Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 8292 of 2018
[Arising out of SLP(C) No.25448/2017]

AHALYA A. SAMTANEY ….APPELLANT

Versus

THE STATE OF MAHARASHTRA & ORS. ….RESPONDENTS

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. Leave granted.

2. The appellant obtained a Post Graduate degree (M.A.) and thereafter completed her Bachelor of Education (B.Ed.). She was appointed as a tutor of English in the H.R. College of Commerce and Economics, Mumbai (respondent No.6), in which position she carried on her professional duties from 15.12.1974 to 31.7.75 in the grade pay-scale of Rs.250-15-400. The then existing pattern of education was of 10 years schooling and 4 years of college. The appointment of the appellant was approved by the University of Mumbai (respondent No.4) on 15.5.1975.

3. The appellant continued to work as a tutor in English till 31.7.1975, when she was promoted as a Lecturer of English in the Senior College w.e.f. 1.8.1975. The appellant continued to work in that capacity up to 30.9.1976 in the revised grade pay-scale of Rs.700-50-1600.

4. A new pattern of education was introduced from June, 1976 under the pattern of 10+2+3, as a consequence of which the appellant was rendered fully surplus in the senior college. The Government of Maharashtra (respondent No.1) conscious of such consequences, laid down certain guidelines for absorption of the lecturers rendered surplus due to the new 10+2+3 pattern vide the Government Resolution No. HSC.1076/419-XX-XXI dated 11th June 1976. It is in view of these guidelines that the appellant was appointed as a full time teacher in English now in the junior college w.e.f. 1.10.1976, in the pay-scale of Rs.500-900 instead of Rs.700-50-1600.

5. It is on 3.6.1977 that the appellant took up the issue of her re-appointment as a full time lecturer in college in view of the fact that she had been working for two years with respondent No.6 College and in response thereto on 14.6.1977, the Principal of the College informed the

appellant that the college was appointing her as a full time lecturer of English in the junior college and that her salary would remain the same.

6. The Government of Maharashtra by Resolution dated 25.10.1977 sought to revise the pay-scales of University and School teachers retrospectively from 1.1.1973. The consequence of this for the appellant was that her salary was revised to Rs.700-50-1600 from 1.8.1975, i.e., the date of her promotion as a lecturer in the senior college.

7. The other developments which took place were that by the order dated 19.6.1978, the Principal of the College appointed her as a full time Lecturer in the Junior College and thereafter allowing her to contribute to the Provident Fund. The College informed the Joint Director of Higher Education that they were desirous of absorbing the appellant in the Degree College w.e.f. 1.1.1994 and to fix her pay in the scale of Rs.2200-4000 from 1.12.1993. This absorption was approved by the University by the order dated 31.1.1994. There were certain other communications also exchanged in the same direction.

8. The appellant sought regularisation of her pay-scale, a grievance, which was not redressed, which resulted in her filing writ petition No.1840/1998, before the Bombay High Court. The gravamen of the

case of the appellant in the High Court was that the appellant was squarely covered by a Government Resolution dated 11.6.1976, which dealt with cases like those of the appellant being rendered surplus. Since the appellant was appointed as a full time teacher of English in Junior College w.e.f. 1.10.1976, the appellant claimed protection of her pay.

9. It is the case of the appellant that the appendix to the Government Resolution of 11.6.1976 contains the guidelines for absorption of teachers determined as surplus at college levels. The appendix has a number of clauses, but what is germane for the present controversy is clause No.(iii) on which reliance is placed by the appellant and reads as under:

> "(iii) College teachers who were in service on or before 7th February, 1975 and were also in continuous service upto the end of the academic year 1975-76 in a college or colleges under the same management but had not completed two years of continuous service upto the end of academic year 1975-76;"

