

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

WRIT PETITION NO. 1795 OF 2016

State of Maharashtra and another	... Petitioners
Versus	
Mahadev Sitaram Gurav	... Respondent

.....

Mr. Narendrakumar Rajpurohit, AGP for the Petitioners.
Ms Ranjana Todankar i/b Miss Swati Prabhakar Manchekar for
the Respondent.

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CORAM : A. S. OKA AND M. S. SONAK, JJ.

RESERVED ON : 09th OCTOBER, 2018
PRONOUNCED ON : 22nd OCTOBER, 2018

JUDGMENT: (Per M. S. Sonak, J.)

1. Heard learned Counsel for the parties.
2. The challenge in this petition is to the judgment and order dated 3rd March, 2014 made by the Maharashtra Administrative Tribunal ('MAT' for short) allowing Original Application No. 328 of 2010 instituted by the respondent seeking interalia the following substantive reliefs.

“(a) By suitable orders / directions, this Hon'ble Tribunal be pleased to direct the Respondents that the applicant is eligible for the benefit of Assured Progressive Scheme from 25.3.1995 as per GR dated 15.10.2009 and be pleased to hold that the GR dated 15.12.2009 is illegal and contrary to the provisions of law.

(b) By Suitable order / directions, this Hon'ble Tribunal be pleased to direct the Respondents to release all benefits of Assured Career Progressive Scheme to the applicant immediately w.e.f. the date on which applicant was eligible for Assured Career Progressive Scheme."

3. The respondent was appointed as a Cleaner in the Government establishment on 13th June, 1978. Thereafter, in the year 1983, the respondent was promoted to the post of Clerk. On 26th June, 1990, the respondent passed the departmental examination, essential for his case to be considered for further promotions in the General Administration Department, where he was posted.

4. On 8th June, 1995, the State issued a Government Resolution for award of Time Bound Promotional Scales (TBPS) in respect of employees who have completed 12 years of regular service, subject to fulfillment of the conditions set out in the said Government Resolution. By yet another Government Resolution dated 20th March, 1997. It was clarified that the employees who failed to pass the qualifying/departmental examination within the stipulated period or within the stipulated chances, nevertheless be eligible for benefits of TBPS if their juniors receive the benefit of TBPS.

5. The effect of the aforesaid two Government Resolutions dated 8th June, 1995 and 20th March, 1997 fell for consideration before the MAT in Original Application No. 22 of 2005 instituted by Smt. Hemlata Choudhari, a Clerk in the Sales Tax Department of the Government of Maharashtra. Since, the facts in case of Hemlata are quite similar to the facts in the present case, some reference to the facts in Hemlata's case become necessary.

6. Hemlata was appointed as a Clerk on 13th March, 1990 and she passed the departmental examination on 21st September, 1998 and 14th May, 1999. She completed 12 years of service as a Clerk on 14th March, 2002 and represented that she be granted the benefits of TBPS. Since there was no response, Hemlata instituted Original Application No. 22 of 2005 before the MAT. The State Government, in response to Hemlata's Original Application No. 22 of 2005 relied upon Government Resolution dated 16th December, 1995 to urge that since Hemlata had failed to pass the qualifying/departmental examinations within the stipulated period and chances, she had lost her seniority and therefore was not eligible for award of TBPS. The second contention raised by the State Government was that the

computation of period of 12 years for award of TBPS must commence from 5th June, 1998, since this was the date on which Hemlata passed the departmental/qualifying examination. On this basis the State Government urged that there was no case made out to consider the case of Hemlata for award of TBPS at least upto 5th June, 2010.

7. The MAT upon due consideration of its own previous judgments, judgments of this Court as well as the judgment of the Apex Court in case of **Dwijen Chandra Sarkar and another Vs. Union of India and others - (1999) SCC (L & S)486**, by its judgment and order dated 17th February, 2006, upheld the contentions of Hemlata and rejected the contentions of the State. The observations in paragraphs 15 to 18 of this judgment are relevant and they read as follows :

*“15. In the instant case, as the applicant had failed to pass the departmental examination, her placement was disturbed in the revised seniority list. It was thought that on account of failure to pass the examination within the specified chances and stipulated period, the G.R. dated 20.3.1997 would apply. It may be possible in a case wherein the applicant had not passed the said examination even during that period of 12 years. **On the relevant date, however, if she had passed the examination, her case was liable to be considered along with other for grant of time bound promotion. She is eligible and therefore, the benefit of time bound promotion will have to be extended to her, provided of course the other conditions mentioned therein are complied with.***

