

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

WRIT PETITION NO. 2719 OF 2015

Vijaykumar Pandharirao Narwade	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. C. T. Chandratre for Petitioner.
Mr. P. G. Sawant – AGP for State – Respondent Nos. 1 to 4.

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

Date of Reserving the Judgment : 21 August 2018
Date of Pronouncing the Judgment : 28 August 2018

JUDGMENT :

- 1] Heard the learned counsel for the parties.

- 2] On 28th July 2016, this Court made the following order:

“Petition will be finally heard and disposed of at the stage of admission. S. O. to 7th September, 2016 (to be placed at the bottom of the admission board).”

- 3] The challenge in this petition is to the judgment and order dated 1st October 2014 made by the Maharashtra Administrative Tribunal (MAT) dismissing petitioner's Original Application No. 1242 of 2013 (Mumbai) seeking

following reliefs :

“A. Direct the respondents to grant higher pay scale of Rs.4000-6000 instead of Rs.3200-4900 w.e.f. 14.2.1997, under time bound promotion scheme, by refixing the pay of the applicant at par with Shri G. S. Uppod (Senior Clerk) and further direct the respondents to pay arrears of pay and all consequential benefits, after fixation of his salary as prayed for and thereafter;

B. Direct the respondents to revise salary of the applicant at par with Shri Uppod as per 4th, 5th and 6th Pay Commission and further direct the respondents to pay all consequential benefits after revision of salary of the applicant.

C. Direct the respondents to grant 2nd time bound promotion under Assured Progressive Scheme w.e.f. 14.2.2009 after completion of 24 years of service and all consequential benefits flowing from such time bound promotion.

D. Grant any other relief to which the applicant is entitled in the facts and circumstances of the present case.”

4] The petitioner was initially appointed as Mechanical Assistant in Rural Broadcasting Directorate on 15th February 1985. Consequent upon his being declared as surplus by order dated 31st August 2001, the petitioner was absorbed and redeployed as a clerk-typist in the office of the Charity Commissioner by order dated 24th January 2002. Whilst in service at the Rural Broadcasting Directorate, the petitioner, vide order dated 25th October 2010 was granted

the first financial upgradation under the Time Bound Promotional Scheme (TBPS) effective from 13th February 1999 in the pay-scale of Rs.3030-4590.

5] The petitioner had two grievances as regards the order dated 25th October 2000, by which he was granted the first financial benefit under the TBPS. They were as follows :

- (a) According to the petitioner such benefit was due to him from 13th February 1997; and
- (b) that the TBPS Scale ought to have been Rs.4000-6000 and not Rs.3030-4590.

6] Despite the aforesaid two grievances, there is nothing on record to indicate that the petitioner, at least upto the year 2010-2011, made any representations or took any steps for redressal of such grievances. Even the representations dated 26th November, 2010, 8th March 2011 and 30th May 2011 made by the petitioner made no reference to his grievance against the order dated 25th October 2000 but mainly relate to the issue of certain adverse remarks in the confidential rolls of the petitioner.

7] The petitioner's second grievance concerns the second financial upgradation under the Assured Career Progression Scheme (ACPS) which replaced TBPS. Again, the case of the petitioner is that since he ought to have been given the first financial upgradation on 13th February 1999, consequently, the petitioner was entitled to the second financial upgradation upon completion of 12 years from 13th February 1999 i.e. on or about 13th February 2011. In a sense, therefore, the second grievance is inextricably linked to the first grievance.

8] The petitioner's third grievance relates to stepping up his pay so as to achieve parity with Shri G. S. Uppod, senior clerk. According to the petitioner, he was senior to Shri G. S. Uppod and therefore the pay of the petitioner will have to be stepped up so as to achieve parity with Shri G. S. Uppod.

9] Mr. Chandratre, the learned counsel for the petitioner has reiterated the contentions advanced by him before the MAT in the Original Application instituted by the petitioner.

Mr. Chandratre submits that the petitioner had completed 12 years of service on 13th February 1997 and therefore, ought to have been awarded the first financial upgradation in terms of the TBPS on 13th February 1999 in the pay scale of Rs.4000-6000. He submits that the denial of first financial upgradation with effect from 13th February 1997 was on account of some adverse remarks in the petitioner's confidential rolls. He points out that the petitioner had already instituted proceedings before the MAT in relation to such adverse remarks. He points out that ultimately, the adverse remarks were expunged some time in 2010 and that is when the cause of action arose for the petitioner to seek the first financial upgradation under the TBPS with effect from 13th February 1997. Mr. Chandratre points out that if the petitioner is indeed awarded the first financial upgradation with effect from 13th February 1997, then, the petitioner deserves to be awarded second financial upgradation after completion of 12 years of service with effect from 13th February 1997 i.e. on or about 13th February 2009. Mr. Chandratre submits that admittedly the petitioner is senior to Shri G. S. Uppod who was appointed as a junior clerk on 1st June 1985. Since the

said Shri G. S. Uppod is drawing higher pay than the petitioner, the petitioner is entitled to stepping up of his pay so that there is parity. Mr. Chandratre submits that since all these aspects have not been appropriately considered by the MAT, the impugned judgment and order warrants interference.

