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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4537 OF 2016

The State of Maharashtra
through Secretary to Govt.
Medical Education & Drugs Deptt.
of Maharashtra and Others .. Petitioners

Vs.

Shri. Hari Shamrao Survase .. Respondent

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Appearances

Mr. N.C. Walimbe	<i>AGP for the State / Petitioner</i>
None for the	<i>Respondent</i>

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**CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**
DATE : AUGUST 24, 2017.

ORAL JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.] :

1. The challenge in this petition is to the judgment and order dated 13.3.2014 passed by the Maharashtra Administrative Tribunal, Mumbai in O.A. No. 838 of 2013 preferred by the respondent.

2. The petitioner - State of Maharashtra has

formulated Revised Assured Career Progression Scheme . This scheme, which was notified vide G.R. dated 1.4.2010 entitles employees to second benefit of Assured Career Progression Scheme (ACPS) upon completion of 24 years of service. Although, the scheme was made applicable retrospectively from 1.10.2006, however the State by yet another G.R. dated 1.7.2011 has purported to “clarify” that even though the G.R. dated 1.4.2010 makes applicable the Assured Career Progression Scheme retrospectively with effect from 1.10.2006, the benefit of such scheme will not apply to such of the employees who may have retired from service between the period 1.10.2006 and 31.3.2010. It may be stated that the respondent retired between 1.10.2006 to 31.3.2010. The Tribunal, by the impugned judgment and order has struck down such “clarification” inter alia on the ground that the same is arbitrary, unreasonable, violative of Article 14 of the Constitution of India and therefore unconstitutional. Aggrieved by such determination, the State has instituted the present petition.

3. Mr. Walimbe, learned AGP for the petitioners-State, has submitted that there is no obligation on the part of the State to either formulate or extend schemes like the ACP Scheme. The very formulation and extension of such scheme, is a policy matter. Therefore, the date from which and the extent to which the benefits of such schemes are to be extended, is also a policy matter. The Tribunal was quite unjustified in interfering with such a policy matter.

4. The effect of such retrospective application of G.R. dated 1.4.2010 could never have been nullified by the State, on the basis of the impugned clarification. The impugned clarification has effected an artificial classification amongst the set of employees similarly placed and such classification has no nexus whatsoever with the objective of the ACP Scheme, which is to relieve the employees from baneful effects of stagnation in service. It is seen that only notional benefits and not arrears for the retrospective

period, have been provided under the scheme.

5. One of the notorious features of Government service is that several employees, though eligible and ever willing to be promoted, do not actually secure such promotions, sometimes, during the entire tenure of their service. This stagnation, naturally leads to frustration. The State has consequently adopted schemes for redressal of such situation arising out of lack of sufficient promotional avenues and the consequent stagnation. Broadly, such schemes do not contemplate actual promotions to the next higher post, but by way of consolation, award the pay-scale of the promotional posts, generally, upon an employee stagnating in a particular post for twelve years or twenty four years respectively. Such schemes, were earlier referred to as Time Bound Promotion Schemes and are now referred to as Assured Career Progression Schemes. The ACP Scheme, with which, we are presently concerned was formulated by the State Government vide G.R. dated 1.4.2010. This G.R

specifically states that the scheme will be applicable with retrospective effect, i.e., from 1.10.2006.

6. The G.R. dated 1.4.2010 makes reference to the objective of the scheme, which is alleviation of the sufferings on account of stagnation. In case of **Dwijen Chandra Sarkar & Anr. vs. Union of India & Ors.**¹, the Supreme Court had occasion to explain the objective of such schemes and further, the importance of such objective, in the interpretation of such schemes. At paras 11 and 12, it is observed thus:

“11. However, the position in regard to “time- bound” promotions is different. Where there are a large number of employees in any department and where the employees are not likely to get their promotion in the near future because of their comparatively low position in the seniority list, the Government has found it necessary that in order to remove frustration, the employees are to be given a higher grade in terms of emoluments — while retaining them in the same category. This is what is generally known as the time-bound promotion. Such a time-bound promotion does not affect the normal seniority of

1 (1999) 2 SCC 119

those higher up.

12 If that be the true purpose of a time-bound promotion which is meant to relieve frustration on account of stagnation, it cannot be said that the Government wanted to deprive the appellants who were brought into the P&T Department in public interest — of the benefit of a higher grade. The frustration on account of stagnation is a common factor not only of those already in the P&T Department but also of those who are administratively transferred by the Government from the Rehabilitation Department to the P&T Department. The Government while imposing an eligibility condition of 16 years' service in the grade for being entitled to time-bound promotion, is not intending to benefit only one section of employees in the category and deny it to another section of employees in the same category. The common factor for all these employees is that they have remained in the same grade for 16 years without promotions. The said period is a term of eligibility for obtaining a financial benefit of a higher grade."

