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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4433 OF 2003

Union of India and Ors.	... Petitioners.
V/s.	
A.M. Shamsher, Asstt. Librarian, Armed Forces Medical College.	... Respondent.

WITH
WRIT PETITION NO.4434 OF 2003

Union of India and Ors.	... Petitioners.
V/s.	
Kalpana A. Bhat, Librarian, Armed Forces Medical College.	... Respondent.

Mrs. Neeta Masurkar a/w Mr. S.G. Thakur and Nieyaati Masurkar and Mr. N.D. Sharma for the Petitioners in both petitions.

Mr. S.P. Saxena for the Respondents in both petitions.

CORAM : A.S.OKA AND M.S. SONAK, JJ.
DATE : 30th AUGUST 2018.

ORAL JUDGMENT (Per A.S. Oka, J.)

1 Called out for final hearing. The issue involved in both the petitions under Article 226 of the Constitution of India is the same. Therefore, we are extensively referring to the facts of the case in Writ Petition No.4433 of 2003 which arises out of Original Application No.115 of 2002. Original Application No.115 of 2002 and Original Application No.919 of 2001 were allowed by the common judgment and order dated 1st November 2002. Writ Petition No.4434 of 2003 takes exception to the order passed in Original Application No.919 of 2001.

2 The respondent in Writ Petition No.4433 of 2003 is in the employment of the Armed Forces Medical College at Pune. According to the case of the said respondent, on 8th October 1988, he was appointed as Assistant Librarian in the Armed Forces Medical College Library (for short “AFMC Library”) . There was a recommendation made in paragraph 11.63 of the Report of the Fourth Central Pay Commission. The recommendation was that a Committee may be constituted to undertake review of the pay scales, qualifications and recruitment levels of responsibility of the library staff. Accordingly, a Review Committee was set up which submitted recommendations. After considering the said recommendations, Office Memorandum (for short “OM”) dated 24th July 1990 was issued introducing pay structure for the library staff under the purview of Central Government. There cannot be a dispute about the fact that the library of AFMC is under the purview of Central Government. It provided for revised pay scale of 1400 – 2600 to the persons holding the post of Library and Information Assistant possessing qualification with Bachelor in Library Science. As far as the respondent is concerned, he was possessing qualifications of M.A. as well as Bachelor and Master's Degree in Library Science of Pune University. Clause No.4.1 of the OM, provided for higher pay scales to various categories of officers such as Library and Information Assistant, Assistant Library and Information Officer, Library and Information Officer, Director (Library and Information) and the Director. According to the case of the respondent, in view of the OM, he was entitled to pay scale of Rs.1400-2600. As far as grant of the said pay scale is concerned, admittedly, the same was granted with effect from 24th July 1990. Reliance was placed upon clause 4 of the OM which provided for undertaking exercise of categorisation of Libraries under the Central Government. As pointed out earlier, to the 5 posts narrated above, after

categorisation, higher pay scales were prescribed. For Library and Information Officer, higher pay scale of 3000-4500 was prescribed. As provided in clause 6 of the OM, action of categorisation was also to be taken on priority basis. According to the case made out in the Original Application, the AFMC Library falls in the Category-III. It is pointed out in the Original Application that clause 4.1 prescribes higher pay scales for various posts including the post of Assistant Library and Information Officer. The specific case pleaded in paragraph 4.5 of the application is that AFMC approached the Central Government for categorisation of the Library as Category-II in terms of the criteria laid down in the said OM. The correspondence made in this behalf is also relied upon and it is stated that approval of the Ministry of Finance for categorisation of the Library of AFMC was awaited. The case made out in the Original Application is that in terms of the said OM, as the Library of AFMC falls in the Category-III as categorised by letter dated 23rd May 2001, the respondent is entitled to revised pay scale of Rs.2000-3500 with effect from 24th July 1990 as provided in clause 4.1 of the said OM. Prayers (b) and (c) of the Original Application read thus :-

- “(b) to direct the Respondents to place the applicant in the scale of pay of Rs.2000-3500 w.e.f. 24.07.1990 as Asst. Library Information Officer and fix his pay as per Rules,
- (c) to direct the respondents to place the applicant in the revised scale of pay of Rs.6500-10500 w.e.f. 01.01.1996 and fix his pay as per Rules.”

3 As far as the respondent in Writ Petition No.4434 of 2003 is concerned, the facts are more or less same except for the fact that the respondent was Librarian in the library of AFMC.

4 By the impugned common Judgment and Order, the Original Application No.115 of 2002 was partly allowed. The Tribunal found that benefit of revised pay scales as provided in clause 4.1 was granted by the Government of India to the library staff of the libraries under the Defence Ministry vide letter dated 26th July 1994. Therefore, benefit of revised pay scale was granted to the respondent in Writ Petition No.4433 of 2003 with effect from 26th July 1994 with all the consequential benefits. In case of the respondent in the other Writ Petition, benefit of higher pay scale of 3000-4500 was granted with effect from 26th July 1994.