10. The case of the appellant is based on her being in service on or before 7.2.1975, as she was working with the college as a tutor from 15.12.1974 and that she continued her service up to the academic year 1975-76 in the college, but could not complete two years of continuous service by then, on account of the new pattern of education. There was a

simultaneous declaration of the appellant as surplus on 29.9.1976, with her appointment as a full time teacher in the Junior College w.e.f. 1.10.1976. In terms of the Government resolutions, the appellant claimed pay-scale of Rs.700-1600. She claimed placement in this pay-scale from 1.8.1975 in view of the pay-scale existing for Senior Lecturer and Lecturer (junior scale), which were revised. She, thus, also claimed entitlement to all consequential arrears on account of re-fixation of pay. The defence of the respondents is based on the alleged non-continuous service on account of her termination on 30.9.1976 with her re-appointment in the junior college w.e.f. 1.10.1976. Thus, it was claimed that the appellant is not covered by clause (iii) having worked as a tutor till 31.7.1975 and being appointed as a Lecturer in the senior college only w.e.f. 1.8.1975.

11. The reasoning advanced on behalf of the respondents found favour with the High Court, which dismissed the writ petition by the order dated 24.7.2017. What weighed with the High Court was the fact that the initial appointment of the appellant was as a tutor of English in the senior college and the appointment was approved by the University as such. Thus, she was working as a tutor on or before 7.2.1975 and the case of

college ‘tutors’ was to be considered in accordance with clauses (iv) & (v) of the Guidelines, which read as under:

> “(iv) College tutors/Demonstrators and persons in equivalent grade (Rs.250-400) F.T. who were either confirmed in clear vacancies or who had been completed two years of service in clear vacancies in a college or colleges under the same management on or before 7th February 1975 and who fulfil the qualifications prescribed by the University concerned for appointment as lecturers and are, therefore, entitled to deemed date of 1st July 1975;
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> (v) College tutors/demonstrators and persons in equivalent grade (Rs.250-400) who were either confirmed in clear vacancies or who had completed two years of service in clear vacancies in a college or colleges under the same management on or before 7th February, 1975 but who do not fulfil the qualifications prescribed by the University concerned for appointment as lecturers.”

12. The conclusion reached was that clause (iii) of the Guidelines and the consequent revision of scales prescribed are applicable to those alone who are working as senior lecturers/lecturers covered by the said clause, while the appellant was not working in that capacity on that cut-off date, but became a lecturer only from a subsequent date. The appellant, before the cut off date of 7.2.1975, was only working as a tutor in the senior college.

13. We may note that delay and laches has also been found to be an additional obstruction in the way of the appellant as the pay-scale was fixed in the year 1976 while the petition was filed in the year 1998.

14. Learned counsel for the respondent endeavoured to support the impugned judgment by emphasising that clause No.(iii) would have no application in the facts of the present case as the services of the appellant were terminated on 30.9.1976 with her re-appointment in the junior college w.e.f. 1.10.1976. On the other hand, learned counsel for the appellant sought to claim relief on a divergent reasoning based on a Government Resolution dated 27.11.1991, which though finds a mention in the writ petition, appears not to have been the fulcrum of the endeavour to get relief for the appellant, before the High Court. Reliance upon this Government Resolution of 1991 is also apparent from the written synopsis filed on behalf of the appellant.

15. It was sought to be contended before us, by learned counsel for the appellant that the relevant resolution, which could assist the appellant in getting relief is in fact this Government Resolution dated 27.11.1991. This is so as the appellant was working under the old pattern of 10+4 in the senior college, but for no fault of hers, on account of change in the education pattern to 10+2+3, she was rendered “fully surplus” in the degree college in June, 1976. As a consequence of the same, the services

of the appellant were terminated from the senior college by the letter dated 29.9.1976, but came along with an almost simultaneous/immediate transfer in the junior college with effect from 1.10.1976. It is also relevant to note that the appointment letter records that the salary of the appellant shall remain the same. However, when the appellant joined the junior college from 1.10.1976 she was given the pay-scale of Rs.500-900 instead of Rs.700-1600. This was so, as under the Resolution dated 11.6.1976, extracted partly aforesaid, the appellant would not fit in any of the categories of P-1 to P-5. The appellant, being a tutor on the cut-off date of 7.2.1975, would not fall in categories P-1 to P-3, while though a tutor was covered under categories P-4 and P-5, she did not meet the requisite parameters thereof. It was for the benefit of such persons like the appellant, who did not fit in any of the categories, that the same were declared as "rest category" in the Government of Maharashtra Resolution dated 27.11.1991, and were accordingly given the benefit of the pay-scale of Rs.700-1600 from their initial appointment date in the senior college. The resolution dated 27.11.1991 is reproduced hereunder:

