

PETITIONER:
THE STATE OF MAHARASHTRA

Vs.

RESPONDENT:
ENGINEERING COLLEGE TEACHERS' ASSOCIATION & ORS.

DATE OF JUDGMENT: 22/07/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (7) 189 1996 SCALE (5) 649

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Delay condoned.
Leave granted.
We have heard learned counsel on both sides.

This appeal by special leave arises from the order of the Administrative Tribunal, Maharashtra made on April 17, 1995 in T.A. No.670/91. The admitted facts are that all the respondents were appointed prior to 1979 as Assistant Lecturers and were possessed of Post Graduation/Doctorate/Higher educational qualifications. The Government of India had taken decision on October 16, 1973 to appoint such lecturers without reference to the Public Service Commission provided they had put in 4 years of service as Assistant Lecturers and also possessed Post-Graduation qualification. The Government of Maharashtra in acceptance of that recommendation had also adopted the same resolution dated March 23, 1990.

The Government of India Resolution reads as under:

"A person already appointed and suitability of the candidate Associate Lecturer or recruited hereinafter as such would be eligible for being upgraded as Lecturer after four years of service as Associate Lecturer provided he fulfils the prescribed educational qualifications and he is adjudged by the Staff Selection Committee as fit to hold the post of Lecturer."

The Government of Maharashtra Resolution dated March 23, 1990 indicates as under:

"In order to encourage research, in continuation of post-graduation studies, candidates, who, at the time of their

recruitment as Lecturers possess Master's and Doctoral degree in engineering/technology shall be granted 2 and 4 advance increments in Sciences and Humanities shall be granted 1 and 3 advance increments respectively in the scale of Rs.2200-4000 along with the benefit of corresponding years of service for the purpose of promotion. The existing Lecturers who do not possess these qualifications, or who might be recruited in future without these qualifications will be eligible for a similar benefit in service for the purpose of promotion as and when they acquire these qualifications, but they will not be eligible for advance increments. Existing Lecturers who possess these qualifications will also be eligible for the benefit in service for the purpose of promotion.

CAREER ADVANCEMENT:

a) Every Lecturer will be placed in a senior scale of Rs.3000-5000 if he has:-

completed 8 years of service after regular appointment with relaxation in service as provided in para 7(c) above:-
Participated in two refresher courses or summer institute each of approximately four weeks duration or in other comparable continuous education programmes approved by the All India Council for Technical Education and
Consistently satisfactory performance appraisal reports.

All lecturers in the existing scale of Rs.700-1600 who have completed 8 years of service on 1st January 1986, will be placed through a process of screening/selection in the scale of Rs.3000-5000. The benefit of service provided in para 7(c) above, will be available for the initial placement also.

b) Every Lecturer in the Senior Scale will be placed in a Selection Scale of Rs.3700-5700 on completion of 8 years service in the Senior Scale with relaxation in service as provided in para 7(c) above. Placement in the Selection Grade will be through a process of Selection by a Selection Committee set up by the appointing authorities. Only those who have attended two refresher courses or summer institutes or in other

comparable continuing education after placement in the senior scale, and whose performance has been assessed as consistently good, will be eligible for placement in the Selection Grade.

c) Existing lecturers, who have completed or will complete, a total period of sixteen years of service on 1st January, 1986 or thereafter will be eligible for placement in the Selection Grade. They will also be entitled to the relaxation in the years or service as provided in para 7(c) above.

d) For the purpose of placement of Lecturers in the Senior Scale and Selection Grade, the corresponding number of posts held by them will be upgraded. The placement shall be through a process of screening/selection.

In furtherance thereof, it would appear that a committee of the Secretaries had recommended for upgradation. When a doubt had arisen, the Desk Officer appears to have clarified that the candidates who had put in requisite total service would be eligible for grant of senior scale and selection grade of pay. This was done by proceeding dated August 28, 1992. When the matter was brought to the notice of the Government for higher education by proceedings dated June 23, 1994, it was clarified as under:

"Taking into consideration all these facts, it is proposed to call for a meeting of the screening selection committee, wherein an issue of granting revised pay-scales the teachers who will be held eligible by considering their regular service for counting it as experience period, will be discussed. A proposal for the said meeting in respect of eligible teachers who have after taking into consideration their regular service upto 1.1.1994 be submitted to Government for the sanction."

