

(1989) 08 BOM CK 0025

Bombay High Court

Case No: Appeal No. 620 of 1987 in Writ Petition No. 1526 of 1986

State of Maharashtra

APPELLANT

Vs

Hon"ble Mr. M.H.
Kania, The Hon"ble the
Chief Justice, High
Court of judicature at
Bombay and Others

RESPONDENT

Date of Decision: Aug. 31, 1989

Acts Referred:

- Constitution of India, 1950 - Article 14, 226, 229, 229(2)

Citation: (1989) 3 BomCR 692 : (1989) 91 BOMLR 291

Hon'ble Judges: P.B. Sawant, J; H. Suresh, J

Bench: Division Bench

Advocate: P.K. Thakore and S.D. Chaugule, for the Appellant; D.R. Dhanuka, Milind State and K.D. Naik for respondent Nos. 2 to 17, for the Respondent

Final Decision: Dismissed

Judgement

H. Suresh, J.

In this appeal, the State is challenging an order passed by the learned single Judge allowing Writ Petition No. 1526 of 1986 whereby respondent Nos. 2 to 17 who are all in the category of the lowest self drawing gazetted officers on the Original Side in this High Court, have been equated with their counter parts on the Appellate Side, namely, the Assistant Registrars.

2. At the time of the filing of the petition, the respondents were in the pay scale of Rs. 650 1250, which was the same as that of Senior Superintendents and the Shirestedars, though their function was comparable to that of the Assistant Registrars on the Appellate Side. The Assistant Registrars were in the pay scale of Rs. 1000-1500. Therefore, they had contended that they were being equated with unequals (i.e. Shirestedars/Senior

Suprintendents) and they were not being equated with their equals. That is how they had sought a writ directing the Government to grant them the pay scale on par with that of the Assistant Registrars on the Appellate Side.

3. It appears that some time in 1965, the Government had, in principle, accepted parity in pay scales for the High Court officers with that of the officers in the Mantralaya. By virtue of the recommendations of the Badkas Pay Commission, the Government granted parity in part, upto the level of Superintendents, and thus non-gazetted employees were granted the same pay scales as their counterparts in the Mantralaya. This point was agitated before the Bhole Pay Commission, which, in 1977, recommended parity only upto the level of Assistant Registrars and the equivalent posts on the Original Side in the High Court. However, officers holding higher posts, both on the Original Side and the Appellate Side, were not given parity of pay scales as are paid to their counterparts in the Mantralaya, viz., Deputy Secretary, Additional Secretary. Secretary etc. Similarly, it was not clarified before the Bhole Pay Commission that certain categories of officers, such as the 2nd Assistant Master, 1st Assistant to the Official Assignee, 2nd Assistant to the Court Receiver, 3rd Assistant Master and the Associates were discharging functions similar to that of the Assistant Registrar on the Appellate Side, though such equation could have been legitimately done by the Chief Justice himself. This led to an anomalous situation whereby these officers i.e. the respondents came to be equated with non-gazetted officers and continued to get lower pay scale of Rs. 680-1250 as the Superintendents.

4. The respondents, therefore, began agitating about the disparity of the scales as mentioned above. They made representations to the Chief Justice by submitting memorandum dated September 30, 1982. They again repeated their request by further submission dated October 7, 1982. Their representations were forwarded to the Government. They were discussed between the Government of Maharashtra and the learned Chief Justice. The learned Chief Justice through the Prothonotary and Senior Master, High Court, Original Side and the Registrar, High Court, Appellate Side by a letter dated February 17, 1983, recommended the parity of pay scales of officers in the category of respondent Nos. 2 to 17 as demanded by them, on the basis that their work could be compared with the work of Assistant Registrars in the Appellate Side. The Government of Maharashtra in a cryptic letter dated April 8, 1983, addressed to the Prothonotary and Senior Master and the Registrar, informed the High Court that since the matter regarding revision of pay scales of the High Court staff had been considered at the highest level of the Chief Minister and the Chief Justice, the question of reopening it at that stage did not arise. The respondents made further representations by their letter dated March 28, 1984, which was also forwarded by the learned Chief Justice to the Government. The respondents also by their Advocate's letter dated March 13, 1986, once again appealed to the Government and pointed out that the Government's refusal to consider their representations, despite the recommendations of the learned Chief Justice would amount to denial of justice and , therefore, they would have to file a writ petition. As

usual, the Government would not consider. Hence, the above writ petition.

