

(1977) 04 BOM CK 0018
In the Bombay High Court
Case No : Spl C. A. No. 1382 of 1971

Yadunathsing Gendasingh Rathor

APPELLANT

Vs

Tirora Municipal Council and others

RESPONDENT

Date of Decision : 01-04-1977

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1977) MhLj 556

Hon'ble Judges : C.S. Dharmadhikari, J;A.A. Ginwala, J

Bench : Division Bench

Advocate : S.G. Aney, for the Appellant; M.P. Badar, Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Dharmadhikari, J.—The petitioner in this case was appointed by Municipal Council, Tirora as a Shops and Establishments Inspector on Rs. 30 pay plus usual C. C. L. A. at Government rate in the pay-scale of Rs. 80-5-110-5-150, vide order dated 21st December 1964. Since then he is working in that capacity for the local area of Tirora Municipal Council.

2. The Government of Maharashtra had appointed a commission which was popularly known as Badkas Pay Commission, to revise the pay scales of Government employees. On the basis of the recommendations made by this Commission, the Government framed rules called the Maharashtra Civil Services (Revision of Pay) Rules, 1969. The Government also issued a circular under Urban Development, Public Health and Housing Department No. MUN-2770/12218-N dated 17th March 1970, whereby the Municipal Councils were allowed to adopt the pay scales recommended by the Badkas Pay Commission and as adopted by the Government of Maharashtra in the Maharashtra Civil Services (Revision of Pay) Rules, 1969. The Government also decided to pay enhanced Dearness Allowance grants with effect from 1st August 1970 to the Municipal Councils, vide its Resolution dated 24th November, 1970. Such grants were to be

paid to the Municipal Councils which had adopted the pay scales recommended by the Badkas Pay Commission.

3. Pursuant to these circulars, the respondent Tirora Municipal Council passed a Resolution in its special meeting held on 21st March 1971, revising the pay scales for its employees. Vide this Resolution, which is Annexure II, the pay scales for the post of Shops and Establishments Inspector was fixed at Rs. 210-10-280-15-310-EB-15-430. By this Resolution sanction was sought from the Director of Municipal Administration u/s 76 of the Maharashtra Municipalities Act, 1965 (hereinafter called "the Act") for the revised pay scales for the employees of the Municipal Council. However, the Director of Municipal Administration, in exercise of his powers conferred upon him u/s 76 of the Act, accorded sanction to the revision of pay scales with effect from 1-4-1966, though actual payment was to be made with effect from 1-8-1970. So far as the post of Shops and Establishments Inspector was concerned, he sanctioned the revised pay scale of Rs. 150-8-190-10-220-EB-10-270. Being aggrieved by this order, the petitioner made a representation to the Director, requesting him to reconsider his order. However, the said representation was not favourably considered and, therefore, the petitioner has filed this writ petition challenging the said order passed by the Director of Municipal Administration, dated 2nd of October, 1971.

4. Shri Aney, the learned counsel for the petitioner, contended before us that the Director of Municipal Administration committed an error in issuing the impugned order because, according to the learned counsel, u/s 76 of the Act, such a sanction was not necessary and the Municipal Council was at liberty to fix any pay scale for its own employees. According to Shri Aney, this is not a case of creation of a post but is a case of revision of pay scales of already existing post which was occupied by the petitioner. To such a case, according to the learned counsel, the provisions of section 76 of the Act are not applicable and, therefore, the order passed by the Director of Municipal Administration is without jurisdiction. According to the petitioner, in Nagpur Division, there were only two posts, namely, the Inspector of Shops and Establishments and Assistant Inspector of Shops and Establishments. The petitioner was appointed as an Inspector of Shops and Establishments in Tirora Municipal Council. He fulfills all the necessary qualifications for the appointment to the said post as prescribed under the Shops and Establishments Act and, therefore, according to him, he was entitled to the pay scale of Rs. 210-430, which was recommended by the Municipal Council and hence providing a pay scale which is lesser than this is obviously discriminatory. According to the petitioner, this amounts to hostile discrimination and is clearly violative of the petitioner's fundamental right guaranteed under Article 14 of the Constitution of India. He further contended that he is entitled to get the same pay scale which is being paid to Inspector of Shops and Establishments appointed by the Government. According to the petitioner, fixing a lower pay scale for him amounts to denial of equality. The learned counsel appearing for the petitioner further contended that the Municipal Council is obliged to act according to its own decision and, therefore, a writ of

