
(2000) 01 BOM CK 0066

Bombay High Court

Case No: Writ Petition No. 5467 of 1999

Dr. Suresh Srikrishna
Naik

APPELLANT

Vs

Karamveer Hire Rural
Institute and others

RESPONDENT

Date of Decision: Jan. 18, 2000

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Citation: (2000) 2 ALLMR 94 : (2000) 2 BomCR 522 : (2000) 2 BOMLR 199

Hon'ble Judges: R.K. Batta, J; P.S. Patankar, J

Bench: Division Bench

Advocate: Ane, C., Nitin Jamdar, for the Appellant; Mrs. Meena H. Doshi and A.V. Anturkar and C.R. Sonawane, Asstt. Govt. Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.K. Batta, J.
Rule.

With the consent of the learned Advocates for the parties, rule is made returnable forthwith and heard.

2. The petitioner retired from service on 30th April, 1994 after serving as Lecturer in Social Work in Karamveer Hire Rural Institute, Gargoti, Dist. Kolhapur (respondent No. 1) from 27-6-1961 to 20-6-1967, after which he had worked as Senior Lecturer in Social Work in Karve Institute of Social Work (respondent No. 2) from 1-7-1967 to 24-6-1981 and, finally, he was Professor-in-charge in Social Science Centre, Bharati Vidyapeeth, Pune (respondent No. 3) from 25-6-1981 to 30-4-1994. According to the petitioner, the respondent Nos. 1 to 3 institutes are not only recognised by the Social Welfare Department of the Government of Maharashtra, but the said Institutes are also receiving

grant-in-aid. The petitioner's grievance is that though he had worked for 32 years in the said Institutes and is eligible for pension scheme, yet retirement benefits such as gratuity, pension, etc. are denied to him. The petitioner has thrown challenge to the discriminatory treatment being meted out to him and the teachers in the said institutes in relation to pensionary benefits while the said benefits are being granted to teachers fraternity, to various teaching and non-teaching staff of recognised aided non-Government Arts, Science, Commerce and Education Colleges and non-Agricultural Universities in the State. The petitioner has pointed out that such benefits have been granted to teachers in Education Colleges under the Department of Education & Employment vide Government Resolution dated 21-7-1983, but the said benefits are not applied to teaching and non-teaching staff of the Social Work Institutions/Colleges which amounts to discrimination and is violative of Article 14 of the Constitution of India. It is further pointed out that in the said Government Resolution dated 21-7-1983, detailed instructions relating to options to elect either to continue under the Contributory Provident Fund Scheme or to come under the pension scheme are available. The petitioner further claims that the teaching staff of the Colleges under the Social Welfare Department perform the same duties which are being performed in the Colleges under the Education Department; the service conditions, manner of fixation of pay, recruitment, qualifications, career advancement, syllabus, teaching programme, work load, etc., which are applicable to the teachers in Government and non-Government Colleges affiliated to the University are equally applicable to teachers in Social Work Institutions and Colleges under the Social Welfare Department. It is further pointed out by the petitioner that Institutions/Colleges under the Social Welfare Department are affiliated to Shivaji University and Pune University to which Colleges under the Education Department are also affiliated and all norms of the University Grants Commission applicable to the University are equally applicable to the Institutions and Colleges under the Social Welfare Department. The petitioner had approached the Hon"ble Lokayukta where it was pointed out by the Social Welfare Department that grant of pension to the teachers under the Social Welfare Department is a policy decision of the State and, as such, no further action was taken by the Hon"ble Lokayukta. The immediate cause for filing this petition is that on 31-3-1993 the Director of Social Welfare sent a letter addressed to the Association of Social Work Educators that the Government has taken decision not to grant pension to teachers of Colleges of Social Work on the ground of financial situation. The petitioner contends that this decision of the State Government on the ground of financial constraints is not only arbitrary and irrational, but it is violative of Article 14 of the Constitution of India. According to the petitioner, he has received total Provident Fund of Rs. 64,000/- from three Institutions where he had served for 32 years and the said amount is not sufficient for his maintenance. Therefore, the petitioner seeks direction against the respondent Nos. 4 to 6 to pay retirement benefits.

3. The State of Maharashtra has filed affidavit-in-reply through Deputy Secretary to Government, Social Welfare, Cultural Affairs and Sports Department, Mantralaya, Mumbai. In this affidavit, it is submitted that the petitioner is not entitled to get retirement

benefits such as pension, gratuity, etc. since the Government has taken a policy decision on 8-7-1998 considering the financial implications and position of the State exchequer so as not to grant such benefits to teaching/non-teaching staff of Social Work Colleges. It is further submitted that the payment of such benefits would result in huge financial burden which the State is unable to meet on account of limited financial resources of the State. It is further averred in the affidavit that the provisions of the Maharashtra Civil Service (Pension) Rules are not applicable to the case of the petitioner and that even in the case of employees of aided non-Government Institutes/Colleges working under the Public Health Department, the Government had taken a policy decision that no pension and gratuity scheme shall be made applicable to them. The said policy was challenged before this Court and this Court had granted relief in favour of the petitioners therein, but in the SLP filed by the State Government before the Apex Court, it has been held that whether the scheme could be extended or not is a question of an executive policy and the Court would not take the responsibility of directing the Government to extend the policy. Besides, reliance is also placed on the judgment of the Apex Court in [Director, Lift Irrigation Corporation Ltd. and Others Vs. Pravat Kiran Mohanty and Others, .](#)

