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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1840 OF 1998

Mrs. Ahalya A. Samtaney
residing at 126/3, Mayur TPS-V,
2nd Road, Santacruz (East),
Mumbai 400 055.

...Petitioner

vs.

1. State of Maharashtra
(Through the Secretary to the
Government of Maharashtra,
Education Department, (Higher
Education), Mantralaya,
Mumbai-32.

2. R.R. Pardeshi,
Joint Director of Education,
Mumbai Region, Mumbai.

3. The Administrative Officer,
Office of the Jt. Director of
Higher Education, Mumbai Region,
Mumbai.

4. Registrar, University of Mumbai,
Mumbai.

5. Hyderabad (Sind) National Collegiate
C/o. K.C. College, Churchgate,
Mumbai 400 020.

6. H. R. College of Commerce & Economics,
Churchgate, Mumbai 400 020.

7. Director of Education,
Pune, Maharashtra State.

...Respondents

Mr. Abhishek Tripathi i/by Rui Rodrigues for Mumbai University.

**CORAM : A.A.SAYED AND
M.S.KARNIK, JJ.**

RESERVED ON : 14th JULY 2017

PRONOUNCED ON : 24th JULY 2017

JUDGMENT (PER M.S. KARNIK, J.) :-

The petitioner by this petition prays for a direction to be issued to the respondents to regularise her pay from 1976 and order for payment of difference in salary. The petitioner is qualified M.A.,B.Ed. She was appointed as a tutor of English in Senior College by respondent no.6, H.R. College of Commerce & Economics. From 15th December, 1974 to 14th March, 1975 she was working as a Tutor in English in the old pattern (11 + 4) in respondent no.6's college in grade pay scale of Rs.250-15-400. The respondent no.4 University approved the appointment of the petitioner on 15/5/1975. She continued to work as a tutor in English till 31st July, 1975.

2. By an order dated 31st July, 1975, she was promoted as a Lecturer of English in Senior College, with effect from 1st August, 1975. From 1st August, 1975 to 30th September, 1976 she continued to work as a Lecturer in English in Senior College in the grade pay scale of Rs.700-50-1600.

3. From June, 1976 the new pattern of 10+2+3 was introduced as a result of which the petitioner was rendered surplus in the Senior College.

4. By a Government Resolution dated 11th June, 1976 the Government of Maharashtra laid down the guidelines for absorption of the lecturers rendered surplus due to the introduction of new 10+2+3 pattern. The petitioner was appointed as a full time teacher in English in the Junior College with effect from 1st October, 1976. The petitioner was transferred to the Junior College with effect from 1st October, 1976 in the pay scale Rs.500-900 instead of Rs.700-50-1600 as the petitioner was rendered surplus. On 3rd June, 1977, the

petitioner wrote to the respondent no.6 that she had been continuously working for last two years with the respondent no.6 college and she wishes to be re-appointed as a full time Lecturer in the college. By letter dated 14th June, 1977, the Principal of respondent no.6 college informed the petitioner that they were appointing her as a full time lecturer in English in the Junior College and the salary will remain same.

5. The Government of Maharashtra by a Government Resolution dated 25th October, 1977 revised the pay scale of University teachers and school teachers with effect from 1st January, 1973. It is the petitioner's case that her salary therefore stood revised to Rs.700-50-1600 from 1st August, 1975. By an order dated 19th June, 1978 the Principal of respondent no.6 college appointed her as a Lecturer in English in the Junior College. Respondent no.6 further informed her by communication dated 4th December, 1980 allowing her to contribute to the provident fund.

6. The respondent no.6 by letter addressed to

respondent no.3 Administrative Officer, Office of the Joint Director of Higher Education, requested for absorption of the petitioner in the Degree College with effect from 1st January, 1994 and to fix her pay in the Degree College on her absorption in the pay scale Rs.2200-4000 from 1st December 1993. The petitioner was given a salary of Rs.3100 in the pay scale of Rs.2500-4000 from 1st December, 1993 in the Junior College. The respondent no.6 requested the respondent no.4 to approve absorption of the petitioner in the Degree College since she fulfilled the conditions of the Government Resolution dated 27th November, 1991. The University of Mumbai by an order dated 31st January, 1994 approved the appointment of the petitioner in Degree College.

