

(2007) 04 BOM CK 0096

In the Bombay High Court

Case No : Writ Petition No. 2519 of 1990

Tukaram Bapuji Datke

APPELLANT

Vs

Rajasthan R.N. Arts and Mithulalji Kacholiya Commerce
College, Amravati University, State of Maharashtra,
Department of Education and Employment and University
Grants Commission

RESPONDENT

Date of Decision : 10-04-2007

Acts Referred:

Citation : (2007) 3 ALLMR 746 : (2007) 5 BomCR 798

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

Bench : Division Bench

**Advocate : R.K. Deshpande, for the Appellant; J.B. Jaiswal and B.H. Dangre,
A.G.P., for the Respondent**

Judgement

R.C. Chavan, J.—The petitioner, a tutor in respondent No. 1 college under respondent No. 2 university, has sought declaration that he was entitled to placement in pay scale of Rs. 700-1,600 w.e.f. 01.07.1975 and the corresponding subsequent scales with all consequential benefits.

2. The petitioner was employed as tutor in English in the pay scale of Rs. 250-400 w.e.f. 01.07.1969. Admittedly the petitioner does not hold second class master's degree. He was confirmed as a tutor by resolution dated 18.06.1971 on successful completion of probation.

3. The University Grants Commission recommended scale of Rs. 7001,600 for lecturers w.e.f. 01.07.1975. These scales were latter revised w.e.f. 01.01.1986 to Rs. 2,200-4,000. The State of Maharashtra had applied these scales of pay by Government Resolution dated 27.10.1977. The petitioner claimed that he was eligible and qualified for being appointed as a Lecturer in English and therefore, he was entitled to have his scale upgraded to Rs. 7001600 from 01.07.1975 and Rs. 2,200-4,000 from 01.01.1986. However, the demonstrators and tutors in the position of petitioner were arbitrarily discriminated against and kept out side the

entitlement to these scales of pay.

4. According to the petitioner, Librarians and Instructors of Physical Education were deemed to be university teachers. While scale of Rs. 700-1,100 was made applicable to Librarian who did not possess a post graduate degree but were working as such in April, 1966 w.e.f. 01.01.1973 and eventually the scale of Rs. 700-1,600 was made applicable to librarian who had been appointed before 13.12.1972 but did not possess requisite qualification like petitioner as to deficiency in qualification and claimed that similar treatment was not given to demonstrators and tutors. Being aggrieved by this discriminatory treatment, the petitioner has approached this Court.

5. On behalf of respondent No. 3-State of Maharashtra a return has been filed stating that since the petitioner had passed M.A. in third division he was not qualified for appointment of the post of lecturer and consequently his pay was rightly fixed in pay scale admissible to the post of tutor. Respondents denied that the State had practiced any discrimination. The respondent, therefore, prayed for dismissal of the petition.

6. We have heard learned Advocate Mr. R.K. Deshpande, for the petitioner, learned Advocate Mr. J.B. Jaiswal for respondent No. 2 and learned A.G.P. Mrs. Bharti Dangre, for respondent No. 3.

7. The learned Advocate for the petitioner pointed out that:

a) The petitioner undoubtedly did not possess qualification for the post of lecturer since he held third class degree of Master of Arts. He, however, submitted that the petitioner was appointed before 31st December, 1972, when the petitioner was eligible for being appointed as teacher in spite of his third class degree. Subsequently, the post of tutors and Demonstrators were abolished and those tutors and Demonstrators who were qualified for being appointed as lecturer in the cadre of lecturers, and who were not qualified to be lecturer were retained in their existing position.

b) The learned Advocate submitted that library staff and physical education instructors were brought in the class of the university teachers by fiction though they were not in fact, teachers under the directions of UGC.

c) Even in respect of librarian's qualification laid down by the University Grants Commission required them to have Master's Degree with 55% marks.

d) By Government Resolution dated 22nd February, 1989 is implied relaxation of conditions as to educational qualification the librarians who were appointed on or before 31st December, 1972 and who did not satisfy qualification laid down by the U.G.C. were granted pay scale of Rs. 2,200-4,000 w.e.f. 1st January, 1986 i.e. scale equivalent to that of Librarian holding qualification which is equivalent to the scale of a lecturer. The Demonstrators or Tutors were however, continued in the scale of Rs. 1,740-2,000. This distinction is apparent from Appendix-I of the Government Resolution dated 22.02.1989.

