

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

WRIT PETITION NO. 95 OF 2007

Somshankar Murgappa Singare,
Age : 62 years, occup. Nil -
Retired Professor,
R/o N-4, F-1, Plot No. 9, CIDCO,
Aurangabad 431 003 .. Petitioner

versus

1. Marathwada Agriculture University,
Parbhani, through it's Registrar,
2. The State of Maharashtra,
through The Secretary,
Agriculture, Live Stock Development,
Dairy Development and Fisheries
Department, Mantralaya,
Annexe, Mumbai, 400 032 .. Respondents

Mr. Ajay S. Deshpande, Advocate for petitioner
Mr. Manish N. Navandar, Advocate for respondent no.1
Mr. S.N. MOrampalle, Asst.Govt.Pleader for respondent no.2

CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.

DATE : 09-10-2017

JUDGMENT (PER : SUNIL P. DESHMUKH, J.)

1. Petitioner, a duly qualified person in accordance with relevant provisions pursuant to his selection as lecturer (mathematics) in Mathematics in Mahatma Gandhi Mahavidyala, Ahmedpur in Osmanabad, now under district Latur, run under the aegis of Vichar Vikas Mandal, Ahmedpur had joined post of lecturer on 23-06-1973 in the pay scale of Rs.300-600. His services came to be regularized and with effect from 01-01-1976, his pay scale had been Rs.700-40-1100-50-1600.

2. Respondent no.1 - Marathwada Agriculture University had published an advertisement in newspaper in August, 1980 for filling up certain posts. In response, petitioner had offered his candidature applying through proper channel. In the selection process, he was found suitable by respondent no.1. Respondent no.1 had accordingly issued order on 22-10-1981 appointing petitioner to the post of Assistant Statistician in pay scale of Rs.700-40-1100-50-1600.

3. Petitioner by representation dated 31-10-1981 had pointed out to respondent no.1 that he had been working as

lecturer on basic pay of Rs.1020/- in the pay scale of Rs.700-40-1100-50-1600 and had as such requested for protection of his salary accordingly, drawing attention to that the same had been mentioned by him during interview, producing salary certificate and since the order of appointment by the university does not reflect upon the same, he had once again requested respondent no.1 to protect his salary.

4. In response, petitioner has been communicated under a telegram dated 02-12-1981 that his request for pay protection has been accepted and that he shall join on or before 17-12-1981. Petitioner, accordingly, had joined the services of respondent no.1 on 17-12-1981 and had submitted a detailed last pay certificate issued on 15-12-1981 by the Principal of the institution petitioner, where he had been serving earlier, indicating his basic pay to be Rs.1020/- as on 15-12-1981. An order had been issued by the Registrar of respondent no.1 on 20-01-1982 to the petitioner referring to that the Vice Chancellor has been pleased to protect his pay accordingly with effect from 17-12-1981. Petitioner's pay protection is also recorded in his service book.

5. The petitioner had then been granted selection grade pay scale of Rs.3700-125-4950-150-5700, specifically taking

into account his past service rendered prior to joining the University for award of the same as reflected in the order passed by the Registrar of Respondent University on 10-09-1990. The selection grade had been granted to petitioner with effect from 23-06-1986. Petitioner, by subsequent order dated 30-11-1999, had been promoted as Associate Professor (Statistics) in the pay scale of Rs.12000-420-18300. By 01-11-2000, he had reached maximum stage in said pay scale and thus stood stagnated in the same, continuing stagnation till 31-08-2003.

6. The petitioner retired on attaining age of superannuation on 31-08-2003. Before retirement he had, under a representation submitted on 29-01-2002, requested respondent no.1 that while granting pensionary benefits, his past service may not be ignored and same be counted for benefits. The representation had been responded to on 25-11-2002 purporting to convey that there are no government orders to consider computation of service earlier rendered in private aided colleges, for the purposes of pensionary benefits and as such his such past service cannot be considered and computed for pensionary benefits.

7. Thereafter, in September, 2005, petitioner had once

again requested the Deputy Chief Auditor (Senior), Local Fund Account, Aurangabad, for fixation and payment of pensionary benefits by taking into account his past service rendered in private aided college. In October, 2005, said authority communicated petitioner inability to issue instructions for payment of pensionary benefits and that it would be an obligation on the University to properly fix pension. In the meanwhile, it appears, government had conveyed to Agriculture Universities in the State that services earlier rendered in private institutions by the concerned incumbents would not be taken into account for the purpose of computation for fixation of pension and grant of pensionary benefits.

8. The petitioner submits in the process an amount to the tune of Rs.29,646/- from his pensionary benefits has been withheld by respondents and is not paid to him though legitimately due and payable to him upon proper fixation of pension by taking into account and computing his past service.