mandamus should be issued directing the Municipal Council to pay him the pay scale as suggested by it, vide its Resolution dated 21st March 1971. The petitioner also prayed for a relief of quashing the order passed by the Director of Municipal Administration sanctioning the pay scale of Rs. 150-270.

5. In the return filed on behalf of the State Government as well as the Director of Municipal Administration, it is contended that vide Circulars issued by the Government, the Municipal Councils were authorised to adopt the newly revised pay scales. But these circulars were in the nature of permissive circulars. By this very circular on which reliance is placed by the petitioner, dated 24th November, 1970, the position was clarified by stating that:

The Municipal Councils should pass resolutions for adoption of the pay scales as recommended by the Badkas Pay Commission for the Government Employees, and obtain prior sanction of the Director of Municipal Administration or the State Government as the case may be for revision of pay scales of the posts falling u/s 76 (2) (b) and section 75 (1) and (2) respectively of the Maharashtra Municipalities Act, 1965. Till action as shown is completed, the enhanced Dearness Allowance grants should not be released to the Municipal Councils.

By this Resolution the ratio regarding the payment of enhanced grants was also laid down, which was based on the classification of the Municipal Councils. From the averments made in para 10 of the petition it appears that the Government was sanctioning grant-in-aid to the local authorities to meet the part of expenditure incurred by them on enforcement of the Shops and Establishments Acts, 1948. Under this Circular, in respect of the local area having a population of less than 25,000 grant-in-aid is given equal to 50 per cent of the expenditure on the enforcement of the Bombay Shops and Establishments Act or equal to the amount of fine realised under it, whichever is higher. The Tirora Municipal Council falls in category of local area having population of less than 25,000. Under this Circular, Tirora Municipal Council received Government grant equal to 50 per cent of the total expenditure on the enforcement of the Bombay Shops and Establishments Act, including the salary paid to the employees. The respondents have denied the contention that no sanction u/s 76 of the Act was necessary for the revision of these pay scales. According to the respondents, the order passed by the Director of Municipal Administration dated 2nd of October 1971 is deemed to have been passed in exercise of all the powers and enabling provisions in that behalf as contained in the Act. u/s 310 of the Act, the Director can reduce the remuneration assigned to any person if in his opinion it is excessive. Even otherwise, the Director has overall supervisory jurisdiction over the working of the Municipal Councils. u/s 318 of the Act, the State Government can exercise revisional powers in this behalf and vide section 319, it can enforce its orders. Further in view of section 347 of the Act, the State Government can exercise the supervisory jurisdiction even relating to the officers and servants of the existing Council. Further, according to the respondents, the very Government Resolution on which reliance is placed by the petitioner as well as the Municipal Council,

