

(2017) 07 BOM CK 0297
In the Bombay High Court
Case No : 5575 of 2007

Vishnu Arjun Kadam, & Ors.

APPELLANT

Vs

State of Maharashtra, & Ors.

RESPONDENT

Date of Decision : 11-07-2017

Acts Referred:

Constitution of India, Article 14, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Dissolution of a Distr

Citation : (2017) 07 BOM CK 0297

Hon'ble Judges : A.A.Sayed, M.S.Karnik

Bench : DIVISON BENCH

Advocate : V. A. Shastry, K. R. Kulkarni

Judgement

1. The Petitioners are aggrieved by the implementation of G.R. dated 12th July 2004 issued by Respondent no.2 extending the benefits of "Periodical Promotion Scheme" ("PPS" for short) from the year 2004 instead of 1994. The Petitioners' case is that similarly situated nonteaching employees of the educational institutions in the State of Maharashtra are granted the benefits of PPS from the year 1994. The Petitioners are granted this benefit only from the year 2004 and therefore the alleged discrimination.

2. The Petitioners are Class "C" and Class "D" nonteaching employees of different nonGovernmental granted schools/colleges imparting education in Technical and bifocal vocational courses based in minimum skill. By a G.R. dated 8th June 1995 the decision was taken to adopt a policy of the PPS to the Government employees falling in Class "C" and Class "D" for the reason of nonavailability of the opportunity for the promotions in the said class as well as nonavailability of vacant promotional post in spite of acquiring eligibility for the promotion after completion of long services, when there is an opportunity for promotion. The benefit of the PPS was made effective from 1st October 1994. Accordingly, the employees of the Government who have rendered 12 years

regular service who are given the benefit of the PPS by giving increment in the pay scale next to the one held by them and further, when there is no promotional post, in that eventuality, the employees of the Government are given benefit of increment of pay scale as explained in the said G.R. along with the conditions as applicable to the employees of the State Government. The intention behind the G.R. was to remove the stagnation in the services of the Government employees due to nonavailability or there being no vacancy in the promotional posts as the case may be.

3. The Petitioners contend that with a view to remove the stagnation in the services of the nonteaching staff of the private schools, employees of Class "C" and Class "D", by G.R. dated 30th April, 1998, the benefit of PPS was extended to the nonteaching employees of the private schools. The benefits of the PPS to those covered by the G.R. dated 30th April, 1998 was made applicable from 1st October, 1994 as in the case of Government employees. This aspect was clarified by the G.R. dated 23rd July, 1998.

4. By issuance of the G.R. dated 12th July, 2004, it was decided to extend the benefit of PPS to the teaching and Class "C" and Class "D" nonteaching employees of various nonGovernmental granted schools/colleges imparting education in Technical and bifocal vocational courses based on minimum skill. The benefits of the said scheme were however made applicable from 1st June, 2004. The grievance of the Petitioners is in respect of the date of implementation of the benefits under the PPS vide G.R. dated 12th July, 2004. According to the Petitioners, similar situate employees have got the benefits of increment in the pay scale under the said Scheme from 1st October, 1994. Depriving the Petitioners of the benefits of increments in the pay scale from 1st October, 1994 is arbitrary and discriminatory in the submission of the learned Counsel for the Petitioners.

5. According to the learned Counsel for the Petitioners, the terms and conditions of the service and the statute governing the services of the Petitioners herein as well as nonteaching employees in nontechnical department are same and the pay scale applicable to both the categories of the employees were similar prior to the implementation of the G.R. dated 30th April, 1998 and 12th July, 2004.

6. The learned Counsel for the Petitioners invited our attention to the difference in the pay scales of the similarly situated employees working in technical and nontechnical department. It is also contended that by virtue of inter departmental transfers Petitioner no.2 who was initially appointed in the nontechnical department was transferred as nonteaching employee of the technical department. Thus, in the submission of the learned Counsel for the Petitioners the implementations are discriminated in the matter of grant of benefits under the PPS.

7. In the submission of the learned Counsel for the Petitioners due to the different dates of implementation of the PPS to the Petitioners being nonteaching

employees of technical department on one hand and nonteaching employees of nontechnical department on the other hand, different basic pay and consequently different total salaries are paid to the employees. In the submission of the learned Counsel for the Petitioners the date of implementation of the G.R. dated 12th July, 2004 extending the benefit of PPS scheme belatedly is unreasonable and without any rational.