"EXHIBIT – III

27.11.1991

Government Resolution-The new education system (Program) of 10+2+3 has started in the year 1975-76 in the

Maharashtra state. In order to absorb some surplus teachers in service as per the guidelines of the Government these (teachers) were divided into five categories and as per the guidelines they were labelled on P-1, P-2, P-3, P-4 and P-5.

The teachers belonging to P-1 category were recognized (teachers) and were in service before 7.2.1975. Therefore as per the Government policy they were absorbed in pay scale of Rs.700-1200. The teacher in P-1 category included tutor demonstrator, Method Masters and they were in service on 7.2.1975. However as per the rules of University they were not having teacher's qualification.

Subsequent to the implementation of the new educational pattern, some teachers joined the senior college after 7.2.1975. Since these teachers were not included in the above referred categories they were considered in remaining or Rest Category teachers.

As the new educational pattern was implemented from the year 1975-76, these rest Category teachers who had become surplus were absorbed in Junior college so that they would not the[1] (sic) rendered jobless. Since these teachers were not from the above referred five categories they were given a pay scale of Rs.500-900 in Junior college instead of pay scale of Rs.700-1600. A five Member Committee appointed under the Chairmanship of Department of Higher Education to study the question of protecting the pay scale of Rest Category teachers in pay scale of Rs.700-1600 who had been rendered surplus because of the implementation of the new educational pattern, had recommended the protection of scale for that Category teachers. The question of giving such scale of Rs.700-1600 to Rest category teachers was therefore under consideration of Government.

The Government therefore resolved that subject to the conditions mentioned hereafter the teachers who have been

[1] To be read as 'be'.

rendered surplus in Senior Colleges and have been absorbed in Junior College, because of the new educational pattern, be given the protection of pay scale of Rs.700-1600 from their earlier appointed in Senior Colleges.

1. Their appointment should be in the clear vacancy in the scale of Rs.700-1600.

2. They have been rendered surplus due to implementation of 10+2+3 pattern.

3. They having been rendered surplus in this manner, have been immediately absorbed in the junior college of the same management.

4. They (said teacher) have continued in the Senior College of the management if vacancy, senior college in pay scale of Rs.700-1600 has not been available for their absorption.

5. Their service has not been terminated by the management.

6. They just[2] (sic) not have tendered their resignations.

Date: 27.11.1991"

16. There is really no dispute that the appellant falls in the "rest category". This is *inter alia* acknowledged in the letter of the Principal of the College dated 16.11.1993 noticing that but for the loss of workload in the degree college she would have been working in the senior college but had to be re-appointed in the junior college. Once again in the letter dated 16.11.1993 addressed by the College to the University it is

[2] To be read as 'must'.

categorically stated that the appellant falls in the "rest category". The only ground on which the Government refuses to consider her in the "rest category", is the absence of continuous employment and for no other reason. Her termination and re-appointment is being used against her. Para 5 of the counter affidavit before us is quite clear on this aspect. The one day gap arising from the letter dated 29.9.1976 informing the appellant that she would be joining on 1.10.1976 in the junior college as she was declared surplus in the senior college from 29.9.1976 is, thus, sought to be put against her. The letter dated 16.11.1993 may usefully be referred to for this purpose, which reads as under:

> "I have to state that Mrs. A.A. Samtaney REST category teachers the Degree College was transferred to the Junior College for want of work-load as per the above orders she is to be absorbed as Lecturer in the Degree College, in the Vacancy be filled in now, the particulars are as below:
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> > (1) Mrs. A.A. Samtaney was working as Tutor in English from 16.12.1974 to 14.3.1975, she was again appointed as Tutor in English from 15.7.1975, but was promoted as Lecturer in English from 1.8.1975. She would have continued as Lecturer in English during the academic year 1975-76, but for the loss work-load in the Degree College, she was transferred to the Junior College, with effect from 1.10.1976. She is working in the Junior College till today."