9. Learned counsel Mr. Ajay S. Deshpande appearing on behalf of petitioner submits that the petitioner had been induced to join services in respondent no.1 University by

assuring protection of his basic pay as had been requested by him and upon specific request therefor by the petitioner with a view that he should not be put to any financial detriment/ loss and his request had been accepted and accordingly his pay had been protected. Not only this, subsequently, he had been given selection grade taking into account past service he had rendered in private aided institution; he had been further promoted as Associate Professor and as a matter of fact, his basic pay in the pay scale of the post of Associate Professor had reached the maximum stage and since there was no further stage of increment, his pay had been stagnated till he reached age of superannuation.

10. He submits, to meet cases of stagnation, finance department of the State Government had issued a resolution on 25-01-1999 providing additional increments after every two years to those who had reached maximum of their pay in the pay scale. According to him, under said resolution of the government, petitioner since stagnated would be eligible and entitled to receive one increment of Rs.420/- with effect from 01-11-2002, however, not only that such an increment had not been granted to him but, the amount of Rs.29,646/- had also been wrongly withheld by respondents on account of technical deficiency being incurred under erroneous

interpretation of the rules or for that matter non availability of specific rules. He submits that, in the circumstances, the amount which has been wrongfully detained be released to him and the increment which is not released though due to the petitioner under Government Resolution dated 25-01-1999, be released and he be paid pensionary benefits accordingly.

11. He submits, petitioner has retired in November, 2003 whereas communication of the government is subsequently issued turning down his request to grant the benefit of computation of past service for the purposes of fixation of pension and other incidental benefits. He submits that as a matter of fact, respondent no.1 - University had recommended to the Deputy Chief Auditor (Senior), Local Fund Account, Aurangabad, to compute and take into account petitioner's past service rendered in aided private school for the purpose of his pay protection and fixation of pension. He submits that while the petitioner had entered the University services upon understanding that not only his pay would be protected but also all consequential and ancillary benefits would flow from the same, was his legitimate expectation. Inflexible and pedantic approach of respondents has hampered his legitimate and genuine claim which would have

in natural course come unhindered to him. He, therefore, urges to allow writ petition.

12. Learned counsel Mr. Manish N. Navandar appearing on behalf of respondent no.1 University opposing aforesaid, fairly submits that factual aspects are not disputable, however, since policy decision appears to have been taken by the State Government, petitioner's claim would be decided within the precincts of the rules and policy decision. He further submits that the stagnation increment may not be possible to be awarded to petitioner, for, such a benefit, as a matter of policy, had not been extended to teaching profession.

13. Mr. Navandar purports to refer to and rely on a decision of the Supreme Court in the case of *Basudeo Pati vs State of Orissa; 1997(3) SCC 632*. However, it appears that said decision has been rendered with reference to different set of facts and hardly any analogy can be drawn from the same to support the submissions advanced on behalf of respondent no.1 - University.

14. Learned Assistant Government Pleader Mr. S.N. Morapalle appearing on behalf of respondent no.2 - State, supports the order impugned.

15. During the course of submissions, as referred to in the writ petition, learned counsel Mr.Deshpande has drawn attention to that in the cases of certain personnel, who had been erstwhile employees of Zilla Parishad, their past services had been taken into account and computed while granting them pensionary benefits. It appears, there had been resolution issued in respect of computation of their services passed way back on 24th January, 1994. A photocopy of the same is tendered across during the course of hearing.

16. While the petitioner had joined services in respondent no.1 University specifically making a request to protect his pay with a view not to cause any financial loss/detriment to him, it was his legitimate expectation that pensionary benefits would accrue to him and paid accordingly by computing service rendered by him earlier in private aided institution before joining services of respondent no.1 – University. He did not expect and foresee that pension fixation would be done without computation of his past service rendered in a college run by private aided institution. It further appears that had the petitioner continued in private aided institution, he would have received full benefit of the service rendered in such institution, by computation of the same. It appears that while petitioner had been appointed by respondent no.1, his pay

fixation had taken place, considering the same as was, during his past service. No reasonable distinction has been drawn for not computing past service in petitioner's case as had been done in the case of past employees of Zilla Parishad appointed by respondent no.1 in teaching staff. The financial implications are also not of such magnitude as would inhibit the State from granting benefit of past service. In the circumstances, detention/withholding of payment of Rs.29,646/- does not appear to be proper deciding its fate after retirement of petitioner.

17. So far as grant of increment of Rs.420/- due to stagnation claimed by petitioner based on January 25, 1999 Government Resolution is concerned, the petitioner has not been in a position to show that the same is applicable to the teaching profession in the State.

18. In the circumstances, Writ Petition stands allowed in terms of prayer clauses (B) (i) and (B) (iii) and is disposed of.

19. Rule made absolute accordingly.

SANGITRAO S. PATIL
JUDGE

SUNIL P. DESHMUKH
JUDGE