5 From the submissions made before the Central Administrative Tribunal (for short “the Tribunal”) which are recorded in paragraph 10 of the impugned order, the contention raised by the petitioners (respondents in the O.A.) was that since the library of AFMC was categorised as guidelines given in the said OM only in the year 2001, the case of the respondent for grant of revised pay scale could have been considered only thereafter. It is stated that the matter is taken up with the higher authorities on 9th October 2001 obviously for grant of higher pay scale. In fact, in paragraph 16 of the written statement of the petitioners in O.A. No.115 of 2002, the petitioners have contended that after categorisation of AFMC as Category-III vide letter dated 23rd May 2001, the case has been referred to respondent no.2 in the original application for issue of orders. In paragraph 17, it is assured that the respondents will be placed in proper pay scale after receipt of the orders from the respondent no.2 in the original application and action for further revision with effect from 1st January 1996 (in terms of Fifth Pay Commission) will be taken thereafter. Thus, the stand taken by the petitioners before the Tribunal was that the case of the respondents for placing them in higher pay scales as provided

in clause 4.2 of the OM will have to be considered in view of the letter dated 23rd May 2001 by which the Ministry of Defence categorised the said library as Category-III.

6 Even in clause (l) of paragraph 3 of the writ petitions, it is specifically contended that by letter dated 9th October 2001, AFMC recommended implementation of the letter dated 23rd May 2001. A copy of the said letter is also annexed to the petition as Exhibit – G. We have perused the said letter addressed by the Commandant on behalf of the AFMC. Approval is sought by the said letter for revision of pay scales on the basis of the letter dated 23rd May 2001.

7 Therefore, the narrow controversy to be considered is whether the respondents will be entitled to revised pay scale in terms of clause 4.1 of the said OM with effect from 23rd May 2001 or w.e.f. 26th July 1994 as granted by the Tribunal under the impugned order.

8 The first submission of the learned counsel appearing for the petitioners is that the respondents never challenged the delay in issuing categorisation of the said library. She submitted that various clauses under clause 4 of the OM are very clear. The question of considering placing the respondents in higher pay scales could have been considered only after categorisation. Her submission is that on conjoint reading of clauses 4.1 to 4.3, it is very clear that the benefit of higher pay scales was to be made available to the library in-charge of the libraries. She further submitted that the respondents were occupying Group-C posts. She pointed out that Recruitment Rules were issued on 22nd February 1993 pertaining to various categories of Group – A and Group – B posts in library discipline.

Therefore, the respondents are not entitled to the benefits of the said Rules. It is her submission that in view of clause 4.3 of the said OM, the post can be upgraded only by one step initially and in the present case, by virtue of the impugned order, the respondents will get upgradation by more than one step which is not permissible in law. She submitted that the library of AFMC was not categorised under letter dated 26th July 1994 and for the first time, it was categorised as falling in Category-III w.e.f. 23rd May 2001 and therefore, by no stretch of imagination, the benefits under clause 4.1 of the said OM could have been granted to the respondents at a date prior to 23rd May 2001. The learned counsel appearing for the respondents supported the impugned order. The learned counsel appearing for the petitioner relied upon the decision of the learned Single Judge of the Allahabad High Court dated 30th October 2007 in Civil Misc. Writ Petition No.40138 of 1998 (Chandra Kant Dixit Vs. Director Kendriya Hindi Sansthan). Lastly, she submitted that the respondent in Writ Petition No.4434 of 2003 does not possess qualifications for the post of librarian.

9 We have considered the submissions. We have perused the documents and pleadings on record. We have also perused the written statement filed by the respondents. It is not in dispute that by the application of the said OM, with effect from 24th July 1990, revised pay scales as provided in the said OM were granted. Clauses 4.1 to 4.3 of the OM are relevant which read thus :-

“4.1 After placement of the existing incumbent in the grade structure indicated in para 2 above, each administrative Ministry may initiate action to categorise the Libraries under their control in consideration with F.A. concerned based on the parameters indicated in Annexure II to this O.M. Based on the categorisation of the Libraries so

determined the designation and scale of pay of the Librarian. In charge of each category of Library may be adopted on the lines indicated below :-

Category	Post with Designation	Pay Scale (Rs)
I.	Library & Information Assistant	1400-2600
II.	Asstt. Library & Information Officer	2000-3500
III.	Library & Information Officer	3000-4500
IV.	Director (Library & Information)	4500-5700
V.	Director	5900-6700

4.2 In case the existing incumbent (viz. Librarian in charge) is in a lower scale of pay than the scale determined based on the categorisation, he may be considered for appointment in the higher scale provided he fulfills the recruitment qualifications laid down for that post in Annexure I to this O.M. subject to the provisions of Para 4.3.