16. We therefore, find that in consonance with the orders passed by this Tribunal in O.A. No.229 of 1999 on 13.10.2000 and in O.A. 225 of 1999 on 28.11.2003 and such other orders, we have no other option but to reach to the same conclusion. Miss S.P. Manchekar, learned Presiding Officer has drawn our attention that, when the case of Smt. Pol was decided, the G.R. dated 20.3.1997 was not brought to the notice of this Tribunal. It is also urged that the case of Trimbak Kadge V/s. State of Maharashtra & Ors. reported in 2003(2) C.R. 231 has no application. The oral order was complied with in the case of Kumawat, as there were specific directions to that effect. We find that the ratio of the case of Sarkar (cited supra) will have to be made applicable. **The loss of seniority on account of transfer or failure to pass the departmental examination will not be relevant for considering the case of employee for grant of time bound promotion. The regular promotions stand at different footing and the time bound promotion is on different foundation. The object in case of the letter is to remove the frustration.** Of course, in case the applicant or such other employees are not in position to get the regular promotion, then the term and condition used in Clause (y) of the Circular dated 8.6.1995 together with G.R. dt. 20.3.97 shall follow.

17. **In the result, therefore, we are inclined to hold that the decisions rendered by this Tribunal from time to time, will have to be followed.** Number of authorities, which are relied upon by the parties regarding the precedents, are not discussed.

18. In the result, therefore, the Original Application is allowed. The Respondent is directed to consider grant of time bound promotion to the applicant, consequent on the completion of 12 years of continuous service in terms of G.R. dated 8.6.1995, subject to applicant's fulfilling other criteria laid down in the G.R. for such promotion within three months from the date of this order. No order as to costs."

[Emphasis supplied]

8. The State challenged the MAT's aforesaid judgment and order dated 17th February, 2006 by instituting Writ Petition No. 4804 of 2006. The Division Bench of this Court by its order dated 6th November 2006, however, declined to interfere. Since there was no further challenge, the decision in Hemlata's case attained finality.

9. Ordinarily, the State, was required to follow the decision in Hemlata's case not just in case of Hemlata but also in case of its employees placed in a position similar to that of Hemlata. This is more so because there is no dispute that the ruling of MAT and this Court was ultimately accepted and followed by the State in case of Hemlata, without any further challenge.

10. Instead, the State Government, in purported compliance with the decision in Hemlata's case issued Government Resolution dated 15th October, 2009 in order to extend the benefit of TBPS to employees who may have cleared the qualifying/departmental examination within period of 12 years, though not within the stipulated period or stipulated chances. However, the resolution provided

that such benefit can be availed only from 17th February, 2006 onwards. The date of 17th February, 2006 was fixed as a cut off date because this was the date on which the MAT had disposed of Hemlata's Original Application No. 22 of 2005.

11. The State, thereafter on 21st May, 2010 issued a corrigendum to the Government Resolution dated 15th October, 2009. The corrigendum declared that the benefit of TBPS to employees governed by the Government Resolution dated 15th October, 2009 will become actually payable with effect from 15th October, 2009 though notional benefit would be extended from prior date. It was clarified that no arrears prior to 15th October, 2009 would be paid to such employees.

12. The respondent aggrieved by the artificial cut off dates introduced by the Government Resolutions dated 15th October 2009 and 21st May, 2010 instituted the Original Application No. 328 of 2010 before the MAT. The respondent contended that he was entitled to the benefits of TBPS as well as the subsequent Assured Career Progressive Scheme (ACPS) in terms of the Government

Resolutions dated 8th June, 1995 and 20th March, 1997 as interpreted in Hemlata's case, from the date he completed 12 years stagnation service and that such date could not have been postponed on the basis of some artificial cut off date, which has absolutely no nexus with the objectives of the TBPS or ACPS.

13. The MAT, vide impugned judgment dated 3rd March, 2014 has upheld the respondent's contention and directed the State to award the respondent the benefit of TBPS and ACPS unhindered by the cut off dates in the Government Resolutions dated 15th October, 2009 and 21st May, 2010. Aggrieved by the impugned judgment and order dated 3rd March, 2014 in Original Application No. 328 of 2010, the State has instituted the present petition.

14. Mr. Narendrakumar Rajpurohit, the learned AGP for the State submits that the date from which benefit under TBPS or ACPS ought to be extended by the State to its employees is essentially a policy matter. He submits that in such policy matters the Courts and Tribunals ought not to interfere. He submits that the view taken by the MAT might expose the State to considerable financial burden. Mainly

on this ground Mr. Rajpurohit submits, that the impugned judgment and order warrants interference.

