

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

WRIT PETITION NO.9121 OF 2015

The State of Maharashtra & Anr. ...Petitioners
Versus
Shri.Gundurao Rama Patil ...Respondent

Mr.O.M. Kulkarni, AAGP for the Petitioner-State.

Mr.Bhushan A. Bandiwadekar for the Respondent.

**CORAM : SMT.V.K. TAHILRAMANI, Acting Chief, J.
M.S. SONAK, J.**

DATE : 27th FEBRUARY 2018

P.C.

1. Heard learned counsel for the parties.
2. Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
3. The challenge in this petition is to the judgment and order dated 21-04-2015 made by the Maharashtra Administrative Tribunal (MAT), Mumbai allowing Original Application No.779 of 2013 instituted by the respondent seeking certain reliefs in relation to senior pay-scale.

4. The respondent, in OA No.779 of 2013, had prayed for the following reliefs:-

(a) to quash and set aside order dated 23.7.2012 by way of which the applicant was denied the senior pay scale benefits as per Assured Career Progression (ACP) Scheme on the ground that the same is applicable to non-teaching employees only;

(b) to fix the pay of the applicant in the senior pay scale w.e.f. 1.6.2006, already granted to the applicant vide GR dated 18.12.2009 after considering option given by the applicant, after availing of the yearly increments in the old pay scale w.e.f. 1.7.2006 as against 1.6.2006 and then grant additional increments, in the light of provisions of Rule 11(2) and 15 of the MCS (Pay) Rules, 1981.

5. The learned counsel for the respondent, however, conceded that the respondent being a Librarian, was not eligible for the benefits of ACPS Scheme applicable to non-teaching employees. As a result, relief in terms of prayer clause (a) above was not pressed.

6. The MAT, vide the impugned judgment and

order dated 21.04.2015 has granted relief in terms of prayer clause (b) above. Hence, the present petition.

7. Mr.Kulkarni, the learned AAGP appearing for the petitioner-State submits that the provisions of MCS (Pay) Rules, 1981 were not at all applicable to the present case, since, the present case was governed by the GR which relates to award of senior pay scale. He points out that in the GR there is no provision for grant of any option to avail the senior pay-scale after availing the yearly increment in the old scale. Mr.Kulkarni therefore, submits that the relief in terms of prayer clause (b) above could not have been granted.

8. Without prejudice to the aforesaid, Mr.Kulkarni submits that the MAT has misconstrued Rule 15 of the MCS (Pay) Rules, 1981. He submits that in the present case the pay-scale of the respondent was changed not as a result of change in his duties and responsibilities. He submits that in such circumstances, the respondent, was not entitled to the benefit of Rule 15 of the MCS (Pay) Rules, 1981.

9. Mr.Bandiwadekar, the learned counsel appearing for the respondent submits that the issue of inapplicability of the MCS (Pay) Rules, 1981 was never raised by the petitioner-State before the MAT. In any case, the GR relates only to the circumstances in which an employee is to be held eligible to receive the senior pay-scale. Once the senior pay-scale is awarded, the issue of pay fixation is squarely governed by the MCS (Pay) Rules, 1981. He submits that the interpretation suggested by Mr.Kulkarni as regards Rule 15 is incorrect and the MAT, has quite correctly interpreted the Rule. For these reasons, Mr.Bandiwadekar submits that there is no case made out to interfere with the impugned judgment.

10. From the perusal of the record, it does appear that the issue of inapplicability of the MCS (Pay) Rules, 1981 was never raised by the petitioner-State before the MAT. Rather, it is the petitioner-State, which had relied upon Rule 15 MCS (Pay) Rules, 1981 as, according to State, the Rule, including in particular the proviso thereto, was applicable only to those employees whose pay-scale changes as a result of change in duties and responsibilities.

This is quite clear from the perusal of paragraphs 11 and 12 of the impugned judgment and order.

11. Further, if the grounds raised in the present petition are perused, it is again clear that the ground now raised by Mr.Kulkarni has not even been raised in the petition. In fact, most of the grounds raised in the petition relate to prayer clause (a) of the Original Application, which was in fact not even pressed by the respondent before the MAT. In any case, there is substance in the contention of Mr.Bandiwadekar that the GR relating to payment of senior pay-scale prescribes the condition subject to such scale can be granted. Once, such scale is granted, the issue of pay fixation is governed by the MCS (Pay) Rules, 1981. Accordingly, there is no merit in the first ground raised by Mr.Kulkarni.

12. In order to examine the second ground raised by Mr.Kulkarni, it will be useful to refer to Rule 15 of the MCS (Pay) Rules, 1981 which reads as follows :-

“15. When pay of a post is changed.-The holder of a post, the pay of which is changed, shall be treated as if he were transferred to a

new post on the new pay :

Provided that, except in cases where the pay-scale of the post has been changed as a result of change in its duties or responsibilities, he may at his option, retain his old pay until the date on which he has earned his next or any subsequent increment, on the old scale or until he vacates his post or ceases to draw pay in that time-scale. The option once exercised is final."

(emphasis supplied)

13. Mr.Kulkarni, consistent with the affidavit which was filed by the petitioner-State before the MAT submits that Rule 15 is not applicable to the respondent because Rule 15 applies only to those employees whose pay-scale has been changed as a result of change in his duties or responsibilities. Mr. Kulkarni submits that in the present case, the duties and responsibilities of the respondent have remained unchanged and therefore, the option as contemplated by Rule 15, cannot be availed by the respondent.

14. The MAT, has quite correctly rejected the aforesaid contention on behalf of petitioner-State. The

proviso to rule 15, very clearly states that except in cases where the pay-scale of the post has been changed as a result of change in his duties and responsibilities, an employee may at his option retain his old pay until the date on which he has earned his next or any subsequent increment, on the old scale or until he vacates his post or ceases to draw pay in that time-scale. The option once exercised is final. This means that the proviso to Rule 15 is applicable to an employee whose pay-scale has been changed, without, there being any corresponding change in his duties or responsibilities. The interpretation proposed by Mr.Kulkarni, runs counter to the express unambiguous text of the proviso to Rule 15 and therefore, such interpretation, cannot be accepted. Once, it is held that the MAT was quite right in interpreting Rule 15 of MCS (Pay) Rules, 1981, the second ground urged by Mr.Kulkarni, also fails.

15. There is neither any jurisdictional error nor any perversity in the making of the impugned judgment and order so as to warrant inference under Articles 226 and 227 of the Constitution of India. Accordingly, this petition

is liable to be dismissed and it is hereby dismissed.

16. There shall however be no order as to costs in the facts and circumstances of the present case.

(M. S. SONAK, J.)

(ACTING CHIEF JUSTICE)