(Emphasis Supplied)

7. The entire ACP Scheme, with which we are concerned is set out in great detail in the G.R. dated 1.4.2010. The salient features of the ACP Scheme, are as follows:

i) The scheme is made applicable from 1.10.2006. However, for the period between 1.10.2006 till the date of G.R., i.e., 1.4.2010, the

employees will be entitled to only notional benefits and not actual arrears.

ii) Under this scheme, an eligible employee is entitled for the pay scale of next promotional post twice in his service career i.e. eligible for two financial upgradations on completion of 12 years and 24 years of service.

iii) In the case of an employee who has been granted time bound promotion/ACP it would be presumed that he got the first benefit of this modified ACP Scheme on that date.

iv) The second financial upgradation will be available to the employee on completion of 12 years of service from the date of first financial upgradation.

8. In order to combat certain practical difficulties in the matter of implementation of ACP Scheme, the State vide G.R. dated 1.7.2011 has issued certain clarification. At serial No.1 of Annexure to the said G.R. dated 1.7.2011, it is "clarified" that the benefit of ACP Scheme, as formulated in G.R. dated 1.4.2010 will not be available to employees, who have retired from service between the period 1.10.2006 (retrospective date from which scheme was made applicable) and 31.3.2010 (one day prior to the date of G.R.

dated 1 April 2010, by which the scheme was directed to be implemented with retrospective effect). As noted earlier, it is this clarification, which has been struck down by the impugned judgment and order of the Tribunal.

9. Although, the formulation and extension of ACP Scheme may be in realm of policy, nevertheless, once such scheme is formulated and implemented by the State of its own accord, there is no question of State practising discrimination, as between the class of persons, otherwise uniformly entitled to benefit of such scheme. Once, the State has taken a decision to formulate and implement the ACP Scheme, Article 14 of the Constitution will ensure that such scheme is not implemented with an unequal hand and that the employees who are otherwise entitled to avail the benefit of such scheme, are left out on basis of irrational or unreasonable parameters. Therefore, there is no merit in the submission of Mr. Walimbe that since the very formulation and implementation of ACP Scheme is in the realm of policy,

the State has unfettered discretion in the matter of choice of beneficiaries or that such choice is not capable of judicial review.

10. The circumstance that the class of employees excluded on account of the impugned clarification were not capable of availing *de facto* promotions, is quite an irrelevant circumstance, particularly considering the terms of the ACP Scheme as stated in the G.R. dated 1 April 2010 and the objective of such scheme. In fact, the question of extension of benefits under the ACP Scheme arise, precisely because the employees are in no position to avail *de facto* promotions. That apart, since ACP Scheme has been made retrospectively applicable since 1.10.2006, for the period between 1.10.2006 and 31.3.2010, the employees, prior to their actual retirement, were theoretically capable of availing *de facto* promotions. Therefore, employees completing twelve years or twenty four years of service in any particular post between the period 1.10.2006 and

31.3.2010 cannot be deprived of the benefits of the scheme, merely on account of fortuitous circumstance that they may have retired between the period 1.10.2006 and 31.3.2010. Such exclusion appears to be arbitrary, unreasonable and based upon no rational criteria. This is admittedly not a case where ACP Scheme, by itself, has been made applicable with effect from 1.4.2010. This is a case where the scheme has been made applicable from 1.10.2006 retrospectively. Therefore, there is no justification in the creation of artificial classification on the basis of the impugned clarification. Such classification bears no intelligible differentia whatsoever and in any case, differentia, if any, has no nexus whatsoever with the objective of the scheme, i.e., to compensate employees for stagnation on account of lack of promotional avenues, whilst in service. Thus, construed we detect no error in the view taken by the Tribunal in the impugned judgment and order.

11. The G.R. dated 1.4.2010 was quite clear in that

the ACP Scheme was made applicable with retrospective effect from 1.10.2006. Accordingly, there was neither any reason nor any occasion for issuance of the impugned clarification, which has the effect of excluding employees, who are otherwise on par with the other employees, in the matter of receipt of benefits under the ACP Scheme. Besides, we note that the ACP Scheme contemplates only notional pay fixation for the period between 1.10.2006 and 1.4.2010, without there being any liability to make actual payment of arrears. In the absence of any ambiguity in the G.R. dated 1.4.2010, there was no question of issuance of impugned clarification. Further, it is impermissible for the State to substantively modify the G.R. dated 1.4.2010, under the guise of issuance of impugned clarification. Such a cut off date is clearly discriminatory. There is no rationale behind stating that the said scheme would not be applicable to those who have retired in between 1.10.2006 to 31.3.2010. If the said explanation is accepted, then those persons retiring before 1.10.2006 would be given the benefit of that scheme

so also the persons retiring after 31.3.2010 would be given the benefit of said scheme and only those persons retiring in between 1.10.2006 to 31.3.2010 would be deprived of the said benefits which is clearly discriminatory and arbitrary and violative of Article 14 and hence, cannot be allowed.

12. There is neither any jurisdictional error nor any perversity in the view taken by the Tribunal in the impugned judgment and order. We are, accordingly, satisfied that there is no case made out to interfere with the impugned judgment and order, hence, the Writ Petition is dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[SMT. V.K. TAHILRAMANI, J.]