

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

WRIT PETITION NO. 1263 OF 2004

The State of Maharashtra
through : ..Petitioner /
The Joint Director, Higher Education Original Resp.
Division, Nanded, Dist. Nanded no.4

versus

1. Narayan s/o Shankarrao Deshmukh,
R/o Uattarwancha Wada, Dattatraya
Galli, Mukhed, Tq. Mukhed,
Dist. Nanded
2. Virbhadra Education Society,
Through :
Its President, Mukhed, Dist. Nanded
3. Virbhadra Education Society,
Mukhed, Dist. Nanded,
through its Secretary, ..Respondents/
R.No.1 Orig.
4. Mahatma Jyotba Phule Mahavidyalya, Appellant.
Mukhed, Dist. Nanded, Dist. Nanded R.2 to 4 orig.
Resp.No.1 to 3

Mr. S.N. Morampalle, Asstt. Government Pleader for petitioner
Mr. Vivek Bhavthankar, Advocate for respondent no. 1

CORAM : SUNIL P. DESHMUKH, J.
DATE : 7th June, 2018

ORAL JUDGMENT :

1. Heard learned counsel for parties.
2. Writ Petition has been moved posing challenge to the
order passed by the presiding Officer, University and

College Tribunal, Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, in appeal bearing No. SRTMU-06/2002 dated 16-03-2003.

3. Indisputable facts are, respondent no. 1 in present writ petition – original appellant had joined services with respondents no. 4 college run by respondents 2 and 3 under order dated 15-06-1972. Since then, he had been working with respondent 4 as peon. From 18-07-1997 he has been promoted as library clerk pursuant to government resolution dated 22-02-1980.

4. However, government auditor in his report dated 13-03-2002 raised an objection to promotion and appointment of respondent no. 1 to the post of library clerk to the effect that pursuant to government resolution dated 22-02-2000 where a peon has been given pay scale of library attendant of ₹ 950-1400 and ₹ 975-1600 and his pay is revised to ₹ 4000-6000 as per implementation of the 5th Pay Commission recommendations, then he is not entitled to promotion. Based on this, respondents no.2, 3 and 4 purported to revert respondent no. 1 and as such appeal had been preferred by the respondent and the same came

be allowed under order dated 16-4-2003 which is subject-matter of challenge in this writ petition by State.

5. Learned Assistant Government Pleader for petitioner submits that there had been government decision on 22-02-2000 not to promote persons who had been given pay scale of library attendant of ₹ 950-1400 and ₹ 975-1660 while their pay scale has been revised to ₹ 4000-6000 under implementation of recommendations of the 5th Pay Commission and, as such, promotion given to respondent no.1 by respondents no. 2, 3 and 4 is apparently not justifiable and thus reversion order was passed based on auditor's report. Having regard to position emerging from aforesaid government resolution, respondent no. 1's promotion was not proper, however, the tribunal under impugned order has not considered relevant aspects and has erroneously set aside order of reversion of appellant – respondent no. 1 herein.

6. Mr. Bhavthankar, learned counsel appearing on behalf of respondent no. 1, however, contends that pursuant to decision under government resolution dated 22-02-1980 respondent no. 1 had been promoted as library clerk but

had not been receiving salary in the pay scale as reflected in auditor's report. He had been drawing salary in pay scale of library attendant as approved by the university and thus the case of respondent no. 1 would not be covered by government resolution dated 22-02-2000 relied on by the petitioner.

7. Perusal of the decision by the tribunal shows that it had been the case of the employers i.e. present respondents no. 2 to 4 that respondent no. 1 – appellant had been promoted to the post of library clerk with effect from 01-07-1997 initially in pay scale of Rs.950-1500 which subsequently came to be revised to Rs.3050-4500 with effect from 01-01-1996 under implementation of recommendations of the 5th Pay Commission. Written statement only refers to that pay scale to which respondent no. 1 had been entitled was ₹ 4000 – 6000. This was the case of the employer whereas, the case of present petitioner – State had been that there was gap in the service of respondent no. 1 from 15-06-1974 to 16-06-1974 and the same had not been regularized and, therefore, respondent no. 1 could not have been given promotion and further that the strength of the students in the college did not meet

requirement for conversion of one post of library attendant to that of library clerk.

8. Service book of respondent no. 1 has been observed to indicate that he had been drawing salary in pay scale of ₹ 950-1500 i.e. in the cadre of library clerk as on 01-10-1990 and prior to that he was drawing salary in the cadre of library attendant in the pay scale prescribed by the university for library attendant i.e. ₹ 950-1400. Respondent no. 1 had produced record of revised pay scales prescribed by Swami Ramanand Teerth Marathwada University, Nanded, indicating that pay scale of ₹ 950-1500 has been revised to ₹ 3050-4500/-. Thus, the tribunal had found respondent no. 1 had not been drawing salary in the pay scale of ₹ 975-1600 and had not been given pay scale of ₹ 4000-6000 in the cadre of peon. It was only on promotion as library clerk, he was given pay scale of ₹ 950-1500 which was revised to ₹ 4000-6000 under implementation of recommendations of the 5th Pay Commission. In such a given situation, objection by auditor in his report as observed by the tribunal would hardly be sustainable.

9. The tribunal further had found that the break in service had been condoned under the orders by the authority.

10. Over and above aforesaid, Mr. Bhavthankar purports to submit that there had been no interim relief operating thus far and that respondent no. 1 has retired from service and is running 65th of his age and requests no orders against his interest now at this stage be passed after such a huge passage of time.

11. In the face of aforesaid situation which could not be disputed by petitioner, the submissions on behalf of petitioner do not appear to carry any substance.

12. Writ petition stands dismissed.

13. Rule stands discharged.

SUNIL P. DESHMUKH,
JUDGE

pnd/-