
(1993) 07 BOM CK 0057
In the Bombay High Court

Vadakka Nottath Kesavan

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-07-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 68 FLR 1141

Hon'ble Judges : M.L. Pendse, J;A.P. Shah, J

Bench : Division Bench

Judgement

A.P. Shah, J.—The petitioner is working as a Junior Clerk in the College run by the respondent No. 3. The petitioner was initially appointed as a Peon on July 15, 1963. He was promoted as a Library Clerk with effect from July 11, 1966 and he was confirmed in the said post on or about January 11, 1967.

2. The State of Maharashtra issued a Government Resolution dated August 1, 1979 rationalising the pay-scales, allowances and a scheme for non-teaching personnel of six non-agricultural universities in Maharashtra and for non-Government Colleges affiliated to such universities. The material portion of the said Resolution reads as under :-

"So far as the Uniform Staff Pattern (of non-teaching staff) for affiliated Colleges of affiliated Colleges of Arts. Science, Commerce and Education is concerned, orders in that regard will be issued separately. Meantime, only Junior Clerks in the service of the non-Government Aided Colleges affiliated to the six non-Agricultural Universities who become eligible to draw the maximum pay of Rs. 540/- in the revised scale, on or before 26th October, 1978, should be promoted as Senior Clerks in the scale of Rs. 355-680 with effect from 1st July, 1979. This concession should also be extended to only Junior Clerks in the service of the non-Agricultural Universities who fulfil the same conditions."

" (C) : Qualifications : The second pay commission has recommended that in so far as the pay-scales recommended by them were linked with certain

qualifications, they should not apply automatically to the existing holders if posts of they did not possess the qualifications. Upon careful consideration of this recommendation, the Government had decided not to deny the benefit of new scales to any of the existing holders of the posts. Accordingly, the new scales would be given to all the existing incumbents irrespective of the fact whether they have the requisite qualifications or not.

Nevertheless, it would be necessary for the Universities to prepare immediately statutes laying down qualifications for the various categories of non-teaching posts in the Universities and Colleges affiliated to them after taking into account the views expressed by the Second Pay Commission in para 14.30 of its Report (Part 1) and the recruitment rules prescribed by the Government for comparable posts and to ensure that fresh recruits will have the prescribed qualifications. For this purpose, the Vice Chancellors may consider issuing if necessary, requisite directions u/s 11(6) (b) of the respective University Act of 1974 pending making of the statutes".

3. On perusal of the Resolution, it is seen that the object of issuing the said resolution was to offer better grades to the existing staff. The directions contained in the resolution are devised to avoid stagnation of employees in their grades, years after reaching the maximum in the scale and to open up avenues for upgradation irrespective of the lack of educational qualifications. This is fortified by the Circular issued by the Vice Chancellor dated 11th June, 1982 u/s 11(6) (b) of the Bombay University Act, 1974. This circular came to be issued in pursuance of the above-mentioned Government Resolution dated 1st August, 1979. Clause 5 of the said Circular is material as far as the present case is concerned and the same may be reproduced as under :-

NOW THEREFORE, I, principal Ram Joshi, Vice Chancellor of the University of Bombay, in exercise of the powers conferred upon me u/s 11(6) (b) of Bombay University Act, 1974 hereby direct that all promotional posts upto the level of Superintendent be filled in from amongst the existing staff on the basis of seniority-cum-merit".

A clear direction was given by the Vice Chancellor u/s 11(6) (b) of the Bombay University Act that all promotional posts upto the level of Superintendent be filled in from amongst the existing staff on the basis of seniority-cum-merit. From the said Circular, it is evident that promotions/up gradation upto the level of Superintendent, existing staff is required to be considered on the basis of seniority-cum-merit irrespective of their educational qualifications. It may be mentioned that at the relevant time, seven similarly placed employees of the category of the petitioner were working with the 3rd respondent-College. The petitioner was fourth in the seniority of personnel similarly placed under respondent No. 3. On or about 1st October, 1979, all the employees except the petitioner were placed in the higher grade than the grade in which they were in pursuance to the said Government Resolution as the same has clearly provided for consideration of the seniority-cum-merit of non-teaching staff for promotion

or the upgradation.

4. Respondent No. 3 recommended the petitioner's case to the Government for promotion to the post of Senior Clerk. The Administrative Officer, Higher Education Grant, Bombay Region, Bombay, by his letter dated 28th February, 1983 informed the College that the petitioner does not fulfil the requirement of minimum qualifications to hold the post of Clerk and therefore, he will not be considered for promotion as a Senior Clerk till he possesses the requisite qualification i.e., Matriculation. This communication dated 28th February, 1983 is impugned in the present petition filed under Article 226 of the Constitution.

5. On perusal of the record and particularly the Government Resolution and the Circular issued by the Vice Chancellor, we are satisfied that the petitioner is entitled for upgradation to the post of Senior Clerk. The object of issuing Government Resolution was to remove stagnation in the service by conferring promotion on the existing staff by upgrading the posts of Junior Clerk to Senior Clerk. The Circular issued by the Vice Chancellor also directs the filling up of the promotional posts upto the level of Superintendent from amongst the existing staff on the basis of seniority-cum-merit. The impugned letter dated 28th February, 1983 is issued in complete misconception of the scope of the Government Resolution and the Circular. The petitioner is clearly entitled for upgradation to the post of Senior Clerk with effect from 1st October, 1979, which is the date on which similarly situated employees were promoted.

6. For the reasons hereinabove, this petition must succeed. The petitioner shall be deemed to have been promoted to the post of Senior Clerk with effect from 1st October, 1979. The petitioner shall be entitled to the difference of salary from 1st October, 1979 and further promotions on that basis. Respondents Nos. 1 and 2 are directed to pay the difference of salary within period of three months from today. We make it clear that inter se seniority amongst the Senior Clerks shall not be disturbed by reason of our order. The respondent-State shall pay the costs of the petitioner.