
(2014) 09 BOM CK 0153

In the Bombay High Court

Case No : Writ Petition Nos. 243, 326 and 336 of 2006

Upasana Majgaonkar

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 09 BOM CK 0153

Hon'ble Judges : B.P. Dharmadhikari, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : S.D. Lotlikar, Senior Advocate and M. Furtado, Advocate for the Appellant; V. Rodrigues, Additional Government Advocate, Advocate for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—After the Court Orders dated 29.07.2003, deciding Writ Petition No. 205 of 1999 and Writ Petition no. 357 of 1999, the Mamlatdars working with State of Goa, have filed these Petitions for the direction to State Government to extend to them benefit of pay scale of Rs.6500-200-10500 in terms of recommendation of Fifth Pay Commission w.e.f. 01.01.1996 along with seven other Officers belonging to that cadre and on same terms as per Order dated 08.10.2003 and 27.03.2006.

2. Learned Addl. Government Pleader appearing for the Respondents, has at the threshold, pointed out that earlier bench after hearing the arguments had adjourned the matter to enable the State Government to take appropriate decision. He submitted that very same Bench while deciding similar issue in Writ Petition nos. 322 of 1998 and 138 of 1999 on previous day, had taken a different view. He, therefore, sought adjournment. However, his request was rejected.

3. In the background of above mentioned Orders earlier passed by this Court, we have heard learned Senior Advocate Shri S. D. Lotlikar appearing for the

Petitioners and learned Addl. Government Pleader for the Respondents.

4. Shri Lotlikar, learned Senior Counsel, has submitted that because of the action on the part of the Respondents, two different pay scales have been made applicable to the same cadre i.e. cadre of Mamlatdars. He submits that benefit of Order dated 29.07.2003 passed by this Court needed to be extended to all the Petitioners and it could not have been restriction to only those seven persons who were then Petitioners before this Court. In support of his contention, he has taken support from the Judgment of the Hon'ble Apex Court reported in K.T. Veerappa and Others Vs. State of Karnataka and Others, particularly paragraph 16. He also submitted that the distinction being pressed into service that because seven persons were appointed as per advertisements, which stipulated pay scale of Rs.2000-3200 and, therefore, a corresponding pay scale of Rs.6500-200-10500 came to be extended to them, is incorrect. He submits that treating it as personal pay only for those seven persons, has resulted in hostile discrimination to several Petitioners who are much Senior than those seven persons. He points out that after Fifth Pay revision came into force from 01.01.1996, the other Mamlatdars were drawing their salary in revised pay scale of Rs.5500-175-9000 which is corresponding the Fourth pay scale of Rs.1640-2900. He has invited our attention to the advertisement issued on 28.11.1997 wherein for ten posts of Mamlatdar/Jt. Mamlatdar/Assistant Director of Civil Supplies, the pay scale stipulated is Rs.2000-3200. Senior Advocate Shri Lotlikar has pointed out that after said advertisement, the Orders of appointment have been issued on various dates like 04.03.1997 and the offers of appointments were issued on various dates. He has invited our attention to the communication dated 04.03.1997 issued to the Petitioner no. 1. He further states that similar offers were issued to other Petitioners and ultimately the appointment Order has been issued on 22.12.1998. He further points out that in an offer for appointment, pay scale mentioned is Rs.2000-3200 as per Fourth Wage Revision while in actual appointment Order, after Fifth Wage Revision i.e. Rs.5500-9000 (Group B Gazetted) has been mentioned. He has submitted that these Petitioners also needed to be fitted in the pay scale of Rs.6500-10500 as has been done in case of seven Petitioners who had earlier approached this Court.

5. Learned Senior Counsel has also taken the Court through the Judgment delivered on 29.07.2003 by the Division Bench of this Court in Writ Petition no. 205 of 1999. He points out that after said Order, on 27.03.2006, the Government issued consequential Orders and fixed five Officers mentioned therein to the pay scale of Rs.6500-10500 by treating it as a pay scale granted personally to them.