provides that prior sanction of the Director is necessary for revising the pay scales of the Municipal Employees. So far as the challenge based on fundamental right incorporated in Article 14 is concerned, it is contended by the respondents that the classification of the Municipal Councils under the Act is based on a rational criteria. The duties and work load of Inspectors in "A" class Municipalities would be more onerous and exacting than the duties of Inspectors in other Class of Municipalities having a lessor population. Further the Shops Inspectors in Municipal Councils have limited municipal areas and the conditions of their service cannot be compared with those of the Government Shops Inspectors in Marathwada or Vidarbha areas. If any Municipal Council has a larger area with more shops and establishments, a larger number of Shops Inspectors are appointed and where the Municipal Councils are small as in the instant case, i.e. Tirora Municipal Council, only one Shops Inspector is appointed. Taking into consideration all these factors, a uniform pay scale has been sanctioned for the Municipalities, except for Nanded and Amraoti, wherein the Shops Inspectors appointed were drawing the pay scale fixed for the Government Shops Inspectors in Vidarbha. The old pay scales of these two Municipalities were on higher level and, therefore, the pay scale of Rs. 210-430 has been allowed to the present incumbents with a specific direction that for future incumbents the revised pay scales will be of Rs. 150-270 only. Therefore, the pay scales for Nanded and Amraoti Municipal Councils" Shops Inspectors is a special and their individual pay scales. Further if the higher pay scale is paid, which has no nexus with the nature of their duties, then there would be an increased burden on the State exchequer as well as the tax-payers. In view of this, according to the respondents, the pay scale sanctioned being uniform pay scale applicable to all the Municipalities, is just and proper and the petitioner cannot make any complaint in that behalf.

6. From the rival contentions raised before us, therefore, two questions emerge which require consideration in this petition. According to the learned counsel for the petitioner, sanction from the Director of Municipal Administration u/s 76 of the Act was not necessary and the order passed by him sanctioning the pay scale with modification is without jurisdiction. It is not possible for us to accept this contention.

7. Apart from the fact that section 76 of the Act deals with the appointment of the officers and servants with the sanction of the Director of Municipal Administration, in the case before us from the very Circular on which reliance is being placed by the petitioner and the Municipal Council, the Municipal Council was directed that such pay scale should be fixed after obtaining the prior sanction of the Director of Municipal Administration or the State Government as the case may be. It is not disputed before us that the post of Inspector of Shops and Establishments is post for which the sanction of the Director of the Municipal Administration is necessary. The petitioner in this case was appointed as Shops and Establishments Inspector by the Tirora Municipal Council on 21st December 1964, i.e.. before coming into force of the Maharashtra Municipalities Act, 1965,

obviously under the provisions of the C. P. and Berar Municipalities Act, 1922. The C. P. and Berar Municipalities Act, 1922 was repealed by section 343 of the Act. Section 346 of the Act provides for the consequences of replacement of the existing Councils. Then section 347 makes a provision in relation to the officers and servants in the employment of existing Council immediately before the appointed day. By this provision it is laid down that all officers and servants in the employment of an existing Council immediately before the appointed day shall be transferred to the services of the successor Council and shall until other provision is made by a competent authority, receive such salaries and allowances, etc. to which they were entitled to receive immediately before the 26th day of March 1965. Therefore, the services of the petitioner were deemed to be transferred to the successor Municipal Council of Tirora and he was entitled to receive such salaries and allowances which he was entitled to receive immediately before the 26th day of March 1965 until other provision is made by the competent authority. The relevant provision of section 76 of the Act, on which reliance is placed by both the parties, reads as under :

76. (1) A council may, with the sanction of the Director, create such posts of officers and servants other than those specified in sub-sections (1) and (2) of section 75 as it shall deem necessary for efficient execution of its duties under this Act.

(2) The qualifications, pay, allowances and other conditions of service and the method of recruitment of any such officers and servants-

(a) if the minimum salary (exclusive of allowances) of the post is less than Rs. 75 per month shall be determined by bye-laws made by the Council in this behalf; and

(b) if the minimum salary (exclusive of allowances) of the post is Rs. 75 or more shall be determined by general or special order made by the Director in this behalf.

From the bare reading of this section it is quite clear that the Municipal Council can create such posts of officers and servants, as it shall deem necessary for the efficient execution of its duties, under the Act, only with the sanction of Director. By sub-section (2) the qualifications, pay, allowances and other conditions of service and method of recruitment of any such officers and servants is to be determined by the general or special order made by the Director in this behalf. Therefore, the Director is empowered to determine not only the qualifications but pay, allowances and other conditions of service of these officers and servants by a general or special order made by him if the minimum salary exclusive of allowances of the post is Rs. 75 or more. In the present case the minimum salary of the post of Inspector of Shops and Establishment is more than Rs. 75 and, therefore, the Director of Municipal Administration was quite competent to determine by a general or special order his pay, allowances and other conditions of service. In the case before us, by the Government Resolution dated 24th