8. The learned Advocate submitted that if the Governor could extend the benefit of pay scale applicable to Physical Education Instructors or Librarians, even to those Librarians, who were not qualified, but were appointed before 31.12.1972, there was no reason why similar benefit of higher pay scale was not extended to Demonstrators and Tutors in the position of petitioner. Higher qualifications for all Teachers were prescribed by Government Resolution dated 07.11.1967. It is seen that some Teachers and Librarians have acquired such higher qualifications or improvements however, some teachers did not acquire prescribed qualification, and they were retained in services. By Government Resolution dated 25th October, 1977 decision to progressively abolish the posts of Demonstrators/Tutors was taken and no new recruitment to the cadre was made. Therefore, those who were appointed before 31.12.1972, though not qualified, were entitled to benefit of higher pay scales, considering the fact that the requirement of higher qualification or higher grade was not insisted upon, when they entered the service or conditions of service, were altered while they were already in the employment. It would be unjust to deny to them parity with others who were granted higher pay scale in spite of deficiency. The learned Advocate for the petitioner submitted that since the petitioner's cadre was thus depleting, the State neglected those Tutors appointed before 31st December, 1972 for the benefit of up-gradation. According to learned Advocate Mr. Deshpande the class of Tutors/Demonstrators along with Librarians, Physical Training Instructors, holding lesser qualification constituted one class of persons having deficiency in qualification which was similar or concurrent. This being so, one section of Librarians, Physical Training Instructors, who constitute a component of one and same class of personnel of similar deficiency has been given a favoured and differential treatment and remainder is excluded from the benefit. This discrimination has been practiced.

9. The learned A.G.P., on the other hand, pointed out, by reference to a chart showing comparative pay scales of lecturers, demonstrators, tutors and librarians or physical education instructors as per various government resolutions, that only those who were having minimum qualification were given scale equivalent to that of a regular lecturer, and therefore, there was no discrimination whatsoever. She further submitted that petitioner's claim for parity in pay scale is unfounded since the petitioner and the librarians or physical education instructors do not have comparable qualification or duties to warrant equal pay scale.

10. The learned A.G.P. drew our attention to three decisions of the Apex Court, namely :

- (1) V. Markendeya and Others Vs. State of Andhra Pradesh and Others, ,
- (2) Sita Devi and others etc. etc. Vs. State of Haryana and others, .
- (3) State of Tamil Nadu and Another Vs. M.R. Alagappan and Others, etc., .

11. As rightly countered by learned Advocate for petitioner the question is not of equal pay for equal work. The question is one of discrimination between

librarians or physical education instructors on one hand and demonstrators or tutors on the other, who all were similarly placed in the sense that they did not possess the prescribed qualification while granting higher scales of pay by the Government Resolution dated 27th February, 1989. The learned Advocate for the petitioner has demonstrated that Librarians, not possessing requisite qualifications, but appointed prior to 31.12.1972, were granted a higher pay scale as may be seen from Note 10 of Annexure-I to Government Resolution dated 27.02.1989. Demonstrators and Tutors were not shown any such indulgence. In our view, in present case, for seeking equality it is not essential to establish congruent qualification and duties. It would be enough to establish that a factor which was common for both the groups was itself the foundation for different treatment. The petitioner has also duly demonstrated that the common factor between teachers in the category of the petitioners and deemed teachers in the category of librarians was that all of them were appointed before 31.12.1972 and did not possess requisite qualification which brings them within one bracket of one "class". Yet while in case of one group of employees within same class of "persons with deficiency in qualification", (who were, in fact, teachers, only fictionally), the Government granted by implication relaxation in respect of minimum qualifications, since they were appointed before 31.12.1972, but the declining tribe of Demonstrators and Tutors whose posts were to be progressively abolished, in view of the Government Resolution dated 25.10.1977, were denied the said benefit.

12. The return filed on behalf of the Government - respondent No. 3 does not clarify this aspect of the matter. It is not made clear as to what propelled the Government into granting higher scale of pay to deemed teachers like Librarians appointed before 31.12.1972, who did not possess requisite minimum qualification while not considering the decimating class of lecturers or tutors for similar treatment. Once Government decides to extent some monetary benefit which is a matter which rests in realm of policy of the Government and Court has no role in it. However, once such decision is taken and a grievance of discrimination is made, and such discriminatory treatment to declining class of Tutors/Demonstrators appointed before 31st December, 1972 is duly demonstrated, the discrimination needs to be removed by issue of appropriate writ. We wanted to ascertain as to whether the class of Tutors/Demonstrators forming part of same class of pre 31.12.1972 appointees with deficiency in qualification were consciously kept out or were they only missed out while prescribing higher pay scale to similarly situated librarians appointed before 31st December, 1972 and not possessing minimum prescribed qualification. However, no material in this regard is coming forward. On the other hand Government has justified its action and opposed the petition. The Government has not even shown willingness to re-examine the issue for a coercive action. We, therefore, find that present is a case of patent and gross discrimination practiced and attempted to be justified.

13. We, therefore, hold that the petitioner is entitled to relief, and direct

respondent No. 3 to extend, within three months, the benefit of pay scale (i.e. Rs. 2,200-4000) which was granted by the Government Resolution dated 27.02.1989) to Librarians not possessing requisite qualifications, but were appointed before 31.12.1972 and the corresponding subsequent pay scales granted at subsequent pay revisions along with the consequential benefits of revision of pension.

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