6. Learned Addl. Government Pleader has, without prejudice to his request for adjournment rejected supra and to assist the Court, placed on record a chronology of events. According to him, the Goa Government issued Order implementing Fifth Pay Commission on 27.10.1997. As per those Orders, pay scale in revised (Fifth Pay Commission Report) scale was to be done by considering the pay scales of the cadre as existing on 01.01.1986 i.e. by ignoring

subsequent ad hoc revision granted. He contends that thus, Rs.1640- 2900 was the pay scale prevailing on 01.01.1986 and, therefore, whilst extending revised pay scale w.e.f. 01.01.1996 that pay scale has been taken into reckoning and the corresponding pay scale of Rs.5500-9000 has been extended to the cadre of Mamlatdar. He has also invited our attention to the fact that advertisements in so far as Writ Petition no. 336 of 2006 are concerned, was issued on 21.02.2000 and, in that advertisement, this pay scale of Rs.5500-9000 was only mentioned. Accordingly, the Orders of appointment were also issued to those Petitioners in very same pay scale. Those Orders are issued on various dates between 29.08.2000 to 03.06.2003.

7. In this background, he has invited attention of the Court to the Judgment dated 28.07.2003 delivered on the very same bench in Writ Petition nos. 322 of 1998 and 138 of 1999. Fairly, he also invited our attention to a Judgment dated 29.07.2003 delivered on the very same day in Writ Petition no. 357 of 1999. However, it is not in dispute that the said judgment is in tune with the Judgment delivered on very same date in Writ Petition no. 205 of 1999. He contends that in Writ Petition nos. 322 of 1998 and 138 of 1999, this Court was called upon to consider the three issues which have got bearing on present controversy. He submits that in the process of discussion, this Court has found that State Government was justified and within its right in providing on 27.10.1997 that revision of pay scales subsequent to 01.01.1986 would be ignored. He further submits that different treatment, accorded to employees of different Department, was found not tantamounting to violation of Article 14 of the Constitution of India and the Court also found that a revision granted pursuant to Court Order, would not constitute an anomaly. He has stated that in peculiar facts, the Order dated 27.03.2006, came to be issued and the Petitioners, who were recruited after an advertisement expressly stipulating a particular pay scale and an order of appointment which also reflected the same pay scale, were extended protection and it was made personal to them. He contends that thus personal treatment or protection extended to those persons cannot be extended to all Mamlatdars and it cannot be a ground to allege violation of Article 14 of the Constitution of India. Upon instructions, he also stated that at the relevant time, cadre of Mamlatdar was consisting of 53 persons and pointed out that only seven out of them were given pay protection. He further submits that after 01.01.2006, the entire cadre as such has been getting same pay scale and the personal pay extended to seven persons was only between 01.01.1996 till 31.12.2005. It is not in existence thereafter.

8. Learned Government Pleader has invited our attention to the fact that the Petitioners before this Court were aware of the Government decision dated 27.10.1997 and did not challenge it at any point of time till filing of present Petition within 2006. He further submits that the Petitioners also accepted offer of appointment and joined employment in the pay scale of Rs.5500-9000. According to him, therefore, the approach by the Petitioners is hopelessly belated and the Petitioners themselves have not conducted themselves diligently. The

earlier Petitions were filed immediately in 1999 after the direction in Order dated 27.10.1997, and the present Petitioners could have also approached the Court at that juncture only. He has also invited our attention to the unreported Judgment delivered on 19.11.2013 by the Division Bench of this Court in Writ Petition nos. 557 of 2006 and 364 of 2012 at Goa. He contends that as the Petitions are hopelessly belated, no cognizance thereof can be taken by this Court.

9. Lastly, the learned Addl. Government Pleader invited attention of the Court to the possible financial burden on the Government revenue. He also indicated a possible cascading effect. He contends that in this situation when the grievance pertains to period w.e.f. 01.01.1996 to 31.12.2005, the Petitions must be dismissed.

