

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1747 OF 2014

Suresh Yashwant Kadam	 Petitioner
Vs.	
State of Maharashtra & Others	 Respondents

Mr. S.A. Rajeshirke for the Petitioner.
Ms Rupali M. Shinde, AGP, for the Respondent-State.

CORAM: S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.

DATE : JANUARY 10, 2019

P.C:

1. The affidavit filed in the petition by the learned AGP is full of mistakes. Apart from the fact that the language is poor, we cannot make out anything from this affidavit, and particularly which rule applies to the situation in which the petitioner claims to have been placed.

2. In any event, we find that the writ petition proceeds on the footing that the petitioner was appointed by the 5th

respondent as a Junior Clerk on a permanent basis in respondent No.6-school with effect from 1-9-1973. This appointment was approved by the 4th respondent. The post is permanent and 100% aided.

3. The petitioner worked in that post till his promotion as a Senior Clerk with effect from 17-9-1986. His pay was fixed at Rs.1,325/- on 1-1-1986 in the Grade of Rs.950-20-1150-EB-25-1500 with the date of next increment on 17-9-1986. The petitioner worked till 31-5-1989. He was granted increment from time-to-time and lastly on 1-9-1988. He was getting a pay of Rs.1,440/- and the next increment was to fall due on 1-9-1989.

4. The petitioner says that in the Academic Year 1989-90, there was a fall in the number of pupils and it was below 500. One Junior Clerk working in respondent No.6 was declared surplus and absorbed in another school. At the same time, the pay scale of the petitioner was illegally fixed. That was as Junior Clerk with effect from 1-6-1989. In 1994, the strength

of the students increased and therefore the post of Senior Clerk became available in respondent No.6. The respondent No.5 promoted the petitioner to this post of Senior Clerk with effect from 26-12-1994. Then the petitioner says in para 7 of the writ petition that his pay scale was required to be protected and it should not have been reduced to the pay scale of a Junior Clerk. More so, when a surplus Junior Clerk was already absorbed in another school. The petitioner worked as a Junior Clerk hardly for a year or two and he became a Senior Clerk once again. Therefore, he was drawing the pay of a Senior Clerk and that should have been protected.

5. The petitioner makes a grievance that he addressed a letter, copy of which is at Exhibit-A, page 11, in May, 2000 but there has been no redressal of his grievance. The respondent No.6 also forwarded a proposal and seeking to protect the pay of the Petitioner. The 4th respondent, on 22-10-2008, granted to the petitioner protection vide order of that date, copy of which is at Exhibit-C. The 6th respondent, therefore, carried out the necessary correction and submitted the same to respondent No.3

for verification. Despite such protection, the 3rd respondent sought to revise the pay scale and fixed it accordingly. This is done by a letter of 28-3-2012. It is claimed that this was done in terms of Rule 12 of The Maharashtra Civil Services (Pay) Rules, 1981 (“the said Pay Rules” for short).

6. The petitioner is aggrieved by the letter of 18-2-2013, copy of which is at Exhibit-E. The same is referring to an application of 9-2-2013 stated to have been made by the petitioner. The same says that by relying upon Rule 12, the verification of the pay scale was made and the request of the petitioner is rejected.

7. Now, the State has filed an affidavit through the Deputy Director of Education although what the petitioner is aggrieved by, is an act of the Junior Auditor, Audit Cell (Education Division), Ratnagiri.

8. In this affidavit, it is stated that the petitioner was required to be reduced in rank from the post of Senior Clerk to Junior Clerk due to non-availability of the post of Senior Clerk.

The reason is reduction in the enrolment of students. Therefore, it was incumbent to fix the pay of the petitioner in the Junior Clerk's Scale with effect from 1-6-1989. That would have been the pay to which the petitioner was entitled to had he not been promoted as Senior Clerk from the date of appointment. Hence, the action initiated to fix his pay in the scale of a Junior Clerk is quite proper and correct. The said Pay Rules are relied upon. Chapter-II of the said Pay Rules not only contains the definition of the term "Pay" but also the definition of the terms "Special Pay" and "Substantive pay". It also contains the definition of the term "Time-scale pay". After these definitions, in Chapter-III, Rule 10 deals with pay on first appointment to Government service, and Rule 11 deals with fixation of pay on appointment to another post. That expressly saves what is provided in Rules 12, 13, 14, 17 & 20. Rule 12 says that the provisions of Rule 11 do not apply in the case of a Government servant appointed from a higher post to a lower post due to reduction of establishment or reverting to a lower post on termination of his officiating promotion to a higher post. Where the Government

servant reverts to a lower post after a spell of promotion in a higher post, his pay in the lower post should be fixed at the stage in the time-scale of the lower post at which the Government servant would have drawn pay but for his appointment to the higher post as admissible under Rule 39.

9. The definition of the term “Time-scale pay” as appearing in Rule 9, Clause (55), reads as under:-

*“(55)(a) **Time-scale pay** means pay which, subject to any conditions prescribed in these rules, rises by periodical increments from a minimum to a maximum.*

(b) Time-scales are said to be identical if the minimum, the maximum, the period of increment and the rate of increment of the time-scales are identical.

(c) A post is said to be on the same time-scale as another post on a time-scale if the two time-scales are identical and the posts fall within a cadre, or a class in a cadre, such cadre or class having been created in order to fill all posts involving duties of approximately the same character or degree of responsibility in a service or establishment or group of establishment; so that the pay of the holder of any particular post is determined by his position in the cadre or class and not by the fact that he holds that post.”

10. A bare perusal of this would, therefore, mean a rise by periodical increments from a minimum to a maximum.

However, this is subject to the conditions prescribed in the said Pay Rules.

11. Neither in the affidavit nor in the impugned communication we find any application of mind to the definitions or to the factum of the petitioner's promotion. If he has worked from 1986 to 1989 as a Senior Clerk, and reduced in rank with effect from 1-6-1989 due to non-admissibility of Senior Clerk's post but subsequently there were changes in the norms of admissibility to clerical posts, then, in the two affidavits both the Deputy Education Officer and the Deputy Director of Education appear to be themselves confused and they have further confused the draftsman of the affidavits. It appears to us that both have not read the said Pay Rules, much less applicable with the factual position emerging from the record.

12. We have, therefore, no alternative but to direct that this matter should be reconsidered. All the more, we are not expected to interpret the Rules or the Government Resolutions

referred in the affidavits in-reply. There is absolutely no application of mind nor the order can be said to be reasoned. Once the exercise results in reduction of the pay, then in dealing with the situation of this nature the minimum that is expected from the Officer is to pass a proper reasoned order. From the record we do not find any such exercise being carried out. All the more, when the petitioner claims that his pay was protected earlier and thereafter there is a change of mind.

13. In these circumstances, the impugned communication is quashed and set aside. The matter shall now be examined by the Deputy Director of Education (Secondary & Higher Secondary), Kolhapur Region, Kolhapur. He shall after hearing the petitioner and perusing the entire record pass a fresh reasoned order. That reasoned order shall be passed uninfluenced by what is held earlier and particularly by the 3rd respondent.

14. The records can be summoned by this Officer from respondent No.4 as also from the Management. After a proper

consideration of all materials, the fresh order shall be pronounced by him within a period of six weeks from the date of receipt of a copy of this order.

15. All contentions of the petitioner in the petition are kept open.

16. With the above observation and direction, the writ petition is disposed of.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)