November, 1970, the Municipal Councils were instructed to get prior sanction of the Director of Municipal Administration or the State Government as the case may be, for the revision of pay scales. The Resolution passed by the Municipal Council, Tirora, dated 21st March, 1971, was not an absolute one but it was also subject to sanction of the Director or the Government. The Municipal Council itself sought sanction from the Director of the Municipal Administration to their proposal. Apart from this section 76, section 310 of the Act also confers a power upon the Director to reduce the remuneration of any officer or servant if in his opinion the remuneration assigned by the Council to any particular person is excessive. It is no doubt true that this order passed by the Director u/s 310 of the Act is subject to an appeal by the Council. It is admitted position before us that the Municipal Council has not filed any such appeal. If, therefore, the relevant provisions of the Act are read with the Government Resolution, then in our opinion, the Director of Municipal Administration was quite competent to issue order dated 2nd October 1971 in exercise of the powers vested in him under the Maharashtra Municipalities Act, 1965.

8. So far as the challenge based on Article 14 of the Constitution is concerned, in substance though the petitioner has referred to Article 14 in his writ petition, the challenge is based on Article 16 of the Constitution which deals with equality of opportunities in the matters of public employment. Equality contemplated by Article 16 of the Constitution of India is nothing but an incident of the application of concept of equality enshrined in Article 14 of the constitution. Equality contemplated is amongst the equals. Treating unequals equally is not equality in the matters of employment. Equality contemplated is between the persons belonging to the same class and not to the different classes. As observed by the supreme Court in *All India Station Masters' and Assistant Station Masters' Association, Delhi v. General Manager, Central Railway and others*, AIR 1960 S C 384, the concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. Equality of opportunity in matters of employment can be predicated only as between persons, who are either seeking the same employment or have obtained the same employment. Equality of opportunity in the matters of employment must mean equality as between members of the same class of employees and not equality between members of separate, independent classes. The principle of "equal pay, equal work" is not an abstract principle. The abstract doctrine of equal pay for equal work has nothing to do with Article 14. Article 14, therefore, cannot be said to be violated where the pay scales for different classes of employees are different though they do the same kind of work. *Kishori Mohanlal Bakshi Vs. Union of India*, . From this it follows that there can be a reasonable classification of employees for the purposes of appointment etc. Hence there can be no denial of equality of opportunity unless the person who claims discrimination is equally situated with the person or persons who are alleged to have been favoured. It is clear that between the members of the same class the question whether conditions of service are the same or not may arise.

Concept of equality can have no relevance except with reference to the existence of matters which are common. Therefore, the validity of the contention which has been raised before us by Shri Aney, the learned counsel for the petitioner, will obviously depend upon the facts as to whether the petitioner is able to establish that he belongs to the class of Inspectors of Shops and Establishments who are working in the State Government. Can it be said that he belongs to the same cadre ? The petitioner is a servant of the Municipal Council, Tirora and is not a Government servant. The question whether the two posts are identical will primarily depend upon the facts as to whether rules governing the recruitment to these posts, scales of pay attached to these posts, duties and responsibilities attached to them and the promotional chances open to the persons who are holding them are identical. The petitioner belongs to different service, whereas the Government Shops and Establishments Inspectors belong to a distinct and separate class. Whereas the petitioner is a servant of Municipal Council, Tirora, the Government Inspector is a government servant whose recruitment etc. is governed by the rules applicable to the government servants in general. The rules regarding recruitment, etc. so far as the employees of the Municipal Councils are concerned, are governed by Chapter V of the Maharashtra Municipalities Act, 1965. His other conditions of service are regulated by the rules and bye-laws framed under the Act. Thus the method of recruitment and machinery for the same for the post of Government Inspector of Shops and Establishments and the Shops and Establishments Inspectors working with the Municipal Councils is distinct and different. They start their career in altogether two different classes. They start dissimilarly and, therefore, dissimilarity in their treatment will not amount to denial of equal opportunity because within each group there is no such denial. All the Shops and Establishments Inspectors working in the Municipal Council are being paid equal wages. The Shops and Establishments Inspector appointed by the State Government and those appointed by the Municipal Councils belong to separate and independent classes. The guarantee of equality is not applicable as between the members of distinct and different classes of service. 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. The maintenance of such a "classless" and undiscerning "equality" where, in reality, glaring inequalities and intelligible differentia exist, will deprive the guarantee of its practical content. (See *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, and *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*,). The State Government service stands on different footing from the service under a Municipal Council and cannot be equated with each other.