5. After the filing of the writ petition with a view to meet the contentions raised in the petition, the Government requested the High Court to give comments on the various contentions mentioned in the petition. The Prothonotary and Senior Master by a letter dated October 13, 1986, addressed to the Secretary to the Government of Maharashtra conveyed to the Government the stand of the High Court. The High Court in turn pointed out that the pay scale of respondent Nos. 2 to 17 is on par with the Senior Superintendents and is not on par with that of the Assistant Registrars. The High Court also pointed out that anomalous position of their pay scale has arisen only because the Government was pleased to accept the parity of pay scales of the administrative posts upto the level of Assistant Registrar in the High Court by treating them on par with the posts of Under Secretary in the Mantralaya. The High Court further pointed out that the duties and the responsibilities of respondent Nos. 2 to 17 are comparable to that of the Assistant Registrars. It was also pointed out that respondent Nos. 2 to 17 are self drawing gazetted officers while the Senior Superintendents are not, and that qualifications and the experience of both these grades are not comparable. In fact the qualifications of the respondents are higher than those of the Senior Superintendents. It was in that background, pointed out that the High Court had recommended that the posts of the respondents should be brought on par with that of the Assistant Registrars on the Appellate side. In fact, when the Government filed its affidavit-in reply to the petition, it annexed the said letter dated October 13, 1986, as a part of their reply to the petition. In other words, on the question of parity of work, the Government accepted the equation given by the High Court.

6. Despite this categorical admission on the part of the Government and despite the fact that the High Court had equated the duties and functions carried out by the respondents with that of the Assistant Registrars on the Appellate Side, Mr. Thakore sought to submit that it could be said that there is a difference in the rules with regard to the recruitment of the respondents in the Original Side and the Assistant Registrars in the Appellate Side, and on this basis, he submitted that the classification should be accepted. Under the rules for recruitment to gazetted posts in the High Court, initially the appointment to gazetted posts including the Second Assistant Master, Second Assistant to the Court Receiver, First Assistant to Official Assignee, Third Assistant Master and Associate shall be made by the Chief Justice; (i) by promotion from amongst the staff working in the offices on the Original Side of the High Court and (ii) by nomination from advocates or attorneys of not less than 2 years standing. However, in June 1985 the Rules were amended and now the appointment to these posts shall be made from amongst the staff working in the office of High Court, as well as from City Civil and Sessions Court or the Court of Small Causes or the Court of Metropolitan Magistrate, provided this appointment should be only from the Members of the staff "who possess legal qualification." As against this on the Appellate Side as far as the posts of Assistant Registrars are concerned, the appointments are to be made by the Chief Justice; (i) by promotion from amongst the staff working on the

