

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3368 OF 2012

Maharashtra State Ground Water
Survey and Development Agency,
Tantrik Karmachari Sanghatana,
Through its General Secretary,
Shri Vinod s/o Madhukar Bhadange,
Age: 42 years, occu. Service as
Technical officer, Serving in
the office of GSDA, Nashik,
Present r/o Nashik, Dist. Nashik - PETITIONER

VERSUS

- 1) The State of Maharashtra
Through Secretary,
Water Supply & Sanitation
Department, Mantralaya,
Mumbai-32.
- 2) The Secretary, Finance Deptt.
Mantralaya, Mumbai-32.
- 3) The Director, Ground Water
Surveys & Development Agency
Pune. - RESPONDENTS

Mr.Pradeep Deshmukh, Advocate h/for Mr.H.A.Joshi,
Advocate for Petitioner;

Mr.VH Dighe,AGP for Respondent - State.

**CORAM : S.S.SHINDE &
P.R.BORA, JJ.**

DATE OF RESERVING JUDGMENT :- 23rd March, 2015.
DATE OF PRONOUNCING JUDGMENT:- 11th JUNE, 2015.

JUDGMENT (PER:-P.R.BORA, J.)

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- 1) An association of Technical officers

working in Ground Water Survey and Development Agency (hereinafter referred to as "GSDA") has filed the present petition, challenging the order dated 2nd May, 2011 passed by Aurangabad Bench of Maharashtra Administrative Tribunal (for short, the Tribunal) in Original Application No.790/2006. The aforesaid Original Application was filed by the petitioner association seeking quashment of Government letter dated 12th June, 2006, whereby the Government has refused the request of the petitioner association for providing higher pay scale to the Technical Officers in GSDA equivalent to that of Technical Officers in Food and Civil Supplies Department. The petitioner association had, in the said original application, also sought direction against the respondents for grant of pay-scale of Rs.6,500-10,500/- to the Technical Officers working in GSDA w.e.f. 1.1.1996 and for grant of all other consequential benefits thereof.

2) It was the contention of the petitioner

association before the Tribunal that, the educational qualifications for appointment to the post of Technical Officer in various departments, like Agriculture Department of the Central Government, Food and Civil Supplies Department and GSDA, since are equivalent and the nature of duties performed by the Technical Officers in all the aforesaid departments being similar to each other, the Technical Officers in GSDA are entitled for pay-scale of Rs.6,500-10,500/-. It was further contended that the Technical Officers in GSDA are presently placed in the pay scale of Rs.5,000-8,000/-. It was vehemently argued by the petitioner association before the Tribunal that since the nature of duties of the employees, more particularly, the Technical Officers serving in GSDA and the Technical Officers serving in other Departments, i.e. Agriculture Department of the Central Government and Food and Civil Supplies Department of the State Government, are similar/identical to each other and the responsibilities and duties of the said officers

are also akin to each other, the Technical officers in GSDA are entitled to pay scale of Rs.6,500-10,500/- in place of their existing pay scale of Rs.5,000-8,000/-.

Various documents were filed on record by the petitioner association before the Tribunal in support of their claim. The contentions raised on behalf of the petitioner association were opposed by the respondents before the Tribunal. In short, it was the contention of the respondents that neither the duties nor the responsibilities of the Technical Officers working in GSDA are equivalent to the Technical Officers in Agriculture Department of the Central Government and Food & Civil Supplies Department of the State Government. It was also argued on behalf of the respondents that the educational qualifications were not similar for appointment of Technical officers in the Agriculture Deptt. as well as Food & Civil Supplies Deptt. and GSDA. The contention of the petitioner association, that there was no opportunity of any further

promotion to the Technical Officers in GSDA, was also denied by the respondents, stating that opportunities of further promotion were available to the Technical officers in GSDA. It was also contended by the respondents that the claim of the petitioner association was examined by the Anomaly Committee appointed for the purpose and the said committee has negated the claim of petitioner association. It was the further contention of the respondents that even the Finance Department has independently considered the request of the petitioner association and after due deliberations the same was turned down by the said committee.

3) Learned Tribunal, after hearing both the parties and after having gone through the documents placed before it, ultimately dismissed the original application, vide its order dated 2nd May, 2011. Aggrieved by the said decision, the petitioner association is before this Court invoking writ jurisdiction.

4) Shri Pradeep Deshmukh, learned Counsel appearing for the petitioner association, vehemently argued that the Tribunal has failed in appreciating the contentions raised by the petitioner association in proper perspective. It was further argued by the learned Counsel that the Tribunal has grossly erred in holding that the Technical Officers working in GSDA cannot claim equivalence with other posts based on the change in the nomenclature, since in the concerned Government Resolution, the Technical officers were dis-entitled to claim any revision in pay scale on that basis. It was further argued by the learned Counsel that the said Government Resolution has been mis-interpreted by the learned Tribunal. The learned Counsel further argued that the embargo put in the concerned Government Resolution, in debarring the members of the petitioner association for claiming higher pay, is erroneous and patently illegal as it runs against the fundamental right of the members of the petitioner association to

claim "Equal pay for Equal work."

