. Leave granted. The challenge in this batch of cases is primarily to the order dated 13th January, 2006 passed by the Bombay High Court. The Civil Appeal arising out of SLP(C) No. 20503 of 2006 has been taken as the leading case since the facts and the issues of law are common in all these cases.

2. The Respondents were working as Demonstrators/Tutors in various government colleges of Arts/Science/Commerce faculties. Apparently, with a view to upgrading their posts, the Government of Maharashtra passed a resolution on 25th October, 1977 upgrading the post of Demonstrator/Tutor from the beginning of the academic year 1975-76, i.e., from 1st July, 1975. There were certain conditions required to be fulfilled for taking the benefit of the upgradation, viz., that incumbent must possess the qualification for the post of Lecturer and that there would be some period of probation etc. We are not concerned with these conditions. The relevant part of the Resolution dated 25th October, 1977 reads as follows:

"XIII. Conversion of posts of Demonstrators/Tutors:-Non-Government Colleges of Arts/Science/Commerce faculties shall, as already directed earlier-(a) Upgrade, with effect from the beginning of the academic year 1975-76 (i.e. from 1st July,

1975) the existing posts of demonstrators/tutors held by persons possessing qualifications for the posts of Lecturers as prescribed by the University concerned into those of lecturers.

In view of the instructions issued earlier in that behalf, some colleges have already upgraded from 1st July, 1975 the posts of demonstrators/tutors held by persons possessing the qualifications for the posts of lecturers as prescribed by the University concerned. Such persons holding the upgraded posts of lecturers from 1st July, 1975 and continued as lecturers at the college level beyond 30th June, 1977 should be deemed to have satisfactorily completed their probationary period of two years. Colleges which have not yet formally upgraded from 1st July, 1975 the posts of demonstrators/tutors held by persons possessing the qualification for the posts of lecturers and fix the pay of the persons concerned in the prescribed pay-scale of lecturers ( Rs. 700-1,600) with effect from 1st July, 1975. From 1st July, 1975 onwards they should be allowed to draw their pay in the said scale of lecturer if they have continued at the college level. Merely the fact that they have been so allowed to draw pay in the scale of lecturers ( Rs. 700-1,600) from 1st July 1975 to 30th June 1977 shall not, however, upgraded posts of lecturers satisfactorily. Their period of probation of two years should be computed with effect from 1st July 1977.

(b) Sanction with effect from 1st January 1973 the revised scale of pay of demonstrator/tutor i.e. Rs. 500-20-700-25-900 to those not covered by (a) above, but who possessed at the time of their initial appointment as demonstrator/tutor qualifications prescribed by the respective Universities for the posts of demonstrator/tutors.

(c) Continue the existing scale of pay to such demonstrators/tutors who are not covered by (a) and (b) above. In order to help the process of progressive abolition of the cadre of demonstrators/tutors, no new recruitment to this cadre shall be hereafter."

3. With regard to the actual working of the Resolution dated 25th October, 1977, the Government of Maharashtra passed another resolution on 27th February, 1989, which was for the purposes of the career advancement of such Lecturers. Paragraphs 12 and 13 of this Resolution are of some consequence and they make it clear that for the purposes of career advancement every Lecturer will be placed in the Senior Scale if he/she has completed eight years of service after regular appointment (with relaxation) and has participated in two refresher courses, etc. For grant of Selection Grade, the Lecturer in a Senior Scale should have completed eight years" of service provided that the eight years" requirement will be relaxed if the total service of the Lecturer is not less than 16 years. Paragraphs 12 and 13 of the Resolution dated 27th February, 1989 reads as follows:

"12. Career Advancement - Every Lecturer/Assistant Librarian/Librarian/Director/Instructor of Physical Education/Assistant Director of Physical Education, in the

existing scale of Rs. 700-1,600 will be placed in a senior scale of Rs. 3,000-5,000 if he/she has-

(a) Completed 8 years of service after regular appointment with relaxation as provided in para 10 above;

(b) Participated in two refresher courses/summer institutes, each of approximately 4 weeks" duration or engaged in other appropriate continuing education programmes of comparable quality as may be specified by the University Grants Commission;

(c) Consistently satisfactory performance appraisal reports.