Appellate Side and (ii) by nomination of advocates or attorneys of not less than five years" standing, provided that "ordinarily the appointment to one of the posts of Assistant Registrars shall be by nomination under clause (ii)". Thus, it is significant to note that for the purpose of appointing Assistant Registrar on the Appellate Side by promotion, no legal qualification is required, whereas as far as the respondents are concerned no appointment by promotion is possible without legal qualifications. Mr. Thakore points out that in the case of nomination there is a difference in the qualifications. But what he forgets is that only one such post should be filled in the nomination from the advocates or attorneys of not less than five years" standing, while all the others can be appointed without their having any legal qualifications whatsoever. It appears that, by and large, it is the Senior Superintendents and the Shirestedars, at the fag-end of their service, are promoted as Assistant Registrars, without any legal qualifications at all. In fact, it could as well be said, that the respondents as a class, have better qualifications than the Assistant Registrars. The Chief Justice had, therefore, rightly, recommended to the Government as far back as on February 17, 1983 that it is necessary that these posts should be brought on par with that of the Assistant Registrars in the Appellate Side. We are, therefore of the opinion that there is no force in the contention of Mr. Thakore that the classification of the respondents a distinct form that of the Assistant Registrars has any rational basis whatsoever. We are of the opinion that the respondents have been irrationally classified with the Senior Superintendents. We are also of the opinion that respondent Nos. 1 to 17 ought to have been classified with the Assistant Registrars on the Appellate Side as their work is comparable on an equal basis with that of the Assistant Registrars. In fact it is not open to the Government to raise any such contention, in view of the fact that the Government has accepted whatever the High Court had said. The Government itself has no opportunity to assess or evaluate the work of the respondents or of the Assistant Registrars. It is the High Court that appoints. It is the High Court that determines the functions of both these categories. If the High Court equates their work, there can be no demur.

7. Consequently, Mr. Thakore's contention that the High Court ought not interfere with the value judgments of the executive, as if the Government itself had assessed, also cannot stand scrutiny. On the other hand, by not accepting the value judgment given by the High Court which alone is the proper authority in that behalf, the Government's action or for that matter, its inaction, is liable to be impugned as arbitrary.

8. M. Thakore drew our attention to the case of [Federation of All India Customs and Central Excise Stenographers \(Recognised\) and others Vs. Union of India and others](#), to point out that there is an element of value judgment by those who are charged with administration in fixing the pay scales and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation such differentiation will not amount to discrimination. It is important to emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work

will be a negation of that right. We wonder how these propositions can come to the rescue of the Government, when the High Court in its value judgment, administratively has categorically admitted that there is a patent anomaly in the classification of these employees, inasmuch as patently, unequals have been equated with equals and equals have not been equated with equals.

9. Mr. Thakore then submitted that this writ petition is, in effect, to implement the recommendations of the Chief Justice and since it imposes a financial liability on the Government, having regard to Clause (2) of Article 229 together with the proviso appended thereto, no writ of mandamus could lie compelling the Government to pay any such amounts. He referred to the case of [The State of Assam Vs. Bhubhan Chandra Dutta and Another](#), and [State of Andhra Pradesh and Another Vs. T. Gopalakrishnan Murthi and Others](#). Undoubtedly, if the Chief Justice himself wants to enforce his own recommendations without appropriate rules being framed, and approved by the Governor, the High Court would not issue a writ under Article 226. In the present case, it is not that the Chief-Justice is framing new set of rule which require approval by the Government. On the other hand, the respondents are complaining that under the existing pay scale they have been discriminated irrationally and that is hit by Article 14 of the Constitution of India. Mr. Thakore contends that even then since it involves additional financial liability in view of Clause 2 of Article 229 together with the proviso, no relief can be given to the respondents. We are afraid, that if this argument is taken to its logical conclusion it would mean that Article 229 sub-clause (2) together with proviso would curtail the ambit of Article 14. On the other hand, there can be no restriction as to the ambit and scope of Article 14 by invoking Article 229. Article 14 strikes down every arbitrary act and irrational classification. Article 229 is concerned with framing of rules by the Chief Justice and sanction or approval by the Governor. They operate in two separate domains and Article 229 cannot control Article 14 of the Constitution of India.

10. Mr. Thakore then submitted that if the matter is pending before the pay commission, the High Court could not have issued any writ of mandamus to grant to the petitioners a particular scale. Initially, we thought that in fact the question of parity between the Associates and other respondents on one side and the Assistant Registrars on the other side had been referred to the pay Commission, and it was on that footing we thought that Mr. Thakore could advance this argument. But, as the facts show, there was no reference to any pay commission at any time.