8. It is the submission of the learned Counsel for the Petitioners that different dates of the implementation is arbitrary and without discernible principle and it results in discriminatory treatment to the similarly situate. As regards the inter departmental transfers of nonteaching employees, the same have resulted in implementation of the said PPS to the transferred and nontransferred employees with effect from different dates and consequently resulted into different pay scale to the transferred and nontransferred department.

9. Learned AGP on the other hand supported the G.R. dated 12th July 2004 in its application of the scheme with effect from 1st June, 2004. Learned AGP submitted that the implementation of the PPS to the employees of different departments is a policy decision of the State as the said issue falls within the exclusive purview of the State Government.

10. In the submission of the learned AGP the object of introducing the PPS is for removal of stagnation in promotion and pay scales in the services of the Class "C" and Class "D" employees not having the opportunities of promotions in the Government services, the scheme of giving senior pay scale by Periodical promotion after rendering 12 years service to the employees has been made applicable by the issuance of G.R. dated 8th June 1995. By the G.R. dated 12th July, 2004, it was decided to extend these benefits of the G.R. to the teaching and nonteaching employees in nonGovernmental technical secondary schools as well as nonteaching employees in the +2 level nonGovernmental granted bifocal and vocational courses based on minimum skill. If a decision has been taken by the Government that the scheme shall come into force from 1st July, 2004, the same is a policy decision which is not arbitrary or irrational. Learned AGP also invited our attention to the affidavit in reply filed by Shri S. K. Wayadande on behalf of respondent nos.1 and 2. In the affidavit in reply in paragraph 3, it is stated that subject matter was placed before the Cabinet of the Government of Maharashtra and a conscious Cabinet decision was taken by the Government of Maharashtra stating therein that the time bound promotion for the nonteaching staff of the nongovernment vocational schools/Junior colleges shall be applicable w.e.f. 1st June, 2004. After this decision was taken the G.R. dated 12th July, 2004 was issued. Even thereafter proposal to change the date to give time bound promotion to the nonteaching staff like petitioners was also placed before the Cabinet to revise the date of 1st June, 2004 to 1st October, 1994. However, the Cabinet has firmly denied the same. Learned AGP therefore submits that a conscious decision has been taken and therefore, the action of the Government cannot be said to arbitrary or irrational.

11. We have considered the submissions advanced by the learned Counsel for the Petitioners and learned AGP. The very object of introducing the PPS vide G.R. dated 8th June, 1995 was to remove stagnation due to nonavailability of the opportunities of the promotion in Class "C" and Class "D" (Class 3 and Class 4) employees who are in Government services. Reading of the G.R. dated 8th June, 1995 indicates that the opportunities for promotion are not available in some places in Class "C" and Class "D" in Government services, whereas, in some places, though the opportunity for promotion is available, long time is required for getting the promotion. A demand was made by the Employee's Union for implementation of time bound promotion. The State took into consideration that a similar scheme is implemented by some other States and therefore in interest of the class of employees, the decision for implementing the scheme for State Government employees was taken. The scheme was to take effect from 1st October, 1994. Initially therefore the G.R. dated 8th June, 1995 was made applicable to the class of employees viz. Class "C" and Class "D", who are in Government service.

12. By G.R. dated 23rd July, 1998, the PPS was made applicable to nonteaching employees in private schools in the State and the same was to come into effect from 1st October, 1994.

13. In so far as the impugned G.R. dated 12th July, 2004 is concerned, a decision was taken to make PPS applicable to another class of employees which covers the Petitioners but the effective date of implementation is 1st June, 2004. As indicated earlier the very object of the scheme is to remove stagnation due to nonavailability of the opportunities of the promotion or in respect of those employees for whom the promotional post in the promotion chain is not available, such employees are to be given the upper pay scale after completing of 12 years of regular service.

