

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5023 OF 2005

1. The Secretary, Government of Maharashtra, Urban Development Department, Mantralaya, Mumbai – 400 032
2. The Secretary, Government of Maharashtra, Revenue & Forests Department, Mantralaya, Mumbai–032
3. The Director, Town Planning Department, Maharashtra State, Central Bldg., Pune – 411 001.
4. The Competent Authority, Stamps & Valuation, Ratnagiri Unit, Old Treasury Building, Collector Office Premises, Thane – 400 601.
5. The Tahasildar, Stamps & Valuation, Ratnagiri – 415 612.

....Petitioners

Versus

1. Shri. Vivek Hari Pendse, Age – Adult, Occupation – Service, Residing at C/o. J. J. Karve, Krishna Apts., Opp. Janam Hospital, Charai, Dist. Thane.

...Respondent

Mr. N. K. Rajpurohit, AGP for the Petitioner/State.

CORAM: B. R. GAVAI &
N. J. JAMADAR, JJ
DATED: 3rd January, 2019

ORAL JUDGMENT:- (Per B. R. Gavai, J.)

1. The Petitioners have approached this Court being aggrieved by the judgment and order dated 9th October, 1998 in

Original Application No.74 of 1998 ('OA', for short), thereby partly allowing the original application filed by the Respondent and directing the State to pay the arrears of salary to the Applicant and others similarly placed employees like him in the Urban Development Department with effect from the same date as per the arrears which were paid to their counter-parts in the Public Works and Irrigation and Power Department.

2. At the relevant time, the applicant was working as Assistant Town Planner in the office of Respondent no.4 in the OA. The State Government had issued Government Resolution on 30th October, 1973 by which the Urban Development, Public Health and Housing Department, were provided with the posts of Planning Assistants in the Town Planning and Valuation Department which were on par with Junior Engineer/Overseers in the building and Communication Department/Irrigation and Power Department. It also provided the minimum qualification and nature of duties and pay scales and consequently revised the pay scales of Planning Assistants and be brought them on par with the equally situated employees in the Building and Communication Department/Irrigation and Power Department.

3. The State Government in the Irrigation Department by decision dated 16th April, 1984 has also decided to issue

Gazetted status to the graduate Junior Engineers and also to the non graduate Engineers who have completed prescribed number of years. By a decision dated 7th September, 1997, the Urban Development Department, in view of the decision of the Irrigation Department, decided to give Gazetted status to the graduate Assistant Town Planners, who were similarly situated with those employees in the Irrigation Department. However, by the said decision the State Government decided that the pay of the employees was to be fixed prospectively with effect from 17th April, 1996. Being aggrieved by the said OA, applicant had approached the learned Tribunal.

4. The learned Tribunal by the impugned order found that the State Government had itself decided to bring equally situated employees in the Urban Development Department on par with those in the Irrigation and Public Works and Power Department. The State Government was not justified in not giving the benefit to the employees in the Urban Development Department. The learned Members of the Tribunal found that the principles of equal pay for equal work would come into play and the Applicant and the others who are entitled to get arrears from the date from which the benefits were given to the similarly placed employees in the other departments.

5. Mr. Rajpurohit, the learned AGP submits that the learned Tribunal has grossly erred in allowing the OA. He submits that employees of the different departments are from a different class and as such, the impugned order is not sustainable. In the alternative, he submits that, the learned Tribunal has grossly erred in travelling beyond the OA and giving directions to pay arrears to all the similarly placed employees in the Urban Development Department.

6. We find that, the State Government whether in the Department of Urban Development or the Department of Public Works or the Department of Irrigation or Power is one entity and the similarly situated employees of one employer cannot be discriminated. As such, we find that no error can be found with the order of the learned Tribunal in so far as it directs the arrears of salary to be paid to the original Applicant from the date from which they were paid to the similarly situated employees in the other departments.

7. However, we find that the direction which is issued by the learned Tribunal to make the payment to the other similarly situated persons like the original Applicant in the Urban Development Department would travel beyond the scope of OA before the learned Tribunal. In the OA, the original Applicant

had sought relief for himself and as such the learned Tribunal ought to have restricted the relief to the original applicant alone.

8. In the result, the petition is partly allowed.

9. The direction in paragraph 7 to make the payment of arrears of salary to the other similarly placed employees like the original Applicant in the Urban Development Department is quashed and set aside. It is needless to say that if the arrears of the Applicant are not paid by now, the same shall be paid within a period of eight weeks from today.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]