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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 1985 of 2014

Abdul Munaf Mohd.Kazi

..Petitioner.

Vs

State of Maharashtra & Ors

..Respondents.

Ms Rajani Iyer, Senior Counsel a/with Mr Joseph Almedia for the Petitioner.

Mr D.A. Nalawade, Government Pleader for Respondent Nos. 1 and 2.

**CORAM : V.M.KANADE &
A.R. JOSHI, JJ.**

DATE : 17th FEBRUARY, 2015.

P.C.

- 1) Rule. Rule is made returnable forthwith.
- 2) The learned Government Pleader waives service of notice for respondent Nos. 1 and 2. By consent of parties, Petition is taken up for final hearing.
- 3) The petitioner has filed this petition under Article 226 of the Constitution of India seeking appropriate writ, order and direction directing the State Government to put on par the post of Deputy Sheriff of Mumbai with the post of First Assistant Master on the

Original Side of the High Court of Bombay in the pay scale of Rs.14200-350-15950-400-18350 with effect from 4th July, 2003 to 31st December, 2005 and Rs. 43690-1080-49090-1230-56470 with effect from 1st January, 2006 till 28th February, 2013 including all consequential benefits. The petitioner was working in the office of Sheriff of Mumbai as Deputy Sheriff and retired on superannuation on 28th February, 2013. The post of Deputy Sheriff is equivalent to the post of First Assistant Master as it is a judicial post. It is filled in by the Hon'ble Chief Justice. The State Government has not granted the petitioner the same pay scale which is provided to the First Assistant Master.

Ms Rajni Iyer, learned Counsel appearing on behalf of the petitioner invited our attention to two orders passed by the Division Bench of this Court viz. firstly in Writ Petition No. 959 of 1990 (B.L. Mengane and Anr Vs. Shri Nana Chudasama & Ors) which was disposed of by judgment and order dated 18th September, 1991 and secondly, in Writ petition No. 1283 of 2000 (Abdul Munaf Mohammed Kazi Vs. State of Maharashtra) by

judgment and order dated 22nd March, 2001.

4) She submitted that in the decision given by the Division Bench (Coram: Shri A.P. Shah, and Shri S.J. Vazifdar, JJ) it is clearly held that the post of Sheriff is on par to the First Assistant Master and directed the State Government to grant to the petitioner who was a Deputy Sheriff pay scale at par of the First Assistant Master. It is submitted that in view of this the State Government cannot deprive the benefits of the same pay scale which the petitioner is entitled.

5) Shri Nalawade, the learned Government Pleader appearing on behalf of the State has invited our attention to the reply filed by one Shri Neeraj Dhote who is working as Legal Advisor-cum-Joint Secretary in Law and Judiciary Department, Government of Maharashtra, more particularly paragraph 4 of the said affidavit, wherein the opinion given by the Finance Department has been reproduced. According to the Finance Department, the judicial pay scale of the post of First Assistant Master is not applicable to the post of Deputy Sheriff. The post of Deputy Sheriff is under

administrative control of the State Government.

6) We are unable to accept the submissions made by the learned Government Pleader. The question as to whether the post of Deputy Sheriff is under the Administrative Control of the High Court or the State Government is no longer *res integra* since it has been held by the Division Bench of this Court that the Deputy Sheriff is a Judicial Officer. The Division Bench of this Court in the case of B.L. Mengane & Anr has observed in paragraphs 5 and 6 as under:-

“5. Rule 484 provides that “Sheriff” shall include Deputy Sheriff or any other person, who may be appointed, to execute the process of the Court. These rules make it clear that the Sheriff and the Deputy Sheriff have to discharge various functions under the directions and control of the High Court and they are subject to the rules framed by the High Court in that behalf.”

“6. The Sheriff and the Deputy Sheriff, therefore, carry out the execution of various writs and directions of the High Court as set out in the rules framed by the High Court referred to above.”

7) Finally after taking into consideration the various

provisions of the Original Side Rules and clause (viii) of the Letters Patent of 1865, the Division Bench in paragraph 8 has observed as under:

“8. Our attention has also been drawn to clause 8 of the Letters Patent of 1865 which authorizes and empowers the Chief Justice of the High Court to appoint inter alia ministerial officers as shall be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the High Court by these Letters patent. The due execution of all orders of the High Court is carried out by the office of the Sheriff of Bombay.”

8) The Division Bench having been clearly held that the post of Deputy Sheriff of Bombay falls within the term of Officer of the High Court. It is not now open for the State Government much less the Finance Department to say that the said post is under the administrative control of the State Government.

9) Similarly, the question as to whether the post of First Assistant Master is equivalent to the post of Deputy Sheriff is no longer res integra, in view of the judgment of the Division Bench of this Court in the case of Abdul Munaf Mohammad Kazi (supra).

