

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 219 of 2019 (DB)

Dr. Kuwarlal Hiralal Wasnik,
Aged about 51 yrs.,
Occ. Service, r/o 201, Radhika Apartments,
Ganediwal Layout, Camp, Amravati.

Applicant.

Versus

- 1) State of Maharashtra through its Secretary,
Department of Higher and Technical Education,
Mantralaya, Mumbai-32.
- 2) The Director of Higher Education,
State of Maharashtra, Central Building, Pune-1.
- 3) The Joint Director of Higher Education,
Amravati Division, VMV College Campus, Amravati.
- 4) Government Vidarbha Institute of
Science and Humanities, through its Director,
Katora Naka, Amravati.

Respondents.

S/Shri B.G. Kulkarni & R.V. Shiralkar, Advs. for the applicant.
Shri A.M. Ghogre, learned P.O. for respondents.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 8th April,2022

Date of Pronouncement of Judgment : 19th April,2022.

JUDGMENT

Per : Member (J).

(Delivered on this 19th day of April, 2022)

Heard Shri B.G. Kulkarni, learned counsel for the applicant
and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant holds the qualifications (a) M.A. (Political Science), (b) M.A. (Public Administration), (c) U.G.C. SET Examination (Political Science), (d) M.Phil, (Political Science) and (e) Ph.D. (Political Science).

3. The applicant belongs to S.C. category. After following the prescribed procedure for selection and appointment, the applicant was appointed as a Lecturer in Political Science at Smt. Kesharbai Lahoti Mahavidyalaya, Amravati as per order dated 17/11/1997. Smt. K.L. Mahavidyalaya, Amravati being 100% grant in aid college it was a pensionable establishment as per the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 and GPF Scheme. Regular GPF account (No.6396) was opened accordingly.

4. The appointment of applicant on the post of Lecturer at Smt. K.L. Mahavidyalaya, Amravati was validly approved by Sant Gadgebaba, Amravati University as per order dated 17/02/1998. The services of the applicant were confirmed by the Management after completing the period of probation as per order dated 25/04/2000 w.e.f. 17/11/1999. The applicant was granted benefit under the Career Advancement Scheme in the year 2002, 2007 and 2010. The higher pay scales were lawfully approved by the Joint Director of Higher Education, Amravati.

5. The post of Associate Professor in Political Science in respondent no.4 Institute (S.C. category) was advertised by respondent no.1. The applicant had applied for the said post through proper channel with N.O.C. of the Principal of Smt. K.L. College, Amravati. The applicant was selected for the post by the MPSC. The respondent no.1 issued order of appointment dated 30/04/2013. A specific clause (no.9) was incorporated in the said order regarding the benefit of pay protection as per the provisions of the Maharashtra Civil Services (Pay) Rules,1981. On 31/5/2013, the applicant was relieved from Smt. K.L. College and joined the services in respondent no.4 college on 01/06/2013. There was no break in service. As on 31/05/2013, the basic pay of the applicant was Rs.40,240/- with AGP Rs.9000/-. Hence, it was obligatory for respondent nos.1 to 4 to grant pay protection at Rs.40,240/- with AGP Rs.9000/- as on 01/06/2013. However, the basic pay was fixed at Rs.37,400/- and pay protection was not granted.

6. After joining the service in respondent no.4 college, new GPF account was opened (A/c No.15747). Even the balance in earlier GPF account (Rs.8,57,172/-) came to be credited in new GPF Account. As per the order dated 24/08/2015, the respondent no.1 had confirmed the services of the applicant as Associate Professor w.e.f. 01/06/2015. The applicant had submitted applications to

respondent nos. 1 and 2 through proper channel for grant of entitlement of pay protection. The respondent no.4 had submitted the proposal for approval of pay protection to respondent no.2. However, respondent no.2 vide letter dated 09/01/2019 refused to grant approval to the entitlement of pay protection alleging that there are no directions from the State Government for granting benefit of earlier service of non-government grant in aid college.

7. The applicant has filed the copies of Govt. Circular dated 12/01/2007 and G.R. dated 01/12/2008 directing protection of old pension scheme and GPF scheme. All the four conditions mentioned therein are complied with in the case of applicant. The respondents have granted pay protection and pensionary benefits to the similarly situated employees namely Dr. S.S. Pawar and Shri S.S. Kasarla, therefore, prayed to direct the respondents to protect the pay as like other employees and give the pensionary and retiral benefits w.e.f. 17/11/1997 as a continuous service.

