

**THE HON'BLE SRI JUSTICE DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

WRIT APPEAL Nos.523 and 520 of 2007

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JUDGMENT: (per Hon'ble Sri Justice Dilip B.Bhosale)

These two writ appeals are directed against the orders passed in Writ Petition No.18928 of 2001 and Review W.P.M.P.No.31052 of 2005 in W.P.No.18928 of 2001 respectively. The writ petition was disposed of vide order dated 05.07.2005 against which the review petition was filed and that was disposed of vide order dated 18.11.2005.

The appellants had filed writ petition seeking declaration that the action of the second respondent, in not approving the pay scales proposed to be applied by the first respondent-University vide proceedings dated 21.07.1993, to the 4 leftover categories, is arbitrary, illegal and in violation of Articles 14 and 16 of Constitution of India. They also sought direction to the second respondent to approve the pay scales of the petitioners by applying Schedule-II Pay Scales of 1986 w.e.f. 01.07.1986, as fixed by the first respondent in their proceedings dated 21.07.1993. The appellants further prayed for direction to the second respondent to grant the benefit of placement in the revised pay scales of 1986, 1993 and 1999 to them and to fix their pay, treating them as entitled to have the benefit of pay fixation made by the first respondent in Schedule-II Pay Scales of 1986 and all consequential benefits.

Learned counsel appearing for the appellants, at the outset, invited our attention to the following observations made in the order dated 05.07.2005 and submitted that he has instructions to confine challenge in the instant appeal only in respect of not extending monetary benefits after having fixed their pay scales on the basis of 1986 Revision notionally i.e. for the period 01.07.1986 to 01.04.1993:

“..... Whenever there is a revision of pay scales, that is to

say, in the years 1986, 1993 and 1999, the pay scales have been extended to the petitioners. Having extended the pay scales whenever there is a revision to the employees of the 1st respondent, there is no basis or any reason of whatsoever in not extending the same benefit when the revision of pay scales took place in the year 1986. Even in the year 1986, the Schedule-II pay scales have been extended to the employees who are similarly situated as that of the petitioners of all the Universities in the State of Andhra Pradesh and also the Government departments. So, there cannot be any discrimination in respect of two sets of similarly situated persons. There is no intelligible difference for the employees working in the other Universities and the employees working in the 1st respondent-University with regard to the nature of duties and functions. What is the object that is sought to be achieved in not implementing 1986 Schedule II of pay scales and not extending the same to the petitioners has not been stated in the counter affidavit filed by the 2nd respondent. Therefore, the action of the 2nd respondent is clearly hit by Article 14 of the Constitution of India and there is a discrimination in not extending the Schedule-II pay scales of the year 1986. As a matter of fact, learned counsel for the petitioners contended that if the same is extended to the petitioners, they will not claim any monetary benefit from the year 1986 onwards and the pay scales of the petitioners have to be fixed notionally. There is no other reason for not extending 1986 Schedule-II pay scales to the petitioners and it is a clear case where the Government has discriminated in extending the pay scales.”

Learned counsel for the appellants fairly states that he had made concession, as recorded in the impugned order, that the appellants would not claim any monetary benefits from the year 1986 onwards if the pay scales of the petitioners were to be fixed notionally. He however submits that merely because such concession was made, it does not mean they cannot pray for the monetary benefit after having fixed the pay scale notionally.

In our opinion, it is not proper and open to the appellants to challenge the order of the learned Judge after having made concession, as aforementioned. That apart, in any case, the

appellants would not be entitled for monetary benefits for the period from 01.07.1986 to 01.04.1993, which they sought for the first time in writ petition filed in 2001, and that too after having made concession to extend the benefit of 1986 Revision notionally. The appellants claim, in any case, for payment/recovery of arrears on the basis of 1986 Revision, in our opinion, is barred by limitation.

In this connection, it would be relevant to notice the judgment of the Supreme Court in ***M.R.Gupta vs. Union of India***^[1]. In this case, the Supreme Court had considered the issue of fixation of pay and in the light of the question of limitation, made the following observations in paragraph 5 thereof:

“5. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.”

In the circumstances, we find no merit in the appeals. It is once again made clear that learned counsel for the appellants did not urge any other contention.

Accordingly, both the appeals are dismissed. No order as to costs.

Miscellaneous petitions pending in the appeals, if any, also stand disposed of.

Dilip B.Bhosale, J

A.Ramalingeswara Rao, J

13th April, 2015.
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[\[1\]](#) AIR 1996 Supreme Court 669