



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

WRIT PETITION NO. 3106 OF 2024

Rajashree w/o. Prashant Yenurkar
age 46 years, Occ. Service,
R/o.236, Sahakar Nagar, Khamla
Road, Nagpur



.. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Department of Home (Transport),
Mantralya, Mumbai
2. The Transport Commissioner,
Maharashtra State, Mumbai – 32
3. The Regional Transport Officer,
Nagpur (City), Nagpur



.. Respondents

Mr. Firdos Mirza, Senior Advocate, assisted by Ms. Isha Thakre,
Advocate for Petitioner.

Mr. J.Y. Ghurde, Assistant Government Pleader for Respondents.

**CORAM : AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.**

DATED : APRIL 09, 2025

JUDGMENT (PER : ABHAY J. MANTRI, J.)

Heard. **Rule.** Heard finally with the consent of the learned
counsel appearing for the parties.

(2) The petitioner aggrieved by the judgment and order dated 13/03/2023, passed by the learned Maharashtra Administrative Tribunal (For short, "***the Tribunal***") in O.A.No.1028/2021, whereby application filed by her was partly allowed and respondent No. 1 was directed to pay 10% of basic as admissible vide Rule 56(B) of M.C.S.R. (pay) Rules, 1981 from 01.07.2013 instead of payment of salary and other benefits of the post of Assistant Motor Vehicle Prosecutor. Hence, she prefers this petition to modify the impugned judgment and order to that extent, and to grant the entire relief as claimed in the Original Application.

(3) Succinctly, the facts of the case are as under :-

The petitioner holds educational qualifications of B.Com, LL.B., and LL.M. and was enrolled with the Bar Council of Maharashtra and Goa on 31.07.2001. The petitioner joined the service on 30/06/2008 as a 'Junior Clerk'. By order dated 25.06.2020, she was promoted to the post of "*Senior Clerk*" and has been working in that capacity since then.

(4) One Shri S.S. Siddiqui was working with respondent No. 3, who was promoted on 03.08.2004 to the post of 'Accountant'. Then, vide order dated 01.11.2010, he was promoted to the post of 'Assistant Motor Vehicle Prosecutor' (hereinafter referred to as '***AMVP***') and

retired on superannuation on 30/06/2013. On his superannuation, the petitioner was given the additional charge of his post. From 01/07/2013, she held an additional charge until her promotion on 25/06/2020. However, despite having made various representations, she was neither promoted as 'AMVP' nor the benefits of the said post were extended to her.

(5) It is also contended that the office of the respondent No.2 by communications dated 18/02/2015 and 19/05/2015 recommended her name for grant of promotion, as she fulfills the eligibility criteria for the post of 'AMVP', however, the said recommendation was pending, as no recruitment rules for the cadre of 'AMVP' was approved from the General Administration Department, Maharashtra Public Service Commission and Law and Judiciary Department. Subsequently, they were published, and accordingly, she was promoted to 'Senior Clerk' on 25/06/2020. Although she was holding the additional charge of the 'AMVP' post, she was neither promoted to the said post on an ad-hoc basis nor was the salary for the said post released to her. Therefore, she had filed O.A.No.1028/2021 before the learned Tribunal.

(6) After considering the record, the learned Tribunal partly allowed O.A. No. 1028/2021, whereby "*it directed Respondent No. 1 to*

issue necessary orders to pay 10% of the basic salary as admissible per Rule 56(b) of the Maharashtra Civil Services (Pay) Rules, 1981, w.e.f. 01/07/2013, when the applicant took over additional charge of the said post, i.e. higher responsibility till 24/06/2020 and further directed to promote the applicant temporarily as per rules and regulations and if otherwise eligible from 25/06/2020 as per precedent of Shri S.S.Siddiqui on the same terms and conditions." Hence, the petitioner has filed this petition.

(7) Mr. Mirza, learned Senior Counsel, vehemently argued that the learned Tribunal has erred in not granting entire relief as prayed, as it is undisputed that since 01/07/2013, the petitioner has been holding the post of 'AMVP' and therefore, as per the principle of '*equal pay for equal work*', she would be entitled for the ad-hoc promotion on the said post, as well as monetary benefits in that regard.

(8) Learned Senior Counsel further contends that the respondents have not disputed that, since 01/07/2013, the petitioner has held the additional charge of 'AMVP' until her promotion. Although the learned Tribunal observed that there was no hurdle to promoting the applicant on the same terms, it did not grant monetary benefits; therefore, the impugned order requires modification.

(9) He further invites our attention to the communications dated 23/12/2008, 18/06/2013, 18/02/2015 and 19/05/2015 and canvassed that vide communication dated 18/06/2013, the respondent No.3 Authority after considering the criteria laid down in communication dated 23/12/2008, recommended the name of the petitioner to grant her promotion on the said post, however, the said representation was not considered by the respondent No.2. In fact, the said recommendation itself denotes that the petitioner was eligible for ad-hoc promotion on the post of AMVP, however, the learned Tribunal has not considered the same in its proper perspective and erred in discarding the relief as prayed.

