

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION 3173 OF 2010

Smt. Padmatai wd/o. Laxmansingh Thakur,
Aged about 62 yrs, Occ. Household,
R/o. Gurudeo Nagar, Gurukunj Ashram
Mozari, Tahsil Tiwasa,
District Amravati

.....PETITIONER

..V E R S U S..

1. The State of Maharashtra
through its Secretary,
Medical Education and Drugs Department,
Mantralaya, Mumbai 32

2. Director of Ayurved,
Maharashtra State, Khanna
Construction House, Second Floor
Dr. Thadani Marg,
Worali, Mumbai

3. Maharashtra University of Health
Science through its Registrar,
Gangapur Road, Nashik

4. Principal, Shri Gurudeo College
Gurukunj Ashra, Mozari,
Tahsil Tiwasa,
District Amravati

..RESPONDENTS

Mr. N.S. Badhe, counsel for petitioner.
Mrs. K.R. Deshpande, AGP for respondents 1 & 2/State.
Mr. J.B. Jaiswal, counsel for respondent 3
Mr. P.S. Patil, counsel for respondent 4.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 29.03.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Petitioner Mrs. Padmatai Thakur is the widow of Mr. Laxmansingh Thakur, who left for heavenly abode on 9.11.2004. Mr. Laxmansingh Thakur held B.Com, B.A and Diploma in Physical Education qualifications and on 7.8.1972, was appointed as Physical Education Teacher by respondent 4 which is an aided institution. Mr. Laxmansingh Thakur's appointment was approved by the Director of Physical Education of the Nagpur University and he was confirmed in service as Full Time Physical Education Teacher on 18.10.1977.

3. The Nagpur University conveyed to all the Principals of the Affiliated Colleges that Physical Education Teachers shall be re-designated and referred to as Lecturers in Physical Education. The Government of Maharashtra issued Government Resolution dated 18.4.1984 in order to implement the recommendations of the University Grants Commission ("UGC") of assigning revised pay scales to the Librarians and Directors/Instructors of Physical Education in non-agriculture universities and affiliated non-government colleges. The post of Instructor of Physical Education was assigned the pay scale Rs. 700-40-1100-50-1600 and the

qualification prescribed was Post Graduate Diploma or Certificate or a Degree in Physical Education.

4. Mr. Laxmansingh Thakur did not receive benefit of the revised pay scale and espousing his cause, the Management addressed representations dated 6.4.1991 and 30.4.1991 to the Medical Education and Drugs Department of the Government of Maharashtra. The Management further addressed communication dated 20.10.1991 to the office of the Director of Ayurved, Maharashtra State emphasizing that the revised UGC pay scales are made applicable to Physical Education Teachers with effect from 1.4.1980 and that Mr. Laxmansingh Thakur is entitled to the difference of the pay prescribed and received. It is averred in the petition that Mr. Laxmansingh Thakur also addressed representation dated 14.10.1992 (Annexure – 9) requesting the Amravati University to take appropriate steps for implementing the UGC pay scales to Physical Education Teachers with effect from 1.4.1980. Mr. Laxmansingh Thakur also submitted representation in October 1992 addressed to the Director of Ayurved, Government of Maharashtra, and the Amravati University, to which the employer institution came to be affiliated subsequently, also requested the Director of Ayurved, Government of

Maharashtra to implement the UGC pay scales. It is further averred that Mr. Laxmansingh Thakur and the Management preferred representations in 1993 and 4.1.1994 requesting the concerned authorities to redress the grievance, and in response, the In-Charge Assistant Director of Ayurved informed the Management vide letter 21.2.1994 that the proposal was under consideration and orders are likely to be issued by the Government of Maharashtra. The Management in turn, conveyed the contents of the said communication to Mr. Laxmansingh Thakur vide letter dated 19.2.1994. It is averred in the petition that a similarly situated Physical Education Teacher employed with Swami Ramanand Tirtha Gramin Medical College, Ambejogai Mr. M.G. Pawar was granted the revised pay scale pursuant to the decision of the Aurangabad Bench of Maharashtra Administrative Tribunal ("MAT") in Original Application 658/1993. Similarly, the revised pay scale was granted to Mr. Vitthal Bhore a Physical Education Teacher working with Dhanwate National College, Nagpur in view of the decision of the High Court in Writ Petition 768/1988. In the petition, other instances are given which according to the petitioner, demonstrate that similarly situated employees have been extended the benefits of the revised pay scale with effect from 1.4.1980.