10] Mr. P. G. Sawant, the learned AGP submits that there is absolutely no jurisdictional error or any other illegality in the impugned judgment and order made by the MAT. He points out that for a period of over 12 years, there was no grievance raised by the petitioner as regards the order dated 25th October 2000. He points out that the issue of adverse remarks had no nexus with the award of first financial upgradation under the TBPS to the petitioner. He points out that ultimately, even before the adverse remarks were expunged such benefit was granted to the petitioner with effect from 13th February 1999 on which date the petitioner completed 12 years of regular service in the grade. He points out that there could have been no comparison between the case of the petitioner and Shri G. S. Uppod who was always drawing more pay than the

petitioner. For all these reasons, Mr. Sawant submits that this petition may be dismissed.

11] The rival contentions now fall for our determination.

12] The cause of action for seeking first financial upgradation under the TBPS, with effect from 13th February 1997 instead of 13th February 1999, which is the date on which the petitioner was admittedly granted such first financial upgradation arose on 25th October 2000. There is absolutely no material on record to indicate that the benefit of first financial upgradation with effect from 13th February 1997 was denied to the petitioner on account of any adverse remarks in his confidential rolls or the pendency of any departmental proceedings. In fact, the record indicates that even when the first financial upgradation was in fact granted to the petitioner on 25th October 2000 with effect from 13th February 1999, the adverse remarks continued in the confidential rolls of the petitioner. Despite this, the petitioner neither made any representations nor took any steps to seek the first financial upgradation with effect from 13th February 1997.

Even the representations made by the petitioner after almost 10 to 12 years i.e. the representations dated 26th November 2010, 8th March 2011 and 30th May 2011 make no reference to the issue of first financial upgradation under the TBPS but rather relate to the issue of adverse remarks in the confidential rolls. In such circumstances, the MAT has quite correctly held that the petitioner's grievance as regards the first financial upgradation was hopelessly barred by limitation, not to mention inordinate delay and laches.

13] The record bears out that the petitioner was declared surplus at the Rural Broadcasting Directorate to which he was initially appointed. The record also bears out that the Rural Broadcasting Directorate was itself rendered defunct. The MAT, in such circumstances, was quite right in not permitting the petitioner to agitate his grievance as regards the first financial upgradation after lapse of 10 to 12 years since the date of accrual of the cause of action. The MAT has accepted the position that the petitioner completed 12 years of regular service on 13th February 1999 and was accordingly awarded the first financial

upgradation under the TBPS with effect from the said date. The petitioner has also not been able to establish that the first financial upgradation ought to have been in the scale of Rs.4000-6000 instead of Rs.3200-4900 awarded to the petitioner with effect from 13th February 1997.

14] The second grievance, as noted earlier, is directly linked with the first grievance regards the financial upgradation with effect from 13th February 1997. Since, the petitioner has not been able to establish that he was entitled to the benefit of the first financial upgradation with effect from 13th February 1997, obviously, there is no question of the petitioner being entitled to the second financial upgradation with effect from the year 2009 and not 2011. Besides, the MAT has noted that the petitioner was awarded regular promotion by order dated 13th September 2011 and in these circumstances, there was no question of claiming any second financial upgradation under the ACPS. The financial upgradations under the TBPS or the ACPS are to mitigate the ill effects of stagnation. Such benefits are not required to be awarded to employees who actually secured benefits of regular promotion within

12 and 24 year periods prescribed for award of such financial upgradation.

15] The MAT has quite correctly dealt with the issue of stepping up of a pay of the petitioner. As noted in paragraphs 9 and 11 of the impugned judgment and order, Shri G. S. Uppod was appointed as a junior clerk in 1985, in a scale of pay higher than the petitioner. The petitioner has also not relied upon any provision of law to back his claim for stepping up of his pay. The MAT has considered the various decisions relied upon by the petitioner and distinguished the same appropriately. Most of the decisions relate to issue of stepping up of pay under FR 22. The petitioner has failed to make out any case justifying his claim for stepping up of a pay. The MAT has correctly observed that the grant of any benefit of stepping up might result in award of additional benefits to the petitioner, to which, the petitioner was clearly not entitled to.

16] Mr. Chandratre, at the conclusion, however placed on record the decision of the Division Bench of this Court in ***Writ Petition No. 1419 of 2011 (The State of***

Maharashtra & Ors. vs. Shri Vijay s/o. Pandhari Narwade & Ors. decided on 18th December 2017) by which this Court, has dismissed the petition filed by the State questioning the judgment and order dated 7th September 2009 made by the MAT in Original Application No. 361 of 2009 instituted by the petitioner herein. Mr. Chandratre submits that in terms of this judgment, the petitioner is entitled to the benefit of services rendered by him in the Rural Broadcasting Directorate for purpose of determining seniority as well as other benefits.

17] Mr. Chandratre submits that this decision affords the petitioner a fresh cause of action to seek relief of stepping up of a pay and other benefits. Mr. Sawant, the learned AGP contests this position. Based upon the decision in *Writ Petition No. 1419 of 2011*, there is no case made out to interfere with the impugned judgment and order made by the MAT. However, if according to the petitioner, the decision in *Writ Petition No. 1419 of 2011* affords the petitioner any fresh cause of action, then, it is open to the petitioner to pursue his cause based upon such fresh cause of action. At this stage, we express no opinion one way or

the other on this issue. All contentions of all parties are therefore expressly left open.

18] For all the aforesaid reasons, we see no jurisdictional error or illegality in the view taken by the MAT so as to warrant interference. This petition is therefore liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)

(A. S. OKA, J.)

CHANDKA