9. Apart from this, the Maharashtra Municipalities Act, 1965 deals with various classes of Municipalities. Section 4 of the Act lays down classification of Municipal areas in three different classes, viz. A, B and C. This classification is based on population basis. Tirora Municipal Council is a Class III Municipal Council. Section

9, which deals with composition of the Councils, also lays down the number of elected Councillors on the basis of such classification. Sections 62 to 66 deal with appointment of Standing Committees, etc. and this is also based on the classification of the Municipal Councils. Limits of the powers of the Municipal Councils in respect of financial sanction is provided by section 72 of the Act. It is also based on the classification of the Municipal Councils. Not only this, even the power to impose and levy taxation is based on such classification. Therefore, the very Act, viz. the Maharashtra Municipalities Act, 1965 contemplates division of different Municipal Councils in various classes. As already observed, Chapter V of the Act deals with the appointment of officers and servants of the Municipal Council and their conditions of service etc. Therefore, it creates an altogether different class of service. There can be a reasonable classification of employees based on intelligible differentia. Equality contemplated by Article 16 need not be confused with the absolute equality as such. It does not prohibit reasonable classification. The Badkas Pay Commission, which was appointed by the State Government for recommending the revision of pay scales, was initially appointed for revising the pay scales of the Government servants only. In pursuance of the recommendations of the Badkas Pay Commission, Maharashtra Civil Services (Revision of Pay) Rules, 1969 were issued. These rules did not apply to the servants of the Municipal Councils. Further from the return filed before us it appears that the Shops Inspectors working in the Municipal Councils have to work within local areas of the Municipal Councils and the conditions of their services cannot be compared with those of the Government Shops and Establishments Inspectors. The area of their working in itself is limited. The duties which the Government Shops and Establishments Inspectors have to carry out are more onerous and exacting. Their recruitment rules are different. It appears from the return filed before us that uniform pay scale of Rs. 150-270 is fixed for the Inspectors of Shops and Establishments working in all the Municipal Councils except in cases of Nanded and Amraoti. As indicated in the return, exception has been made so far as these two Municipal Councils are concerned because the old scales of the Shops Inspectors in these Municipal Councils were at higher level. Revised pay scales now fixed at higher level for these Municipalities are only allowed to the present incumbents with a specific direction that for future incumbents the revised pay scale shall be Rs. 150-270, i.e. the one which is given to the petitioner. Therefore, it is quite obvious from the return that all the Shops and Establishments Inspectors working in the Municipalities are treated equally in the matter of pay scales. If on this touch-stone the claim of the petitioner is tested, giving higher pay scale to the petitioner will amount to discrimination. In that case the petitioner will be treated favourably and this is what the petitioner wants from this Court. Therefore, under the garb of claiming equality in the matter of public employment, the petitioner is claiming a writ from this Court for giving direction to the Municipal Council or the respondents to give him a favourable treatment. In this view of the matter, in our opinion, it cannot be said that the petitioner is not given equal treatment in the matter of public employment. All the Shops and Establishments Inspectors working in the

Shops and Establishment Department of the Municipalities are being treated equally. In this view of the matter, there is no substance in this contention raised on behalf of the petitioner.

10. In the result, therefore, the petition fails and is dismissed. However, in the circumstances of the case there will be no order as to costs.