The question for consideration before the Division Bench was refusal to grant parity of pay scale to the petitioner with the post of the First Assistant Master in the office of the Prothonotary and Senior Master of this Court. The Division Bench after taking into consideration various provisions of the Original Side Rules and the Letters Patent and also taking into consideration the judgment of the Division Bench in the case of B.L.Mengane and Anr (supra) has observed in paragraphs 18 and 19 and finally gave the following directions in paragraph no.24. Paragraphs 18,19 and 24 read as under :

“18. Mr Belosey's submission that the recommendations of the Bhole Commission ceased to apply after the IVth Pay Commission came into effect really misses the point. What is important is that by accepting the recommendations of the Bhole Commission, the Respondent recognized the fact that the duties of the Deputy Sheriff are equal to those of the First Assistant Master. Thus, parity in pay scale had to be and in fact was granted to the two posts. It is not the Respondent's case that there was any change in the duties of the two posts, thereafter that warranted disparity. There was no suggestion to this effect at the hearing before us either. Thus, the factual position in regard to the nature of duties of the two posts remained unchanged. There is no explanation as to

why the Respondent has after almost ten years set the clock back. It is also important to note in this regard that the State Government has not at any stage rejected the recommendations of the Bhole Commission regarding integration of the two posts.

19. Having come to the conclusion that the work carried out by the petitioner is equal to if not more than that of the First Assistant Master the doctrine of “equal pay for equal work” comes into operation. This doctrine is well established in a catena of judgments including of the Apex Court. It is sufficient to refer to the judgment of the Apex Court in the case of *Randhir Singh Vs Union of India*, reported in (1982) 1 SCC 618, where the question which fell for consideration in a petition under Article 32 of the Constitution of India, was whether a driver constable in the Delhi Police Force under the Delhi Administration was entitled to the same pay scale as of other drivers in the service of the Delhi Administration. Mr Justice Chinnappa Reddy speaking for the Court held paragraph 8 as follows:-

“It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39 (d) of the Constitution proclaims “equal pay for equal work for both men and women” as a Directive Principle of State Policy. Equal pay for equal work for both men and women means equal pay for equal work for everyone and as between the sexes. Directive Principles as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the

law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay.”

“24. In the circumstances, we pass the following order :-

Order :

Rule is made absolute in terms of prayer clauses (a) and (aa), which are as under :-

prayer clause (a) :

that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other writ, direction or order directing the Government of Maharashtra to grant to the petitioner pay scale at par with first Assistant Master from the date of petitioner's appointment from 1st March, 1990 and further up-gradation to the pay scale of Rs.12,000 – 16,500 with effect from 1.1.1996 including all consequential benefits;

Prayer clause (aa) :

That this Hon'ble Court be pleased to issue a writ of

Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records and proceedings pertaining to the Government Resolution dated 9th March, 2001 in so far as it pertains to the petitioner, and after examining the validity, legality and propriety thereof the same be quashed and set aside.”

10) We are surprised that the Secretary, Law and Judiciary, Government of Maharashtra instead of giving opinion to the Finance Department has unfortunately relied on the opinion given by the Finance Department on the question of law to the Department.

Paragraph 4 of the affidavit-in-reply reads as under :-

“That the post of First Assistance Master” is under the administration of the High Court. Till Sixth Pay Commission, the pay scale of “First Assistance Master” and “Deputy Sheriff” was equivalent i.e. 15600-39100 + Grade Pay 7600/-. However, as per Order dated 7th August, 2013 passed in Writ Petition No. 868/2008, the Hon'ble High Court has made applicable the judicial pay scale to the post of “First Assistance Master”. The post “Deputy Sheriff” is under the administration of the State Government. The pay scale for this post is as recommended by the Sixth Pay Commission. The Judicial Pay Scale of the post of “First Assistance Master” is not applicable to the post of

“Deputy Sheriff” which is under the administrative control of the State Government.”

11) In our view, the questions on interpretation of law will be decided by the Law and Judiciary Department and not by the Finance Department and in fact it is the duty of the Secretary, Law and Judiciary Department to explain the correct position in law to the Finance Department.

12) In the result, the writ petition is allowed. Rule is made absolute in terms of prayer clause (i) and (ii) which read as under:

(i) To put on par the post of Deputy Sheriff of Mumbai with the post of First Assistant Master on the original Side of the High Court of Bombay as regards pay scale and benefits:

(ii) To grant to the petitioner and post of Deputy Sheriff the pay scale of Rs.14200-350-15950-400-18350 w.e.f. 4th July, 2003 to 31st December, 2005 and Rs. 43690-1080-49090-1230-56470 w.e.f. 1st January, 2006 till 28th February, 2013 including all consequential and retirement benefits;

The directions be complied with within the period of 12 weeks from today.

(A.R. JOSHI, J)

(V.M.KANADE, J)