14. In these circumstances, as the very purpose of the scheme is to provide the periodical promotion after rendering 12 years of the services to the employees, the benefit made available to the employees is a policy decision of the State. The right of the employees to the benefit of the PPS is dependent on the applicability of the PPS to a particular class of the employees in the first instance. The Petitioners are eligible to the benefit of the PPS consequent upon the issuance of the G.R. dated 12th July, 2004 whereby a decision is taken by the State Government to apply the PPS to the nonteaching employees in nonGovernmental technical secondary schools as well as nonteaching employees in the +2 level nonGovernmental granted bifocal and vocational courses. The object of the grant of the benefit of the PPS is to provide an opportunity to those employees who are required to retire after rendering long service on very same post on which they were appointed and they do not get any opportunity of promotion. It is therefore that the Government has taken the decision to make applicable the above scheme of periodical promotion to such employees. In these circumstances, if the State has taken a decision to apply the G.R. dated 12th July, 2004 with effect

from 1st June, 2004 and not retrospectively, we do not find the G.R. arbitrary or irrational only on the ground that it is not made effective from 1st October, 1994.

15. Learned Counsel for the Petitioners relied on the decision of the Apex Court in the case of *Purshottam Lal versus Union of India* (1973 (1) SCC 651) in support of his contention that the G.R. should be made applicable retrospectively. The Apex Court in the context of the terms of reference which included the Petitioners therein held that as the recommendations are accepted, the Government is bound to implement the recommendations in respect of all Government employees. The Apex Court observed that if Government does not implement the report regarding some employees only, it commits a breach of Articles 14 and 16 of the Constitution. The ratio of the Apex Court's decision in the case of *Purshottam Lal* (supra), therefore, in our opinion, is not applicable to the facts of the instant case.

16. As held by the Apex Court in the case of *State of Mysore v. P. Narasinga Rao* (AIR 1968 SC 349), the relevant law on the subject is well settled. Under Article 16 of the Constitution there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. In para 4 it is observed by the Apex Court thus :

" It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. As we have already stated, Articles 14 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Art. 16 is only an instance of the application of the general rule of equality laid down in Art. 14 and it should be construed as such. Hence, there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured ; Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection".

17. The same view has been reiterated by the Apex Court in the case of C. A. Rajendran v. Union of India and others (AIR 1968 SC 507) by holding that it is well established that there can be a reasonable classification of employees for the purpose of appointment by promotion and classification as between direct recruits and promotees.

18. A profitable reference can also be made to the decision of the Apex Court in the case of The General Manager, South Central Railway, Secunderabad and another v. A.V.R. Siddhanti and others (AIR 1974 SC 1755) and it is material to quote para 25 which reads as under :

25. The fundamental right of equality means that persons in like situation, under like circumstances are entitled to be treated alike. "The Constitutional Code of Equality and Equal Opportunity", observed this Court in State of Jammu and Kashmir v. Triloki Nath Khosla, Civil Appeal No.2134 of 1972, D/2691973 = (reported in AIR 1974 SC 1), "is a charter for equals." So long as employees similarly circumstanced in the same class of service are treated alike, the question of hostile discrimination does not arise. The equality of opportunity for purposes of seniority, promotion and like matters of employment is available only for persons who fall substantially, within the same class or unit of service. The guarantee of equality is not applicable as between members of distinct and different classes of the service. The Constitution does not command that in all matters of employment absolute symmetry be maintained. A wooden equality as between all classes of employees regardless of qualifications kind of jobs, nature of responsibility and performance of the employees is not intended, nor it is practicable if the administration is to run. Indeed, the maintenance of such a "classless" and undiscerning "equality" where, in reality, glaring inequalities and intelligible differential exist, will deprive the guarantee of its practical content. Broad classification based on reason, executive pragmatism and experience having a direct relation with the achievement of efficiency in administration, is permissible. That is to say, reasonable classification according to some principle, to recognise intelligible inequalities or to avoid or correct inequalities is allowed, but no miniclassification which creates inequality among the similarly circumstanced members of the same class or group.

19. In the light of the above, we are of the opinion that the applicability of the PPS to the different class of employees in the State is dependent on the decision being taken by the State making the PPS applicable to the particular class of employees. Having regard to the object of introducing the Time Bound Promotion Scheme, we do not find the decision of the Respondents to apply the G.R. dated 12th July, 2004 to be implemented from 1st June, 2004 instead of 1st October, 1994 as arbitrary or irrational. The Petition therefore fails and is dismissed with no order as to costs.

20. Rule is discharged.