5. Petitioner – widow contends that she was not aware of the decisions rendered by the MAT and the High Court nor was she aware of the Government Resolution governing the field. After Mr. Laxmansingh Thakur expired on 9.11.2004, she was informed by well wishers that her deceased husband was entitled to the revised pay scale. Petitioner accordingly, preferred representation dated 18.7.2005 addressed to the Deputy Director of Ayurved, Mumbai. At this stage, we may note that while in the petition, there is an elaborate reference to the perceived entitlement of the petitioner's husband to continue till the age of 60, this grievance is not pressed during the course of hearing and the learned counsel for the petitioner Mr. N.S. Badhe has restricted the submissions to the grievance that the deceased husband of the petitioner was illegally deprived of the revised pay scale which was made applicable to Physical Education Teachers with effect from 1.4.1980. Petitioner preferred Writ Petition 5425/2008 which came to be disposed of by the High Court vide order dated 14.1.2009 which directed the respondent 4 – Management to treat the notice dated 25.2.2008 as representation and to decide the same in accordance with law. In paragraph 2 of the order dated 14.1.2009, the High Court records the submission of the learned counsel for the petitioner that legal notice dated 25.2.2008 is

issued to the Government, Director of Ayurved, the concerned University and the Management, and further direction be issued to the Management to decide the representation. Considering that the prayers made in the petition, particularly, the prayer that revised pay scale be made applicable could have been considered only by the Government, since respondent 4 in the said petition was an aided institution, the petitioner had clearly sought a misconceived direction which was restricted to the Management.

6. Be that as it may, the Management considered the representation and forwarded proposal dated 17.4.2009 to the Director of Ayurved, Mumbai recommending the revision in pay scale, which proposal came to be rejected by respondent 2 and Director of Ayurved on the premise that Mr. Laxmansingh Thakur was not holding Post Graduate qualification which was pre-condition for granting revised pay scale prescribed by UGC. It is this rejection which is impugned in the petition.

7. We have perused the affidavit in response dated 29.12.2018 which is filed on behalf of the State of Maharashtra and Director of Ayurved. The affidavit in response asserts that since Mr. Laxmansingh Thakur was holding the qualification B.Com, B.A. and Diploma in Physical Education, he was not

entitled to the revised pay scale inasmuch as the minimum qualification prescribed was Post Graduate Diploma or Certificate or Degree in Physical Education. It is specifically elaborated in the counter affidavit that the minimum qualification is Post Graduate qualification in Physical Education.

8. We have given anxious consideration to the Government Resolution dated 18.4.1984 which provides that the Instructor of Physical Education must possess the minimum qualification of Post Graduate Diploma or Certificate or a Degree in Physical Education. The said minimum qualification is prescribed by the UGC. It appears to be plain to us, that the expression “Post Graduate Diploma or Certificate” and “Degree in Physical Education” are used disjunctively. The minimum qualification is that the candidate must possess a Post Graduate Diploma or Certificate, which Mr. Laxmansingh Thakur did possess since he was a graduate and had cleared Diploma in Physical Education. The qualification “Degree in Physical Education” is in the alternate. A candidate is required to possess either Post Graduate Diploma or Certificate or Degree in Physical Education. It is difficult to appreciate the stand of the respondents 1 and 2 that the Post Graduate Diploma or Certificate must be acquired