8. The application is opposed by the respondents on the ground that the Govt. had issued a communication dated 28/09/2016 with clarification that the Govt. G.R. dated 23/03/1994 does not permit to provide the earlier service protection while pay fixation in case of teaching and non-teaching staff working in private grant-in-aid colleges and therefore the applicant is not entitled for pay protection

and other service benefits. It is submitted that the appointment order of the applicant dated 30/04/2013 has not indicated the specification of the previous service protection for continuity with new services for claiming old pension and GPF scheme facility, therefore, in terms of Conditions nos.2 and 3 of the G.R. dated 23/03/1994, the claim of the applicant is not tenable. In the background, the claim of applicant is not justified in view of Rule 10 and 11 of the Maharashtra Civil Services (Pay) Rules 1981 and as per guidelines in the Govt. G.R. dated 23/03/1994. Hence, the O.A. is liable to be dismissed.

9. Heard Shri B.G. Kulkarni, learned counsel for the applicant. He has pointed out that other similarly situated employees namely Dr. S.S. Pawar, Shri S.S. Kasarla, Kiran G. Dhandore and M.V. Mundhe are given benefit of old pension scheme and their pay also protected. The applicant was appointed as per G.R. dated 01/12/2008. The main conditions in the G.R. are as under –

निर्णय

दि.१ नोव्हेंबर २००५ पूर्वी शासन सेवेत निवृत्तिवेतनाहं आस्थापनेवर कार्यरत असलेल्या व दि. १ नोव्हेंबर २००५ रोजी किंवा त्यानंतर शासन सेवेत नवीन पदावर नियुक्ती स्विकारलेल्या तसेच संदर्भाधिन क्र.२ मध्ये नमूद केलेल्या दि. १२ जानेवारी २००७ च्या परिपत्रकामध्ये विहित केलेल्या खालील अटींची पूर्तता करणा-या कर्मचा-यांना महाराष्ट्र नागरी सेवा (निवृत्तिवेतन) नियम, १९८२ व सर्वसाधारण भविष्य निर्वाह निधी योजना लागू आहे:

- i) शासकीय कर्मचा-याची अगोदरची नियुक्ती नियमित स्वरूपाची असावी, म्हणजेच त्या शासकीय कर्मचा-याची संबंधित पदासाठी विहित करण्यात आलेल्या नियुक्ती नियमांच्या तरतूदीची (उदा. वयोमर्यादा, शैक्षणिक अहंता, महाराष्ट्र लोकसेवा आयोगामार्फत /निवड मंडळामार्फत नियुक्ती इत्यादीबाबींची) पूर्तता करून नियुक्ती झालेली असावी.

- ii) शासकीय कर्मचार्याने अगांवरच्या पदाचा परिचिक्षाधीन कालावधी समाधानकारकरित्या पूर्ण केलेला असावा.
- iii) शासकीय कर्मचार्याने नवीन पदासाठी केलेला अर्ज संबंधित कार्यालयाद्वारे/संबंधित प्रशासकीय प्राधिकार्याची योग्यरित्या पूर्वपरवानगी घेऊन केलेला असावा.
- iv) उपरोक्त दोन नियुक्त्यांमध्ये जर खंड असेल तर त्या खंडाचा कालावधी बदलीच्या नियमांनुसार अनुज्ञेय असलेल्या पदग्रहण अवधीहून अधिक नसावा.

10. From the perusal of G.R. dated 01/12/2008, the appointment of applicant in the establishment of respondents was legal and proper. He has fulfilled all the material conditions in the G.R. dated 01/12/2008 and therefore the respondents have appointed the applicant as Associate Professor (Political Science). There is no dispute that the applicant was working in the Smt. K.L. Mahavidyalaya, Amravati. There is no dispute that the said post / college was 100% grant-in-aid. The post of the applicant in Smt. K.L. Mahavidyalaya, Amravati as a Lecturer (Political Science) was a pensionable post. The applicant has fulfilled the conditions and therefore he was selected and appointed by the respondents in the government establishment. He was appointed by the MPSC.