11. It appears that in July 1983 the Government of India appointed the fourth Central Pay Commission. On June 30, 1986 the fourth Central Pay Commission submitted part I of its report relating to the structure, emoluments, allowances, conditions of service of Central Government employees including the Union Territories, members of the A.I.S. and personnel belonging to Armed Forces. Consequently, as per the policy of the Government of Maharashtra to revive the pay-scales of State Government employees on the lines of recommendations of the Central Government Pay Commission, the Government of Maharashtra appointed the Equivalence Committee for revision of pay

scales headed by Justice N.B. Naik (Chairman) and two others. This Committee submitted its report on or about October 20, 1987. Mr. Thakore submitted that when the petition was pending before the learned Single Judge, the revision of pay scales of the respondents and the question of parity was pending before the said Equivalence Committee and that, therefore, the High Court could not have gone into the said question. He also submitted that the High Court and the respondents' association as also the Prothonotary and Senior Master and the Registrar have all been heard before the said Committee submitted its report. He relied on the case of [Delhi Veterinary Association Vs. Union of India \(UOI\) and Others](#), and also the case of State of U.P. v. J.P. Chaurasia, AIR 1989 S.C. 19.

12. We are unable to accept these submissions for the simple reason that the question parity of the respondents who are all on the Original Side with the Assistant Registrars on the Appellate Side was never a subject of reference to the said Equivalence Committee. The terms of reference to the said Equivalence Committee staged inter alia as under :

"(1) To determine and recommend the comparability of posts in respect of the following with those under the Central Government for deciding the revised pay scales---

- i) State Governments posts (other than the posts include in the AIS).
- ii) Zilla Parishads posts;
- iii) Teachers in aided Schools;
- iv) Such of the posts under the Maharashtra Legislature Secretariat as have no corresponding posts in the State Secretariat;
- v) Posts both Gazetted and non-Gazetted in the High Court;"

The object was to compare the pay scales of gazetted and non-gazetted posts in the High Court with that of the employees of the Central Government and to find a parity of scales between the two. Mr. Thakore referred to the procedure of work and submitted that letters have been issued to all heads of departments requesting them to indicate the posts in Centre which in their opinion were comparable with the posts in their own organisations and to suggest the revised pay scales for them on the basis of the pay scales fixed for the Central posts. We thought, that itself should have indicated to Mr. Thakore that there was no term of reference before the Pay Commission relating to the question that was considered in this petition. We have, therefore, no hesitation in saying that there is no substance in this contention of Mr. Thakore.

13. Finally, Mr. Thakore submitted that if the order of the learned Single Judge is sustained and the respondents are given parity with the Assistant Registrars, their pay scales would be revised as it stood the, to the pay scale of Rs. 1000-1500. He submitted that that was the pay scale of the First Assistant Master and the Company Registrar

which are promotional posts from the cadre of the respondents. He, therefore, submitted that in that event automatically respondent Nos. 2 to 17 would be equated with their superiors, which cannot be permitted. In that connection he relied on the case of [V. Markendeya and Others Vs. State of Andhra Pradesh and Others,](#) . He drew our attention, in particular, to the following passage :

"In view of the above discussion we are of the opinion that where two class of employees perform identical or similar duties and carrying out the same functions with the same measure of responsibility having same academic qualifications they would be entitled to equal pay. If the State denies them equality in pay, its action would be violative of Articles 14 and 16 of the Constitution, and the Court will strike down the discrimination and grant relief to the aggrieved employees, but before such relief is granted the Court must consider and analyse the rationale behind the State action in prescribing two different scales of pay. If on an analysis of the relevant rules, orders, nature of duties, functions, measure of responsibility, and educational qualifications required for the relevant posts, the Court finds that the classification made by the State in giving different treatment to the two class of employee is founded on rational basis having nexus with the objects sought to be achieved, the classification must be upheld. Principle of equal pay for equal work is applicable among equals, it cannot be applied to unequals. Relief to an aggrieved person seeking to enforce the principles of equal pay for equal work can be granted only after it is demonstrated before the Court that invidious discrimination is practised by the State in prescribing two different scales for the two class of employees without there being any reasonable classification for the same. If the aggrieved employees fail to demonstrate discrimination, the principle of equal pay for equal work cannot be enforced by Court in abstract. The question what scale should be provided to a particular class of service must be left to the executive and only when discrimination is practised amongst the equals, the Court should intervene to undo the wrong and to ensure equality among the similarly placed employees. The Court however cannot prescribe equal scales of pay for different class of employees."