15. Mr. Rajpurohit, the learned AGP further submits that the State by issuing Government Resolution dated 15th October, 2009 in fact extended the benefit of TBPS even to those employees who may have failed to clear the qualifying/departmental examination within the stipulated period or within the stipulated chances. Therefore, the State was well within its rights to determine the date from which such benefit could be extended to its employees. He submits that there was nothing arbitrary or unreasonable in the choice of the date and therefore the MAT, exceeded jurisdiction in striking down the cut off date or the Government Resolution dated 15th October, 2009.

16. Finally, Mr. Rajpurohit submitted that there was clear ambiguity in the relief granted by the MAT in terms of paragraph 9 (a) of the respondent's Original Application No. 328 of 2010. The relief as granted amounts to striking down the Government Resolution dated 15th October, 2009 in its entirety which means that the respondent could never have been awarded the benefits of TBPS or ACPS in

terms of the Government Resolution dated 15th October, 2009. Mr. Rajpurohit further points out that the respondent had never even challenged the Government Resolution dated 21st May, 2010 and therefore the MAT clearly exceeded its jurisdiction in holding that even the said Government Resolution dated 21st May, 2010 was arbitrary or discriminatory in nature. He submits that for these reasons also the impugned judgment and order warrants interference.

17. Ms. Ranjana Todankar, the learned Counsel for the respondent defended the impugned judgment and order by adopting the reasons set out therein. She submitted that rights which were vested in the respondent could not have been taken away with retrospective effect by introducing some artificial cut off dates. She submitted that the purpose of TBPS or ACPS scheme is to relieve employees from the burdens of stagnation in service. She submits that admittedly the respondent has stagnated in service despite clearing the qualifying/departmental examination. She therefore submits that the State could not have arbitrarily deprived the respondent the actual benefits of TBPS or ACPS particularly when such benefits were extended to

several others, not to mention Hemlata Choudhari, Ramdas Tavre and Sambhaji Budhawale. For all these reasons Ms. Todankar submits that this petition may be dismissed.

18. The rival contentions now fall for our determination.

19. In terms of the Government Resolutions dated 8th June, 1995 and 20th March, 1997, the respondent was entitled to the benefit of TBPS and thereafter the ACPS, because admittedly the respondent had cleared qualifying/departmental examination on 26th June, 1990 i.e. well within the period of 12 years from the date of his appointment as a Clerk in the year 1983.

20. Hemlata, Tavre and Budhawale who were placed in a position not significantly different from the respondent, instituted separate Original Applications before the MAT, including Original Application No. 22 of 2005 aggrieved by the inaction on the part of the State in granting them the benefits of TBPS in terms of the Government Resolutions dated 8th June, 1995 and 20th March, 1997.

21. The MAT by detailed judgment and order dated 17th February, 2006 accepted the contentions raised by

Hemlata and others and directed that their cases be placed before the DPC to consider the grant of benefit of TBPS. This Court, by its judgment and order dated 6th November, 2006 in Writ Petition Nos. 4804, 4805 and 5498 of 2006 upheld the directions issued by the MAT in favour of Hemlata, Tavre and Budhawale.

22. On the basis of reasoning in Hemlata's case the State ought to have extended the benefits of TBPS and ACPS to the respondent, particularly because the case of the respondent was not significantly different from the cases of Hemlata, Tavre and Budhawale. In ***Amrit Lal Berry Vs. Collector of Central Excise Central Revenue and others - AIR 1975 SC 538*** the Apex Court has observed that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court.

23. If the purpose of issuing Government Resolution dated 15th October, 2009, was merely to extend benefit of TBPS to all employees similarly placed to Hemlata, Tavre and Budhawale, then there could have been no difficulty. However, the Government Resolution dated 15th October, 2009, on one hand seeks to extend such benefit to employees similarly placed to Hemlata, Tavre and Budhawale, but on the other hand purports to extend such benefit only with effect from 17th February, 2006, even though, employees similarly placed, may have completed 12 years of stagnation service on much earlier dates. The Government Resolution dated 15th October, 2009 was further purported to be corrected by Government Resolution dated 21st May, 2010 so as to postpone the benefit to 15th October, 2009 on actual basis. The later Government Resolution clarifies that arrears prior to 15th October, 2009 shall not be paid.

24. The MAT, according to us, has quite rightly granted relief to the respondents by holding that the introduction of such artificial dates was arbitrary and discriminatory. The MAT has given sound reasons in support of its judgment.

The MAT has noted that employees who completed 12 years stagnation period say by the year 1999 cannot be made to forgo the benefits under the TBPS for the period between 1999 and 2009 on account of such artificial cut off dates introduced by the Government Resolutions dated 15th October, 2009 and 21st May, 2010.