7. Respondent no.6 College by letter dated 16th May, 1995 addressed to the Joint Director Higher Education pointed out that as the petitioner was appointed as a lecturer and placed in the grade of Rs.700-1600 from 1/8/1976 to 30/9/1976, she may be placed in the said grade from 1/10/1976 to

31/12/1985. The reason given was that due to the change in the system the petitioner was rendered surplus and she was categorized as P3 teacher. As a result of transfer to the Junior College, from 1/10/1976 to 31/12/1993 the petitioner was placed in the grade of Rs.500-900. It was also requested that with effect from 1/1/1986 she may be placed in the grade of Rs.2200-4000. The Deputy Director of Higher Education by his letter dated 9/7/1999 informed the respondent no.6 College that the petitioner would be getting salary scale of Rs.2200-4000 from 1st January, 1994. The petitioner through her Advocate requested for regularization of her pay scale. On 2nd December, 1997, she represented to the respondent no.5 to regularise her pay scale as her grievance was not redressed.

8. Learned Counsel for the petitioner submitted that the petitioner is squarely covered by the Government Resolution dated 11th June, 1976. According to him the petitioner was rendered surplus and appointed as a full time teacher English in the Junior College with effect from 1st October, 1976, the

petitioner is entitled to protection of her pay. Learned Counsel for the petitioner invited our attention to the relevant clauses of the Government Resolution dated 11th June, 1976. The said Government Resolution is in respect of the ad-interim arrangements regarding Junior College classes attached to colleges in the State. Learned Counsel for the petitioner invited our attention to the Appendix to the said Government Resolution wherein guidelines for the absorption of the teachers determined as surplus at college level is mentioned. The relevant clauses are thus :-

“(i) College teachers who were either confirmed in clear vacancies or who had completed two years of continuous service in clear vacancies in a college or college under the same management, on or before 7th February 1975 ;

(ii) College teachers who were in service on or before 7th February 1975 and were also in continuous service upto the end of the academic year 1975-76 and had completed more than two years of continuous service in a college or colleges under the same management, as at the end of the academic year 1975-76 ;

(iii) College teachers who were in service on or before 7th February 1975 and were also in continuous service upto the end of the academic year 1975-76 in a college or colleges under the same management but had not completed two years of continuous service upto the end of academic year 1975-76.

(iv) College tutors/Demonstrators and persons in equivalent grade (rs.250-400) who were either confirmed in clear vacancies or who had completed two years of service in clear vacancies in a college or colleges under the same management on or before 7th February 1975 and who fulfill the qualifications prescribed by the University concerned for appointment as lecturers and are, therefore, entitled to deemed date of 1st July 1975 ;

(v) College tutors/demonstrators and persons in equivalent grade (Rs.250-400) who were either confirmed in clear vacancies or who had completed two years of service in clear vacancies in a college or colleges under the same management on or before 7th February 1975 but who do not fulfill the qualifications prescribed by the University concerned for appointment as lecturers.”

According to the learned Counsel for the petitioner the petitioner's case falls in Clause (iii). In his submission as the petitioner was in service on or before 7th February, 1975 and was in continuous service upto the academic year 1975-76 in the college of the respondent no.6 Management but had not completed two years of continuous service upto the end of the academic year 1975-76, the petitioner's case squarely falls within Clause (iii). In his submission, therefore, in view of the Government Resolution dated 25th October, 1977, the petitioner should have been placed in the pay scale of Rs.700-1600.

9. Learned Counsel for the petitioner invited our attention to the pay scales prescribed for different categories of Universities and college teachers. In so far as college teachers are concerned the following pay scale is prescribed :-

Sr. No.	Present designation	Existing Scale of pay	Revised Designation	Revised Scale of pay
II	College Teachers -	Rs.		Rs.
	5. Principal	800-50-1,250	Principal	1,500-60-1,800-100-2,000-125/2-2,500.
	6. Principal	700-40-1100	Principal	1,200-50-1,300-60-1,900
	7. Senior Lecturer	700-40-1,100	Lecturer	700-40-1,100-50-1,300-Assessment-50-1,600
	8. Senior Lecturer	400-30-640-40-800		
	9. Lecturer (Junior Scale)	300-25-600		
	10. Demonstrator/Tutor	250-15-400	Demonstrator/Tutor	500-20-700-25-900

Learned Counsel for the petitioner submitted that the revised scales of pay are thus applicable to the petitioner and therefore she should have been placed in the pay scale of Rs.700-50-1600 from 1st August, 1975.