(10) Apart from this, he pointed out paragraphs Nos. 4 and 6 of the reply filed by the respondents before the learned Tribunal and propounded that by filing a reply, the respondents had not disputed that, since 01/07/2013, the petitioner had been holding the additional charge of 'AMVP' until her promotion on 24/06/2020. Therefore, he submitted that as per the principle laid down in ***State of Punjab and others vs. Jagjit Singh and others (2017) 1 SCC 148***, the petitioner is entitled to get the salary of the said post on the principle of '*equal pay for equal work*', hence he urged to modify the impugned order by granting the relief as claimed by the petitioner in the O.A.No.1028/2021.

(11) Mr. Ghurde, learned Assistant Government Pleader resisted the petition, contending that the learned Tribunal after considering the material on record has rightly passed the order and thereby directed the respondents to pay 10% of the basic as admissible as per Rule 56(b) of the MCS(Pay) Rules, 1981 to the petitioner for holding additional charge of the post of 'AMVP' and therefore, no interference is required in the impugned order. However, he does not dispute that the petitioner was entrusted with the responsibility of the post of 'AMVP' as additional charge w.e.f. 01/07/2013. He further canvassed that the ad-hoc promotion of the petitioner to the post of 'AMVP' was not within the purview of the powers exercised by respondent No. 3. Therefore, the proposal in that regard was forwarded to respondent Nos. 1 and 2, which is pending with them. Hence, he submitted that the petition is devoid of merit and urged its dismissal.

(12) We have considered the rival contentions of the learned counsel for the parties, judgment cited by the petitioner and perused the record.

(13) It is undisputed that the petitioner possesses a qualification of B.Com. LL.B. and LL.M. She was appointed as a '*Junior Clerk*' on 30/06/2008 and has been holding the additional charge of the post of 'AMVP' w.e.f. 01/07/2013. Similarly, respondent No. 3, as per

the communication dated June 18, 2013, forwarded a proposal to get approval from respondent No. 2 to the said proposal, wherein it was stated that the petitioner had acquired the requisite qualification to hold the 'AVMP' post and was eligible for promotion to the post of 'AMVP', as she complied requisite terms and conditions as per letter and therefore, her name was recommended for promotion. The communications dated 23/12/2008 (pg.21) and 18/06/2013 (pg.33), stated that the petitioner fulfills the eligibility criteria for holding the post of 'AMVP'. Likewise, since the superannuation of Shri Siddiqui on 30/06/2013, the petitioner held the additional charge of the said post from 01/07/2013 until her promotion on 25/06/2020. However, due to the non-approval of the recruitment rules, she was not promoted to the post in question.

(14) It also indicates from the communication dated 18/02/2015 (page 41) that 09 posts in the 'AMVP cadre were lying vacant out of the sanctioned strength of 14 posts. After the retirement of Shri Siddiqui on 30/06/2013, the sanctioned post also remained vacant, and the petitioner held the additional charge of the said post until her promotion on 25/06/2020, i.e., approximately 7 years. In paragraph 10 of the reply, the respondents have categorically stated that, vide communication dated 01/11/2010, Mr. Siddiqui was given an ad-hoc promotion to the post of 'AMVP', along with eight others, based

on their eligibility as provided in the communication dated 23/12/2008. However, the same benefit was not bestowed on the petitioner, as she was eligible for the said ad-hoc promotion and fulfilled the eligibility criteria for the post of 'AMVP', as reflected in the communication dated 18/06/2013, before she assumed the additional charge of the said post. That being so, the respondent No.3 made a recommendation to respondent No.2 to grant her ad-hoc promotion on the post of AMVP, however, the learned Tribunal has not considered the said fact and erred in granting only 10% of the basic as admissible as per Rule 56(b) of the MCS(Pay) Rules, 1981 to the petitioner for holding additional charge of the said post and observed about the recommendation of respondent No.3 to respondent No.2 for grant her ad-hoc promotion. In paragraph 12 of the impugned order, the learned Tribunal has categorically held that there was no hurdle in promoting the applicant/petitioner on the same terms as Shri Siddiqui was temporarily promoted as 'AMVP' vide order dated 01/11/2010; however, it restrict itself while granting the relief as prayed and erred in granting the relief in partly.

