

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 633 OF 2008

1. Dr. Shankarrao Ramchandra
Suryawanshi & Ors. ... Petitioners

Vs

1. The State of Maharashtra & Ors. ... Respondents

Mr. S.R. Ganbavale for the Petitioners.

Ms. Sushma S. Bhende, AGP, for the Respondent Nos.1 to 3-State.

***CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.***

THURSDAY, 16TH MARCH, 2017

P.C. :

1 The petitioners had approached this Court after complaining that each one of them was appointed initially on a post lower to that of a Principal, but having rendered meritorious service, they were posted as Principals of various colleges and particularly in Satara District.

2 The eleven such petitioners and retired Principals are

before us complaining that after the appointment of the Vth Pay Commission, total pension payable to them because of their retirement before 1st January, 1996, was sought to be increased for the recommendation of the Pay Commission revised the pay scale for both existing and retired personnel. The common understanding appears to be that just as the pay scale recommendations are applicable to those in service, even the pensioners can draw benefit therefrom and their pension is revised. The revision is an upward one is the understanding. That is how a basic salary and the entitlement to pension thereon are computed. It has been pointed out by the petitioners that pension and admissible to Principals working in Government colleges, Government affiliated colleges was on par. There is no disparity even when the Principals of Government colleges are brought on the scene. However, the petitioners who were working in Government aided colleges are drawing lesser pension. The disparity in this pension was an issue raised, but in the case of one Dr. J.K. Godha, who retired as a Principal of a Government aided college. He entered into detailed correspondence. His case was taken up and in his case, some clarifications have been issued.

3 The petitioners are challenging a communication emanating from the Director of Higher and Technical Education, Government of Maharashtra, by which their apprehension was that as was done in the case of Dr. Godha, even in their cases, this Directorate would straight away inform the Pay and Accounts Office and other connected people to revise their pension. This would be done without adherence to the rule of law. It is on such apprehensions and which, to our mind, were genuine, that the petition was filed and on 31st January, 2008, this Court, while issuing notice, granted ad-interim protection. An ad-interim order in terms of prayer clause (c) was passed. Prayer clause (c) of the writ petition reads as under :

"C) Pending the hearing and final disposal of the present petition the Respondents be directed to forbear from taking any action in pursuance of the letter No. NGC1202/19795 (165/02)/VISHI-4, dated 24th April, 2006, of the Higher & Technical Education Department."

4 Subsequently, this writ petition was admitted on 15th April, 2008. The ad-interim order was continued as an interim order made in the writ petition. At the final hearing of this petition, what we noted on the earlier two occasions was that the

petitioners raised two contentions. Firstly, that no principles of natural justice were adhered to before the petitioners' pension was sought to be revised; whether upward or downward, that revision was to be effected in accordance with law. All the more, if it is downward revision, then, the petitioners expected adherence to minimal fairness, namely, a notice and a hearing followed by a reasoned order. That has not been done admittedly in this case. There is a justification provided on merits in the affidavit-in-reply. However, we find that in paragraph 13 of the affidavit-in-reply of the State filed to this writ petition, the State makes out the following case :

"13. With reference to para 15 of the prayer clauses of the Petition, I say that it is explained that, main directions on the basis of the letters dated 24.4.2006 issued by the Government and subsequent orders issued by the Director of Higher Education, Pune dated 30.5.2006 for downward revision of the Petitioners, the necessary letters were issued to the concerned Principals of the Petitioners on 4.10.2006, after receiving of the said proposals from the colleges of downward revision with the list of the Petitioner Principals the necessary proposals were submitted to the A.G. Mumbai for further necessary action. Some different queries from different sections of A.G's office have raised by the Accountant General, Mumbai, meanwhile the Hon'ble High Court, Mumbai, ad-interim relief granted in terms of prayer clause "C". Hence no further action have taken regarding the downward revision of the pension of the Petitioners."

5 What we have noted from all this is that because of the ad-interim order passed by this Court, till date, no action has been taken so as to prejudice the petitioners in this case. If that has not been taken, then, we can safely rely upon this statement in the affidavit and continue the state of affairs prevailing on the date of filing of this affidavit, further. We would clarify that it would be open for the State Government and the Directorate in particular to take action, but strictly abiding by the law. It is only if the law permits any revision in the pension and on the downward side, that too after more than twenty years after the petitioners retirement, then and only then this would be a permissible course. If the permissible course has to be adopted and an action taken thereafter, needless to clarify that the concerned respondents will have to abide by the principles of natural justice. They would have to issue a notice to the petitioners individually calling for their records from the respective managements of the Educational Institutions, the Universities to which these Institutions are affiliated and thereafter grant a personal hearing to each of them. They have to pass a reasoned order dealing with all objections and raised by these aggrieved petitioners. It is only this course which will

permit the respondents to effect any downward revision as allegedly contemplated.

6 We need not express any opinion on the merits of the contentions raised before us. We are keeping them open for being raised at an appropriate stage. We do not, therefore, comment on the applicability of any rule, much less, Rule 131 of the Maharashtra Civil Services (Pension) Rules, 1982.

7 The writ petition is, accordingly, disposed of.

B.P. COLABAWALLA, J. S.C. DHARMADHIKARI, J.