In furtherance thereof, a resolution was passed on January 30, 1995 explaining the position as under:

"The revised pay scales recommended by the A.I.C.T.E. have been sanctioned by Govt. to the teachers in Govt. Aided and un-aided Engineering Colleges w.e.f. 1.1.1986. As per G.R. under reference as provided in para-8 of the said G.R. the services of the lecturers after regular appointment are to be counted as Experience for the purpose of granting senior scales and selection grades prescribed in the revised pay-scales. It is clarified in this context that while granting revised pay-scales to the lecturers in

Govt. Aided and un-aided Engineering Colleges, only the services of lecturers who were appointed or promoted, after the recommendation of the Selection or Promotion Committee respectively, approved by the University are required to be considered as regular services while counting experience in service. The service of lecturers as Non-gazetted service, (Class-III) and non-P.S.C. service, should not be reckoned as an experience and accepted as it is lower Division Class-III service or non-gazetted cadre service. The pay-scales of these posts being junior, the responsibilities attached to them are also of a lower level. Hence while granting senior scales or Selection grade to lects, lower level service period, will not accepted as an experience. By order and in the name of Governor of Maharashtra."

A reading of these resolutions and clarifications would clearly indicate that due to decision taken by the Government, the Assistant Lecturers Class-III became eligible to be regularised as Lecturers in Class-II and accordingly they were regularised. The question is: whether the period of service put in as Assistant/Associate Lecturers would be counted as lecturers for the purpose of selection/selection grade scales? It would appear that since there are no promotional avenues from the Lecturer cadre to higher posts, the Government have evolved the policy of granting senior scales and selection grade scales to the Lecturers after required length of service as qualification was put in by them for fitment in the senior scale and selection grade scale of pay. Rules indicate that a Lecturer who has put in 8 years of service will be eligible for senior scale and a Lecturer who has rendered 8 years of service in the senior scale after putting in 16 years of total service as a Lecturer, namely, 8 years as Lecturer and 8 years as senior scale Lecturer, becomes eligible for selection grade. The question arises: whether the respondents could be fitted into the senior scale of pay or the Selection Grade? It is not in dispute that they have spent more number of years as Assistant lecturers. The Tribunal has given direction as under:

"In the result, therefore, the petitioners succeed. It is hereby declared that while extending the facility as senior scale/selection grade, the teaching experience gained by the petitioners from the date they acquired qualifications required for the post of lecturer prior to 1.4.1979 by their continuous service either as Asstt. lecturer prior to 1.4.1979 ; Asstt. lecturer or as upgraded Lecturer or as upgraded Lecturer even prior to the upgraded post, shall be taken into consideration. With these directions, the petitions stand

disposed of along with Miscellaneous Applications for the proposed amendment. In the circumstances, there shall be no order as to costs. It is further directed that the cases of the petitioners shall be processed in accordance with the above directions and in accordance with the latter dated 20.8.92 and the decision thereon shall be taken in the matter of extending senior scale or selection grade to the petitioner within six months from the date of this order. It is further made clear that the extension of senior scale Selection grade shall not have any effect on the placement of the petitioners in the seniority list of the lecturers which shall be regulated in the absence of any contrary rule either existence or that may be framed in future, on the basis of the date of actual entry in the cadre of lecturer. In case of the present petitioners as already pointed out the date of entry in the cadre of lecturer shall be 1.4.1979."

The Tribunal has proceeded on the premise that since they had put in required length of service they became eligible for senior/selection grade scales. It would be clear that the Tribunal has not properly considered 'the resolutions passed by the Government. The Government intended to grant the senior scale and selection grade to the Lecturers who had put in required number of service in the respective cadres as a qualification for eligibility. As stated earlier, the Assistant/Associate Lecturers are in Class-III whereas Lecturers are in Class-II. Therefore, the service rendered in Class-III cannot be computed as Service rendered in Class-II service. Moreover, required experience of eight years as Lecturer and another eight years as senior Lecturers is pre-condition for grant of senior scale and selection grade scale. It is not in dispute that scales of pay of Assistant Lecturers are entirely different from the scales of pay of Lecturer As and senior scale Lecturers. Therefore, the entire service as Assistant/Associate Lecturers cannot be and could not be counted as Lecturers and senior Lecturers for grant of respective scales. If the contention of respondents merits acceptance, the respondents would be the Assistant Associate Lecturers who had put in 16 years of service after securing post-graduation or doctorate without service as Lecturer. Consequently, a direct recruit lecturer has to wait for 16 years to get into selection grade while Assistant Associate Lecturer would scale a march over the former. The consequence would be startling. So, such service as Assistant/Associate lecturer except four years for fitment as Lecturer cannot be counted towards the service rendered as a lecturer/senior scale Lecturer. It would therefore, be obvious that any Lecturer to become eligible for fitment in the senior scale of pay has to put in 8 years of service as a lecturer after regularisation and thereafter after putting in 8 years of service as Lecturer in the senior scale or pay; then only he gets into the selection grade scale. Under these circumstances, the

view of The Tribunal is wholly illegal.

The appeal is accordingly allowed. The Government is directed to place them appropriately as indicated in the order. No costs.

JUDIS