(15) A perusal of the decision of the Hon'ble Apex Court in **Jagjit Singh** (supra), wherein it is held that "if the employee is performing duties and responsibilities as discharged by the regular employees against the sanctioned post in such and eventuality the

principle of 'equal pay for equal work' applies, as such, the employee is entitled to get the same monetary benefits as would be receivable by the regular employee. We would like to reproduce the relevant paras 42, 42.3, 44, 56, 57 and 58 of the said decision as under :-

"42. All the judgments noticed in paras 7 to 24 hereinabove pertain to employees engaged on a regular basis, who were claiming higher wages, under the principle of "equal pay for equal work". The claim raised by such employees was premised on the ground that their duties and responsibilities were against the same post, for which a higher pay scale was being allowed in other government departments. Or alternatively, their duties and responsibilities were the same as those of other posts with different designations, but they were placed on a lower scale. Having been painstakingly taken through the parameters laid down by this Court, wherein the principle of "equal pay for equal work" was invoked and considered, it would be just and appropriate to delineate the parameters laid down by this Court. In recording the said parameters, we have also adverted to some other judgments pertaining to temporary employees (also dealt with, in the instant judgment), wherein also, this Court had the occasion to express the legal position with reference to the principle of "equal pay for equal work". Our consideration has led us to the following deductions:- Accordingly, narrated the same in sub-paras 42.1 to 42.17... the relevant sub-para 42.3 is as under:-

42.3 The principle of "equal pay for equal work" applies to cases of unequal scales of pay, based on no classification or irrational classification (see Randhir Singh case⁷). For equal pay, the employees concerned with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see Federation of All India Customs and Central Excise Stenographers case⁹, Mewa Ram Kanojia case¹¹, Grih Kalyan Kendra Workers' Union case¹² and S.C. Chandra case¹⁹).

44. We shall first outline the conclusions drawn in cases where a claim for pay parity, raised at the hands of the temporary employees concerned, was accepted by this Court by applying the principle of "equal pay for equal work", with reference to regular employees:- Accordingly, narrated the same in sub-paras 44.1 to 44.9.....

56. We shall now deal with the claim of temporary employees before this Court.

57. *There is no room for any doubt that the principle of “equal pay for equal work” has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court and constitutes law declared by this Court. The same is binding on all the Courts in India, under Article 141 of the Constitution of India. The parameters of the principle have been summarised by us in para 42 hereinabove. The principle of “equal pay for equal work” has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarised by us in para 44 hereinabove. The above legal position, which has been repeatedly declared, is being reiterated by us, yet again.*

58. *In our considered view, it is fallacious to determine artificial parameters to deny the fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action, besides being demeaning, strikes at the very foundation of human dignity. **Anyone who is compelled to work at a lesser wage does not do so voluntarily.** He does so to provide food and shelter to his family at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependents would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situated constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”*

(16) The learned Assistant Government Pleader vehemently contended that the petitioner was working as a Junior Clerk and was holding additional charge of the post of ‘AMVP’ and therefore, as per Rule 56 (b) of the Rules of 1981, she is entitled to additional pay/special pay of 10% of the presumptive pay of the post and not entitled for the pay scale of the post of ‘AMVP’.

(17) While dealing with the above submissions, we would like to reproduce Rule 56 of the Rules of 1981:

“56. Pay during appointment to two or more posts – A Government servant already holding a post in a substantive or officiating capacity may be appointed to officiate as a temporary measure in one or more other independent posts at one time or may be given additional charge of one or more independent posts in addition to his own. In such cases, his pay shall be regulated as follows :-

- (a) *In the former case, the highest pay to which he would be entitled if his appointment to one of the posts stood alone, may be drawn on account of his tenure of that post.*
- (b) *For each other post, he may be permitted to draw additional pay/special pay at 20 per cent of the presumptive pay of the post limited to Rs.250 per month irrespective of whether the Government servant is appointed to such a posts or is given additional charge, subject to the condition that such additional pay/special pay should in no case exceed 20 per cent of the presumptive pay of the highest post limited to Rs.250 p.m. of which he held additional charge. Even, if a Government servant is appointed to more than one independent post or is given full or current charge of more than one independent post, the additional pay/special pay should in no case exceed 20 per cent of the presumptive pay of the highest post limited to Rs.250 p.m. of which he held additional charge. No additional pay/special pay shall, however, be granted if such charge is held for a period of less than sixteen days or if a regular appointment is made for a like period.”*

(18) Bare perusal of the above Rule indicates that if any person holds an additional charge of any post in addition to his own, he is entitled to draw additional pay/special pay at 20% of the presumptive pay, but should not exceed Rs. 250/- p.m. However, the expression holding of an additional charge does not specify its nature, whether in the same cadre or another cadre. Thus, in our view, a contextual interpretation of the above Rule would mean holding the additional charge of the post in the same cadre rather than a higher one.