10. The arguments noted supra clearly show that this Court has to consider different wages received by holders in same cadre i.e. cadre of Mamlatdar during the period 01.01.1996 to 31.12.2005. From 01.01.2006, the pay scales are received as per Sixth Wage Revision on uniform basis and there is no grievance of any anomaly atleast in the present matters. The controversy came before this Court first in Writ Petition no. 205 of 1999 decided on 29.07.2003. The Petitioners therein were appointed to the post of Mamlatdar/Joint Mamlatdar in the pay scale of Rs.2000-3200 after their selection by Goa Public Service Commission. The State Government by order dated 27.10.1997, adopted the recommendations of pay commission appointed for Central Government employees i.e. Fifth Pay Commission Report subject to certain modifications. The State Government notified that pay scale as on 01.01.1986 for the post of Mamlatdar/Joint Mamlatdar/Block Development Officer/Assistant Director of Civil Supplies as per recommendation of Fourth pay Commission would be relevant while finding out corresponding pay scale as per Fifth Wage Revision. The said pay scale as on 01.01.1986 for this cadre was Rs.1640-2900. The grievances about some anomaly in relation to that pay scale was receiving Governments" attention and it appears that an Order dated 16.10.1992 was passed and the pay scale applicable to the post of Mamlatdar/Joint Mamlatdar/Block Development Officer/Assistant Director of Civil Supplies was revised to Rs.2000-3200 from Rs.1640-2900 w.e.f. 01.01.1996. However, both the learned Counsel have pointed out the Order dated 26.10.1992 which implements it "with immediate effect". It is pointed out to this Court that said revision was not with retrospective effect. Retrospective effect on 26.10.1992 could have been from 01.01.1986 only. However, in view of express statement made by respective Counsel, we do not find it necessary to delve more into this controversy. The Division Bench in its Judgment dated 29.07.2003, noted that this correction took place before the Petitioners before it were appointed to the post of Mamlatdar/Joint Mamlatdar. Later on, while extending revised pay scale, the revision was not done by accepting pay scale of Rs.2000-3200 but on the basis of earlier pay scale of Rs.1640-2900. Said Petitioners then approached this Court and sought corresponding pay scale of Rs.6500-10500 which was equivalent to earlier pay scale of Rs.2000-3200. The State Government filed an affidavit and in paragraph

6 of that affidavit, the State Government has stated that the pay scale of Rs.2000-3200 as mentioned in the advertisement was an apparent mistake. The Government also agreed to extend pay scale of Rs.6500-10500 to the said Petitioners under Fifth Pay Commission but qualified that it would be treated as personal to them. The Division bench thereafter has observed that the State Government had stated that pay scale of the post of Mamlatdar/Joint Mamlatdar/Block Development Officer/Assistant Director of Civil Supplies would remain Rs.5500-9000. The Court held that it was not really called upon to consider the legal aspects of the matter and the State Government was entitled to take appropriate steps. In view of the statement made on affidavit by the State Government, the Petition was disposed of by directing to grant to the Petitioners the pay scale of Rs.6500-10500 and make payment to them in terms of Order dated 27.10.1997. This Judgment and direction has been implemented on 27.03.2006. It is important to note that all these Petitions are filed in 2006 only.

11. In so far as Writ Petition nos. 322 of 1998 and 138 of 1999 are concerned, perusal of Judgment delivered on previous day i.e. 28.07.2003 by very same bench shows that bench was required to consider following three questions :

"9.From the above, what this Court will have to decide would be as under :

(i) Was it open to the State Government while passing the Order dated 27th October, 1997 to provide that revision of pay scales subsequent to 1st January, 1996, be ignored and whether such action is arbitrary and/or illegal ?

(ii) Whether the Order dated 27th October, 1997, insofar as it pertains to the petitioners amounts to hostile discrimination in view of the fact that in other departments, including Directorate of Animal Husbandry and Veterinary Services and Directorate of Agriculture, the benefit of Fifth Pay Commission had been extended with regard to the pay scales as revised after 1st January, 1986?

(iii) Whether the action of the respondent State in rejecting the representation made by the petitioners considering that their pay scales were revised after the Fourth Pay Commission recommendations on the ground of anomaly, is arbitrary and illegal inasmuch as if their cases were revised based on an anomaly they ought to have been fixed in the revised pay scales ?

12. The Division Bench a little later has re-produced the order of the State Government dated 27.10.1997 and then noting that the decision of State Government to ignore wage revisions between 01.01.1986 till 01.01.1996, cannot be said to be arbitrary or illegal. It was found that it was within the competence of the state Government to fix the pay scale. It has further found that the effect of any Court order and/or anomaly can be dealt with while dealing with question nos. 2 and 3 by it. The action of the Government can be held to be arbitrary or unreasonable if at the time of fixing the pay scales, the Government had fixed the pay scales of same cadre or posts generally based in the revised scales after 01.01.1986 and chosen not to give to others similarly situated the benefit of revision alone after 01.01.1986.