11. In case of similarly situated employees namely Dr. S.S. Pawar and Shri S.S. Kasarla were given the benefit of old pension scheme and other pensionary benefits. The relevant portions of the orders dated 24/01/2011 and 31/01/2011 are reproduced below –

(i) Order dated 24/01/2011 -

^ **Kki u %MkW** , l -, l - i okj] vf/k0; k[; krk] i kf.k' kkl=] 'kkl dh; foKku l lFkk] ukxi j ; kauh fnukad 17@04@2003 rs17@05@2005 ; k dkyko/khr fouk; djko i kvhy egkfo?kky;] oStki ij] ft- vksjckcn o fn- 18@5@2005 rs fn-12@6@2008 ; k dkyko/khr foKku egkfo?kky;] ukxi j ; k v'kkl dh; vumkfur egkfo?kky; kr vf/k0; k[; krk i nkoj dsydh l ok 'kkl u fu.kz]] for foHkkx dzoru 1289@izdz2@90@l ok&3] fn-21@3@1994 e/khy rjrqhud kj osufuf'prhl kBh xtg; /kj.; kr ; s vkgs R; kph egkj k"V^a ykcd l ok vk; kx i jLdr menokj Eg.ku fn-12@6@2008 jksth vf/k0; k[; krk] i kf.k' kkl= ; k l ed{k i nkoj fu; prh >kyh vl Y; keGsegkj k"V^a ukxjh l ok ¼oru½ fu; e]1981 e/khy fu; e 11 ¼2½ ud kj osufu'prh dj.; kl ekU; rk ns; kr ; s vkgs ek=] 'kkl u fu.kz' fnukad 23 eksp]1994 P; k i fj&2 e/khy rjrqhud kj T; \$B depk& kR; k osuki \$kk vf/kd osufuf'prh >KY; kl] R; kud kj osufu'prh d#u feG.; kpk vf/kdkj T; \$B depk& kl vl .kkj ukgh**

(ii) Order dated 31/01/2011 -

^ **Kki u %Jh-** , l -, l - dkl yk] vf/k0; k[; krk] Hkk\$rd' kkl=] 'kkl dh; foKku l lFkk] ukxi j ; kauh fnukad 01@07@1999 rs 07@02@2008 ; k dkyko/khr l jnkj i vsy egkfo?kky;] pni ij ; k v'kkl dh; vumkfur egkfo?kky; kr vf/k0; k[; krk i nkoj dsydh l ok 'kkl u fu.kz]] for foHkkx dzoru 1289@izdz2@90@l ok&3] fn-23@3@1994 e/khy rjrqhud kj osufuf'prhl kBh xtg; /kj.; kr ; s vkgs R; kph egkj k"V^a ykcd l ok vk; kx i jLdr menokj Eg.ku fn-08@02@2008 jksth vf/k0; k[; krk] Hkk\$rd' kkl= ; k l ed{k i nkoj fu; prh >kyh vl Y; keGsegkj k"V^a ukxjh l ok ¼oru½ fu; e]1981 e/khy fu; e 11 ¼2½ ud kj osufu'prh dj.; kl ekU; rk ns; kr ; s vkgs ek=] 'kkl u fu.kz' fnukad 23 eksp]1994 P; k i fj&2 e/khy rjrqhud kj T; \$B depk& kR; k osuki \$kk vf/kd osufuf'prh >KY; kl] R; kud kj osufu'prh d#u feG.; kpk vf/kdkj T; \$B depk& kl vl .kkj ukgh**

12. Dr. S.S. Pawar and Shri S.S. Kasarla were working in the private colleges having 100% grant-in-aid. They were appointed by the MPSC with the respondents. They were given the benefit of old pension scheme and their pay scales etc. were protected. Recently,

on 23/11/2016 and 15/12/2020, the respondents have given the same benefits to Shri K.G. Dhandore and Shri M.V. Mundhe. The case of the applicant is same as like above said employees.

13. The applicant was working in Smt. K.L. Mahavidyalaya, Amravati as a Lecturer (Political Science). He was selected by the MPSC, therefore, he joined on the establishment of respondents. There was no break in service. He has fulfilled the conditions mentioned in the G.R. dated 01/12/2008, therefore, he is entitled for all the benefits of service and pensionary benefits as like Dr. S.S. Pawar and Shri S.S. Kasarla. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The respondent nos.1 to 4 are directed to grant pay protection to the applicant as on 01/06/2013 at the basic pay of Rs.40,240/- with A.G.P. Rs. 9000/- as per provisions of Rule 11 (2) of the Maharashtra Civil Services (Pay) Rules,1981 within a period of six months from the date of this order.
- (iii) The respondents are directed to give all the pensionary benefits as per old pension scheme as per the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 as well as General Provident Fund (GPF) scheme by counting his services from 17/11/1997 as a continuous service for pensionary and retiral benefits.

(iv) The communications dated 09/01/2019 and 22/02/2019 issued by respondent no.2 and respondent no.4 are hereby quashed and set aside.

(v) No order as to costs.

(Justice M.G. Giratkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 19/04/2022.

dnk.*

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. & Member (J).

Judgment signed on : 19/04/2022.

Uploaded on : 20/04/2022.