Explanation - All such incumbents in the existing scale of Rs. 700-1,6.00, who have completed 8 years of service on 1st January, 1986, will be placed through a process of screening, selection as indicated below, in the scale of Rs. 3,000-5,000. The benefit of service provided in para 10 will be available for the initial placement also.

13. Every lecturer, Librarian and Physical Education staff in the senior scale will be eligible for promotion to the post of Lecturer (Selection Grade) Reader/Deputy Librarian/Deputy Director of Physical Education in the scale of pay of Rs. 3,700-5,700 if he/she has-

(a) Completed 8 years of service in the senior scale provided that the requirement of 8 years will be relaxed if the total service of the lecturer is not less than 16 years;

(b) Obtained a Ph.D. degree, or an equivalent published work;

(c) Made some mark in the areas of scholarship and research as evidenced by self-assessment report of referees, quality of publications, contribution to educational renovation, design of new courses and curricula etc.

OR

made significant contribution to the development of Library Services/physical education in university as evidenced by self-assessment reports of referees, professional improvement in the Library service/Physical Education activities, etc., as the case may be;

d) Participated in two refresher courses/summer institutes, each of approximately 4 weeks duration or engaged in other appropriate continuing education programmes of comparable quality as may be specified by the University Grants Commission, after placement in the Senior scale; and

e) Consistently good performance appraisal reports."

4. The contention of the Respondents herein - writ Petitioners in the High Court was to the effect that since their upgradation was with effect from 1st July, 1975, their services from 1st July, 1975 onwards should be counted towards regular

service for the post of Lecturer and their Senior Scale and Selection Grade should be correspondingly calculated from that date onwards. The stand of the Appellants herein (the Respondents in the High Court) was to the effect that what is required by the Resolution dated 27th February, 1989 is that the present Respondents ought to have put in eight years' regular service for the grant of Senior Scale. Therefore, the period from 1st July, 1975 till 25th October, 1977 could not be counted for the purposes of grant of Senior Scale or for the grant of Selection Grade since the Respondents had not actually worked as Lecturer during that period, but were only deemed to have been in that position.

5. The High Court did not accept the contention of the Appellants before us and relying upon a decision rendered in the case of one Prof. Pervez H. Lentin, it was held that the period from 1st July, 1975 onwards should be counted for the purposes of grant of Senior Scale and Selection Grade to the Respondents.

6. It appears that the Division Bench of the Bombay High Court in the Nagpur Bench had rendered a decision to the contrary, but that was distinguished by the Division Bench in the judgment under appeal.

7. We are not concerned with the correctness of the decision taken by the Nagpur Bench because that is not the subject of appeal before us since the case of State of Maharashtra and Ors. v. Prof. Pervez H. Lentin and Ors. [SLP(C) No. 4832 of 2007] has already been dismissed on the ground of delay and also on the ground that the judgment was implemented though under threat of contempt of court.

8. We have, therefore, examined the present appeals on first principles. We find from a bare reading of the two Resolutions dated 25th October, 1977 and 27th February, 1989 that for the purposes of career advancement the Appellants had upgraded the post of Demonstrator/Tutor to the post of Lecturer and it appears that the Respondents were also getting wages for the period of upgradation, i.e., from 1st July, 1975 to 25th October, 1977. However, for the purposes of grant of Senior Scale and, subsequently, for the grant of Selection Grade, what was required in terms of the aforesaid Resolutions was actual service or regular appointment in the post of Lecturer. Thus, the Respondents did not have and they cannot get the benefit of the deemed status of upgradation from 1st July, 1975 to 25th October, 1977. The deemed status was apparently for the purposes of pay and other allowances and cannot be counted towards actual physical service rendered by the Respondents in the post of Lecturer.

9. That being the position, we are of the opinion that the view expressed by the High Court is not sustainable and, therefore, we set aside the judgment and order passed by the High Court. The appeals are allowed in view of the above. No costs.