In paragraph 11, it has considered the second contention namely whether on account of fact that Government has given some revision in some posts or departments, subsequent to the Order dated 27.10.1997, which can result in holding that hostile discrimination has been practised on the Petitioners before it. The Division Bench noted that the contention was not that of the same cadre or group of employees were given a different scale to the exclusion of others. It further held that "those others" were not before it and did not constitute two different classes as they were in different Departments and different cadres. It also noted the stand of the Government that thus revisions which were given were being re-considered. In very same paragraph, the Division Bench has also considered the question of entitlement in the light of the Judgment of Hon'ble Apex Court reported in Chandigarh Administration and another Vs. Jagjit Singh and another, to hold that merely because an authority has passed a particular Order in the case of another person similarly situated, it cannot be a ground of issuing a writ in favour of Petitioners on the plea of discrimination. Such Order in favour of a particular person might be legal and valid or might not be that has to be investigated first. In the light of these observations, it rejected the second contention. The third contention is dealt with by in paragraph 12. While undertaking discussion on third question, the Court has held that a provision made for independent appraisal in so far as revision of pay scales pursuant to Court orders or for removal of anomaly is concerned, that by itself did not amount to holding that there would be an anomaly. It further found that if in a group or a class a pay scale was granted and somewhere left out or not granted, that pay scale though similarly situated, then that would be an anomaly. It found that State Government after due consideration did not recommend the interim revision granted after 01.01.1986 leaving to itself limited power to consider and revise only those revisions pursuant to Court Orders or specific anomalies. It has also noted additional duty cast upon the cadre. Accordingly, the question of no. (iii) noted supra is also answered in favour of the Respondents. The question before this Court is therefore whether in these two Judgments delivered by these benches there is any inconsistency ?

13. We have already noted the Judgment dated 29.07.2003 in Writ Petition no. 205 of 1999 which does not refer to any debate on the question of eligibility to a particular pay scale. The eligibility of those Petitioners to pay scale of Rs.2000-3200 was accepted and State Government in reply to the affidavit stated that it would be treated as personal to those Petitioners. As such, it cannot be said that very same Division Bench on the next day has taken a view, which is in any way inconsistent with its earlier view. The earlier view dated 28.07.2003 in Writ Petition nos. 322 of 1998 and 138 of 1999 is also briefly noted by supra. Three questions which had arisen before the Division Bench and answer thereto show that in case employees are working in the very same Department, the violation of Article 14 of the Constitution of India can very well be invoked. In the light of answers noted supra, we do not find any view even in that judgment which can be said to be inconsistent with the view expressed on

next day i.e. on 29.07.2003. The said Division Bench, on the other hand, has expressly noted the language of Government Order dated 27.10.1997. It has found that the cases of revision / up-gradation of pay scales such as those resulting from Court orders as well as rectification of specific anomalies after 01.01.1986 are to be examined separately. The Division Bench also holds that, if same pay scale is not given to all in the cadre, it would be an "anomaly."

14. A perusal of Order dated 26.10.1992 issued by Government of Goa, at this stage, becomes relevant. It shows that it has been issued with concurrence of finance department vide their D.O. dated 04.10.1990. The fact that it was issued to revise pay scales applicable to the posts of Mamlatdar/Joint Mamlatdar/Block Development Officer/Assistant Director of Civil Supplies is not in dispute. The Division Bench in its Judgment dated 29.07.2003 in writ Petition no. 205 of 1999 has observed that after fixation in Fourth Pay wage Revision, various representations were made to Government complaining that pay scales were low. The Government having realised that there was a need to revise, by Order dated 26.10.1992, was pleased to revise the pay scales applicable to the said posts. Thus, earlier pay scale of Rs.1640-2900 stood revised to Rs.2000-3200. These facts are not in dispute. Thus, some incongruity found prevailing after 01.01.1986 has been removed on 26.10.1992 and as noted by said Division Bench "not with retrospective effect". However, pay scale of Rs.1640-2900 was found inadequate then.

15. The letter GR of fixation dated 27.10.1997 needs to be read in this background. The relevant portion which deals with revisions becoming necessary on account of Court Orders as well as rectification or specific anomalies is already mentioned by us supra. In the light of these observations, it is clear that after 26.10.1992, for the post mentioned supra, correct pay scale was never Rs.1640-2900 and it was always Rs.2000-3200. Accordingly, the subsequent advertisements have also been issued indicating very same pay scale. The order dated 26.10.1992, does not make any distinction between the employees working in very same cadre depending upon their date of recruitment. Those who have joined prior to 26.10.1992 and those who have been recruited after 26.10.1992 are to be treated similarly. Thus, said order substitutes pay scale of Rs.2000-3200 for earlier pay scale of Rs.1640-2900 for everyone. Pay scale prevailing on 01.01.1986 cannot remain relevant only for those who are recruited prior to 26.10.1992.