after Degree in Physical Education. Such an understanding of the requirement shall militate against the plain words used and in a sense may lead to irrational result. If a candidate already holds a Degree in Physical Education, he is clearly not expected to have further Diploma or Certificate in Physical Education to be considered qualified. It is only if a candidate has graduated not in Physical Education but other subject/s, that the candidate is required to possess Diploma or Certificate in Physical Education. The petitioner referred to the benefits extended to certain employees, suggesting that the employees named are similarly situated to her deceased husband. The affidavit in response, however, refers to the benefit extended to Mr. M.G. Pawar and explains that the Government Resolution provides that Mr. M.G. Pawar shall fulfill the criteria stipulated in Government Resolutions dated 18.4.1984, 27.2.1989 and 15.12.1989. Government Resolution dated 27.1.1997 which is issued in view of the decision of the MAT at Aurangabad records that the employee Mr. M.G. Pawar satisfies the conditions of the Government Resolution and is entitled to the revised pay scales. It is clear that the Government Resolution dated 27.1.1997 which confers the benefits on Mr. M.G. Pawar is not conditional, and specifically acknowledges the eligibility of Mr. M.G. Pawar and the

entitlement to revised pay scale. In the affidavit in response, there is no assertion that Mr. M.G. Pawar held the Post Graduate Diploma or Certificate in addition to Degree in Physical Education.

The affidavit in response then asserts that the case of Mr. Vitthal Bhore is entirely different inasmuch as Mr. Vitthal Bhore was a degree holder in Physical Education. Again, it is not the case of the respondents 1 and 2 that Mr. Vitthal Bhore possessed, in addition to the Degree in Physical Education, Diploma or Certificate in Physical Education. The affidavit in response makes no attempt to deal with the other instances which the petitioner has given to demonstrate that similarly situated employees as Mr. Laxmansingh Thakur, and who held the same qualifications, were extended the benefit of Government Resolution dated 18.4.1984. We note that while the affidavit in response deals with only two cases which are cited by the petitioner as an evidence of discrimination, it is not averred that in the two cases the employees held not only Degree in Physical Education but additionally also held the qualification of Degree or Diploma in Physical Education.

9. It appears to us, that the State Government did accept and implement the decisions of the MAT and the High Court in

cases of similarly situated employees and extended the benefit on the premise that it would suffice if either of the two qualifications are possessed. To be precise, it would suffice if the candidate is either a graduate in Physical Education or if he is not a graduate in Physical Education, he is a graduate and possesses Diploma or Certificate in Physical Education.

10. While we are inclined to uphold the contention of the petitioner that her deceased husband Mr. Laxmansingh Thakur was entitled to the revised pay scale of Rs. 700-40-1100-50-1600 since he fulfill the minimum qualification prescribed by the UGC and reiterated in the Government Resolution dated 18.4.1984, we find substance in the submission canvased on behalf of the respondents that the relief will have to be restricted to 3 years prior to the filing of the present petition.

11. We draw support from the decisions of the Hon'ble Apex Court in *Union of India vs. Tarsem Singh, 2008 CJ(SC) 1911* and *State of Madhya Pradesh vs. Yogendra Shrivastava, 2009 CJ 1578* in which, in cases of continuing wrong, and considering that the erroneous denial of the pay scale has a cascading effect, *inter alia* on the entitlement of the petitioner to pension, and is therefore, a continuing wrong, the Hon'ble Apex Court has

articulated that relief may be granted for/from the period of three years preceding the institution of the petition.

12. We hold that the deceased husband of the petitioner Mr. Laxmansingh Thakur was entitled to the revised pay scale prescribed in the Government Resolution dated 18.4.1984.

13. We further hold the petitioner entitled to every consequential benefit of our finding supra. However, the monetary relief shall be restricted to 3 years prior to the filing of present petition. The monetary entitlement be determined and paid to the petitioner within the next eight weeks. If the petitioner is receiving family pension, the pension will have to be revised in view of the revision of pay scale, and the same may be done in accordance with law, within the next twelve weeks.

14. Petition is partly allowed and disposed of in the aforestated terms.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

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