It is on this last sentence, emphasis was laid, to contend that the respondents and their superiors cannot be given the same pay scale, which will be the inevitable result, if this petition is allowed.

14. Here, there are one or two things which require consideration. Firstly, though the respondents are all in the same category of officers in the Original Side and all of them drew the same salary, inter se, there is a promotion from the level of the Associate to that of Third Assistant Master and from Third Assistant Master to Second Assistant to Court Receiver and from Second Assistant to Court Receiver to First Assistant to the Official Assignee and from the First Assistant to the Official Assignee to the Second Assistant Master. Each of these posts are promotional posts but, they are "paper promotions" with no change in the salary. Therefore, inherently, if a promotional post carried the same salary that itself cannot be a ground to deny a relief to a petitioner, if his case can fall within the principle of "equal pay for equal work" under Article 14 of the Constitution of

India.

15. But what is important is that the High Court recommended to the Government to eliminate these anomalies. Firstly, when the High Court recommended that respondent Nos. 2 to 17 should be brought on par with that of the Assistant Registrars in the appellate side having regard to the fact that they do the same work as that of the latter, the High Court also recommended that the First Assistant Master and the Company Registrar who are in the pay scale of 1000-1500 which is the pay scale of Assistant Registrar on the appellate side, should also be promoted to the category of Deputy Registrar, which is the higher post on the Appellate Side. It appears that in the past, the pay scale of the Assistant Master was higher than that of the Assistant Registrar, but less than that of the Deputy Registrar and in 1977 when the pay scale was fixed it ought to have been equated with that of Deputy Registrar, but instead it was equated with that of the Assistant Registrar. The work was comparable to that of Deputy Registrar and that therefore, they ought to have been paid a higher grade. So also in the case of Company Registrars. In our view, it is not open to the Government to deny the reliefs to the respondents who have made out a clear case of violation of Article 14 on the ground that incumbents of the higher posts on the Original Side are not being given the pay scale which is due to the said promotional post. In our view, this is a clear where discrimination is practised amongst equals and, therefore, it becomes necessary for the Court to intervene, to undo the wrong and ensure equality amongst the similarly placed employees viz. respondents Nos. 2 to 17 and the Assistant Registrars on the Appellate Side.

16. Mr. Dhanuka appearing for the respondents has drawn our attention to number of cases, which is not necessary for us to enumerate, all for the purpose of emphasising that the principle of "equal pay for equal work", if not given effect to in the case of one set of Government servants holding same or similar posts, and doing the same amount of work as another set of Government servants, it would be discriminatory and violative of Articles 14 and 16 of the Constitution.

17. In the result, this appeal will have to be dismissed.

We, therefore, pass the following order :

Appeal is dismissed.

However, there will be no order as to costs as far as this appeal is concerned.

We are told that despite the judgment of the learned Single Judge and despite there being no stay of the order, many of the Associates and Officers holding similar posts as that of respondent Nos. 2 to 17 who are not made parties in this petition as such, have not been paid a higher pay scale as that Assistant Registrars on the Appellate Side, merely on the ground that they were not petitioners in the petition. If that is so, we are indeed surprised and we cannot justify this stand of the Government. The order applies to all officers who are in the category of officers as that of respondent Nos. 2 to 17 whether

they were actually petitioners on record or not, and we do hope all such officers who have not been paid their due salaries shall be paid just as respondent Nos. 2 to 17 have been paid pursuant to the order of the learned Single Judge.