4.3 Where based on categorisation the post of the head of a Library gets upgraded by more than one grade, the post will be upgraded only by one step initially. Its up gradation to the appropriate higher grade may be reviewed after three years in consultation with Ministry of Finance.”

10 On plain reading of these clauses under clause 4 of the said OM, the higher pay scales were to be granted to the employees of the libraries under the Central Government after the categorisation. The learned Members of the Tribunal have noted the contentions raised by the petitioners before it in some detail in paragraph nos.10 and 11 of the impugned judgment. We find that it was not at all contended by the petitioners before the Tribunal that the respondents not being in-charge of library are dis-entitled to higher pay scales as provided in clause 4.1. It is

not the case made out that the respondents were dis-entitled to benefit of higher pay scale as on 23rd May 2001 on the ground that they were not in-charge of each category of library. Apart from the fact that the said contention that only those who were in-charge of the libraries were entitled to higher pay scale as provided in clause 4.1 cannot be accepted, in any event, such a factual contention cannot be raised for the first time in a writ petition under Article 226 of the Constitution of India before this Court. The said factual contention ought to have been raised before the Tribunal so that the respondents could have dealt with the said contention. Moreover, in the grounds for relief in paragraph 4 of writ petitions, it is not the case made out that as on 26th July 1994, the respondents were not covered by clause 4.1. The contention is that till 23rd May 2001, the AFMC library was not categorised as falling in Category-III and therefore, the respondents were dis-entitled to benefit of higher pay scale under clause 4.1.

11 Perusal of the written statement filed by the Brigadier C.V. Koshy, in-charge of Administration for the Commandant, Armed Forces Medical College in O.A. No.115 of 2005 and in particular paragraph 13 shows that AFMC had initiated the process of revision of pay scale on the basis of the said OM. Written statement shows that AFMC was perusing the matter of categorisation with the concerned authorities of the Government of India. Perusal of the cause title of the Original Application shows that the Union of India was a party respondent. It is not the stand of the Union of India that as on 26th July 1994, the AFMC library was dis-entitled to categorisation as falling in Class-III. Moreover, on 26th July 1994 the Ministry of Defence issued sanction of revision of pay scale for library staff in Armed Forces Headquarter (AFHQ) and Inter Service

Organisations (ISOs). Paragraph 6 of the said OM requires all Ministries and Departments to initiate action on priority basis and communicate the results of review to the Implementation Cell, Department of Expenditure. The OM was issued on 24th July 1990 and categorisation was issued to AFMC library in May 2001. It is in this context that in the impugned Judgment and Order, the Tribunal has observed that the fact that the categorisation was granted in May 2001 in terms of the said OM shows that the Ministry was acting as per the said OM and was not treating the OM as outdated after recommendations of the Fifth Pay Commission were received. In fact, a finding was recorded that the said OM was neither modified nor superseded. Thereafter, there is a finding recorded that since the petitioners themselves delayed the categorisation of the library in which the respondents were working, they cannot be allowed to suffer especially in the light of the fact that on 26th July 1994 revised pay scales were sanctioned by the Government of India to all other libraries under it. The prayer of the respondent in Writ Petition No.4433 of 2003 was for grant of revised pay scale in terms of clause 4.1 from the date of OM. That prayer has not been granted and by treating the employees of the library of AFMC on par with the other libraries under the control of Defence Ministry, the benefit has been ordered to be granted from July 1994. We do not find any illegality in the said approach adopted by the Tribunal.

12 As far as the decision of Allahabad High Court in the case of Chandra Kant Dixit is concerned, apart from the fact that it is not a binding precedent, the issues which arise in this petition did not arise in Allahabad High Court. Now, turning to the question of qualifications of the respondent in Writ Petition No.4434 of 2004, the contention of the

petitioners was that the qualification for the post of librarian was Master's Degree of a recognized University or equivalent and Master's Degree or equivalent Diploma in Library Science of recognized University. The Tribunal in paragraph 15 of the impugned judgment has recorded a finding that this qualification is only for direct recruits. It was further held that post of librarian is a promotional post and for the promotion to the post of librarian, the educational qualification is not same as prescribed for the direct recruitment. A finding of fact has been recorded that the respondent in the said writ petition fulfills the qualifications prescribed.

13 We find from paragraph 4.2 of the original application that the respondent in the said writ petition specifically claimed that she was promoted to the higher post of Librarian in November 1975. In the written statement filed by the Armed Forces Medical College, in paragraph 12, while dealing with clause 4.2, it is simply stated that the respondents have no comments to offer.

14 We may also note that the respondents in Writ Petition No.4434 of 2003 has since superannuated.

15 We find no error in the view taken by the Tribunal under the impugned Judgment and Order. There is no merit in the petitions and the same are accordingly dismissed. Rule is discharged with no order as to costs.

(M.S. SONAK, J.)

(A.S.OKA, J.)