5) Shri Deshmukh further submitted that the learned Tribunal has further erred in holding that the petitioner association did not challenge the conclusions of Justice Naik Committee regarding equivalence of posts and has further erred in holding that any such challenge in the original application would be time-barred. Shri Deshmukh further submitted that the petitioner association has made a representation to the authorities, highlighting injustice done to the members of the petitioner association by the erroneous conclusions drawn by Justice Naik Committee and as such, it cannot be said that the conclusions of Justice Naik Committee, were not challenged by the petitioner association. Shri Deshmukh further submitted that even otherwise, if any form of patent illegality creeps in the governance, the Government cannot be estopped or prevented from rectifying the said mistake and if the Government fails to do so, it is within the

purview of Tribunal to set right the course and remove the said patent illegality, it being contrary to the basic principle of "Equal pay for Equal work."

6) Shri Deshmukh further argued that the Tribunal has grossly erred in giving a narrow meaning to the term "anomaly" whereas the Tribunal ought to have given a widest possible meaning to the term "anomaly" for determining the scope and jurisdiction of Pay Anomaly Committee. Shri Deshmukh, therefore, prayed for setting aside the order passed by the Tribunal and further prayed for writ of mandamus against the respondents for grant of pay-scale of Rs.6,500-10,500/- to the Technical Officers working in GSDA w.e.f. 1.1.1996 and for grant of all consequential benefits thereof.

7) In support of the contentions raised in the petition, Shri Deshmukh, learned Counsel, has relied upon two judgments of the Hon'ble Apex

Court; one in the case of Union of India and Ors. Vs. Dineshan K.K. – AIR 2008 SC 1026; and the other in the case of State of U.P. and Ors. Vs. U.P. Sales Tax Officers Grade-II Association – AIR 2003 SC 2305.

8) Learned AGP appearing for the respondents supported the order passed by the Tribunal. Learned AGP submitted that the Pay Anomaly Committee appointed by the Government to remove disparity, if any, in the pay scales sanctioned to Government employees from 1.1.1996, has considered the proposal of the applicants and it did not find any anomaly in the grant of time-scale of Rs.5,000-8,000/- for Technical Officers working in GSDA. Learned AGP further submitted that the Anomaly Committee has also observed that the parallel posts in Agriculture Department, were drawing in higher pay-scale even before implementation of 5th Pay Commission recommendations and, therefore, there was no question of comparison between the pay-scale of the posts in Agriculture Department with the

posts of GSDA. Learned AGP further submitted that the proposal of the petitioner association was also considered by the Finance Department and the Finance Department concurred with the opinion rendered by Pay Anomaly Committee. Learned AGP further submitted that in so far as duties and responsibilities are concerned, the post of Technical Officers under Food and Civil Supplies Department and Agriculture Department, cannot be compared with the Technical Officers of GSDA. For all such reasons, it was submitted by learned AGP that the petition is devoid of any substance and the same deserves to be dismissed.

9) We have carefully considered the submissions advanced on behalf of the petitioner as well as by the State authorities. WE have also carefully gone through the impugned Judgment delivered by the Tribunal.

10) It was the principal contention of petitioner association before the Tribunal that since the designations, educational

qualifications required at the entry point; nature of duties and responsibilities of the Technical Officers working in GSDA, are as similar to that of Technical Officers working in Food and Civil Supplies Department and Agriculture Department, they are entitled to be paid in the time-scale of Rs.6,500-10,500/- w.e.f. 1.1.1996, i.e. the date on which, 5th Pay Commission recommendations were implemented. The Tribunal has rejected the contention of the petitioner association, holding that the members of the petitioner association were never at par with Technical officers in the Agriculture Department or in Food and Civil Supplies Department. The Tribunal has observed that the contention of the petitioner association that disparity is created, for the first time, while implementing the recommendations of Badkas Committee, i.e. 2nd Central Pay Commission, was incorrect. The Tribunal has further observed that the Department of GSDA was not in existence at the time of implementation of Badkas

Commission. The Tribunal has further observed that though GSDA had come into existence when the recommendations of Bhole Commission were implemented w.e.f. 1.1.1976, the cadre of the applicants was designated as "Technical Assistant" at that time, and not as "Technical Officer". The Tribunal has further referred to the Government Resolution dated 1.2.1989, whereby nomenclature of the post of members of the petitioner association was changed. The Tribunal has also considered that the request for change of nomenclature made by the applicants was permitted with condition that the incumbent occupying post in the said cadre, will not be allowed to immediately claim pay scale and on these grounds, the Tribunal has rejected the contention of the petitioner that they are the Officers with the same nomenclature. Further the Tribunal has also elaborately dealt with the contention of the petitioner that GSDA department has recommended for grant of pay-scale of Rs.6,500-10,500 to the applicants. The Tribunal

has held that the Department has recommended 3-tier pay-scale as in the case of Tracers, i.e. higher pay-scale upon completion of seven years; fifteen years; and 25 years for the reason that they do not have promotional avenues. The Tribunal has also noted that even before Pay Anomaly Committee in June 1999, the Department has not recommended pay-scale of Rs.6,500-10,500/- for the applicants.