4. We have heard the learned Advocates appearing in the matter. Relying upon the judgment of the Apex Court in State of Maharashtra & Ors. v. Dr. Shri Hari Shankar Vaidhya & ors., Civil Appeal Nos. 2878-79 of 1997 decided on April 7, 1997 upon which reliance has also been placed by the learned Asstt. Govt. Pleader, it has been urged by Mr. Ane, learned Senior Counsel for the petitioner, that directions be given to the Government to consider extending the benefit of pension and gratuity scheme to the teaching staff of the colleges under the Social Welfare Department in a phased manner as has been done in respect of other aided Institutions. Mr. Anturkar, learned Counsel appearing on behalf of the respondent No. 3, endorsed the argument of the learned Senior Counsel Mr. Ane and further pointed out that in para 2 of the Government Resolution dated 21-7-1983 (Exh. C), an inclusive definition of a non-Government College has been given, as a result of which it would not be proper and justified to exclude the Institutes/Colleges under the Social Welfare Department.

5. The learned Advocate for the respondent Nos. 1 & 2 brought to our notice that the said Institutes had already paid Contributory Provident Fund which was due to the petitioner and in case the pension scheme is made applicable, the same will be required to be adjusted depending upon the nature of the pension scheme. The learned Addl. Govt. Pleader appearing on behalf of the respondent Nos. 4 to 6 submitted that the State Government has taken a policy decision not to extend the pension scheme to the Institutes/Colleges under the Social Welfare Department and such policy decision cannot be interfered with in exercise of writ jurisdiction.

6. The petitioner claims retirement benefits on parity with the teaching and non-teaching staff of non-Government aided Arts, Science, Commerce and Education Colleges and non-Agricultural Universities in the State to whom pension-cum-gratuity scheme and other retirement benefits have been extended by the State Government vide Resolution

dated 21-7-1983. His grievance is that when such benefits are granted to teaching and non-teaching staff of the Colleges under the Department of Education and Cultural Affairs, there is no reason or justification to deny such benefits to the teaching and non-teaching staff of the Institutes/Colleges under the Social Welfare Department. The Institutes/Colleges under the Social Welfare Department as well as the Colleges under the Department of Education and Cultural Affairs are affiliated to the same Universities, viz., Shivaji University and Pune University and all norms of the University Grants Commission are equally applicable to the Colleges under the Department of Education and Cultural Affairs as well as Social Welfare Department. In the facts and circumstances, there is considerable merit in the grievances of the petitioner. The only difference is the Department of the Government under which the Institutes fall in which the petitioner and others are working. In a welfare State, the Government is bound to look after the interest of all the employees similarly situated alike without any discrimination whatsoever.

7. The ground on which the State Government had taken the policy decision to deny benefit of pension scheme to the teaching and non-teaching staff of Social Welfare Department is financial burden/crunch. The State Government had earlier denied such benefits to the teachers working in Ayurvedic, Unani and Homeopathic private aided educational institutions on the ground of huge financial outlay which was the subject-matter of litigation before this Court as well as the Apex Court in *State of Maharashtra & others v. Dr. Shri Hari Shankar Vaidhya & others.* (supra). In that case, the learned Senior Counsel appearing on behalf of the State had contended that in view of huge financial outlay, the Government has been, in a phased manner, extending the benefits from time to time, but directions cannot be given to tide down the hands, of the Government to extend all the benefits to all of them at a stretch. It was pointed out before the Apex Court in the said case that in [State of Maharashtra Vs. Manubhai Pragaji Vashi and others](#), directions were given to extend similar benefits to the teachers working in private Law Colleges. In this view of the matter, the Apex Court had observed that whether the scheme could be extended or not is a question of executive policy and the Court will not take the responsibility of directing the Government to extend the policy. The Apex Court appreciated the stand taken by the Government that in view of huge financial outlay, the policy of extending benefits could be implemented only in a phased manner. Accordingly, the Government was directed to consider the extension of benefit of pension and gratuity scheme to the teachers working in Ayurvedic, Unani and Homeopathic aided educational institutions in a phased manner as was done in respect of other aided institutions.

8. In the facts and circumstances, we are inclined to issue similar directions to the State Government and, accordingly, pass the following order: --

ORDER

The decision of the State Government to deny benefits of pension-cum-gratuity scheme to teaching and non-teaching staff of the Institutions/Colleges under the Social Welfare Department taken on 8-7-1998 and communicated by the Director, Social Welfare Department, vide letter dated 31-3-1999 is set aside and the State Government is directed to consider extension of such benefits to the teaching and non-teaching staff working in the Institutions/Colleges under the Social Welfare Department in a phased manner. Once this scheme is made applicable, the option as well as adjustment of Contributory Provident Fund paid to them can be worked out and adjusted. The rule is made absolute in the aforesaid terms with no order as to costs.

10. Rule made absolute.