(19) On consideration of the affidavit of respondent Nos.1 to 3 presented before the Tribunal as well as this Court, it is quite clear that the respondents have not disputed that the petitioner was performing the duties as a full-time 'AMVP' from 01/07/2013 until her promotion on 25-06-2020, i.e. approximately for seven years. Although the office order dated 29-06-2013 refers to giving additional charge of the post of 'AMVP' as a stop-gap arrangement, it is a matter of record that the petitioner has performed full-time duty as a 'AMVP' continuously for a period of seven years. In such an eventuality, it would not be permissible to contend that it was a stop-gap arrangement by way of additional charge. It should not be overlooked that the petitioner has performed the functions as a full-time 'AMVP' long-term. Similarly, it is not disputed that the clerical cadre differs from the 'AMVP' cadre. Rule 56 relates to the combination of appointments. The post held by the petitioner as a 'Junior Clerk' in the clerical cadre cannot be compared with the cadre of 'AMVP'. Moreover, the said post was vacant when she was performing her duties as 'AMVP'. Therefore, in our opinion, as long as she was performing the full-time duties of an 'AMVP' and taking responsibility for said post, she must receive the pay scale of the 'AMVP' post. Therefore, the provisions of Rule 56 of the Rules of 1981 would not apply to the petitioner as the nature of the work of the Junior Clerk and 'AMVP' is totally distinct. Apart from this, she was eligible for the post of 'AMVP' and therefore, her name was

recommended vide communication dated 18-06-2013 for grant of ad hoc promotion to the post of AMVP by respondent No.3 to respondent No.2. It would be thus apparent that the expression 'additional charge' would indicate an additional charge in the same cadre and not otherwise. For this reason, in our opinion, holding charge of the higher post with responsibilities for a long and substantial period entitles her to get the pay scale of the said 'AMVP' post on the principle of 'equal pay for equal work'. Therefore, in our view, the findings recorded by the learned tribunal are not sustainable in the eyes of the law regarding the applicability of Rule 56 of the Rules of 1981 for holding additional charge of the post of 'AMVP'. That being so, applying the additional pay at 10% of the basic pay as per Rule 56 of the Rules of 1981 would not be proper. Hence, we do not find substance in the respondents' contention in this regard.

(20) Apart from this, the issue in the present matter is covered by the judgment of this Court dated 12/12/2012 in Writ Petition No.163/2012 (***The State of Maharashtra vs. Dr. Mannul S/o Gabbulal Naik***). Since the facts of the said case and the case in hand are identical, as such, what has been held in the said judgment applies to the present case. In the above decision, this Court confirmed the order of the Tribunal to grant the consequential pay scale applicable to the post of '*Motor Vehicle Prosecutor*'; though, he did not fulfil the eligibility criteria for appointment to the said post. On the contrary, the

case in hand is on better footing as the petitioner was eligible to hold the said post, and her name was also recommended by respondent No. 3 to respondent No.2. In the said case, the person was appointed as a clerk and performed the duty of Motor Vehicle Prosecutor. That being so, in our considered view, the dictum laid down in the said case applies to the case in hand.

(21) It would thus be apparent that the petitioner was not promoted on an ad hoc basis as 'AMVP', but she held the additional charge and discharged the duties and responsibilities of the said post for a substantive period, w.e.f. 01/07/2013 to 24/06/2020 until she was promoted and discharged her duty as 'AMVP'. Similarly, the said sanctioned post remains vacant. Moreover, the petitioner was eligible to hold the said post, and her name was also recommended by respondent No. 3 to respondent No. 2, vide communication dated 18/06/2013.

(22) In such an eventuality, in our considered opinion, in view of the mandate laid down in the case of **Jagjit Singh** (supra) the principle of '*equal pay for equal work*' applies, to the employee i.e. the petitioner who would be entitled to get the same monetary benefits as are receivable by the regular employee. Learned Tribunal has not considered this aspect in its proper perspective and erred in granting limited relief i.e. additional 10% pay of the basic as admissible vide

Rule 56(b) of the MCS(Pay) Rules, 1981, in view of the above discussion the said finding cannot be sustained in the eyes of law nor appears consonant with the law laid down by the Hon'ble Apex Court in **Jagjit Singh**(supra), therefore, the same is required to be modified. It would thus be apparent that, as per the law laid down by the Hon'ble Apex Court in **Jagjit Singh** (supra), the petitioner is entitled to the relief as claimed. However, she was not promoted due to the non-approval of recruitment rules until 2019, when the sanctioned post became vacant, and she was holding the additional charge.

(23) In the wake of the above, we find substance in the learned Senior Counsel's contention in that regard; therefore, in light of the dictum laid down in **Jagjit Singh** (supra), we partly allow the petition and modify the impugned judgment passed by the learned Tribunal. The respondents are directed to grant the applicant the pay scale attached to the post of 'AMVP' w.e.f. 01/07/2013 until she has held the said post, and to pay consequential benefits arising from it by adjusting the earlier payment made to her.

(24) Rule is made absolute in the above terms. No costs.

[ABHAY J. MANTRI, J.]

[AVINASH G. GHAROTE, J.]

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