11) After having referred to the contentions raised by the petitioner association, the Tribunal has specifically recorded a finding that all the contentions raised by the applicants were properly dealt with by the Pay Anomaly Committee and Tribunal has also given the reference of the Pay Equivalence Committee, headed by Justice Naik. The Tribunal has recorded that the applicants did not challenge report of Justice Naik Committee to be erroneous and in such circumstances, now they are estopped from raising any dispute in respect of the findings recorded by Justice Naik Committee. The Tribunal has also

recorded that the claim put-forth by the petitioner association, seeking equivalence of the nomenclature, is unsustainable for the reason that till 1.2.1989, the applicants were designated as Technical Assistants and from 1.2.1989, they are designated as Technical officers (Class-III). The Tribunal has further observed that the comparison of officers from the Agriculture Department, whose duties are desired to be compared with that of the applicants, are designated as "तंत्र अधिकारी वर्ग-२" The Tribunal has further observed that the post in Agriculture Department with which the applicants are claiming equivalence, is thus Class-II post; whereas the applicants fall in Class-III cadre. The Tribunal has further observed that for appointment of Technical Officer with GSDA, educational qualification required is Graduation in Science or Agriculture; whereas for Technical Officer in Agriculture Ministry, a candidate must possess a masters degree in Chemistry or Soil Science and for the Technical officers in Food and Civil

Supplies Department, required qualification is degree in Agriculture and Science with Chemistry or biology or Zoology or botany of a recognized university and in addition to that, he should have two years' experience relating to storage of food-grains and control of pests or experience in quality assessment for chemical analyzing of food-grains and allied products. The Tribunal has, thus, rejected the contentions of the petitioner association in respect of similarity in qualifications of the Technical officers in GSDA; Food & Civil Supplies Department and Agriculture Department. Lastly, the Tribunal has also rejected the contentions of the petitioner association that the nature and duties of the Technical Officers of GSDA and the duties of Technical Officers in Agriculture Department are similar to each other, by quoting valid reasons there for.

12) After having carefully considered the impugned judgment of the Tribunal, we do not find

that the Tribunal has committed any error in rejecting the claim of the petitioner association. We reiterate that as contended by the respondents, the Pay Anomaly Committee was appointed by the Government to remove the disparity, if any, in the pay scale sanctioned to the Government Employees w.e.f. 1.1.1996, i.e. from the date on which, the recommendations of 5th Pay Commission were brought into effect. As further contended by the respondents, the pay anomaly committee did consider the proposal of the applicant/association, however, it did not find any anomaly in the pay scale of Rs.5,000-8,000/- for the technical officers working in GADA. The Pay Anomaly Committee has opined that the post existing in the Agriculture Department was in the higher pay scale. In the circumstances, the Pay Anomaly Committee has recorded a conclusion that question of comparison between the pay scale of these two posts, i.e. Technical officers in GSDA and the the Technical Officers in Agriculture Department, does not

arise. It has to be stated that the Pay Anomally Committee was in the best position to decide the issue of providing pay-scale to the Technical officers in GSDA, as similar to the pay scale applicable to the Technical officers in Agriculture Department and Food & Civil Supplies Department. It is brought to our notice that the Pay Anomaly Committee has properly considered the claim of the petitioner and since it did not find any substance in it, did reject the same. In the circumstances, it was not for the Tribunal or even for this Court to sit over the decision of the Pay Anomaly Committee like a Court of Appeal. Nothing has been brought to our notice, convincing us as to how the decision of the Pay Anomaly Committee can be held to be erroneous. Moreover, the claim of the petitioner association was also considered by the Finance Department and the Finance Department also concurred with the conclusions arrived at by the Pay Anomaly Committee that no parity of the equivalent post can be given to the Technical Officers working in

GSDA with the Technical officers working in Agriculture Department or in Food & Civil Supplies Department.

13) Even the Hon'ble Apex court in the case of Union of India Vs. Dineshan K.K. (cited supra), relied upon by the petitioner, has observed that, equation of posts and equation of pay structure being complex matters are to be generally left to the Executive and expert bodies like Pay Commission etc. In the aforesaid case before the Hon'ble Apex court, since there was no dissimilarity between Radio Mechanics in Assam Rifles claiming parity with their counterparts in CRPF and BSF and since the academic qualifications; duties or responsibilities were also not dissimilar, the disparity in the pay of Radio Mechanics in Assam Rifles claiming parity with their counterparts in CRPF and BSF, was held to be irrational and arbitrary by the Hon'ble Apex court. However, as elaborately discussed herein above, there is no such case made out by

the petitioner in the present petition. Another judgment relied upon by the petitioner in the case of State of U.P. and Others Vs. U.P. Sales Tax Officers, Grade II Association (cited supra), also may not apply to the facts of the present case.

14) In the above circumstances, we are not inclined to interfere in the order passed by the learned Tribunal. In the result, the following order, -

ORDER

The Writ Petition stands dismissed without any order as to costs.

sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

bdv/

Res.Jt.