IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5158 OF 2013

Ambadas Bhimrao Wangikar
and another .. Petitioners
Versus
The State of Maharashtra and others .. Respondents

Shri A. G. godhamgaonkar, Advocate for Petitioners.
Shri K. G. Patil, Addl.G.P. for Respondent Nos. 1 and 2.
The Respondent No. 3 is served.

CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.
DATE : 13TH JULY, 2015.

PER COURT :

. Mr. Godhamgaonkar, the learned counsel for petitioners states that, the petitioners had filed original application before the Maharashtra Administrative Tribunal seeking deemed date in the cadre of Revenue Circle Inspector from 09.02.1984 that is the date when the respondent No. 3 was appointed ignoring the claim of petitioners, though the petitioners were senior. So also petitioners claiming placement in the pay scale of Rs. 1200-1800 from 01.01.1986 that is the day on which the respondent No. 3 was placed in said scale and consequential salary benefit be given to petitioners. The Tribunal dismissed the original application.

2. According to the learned counsel, the petitioner Nos. 1 and

2 are appointed as clerk on 21.10.1961 and 01.11.1961 respectively, whereas the respondent No. 3 is appointed as a clerk on 22.09.1965. On 19.02.1984, the respondent No. 3 is posted as Revenue Inspector. The petitioners were placed in the pay scale of Rs. 950-1500 that of a clerk on 01.01.1986 and the respondent No. 3 is placed in the pay scale of Rs. 1200-1800 i. e. of Revenue Inspector. On 23.06.1990 the petitioners are posted as Circle Inspector and respondent No. 3 as clerk. As on 23.06.1990 the basic pay of the petitioner No. 1 is Rs. 1,625/-, the petitioner No. 2 is Rs. 1,620/- and the respondent No. 3 is Rs. 1,680/-. Thereafter on 17.08.1990, the petitioners are reverted as clerk, whereas the respondent No. 3 remained as Revenue Inspector in view of the orders of the Court. On 17.09.1992 the petitioners are promoted as Awal Karkun, whereas the respondent No. 3 is promoted as Awal Karkun on 01.01.1994. The learned counsel submits that, the disparity in the pay scale between the petitioners on one hand and the respondent No. 3 on the other hand is made by the respondents from 01.01.1986 till 1992. The learned counsel submits that, this Court never directed the State Government to pay the pay scale of revenue inspector to the respondent No. 3. It only directed the respondent/State to allow the respondent No. 3 to work as revenue inspector. The learned counsel submits that, it is fundamental principle that senior cannot be given the less pay scale than that of junior. The learned counsel relies on the judgment of the Apex Court in a case of **State of Hariyana**

<u>Vs. Ram Sarup Ganda</u> reported in ***(2012) 15 SCC 772***.

3. The learned Additional Government Pleader submits that, the Tribunal has considered all relevant aspects of the matter in its correct perspective. Though the post of revenue inspector is not a promotional post, however, pay scale of the said post was in the scale of Rs. 1200-1800, whereas that of clerk is Rs. 950-1500 on 01.01.1986. According to the learned Addl. G. P. the promotion to the post of Awal Karkun of both petitioners is from different cadre. The same benefits cannot be claimed by petitioners.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. The petitioners on attaining age of superannuation have retired from service long back. The salary on and from 17.01.1992 is not subject matter of dispute. The only contention of petitioners is that, from 01.01.1986 till 16.01.1992, the petitioners were paid less salary than the respondent No. 3, who was junior to petitioners and whose entry in the service was almost three and half years after petitioners on the post of clerk.

6. The dates as narrated above and as contended by the learned counsel for petitioners are not disputed. The petitioners and the respondent No. 3 are appointed as clerk. However, on 19.02.1984, the respondent No. 3 was posted as revenue inspector

and the petitioners were working as clerk. Though the post of revenue inspector was not a promotional post than that of clerk, however, the pay scale of revenue inspectors was in the scale of Rs. 1200-1800 and that of clerk is Rs. 950-1500. On 23.06.1990 the petitioners are posted as circle inspectors, whereas the respondent No. 3 was reverted as clerk. On 17.08.1990 the petitioners are also reverted as clerk, however, the respondent No. 3 assailed the said order of reversion before this Court. This Court directed the respondents not to revert the respondent No. 3 pursuant to which the respondent No. 3 continued to work as revenue inspector and drew the salary in the pay scale applicable to the revenue inspector. However, the petitioners were already reverted as clerk from 17.08.1990. The petitioners were promoted as Awal Karkun. There is no dispute that the petitioners are getting proper pay scale and have no grievance about the same on and from 1992. The petitioners claim parity in pay scale as that of their junior on the principle that a senior cannot be paid less salary than his junior and the respondent No. 3 was junior to the petitioner, even in the seniority list maintained by respondents, still during the relevant period from 01.01.1986 to 16.01.1992 was drawing a better pay scale.

7. It would be seen that, though the respondent No. 3 was reverted, the respondent No. 3 had approached this Court and sought directions from this Court not to revert the respondent No. 3. Pursuant to the directions of this Court, the respondent

No. 3 continued to work as revenue inspector and naturally drew the pay scale of revenue inspector. Whereas, the petitioners continued to work as clerk and drew salary of a clerk. Considering the seniority, the petitioners have been promoted as Awal Karkun on 17.01.1992, whereas the respondent No. 3 was promoted as Awal Karkun on 01.01.1994. From 1992 the petitioners are getting the relevant pay scale. There is no dispute about the said fact.

8. Because of the interim orders passed by this Court in petition filed by the respondent No. 3, the respondent No. 3 continued to work as revenue inspector and drew salary of revenue inspector. Whereas, the petitioners were discharging duties of a clerk. The judgment of the Apex Court in a case of **State of Hariyana Vs. Ram Sarup Ganda** referred supra would not come to the benefit of petitioners. In as much as both petitioners were functioning as a clerk and the respondent No. 3 at the relevant time was discharging duties as a Revenue Inspector. The principle of parity cannot be applied in the present case.

9. In the light of the above, no case of interference is made out. The writ petition is disposed of. No costs.

[V. K. JADHAV, J.] **[S. V. GANGAPURWALA, J.]**

bsb/July 15