16. This was the position on 27.10.1997 when the benefit of Fifth Wage Revision has been extended. The Division Bench in its Judgment dated 28.07.2003 in Writ Petition nos. 322 of 1998 and 138 of 1999, found that the State Government was justified in recognizing the pay scale prevailing on 01.01.1986 as relevant for the purpose of finding out appropriate corresponding pay scale in Fifth Wage Revision. Here, however, the extension of pay scale of Rs.1640-2900 on 01.01.1986 consequent to Fourth Wage Revision was itself found not proper after 26.10.1992 and, therefore, benefit of pay scale of Rs.2000-3200 has been

extended from said date. The pay scale which was therefore found unjust for cadre could not have been accepted and acted upon for the purpose of finding out suitable equivalent scale in Fifth Wage Revision only for few. Thus, finding out a equivalent pay scale for Rs.1640-2900 on 01.01.1996 for few in cadre is nothing but adding to injustice. The pay scale of Rs.2000-3200 therefore needed to be taken into account for the purpose of finding out appropriate pay scale in terms of GR of fixation dated 27.10.1997 for entire cadre. Admittedly, that has not been done in the case of present Petitioners. Arbitrarily, said scale could not have been used as in-existence on 01.01.1986 only for those seven Petitioners who were favoured by State by labelling it as personal pay.

17. The unreported Judgment of this Court dated 19.11.2013 in Writ Petition nos. 557 of 2006 and 364 of 2012 considers a challenge to seniority. The perspective when seniority list is challenged after huge delay, cannot be the same as in present case. As a result of seniority list further promotions are made and, therefore, further interests are created. An incumbent who is not diligent and wakes up much later, therefore, adds to the problems of administration in such matters. The same cannot be said to be true in the present case. Here the persons who were getting salary in the pay scale of Rs.2000-3200 approached this Court in the year 1999. While considering their grievances, the State Government itself accepted to correct the error in their matter by fixing them in appropriate higher pay scales but with a rider that same should be accepted as a personal pay for those Petitioners. The Court accordingly issued directions. The Government being the model employer could have considered the case of employees working in that cadre in terms of Order dated 26.10.1992. After 26.10.1992, there was no employee in that cadre who was drawing a pay scale of Rs.1640-2900. Therefore, if benefit of personal pay was to be given, the State Government being the model employer should have extended it to all persons in that cadre. The State Government could not have extended the pay scale to Rs.6500-200-10500 only to those who approached this Court and fixed the others in a lower pay scale of Rs.5500-175-9000. The decision in terms of directions of this Court issued on 29.07.2003, has been taken on 27.03.2006. It is thereafter that these Petitions have been filed. We, therefore, do not find that the Petitions are either belated or does not show any diligence. The Hon''ble Apex Court in the Judgment in the case of K. T. Veerappa & Ors. vs. State of Karnataka & Ors., (supra) has in paragraph 16 observed that when benefit of a decision of Single Judge of High Court in Writ Petition nos. 21487-506 of 1982 dated 21.06.1989 was given to 23 employees of University, it was expected that other employees identically placed including the Appellants before the Hon''ble Apex Court, would be given the same benefit. The Appellants before the Hon''ble Apex Court earlier had not approached the Court of law complaining of discrimination. The observations of the Hon''ble Apex Court also apply with equal vigour to present Petitioners.

18. In the result, we find that on 27.10.1997 the pay scale of Rs.2000-3200 should have been treated as the only legally available pay scale and taken into

consideration for the purpose of determining the revised pay scale of the entire cadre to avoid any discrimination. The resulting difference is substantial and sufficient to give rise to discontent.

19. The entire cadre is now receiving salary in appropriate pay scale after Sixth Wage Revision w.e.f. 01.01.2006. The Court is only concerned with the period from 01.01.1996 till 31.12.2005. The benefit of pay scale of Rs.6500-10500 has been given to seven members in that cadre by treating it as personal benefit or personal pay. However, we have already noted supra, that it could not have been restricted only to these seven persons. The pay scale of Rs.5500-175-9000 could not have been treated as equivalent, appropriate and corresponding pay scale for the cadre in these facts. In this view of the matter, we direct the Respondents to extend to other members in the cadre the similar benefit from 01.01.1996 for a period up to 31.12.2005. As the seven employees have been given that benefit as personal pay and they are seeking similar treatment, we direct that Petitioners shall also get it as personal pay.

20. The Petitions are accordingly allowed. Necessary exercise be completed within a period of one year.

21. However, in the circumstances of the case, there shall be no Orders as to costs.