

(1991) 02 BOM CK 0079

In the Bombay High Court

Case No : Writ Petition No's. 1112, 1240 and 1243 of 1986

Virendra Bhupatrai Mehta

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-02-1991

Acts Referred:

Bombay University Act, 1974 — Section 2(30)
Constitution of India, 1950 — Article 14, 16

Citation : (1991) 3 BomCR 636 : (1991) MhLj 533

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : M.S. Rammurthy and T.R. Talpade, in W.P. No. 1112 of 1986, S.D. More, in W.P. Nos. 1240 and 1243 of 1986, for the Appellant; B.E. Patil, for the respondent Nos. 1 and 2 in W.P. No. 1112 of 1986, C.U. Bora, for respondent Nos. 1 and 2 in W.P. No. 1240 and 1243 of 1986, for the Respondent

Judgement

S.M. Daud, J.—The common question arising for determination in these three petitions is whether G.R. bearing No. USG. 1184/28042/(944)/High Education-4, issued by the Government of Maharashtra in Education and Employment Department on 22nd November 1985, is a valid exercise of power.

2. Petitioners are part-time teachers in colleges who have changed institutions and want to get the benefit of G.R. No. USG. 1181/105145/(500)UNI-4 issued by the Government of Maharashtra in Education and Employment Department on 17th September 1982. The relevant portion of the 1982 G.R. read thus :---

"A Teacher/Demonstrator/Tutor leaving one College/University and joining another College/University shall be entitled to annual increment on completion of one year's service in the old as well as the new post. In other words, the one year's period for increment should be calculated on the basis of the total service put in by the teacher in the new post as well as the old post taken together. The increment should be sanctioned after such a teacher completes one year's service calculated in this manner on the same stage of his time scale of pay. If

there is a break in service while joining new post, such period may not be counted for purpose of increment, unless it is condoned by the University."

The applicability to the above entitlement to part-timers came up for consideration in Writ Petition No. 335 of 1985. A Single Judge of this Court held that the Government was in error in refusing the benefit of the above to the part timers. This decision was based upon the definition of "teacher" appearing in section 2(30) of the Bombay University Act, 1974. The decision was given on 23rd January 1985 and almost 10 months later the Government issued the 1985 G.R. impugned in the present petitioners. The G.R. reads as follows :---

"In accordance with the G.R. referred to at 6 above (1982 G.R.), a teacher leaving one College/University is entitled to get annual increment after completion of one year's service. The Government now clarifies that the said orders are not applicable to part-time teachers in Non-agricultural Universities/Colleges."

The 1982 as also the 1985 G.Rs. are both expressed to be issued by the order and in the name of the Governor of Maharashtra. Pursuant to the 1985 G.R. the petitioners have been deprived of the continuity incorporated in the 1982 G.R. They contend that the same is not a valid exercise of power. Firstly, the resolution as it stands purports to nullify a subsisting judgment of a Court of competent jurisdiction. The Executive does not have that power. Next, the 1985 G.R. is violative of Articles 14 and 16 of the Constitution of India inasmuch as persons similarly situated are being discriminated against on grounds not reasonable or defensible.

3. The State in its return takes stand that it was within its right in limiting the benefit of continuity in service to full-timers. In the past when it wanted to confer any benefit to part-timers, it had made this expressly clear in G.Rs. issued by it. The 1982 G.R. did not contemplate part-timers and that is why the 1985 G.R. was issued. A benefit not meant for a certain class should not be allowed to be availed of by that class, for that would amount to a misuse resulting in an unintended burden upon the State's financial resources. There is no substance in the plea that the G.R. of 1985 is violative of Articles 14 and 16 of the Constitution of India.

4. I do not think it necessary to go into the Constitutional vires of the G.R. of 1985, and this is because the question arising for determination in these petitions can be disposed of on the short ground of the G.R. of 1985 being an ineffective exercise to attain the object aimed at by the State. The G.R. of 1985 seeks to clarify that the orders contained in the G.R. of 1982 are not applicable to the part-timers in Non-Agricultural Universities/Colleges. But this is being done without amending the G.R. of 1982. That G.R. i.e. the G.R. of 1982, has been judicially interpreted as applicable to full-timers as also the part-timers. The only way in which the G.R. could have been restrained to full-timers was by a legislative exercise to amend the G.R. of 1982. That exercise could not be

substituted by clarifying something which was not ambiguous at all. Where the clarificatory power is used to explain the obvious and something which is incapable of being misconstrued, the clarification is either a meaningless surplusage or fraught with the risk of being stigmatized as a colourable exercise of power. Here, the G.R. of 1985 was clear in that it applied to "Teachers" and that expression has been judicially construed as covering full-timers as also part-timers. There was no ambiguity and therefore, a clarification was not necessary. In the guise of clarifying what the framers of the 1985 G.R. ought to have done, is to legislate in an indirect manner. It was argued that whenever the Government wanted to give the benefit of G.Rs. to part-timers, it had made that clear in the instrument or G.R. issued by it. Reference to legislative practice albeit by a subordinate legislator is permissible in certain cases, but not when power is sought to be exercised in a manner impermissible in the law. That apart, the practice spoken of by the Government, if really in vogue, requires to be changed. The word Teacher has a particular connotation in the Bombay University Act, 1974, and the G.Rs. purporting to govern teachers whether part-time or full-time in Bombay Colleges and University, should be drafted with some care and caution. That not having been done, the benefit of the 1982 G.R. went to the part-timers also. The said benefit could have been taken away-if permissible within the constitutional restraints-by a valid exercise of the rule making power. The result is that part-timers cannot be deprived of the benefit of the 1982 G.R. and the petitioners will be entitled to the benefit of continuity in service together with the increments as incorporated in the 1982 G.R. Rule issued in the three petitions is made absolute, with parties being left to bear their own costs.