25. From the analysis of the Government Resolutions dated 8th June, 1995 and 20th March, 1997 is quite clear that the respondent was eligible to receive the benefits of TBPS because the respondent had admittedly cleared the qualifying/departmental examination well within the period of 12 years from the date of his appointment as a Clerk in the year 1983. Such benefit was however denied not only to the respondent but to several other employees placed in a similar position, which included Hemlata, Tavre and Budhawale. The MAT, in Original Application No. 22 of 2005 and connected matters instituted by such employees granted them the relief. The view taken by the MAT was duly upheld by the Division Bench of this Court. Therefore, on the same basis and upon the same terms, the State Government, was required to extend benefit of the TBPS and ACPS to the respondent.

26. The State, in the guise of implementing the rulings of the MAT and this Court could not have introduced some artificial cut off dates. There is no merit in the AGPs contention that some additional benefit was granted by Government Resolution dated 15th October, 2009. The Government Resolution dated 15th October, 2009 itself refers to the rulings of the MAT and this Court, which means that the benefits were in fact extended on account of correct interpretation of the existing Government Resolutions by the MAT and this Court. The State having accepted such rulings and the interpretation therein, could not have restricted the benefits to some of the employees from the same class in such an arbitrary and discriminatory manner.

27. The result of such restriction would mean that some employees, including Hemlata, Tavre and Budhawale would get the benefits of TBPS right from the date they complete 12 years stagnation service and respondent/employees similar to the respondent would be deprived of such benefit, even though there is no difference whatsoever in the relative positions of the two groups of employees. Therefore, we are unable to accept the AGPs contention

that this was purely a matter of policy. In any case, the State cannot have some policy which is its arbitrary or discriminatory. The State, even by way of a policy decision cannot treat equals as unequals or discriminate against a group of employees even though, there is virtually no difference between such group of employees and the employees whom the State has extended certain benefits. The constitutional mandate of Article 14 cannot be frustrated in this manner. In ***State of Haryana Vs. Gurcharan Singh - (2004) 12 SCC 540***, the Apex Court has held that the Government, having taken a policy decision, must implement the same fairly and uniformly, and cannot discriminate between persons similarly situated.

28. The view taken by the MAT is consistent with the principles enunciated by the Apex Court in ***Dwijen Chandra Sarkar (Supra)*** while explaining the true purpose of a time bound promotional scheme. The Apex Court has explained why the position in regard to “time-bound” promotions is different from the scheme for grant of normal or actual promotions. 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 those higher up. The Apex Court has explained that the true purpose of a time-bound promotion is to relief frustration on account of stagnation. Therefore, as long as frustration on account of stagnation is a common factor, the State cannot extend benefit only to one section of employees in the category and deny it to another section of employees in the same category. The common factor for all such employees is stagnation in a particular post for the prescribed number of years. The contentions urged on behalf of the State, if accepted will run counter to the principles explained by the Apex Court in ***Dwijen Chandra Sarkar (Supra)***.

29. No doubt, there is some ambiguity in the prayer clause of Original Application No. 328 of 2010, inasmuch as

there is no reference to the Government Resolution dated 21st May, 2010 therein. However, according to us the absence of any reference to the Government Resolution dated 21st May, 2010 in the prayer clause makes no significant difference. From the pleadings in Original Application No. 328 of 2010 it is very clear that the respondent was aggrieved by the artificial dates introduced in Government Resolutions dated 15th October, 2009 and 21st May, 2010. This is not a case where the State can claim that it was mislead on account of the slight discrepancy in the prayer clause.

30. Besides, the prayer clause in the respondent's Original Application No. 328 of 2010 had made specific reference to the Government Resolution dated 15th October, 2009. The Government Resolution dated 21st May, 2010 is nothing but a corrigendum to the Government Resolution dated 15th October, 2009. Therefore, the Government Resolution dated 21st May, 2010 is not some stand alone Government Resolution, but the same has to be necessarily read along with the Government Resolution dated 15th October, 2009. Thus construed, there was no error on the part of the MAT in interfering with the

Government Resolution dated 21st May, 2010 along with the Government Resolution dated 15th October, 2009.

31. The contention based upon financial burden has been correctly appreciated and answered by the MAT in the impugned judgment. The issue of financial burden was relevant when the State formulated and adopted the TBPS and ACPS vide Government Resolutions dated 8th June, 1995 and 20th March, 1997. The respondent is basically claiming relief on the basis of correct interpretation of the the very same Government Resolutions. In any case, the State in response to a charge of discrimination, cannot plead lack of resources.

32. For all the aforesaid reasons we see no good ground to interfere with the impugned judgment and order. Accordingly, this petition is liable to be dismissed and is hereby dismissed. There shall however be no order as to costs.

33. Pending civil applications, if any, do not survive and the same are disposed of.

(M. S. SONAK, J.)

(A. S. OKA, J.)