10. In the submission of the learned Counsel for the petitioner once the petitioner is entitled to this pay scale, she is also entitled to the consequential arrears on account of such re-fixation of pay.

11. Learned AGP on the other hand opposed the Petition. She invited our attention to the affidavit-in-reply filed by Shri Appaji Chandrakant Savant, Administrative Officer, on behalf of the respondent nos.1, 2, 3 and 7. Learned AGP invited our attention to the letter dated 3rd June, 1977 sent by the petitioner to the respondent no.6. In this letter it is mentioned that she is placing her application for reappointment as lecturer in English in Junior College. Learned AGP submits that her appointment in the Senior College was not continuous. Her service were terminated on 30/9/1976. She was reappointed in Junior College from 1/10/1976 with an understanding that her services are likely to be dispensed with if the post held by her is required to be utilized for absorbing surplus of the teaching staff. According to the learned AGP the

petitioner is confirmed in Junior College by an order dated 4/12/1980 with effect from 25th July, 1980.

12. Learned AGP further submits that the petitioner is not eligible for the pay scale as prescribed by the Government Resolution dated 25th October, 1977. According to her, the petitioner has based her claim on Clause (iii) of the guidelines of Government Resolution dated 11th June, 1976 for the absorption of teachers determined as surplus at the college level. In the submission of the learned AGP the petitioner is not covered by Clause (iii). In her submission, the petitioner was admittedly working as a tutor until 31st July, 1975. It is only from 1st August, 1975 that the petitioner was appointed as a lecturer of English in Senior College. Therefore, the very basis of the petitioner's claim that she is covered by Clause (iii) is fallacious.

13. Having considered the submissions made by the learned Counsel for the respective parties we are of the opinion that the petitioner is not entitled for the pay scale claimed by her from 1976. The entire basis of the petitioner's claim is the

Government Resolution dated 11th June, 1976 more particularly Clause (iii) of the guidelines for absorption of the teachers determined as surplus at the college level. Clause (iii) applies to college teachers who were in service on or before 7th February 1975 and were also in continuous service upto the end of the academic year 1975-76 in a college or colleges under the same management but had not completed two years of continuous service upto the end of academic year 1975-76. Admittedly petitioner was appointed as a lecturer of English on 31/7/1975. The petitioner was working as a tutor of English in the Senior College with effect from 16th December, 1974 upto to 31st July, 1975. Even the petitioner's appointment was approved by the respondent no.4 University as a tutor. Thus, on or before 7th February, 1975 the petitioner was admittedly working as a tutor. So far as college tutors are concerned their cases were to be considered in accordance with Clause (iv) and (v) of the guidelines. Even as regard the tutors/demonstrators relevant provisions of the guidelines apart from Clause (iv) and (v) is Clause (5) of the guidelines. In this view of the matter the

petitioner was appointed as a lecturer of English only with effect from 1st August, 1975 with the respondent no.6 and therefore is not entitled for the benefit of Clause (iii) of the guidelines. The Government Resolution dated 25th October, 1977 and the revision of the scale prescribes therein are applicable to those who are working as Senior Lecturers/Lecturer covered by Clause (iii) of the guidelines. The petitioner was appointed as a full time teacher in English in Junior College with effect from 1st October, 1976 in the pay scale of Rs.500-900. As the petitioner is not covered by Clause (i),(ii) and (iii) of the guidelines she is not entitled to the scale of Rs.700-50-1600. Apart from the above, we find that the Petition suffers from delay and laches as the Petition is filed in the year 1998 making grievance about her pay scale in the year 1976.

14. There is, therefore, no merit in this Petition. Learned Advocate for the petitioner indicated that in view of the pendency of the Petition the respondents have not paid gratuity amount to the petitioner. Learned AGP on instructions submits

that if the said amount is not paid to the petitioner the same would be immediately paid to her and in any case within period of four weeks from today. The petitioner also be paid interest at the rate of 6% per annum from the date when the gratuity was due and payable till actual payment is made. Subject to the above Writ Petition is dismissed with no order as to costs.

15. Rule to stand discharged.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)