17. The aforesaid, thus, buttresses the claim of the appellant that she had been in continuous service, but for this artificial break of one day,

arising from the change in curriculum. This position continued till 31.12.1993 when she was transferred to the senior college in view of the vacancy arising from the retirement of one Mrs. K.I. Sippy on 31.12.1993. The appellant continued to work in that capacity till September, 2011 when she retired from service, receiving pension.

18. It is also relevant to note that pension is granted only if there is 20 years of continuous service, thus, the grant of pension itself also supports the continuation of service of the appellant.

19. We have to really, thus, only examine as to what is the effect of this artificial break of one day, which was given to the appellant, as otherwise the appellant is fully covered and is entitled to the benefit under the Resolution dated 27.11.1991.

20. We really do not have to labour much on this aspect as the High Court of Bombay itself had an occasion to examine the same in Writ Petition No.2903/1989 titled ***Professor Pervez H. Lentin v. The Principal St. Xavier's College & Ors.*** decided on 17.2.2005. In a sense this is also an identical case of an artificial break arising from the change in the education pattern. We may usefully extract para 16 of the said judgment as under:

> "16. The petitioner was undoubtedly in continuous service. Indeed, what is termed as a break was at the highest an artificial break. From the correspondence referred to above, it appears to us clear that there in fact was not even an artificial break, for the re-appointments were from the very next date. However, even assuming that the same in the Petitioner's case amounted to an artificial break, the Petitioner is adequately safeguarded by the circulars/resolutions issued by the Government of Maharashtra. For instance, by a G.R. dated 7.6.1980 the Government recorded the fact that it had considered the representations made to it regarding such breaks; that it was observed that in most of the cases services of the teachers in junior colleges were terminated at the end of every academic year and they were appointed for the next academic year without benefit of continuous service and that it had further been represented to Government that such teachers should get the status of confirmed teachers if they had put in, in all, 24 months service even though it was not continuous due to the breaks given by the managements of the Non-Government Junior Colleges. It was observed that such practice had resulted in a sense of insecurity amongst the employees and deprived them of benefits of continuous service. It was therefore directed that a total of 24 months service in the same institution over-looking the break in service, should qualify junior college teachers to be treated as substantive subject to certain conditions. The petitioner admittedly complied with all such conditions. Thereafter, by a further resolution dated 26.2.1981 this resolution was extended *mutatis mutandis*. The same was so far as it related to the counting of break periods towards completion of probation period of 24 months in respect of teachers of Non-Government Junior Colleges to the teachers of Non-Government Senior Colleges in the State as well."

21. We are in complete agreement with the approach adopted by the High Court in the aforesaid judgment of deprecating such artificial breaks to deny the benefit to an employee, more so a teacher. We cannot lose sight of the fact that security of tenure for a teacher, who dedicates

her life for education of the students, is of utmost importance. Insecurity should not be created in the employment of such lecturers or teachers, more so when they are through a process of really a subterfuge of giving artificial breaks. Another plus point is that this artificial break is also the result of a change in the educational curriculum. It is really a matter of internal adjustment arising from the change in curriculum and the appellant has been in continuous service for two decades, but for this one day break. This is how it has been really understood by the college and by the State Government, as they have given pension to her which is admissible after 20 years of service.

22. We are also of the view that this issue has been receiving attention and has been agitated before different authorities and the alleged delay in filing the writ petition cannot stand in the way of the appellant getting the benefit for services. The relevant pay-scale will entitle her to the emoluments which were admissible to her for work already performed.

23. We, thus, unhesitatingly conclude that the appellant is entitled to be treated in the pay-scale of Rs.700-1600 and is entitled to all the benefits of the Resolution dated 27.11.1991.

24. We, thus, direct the respondents to calculate the emoluments due to

the appellant in the aforesaid terms within a period of three months from today and remit the same to her within the same period of time. In the peculiar facts, we are not granting any past interest in this case, but in case of any delay beyond three months, interest would be admissible on the amounts due and payable to the appellant @ 12 per cent per annum, simple interest.

25. The appeal is accordingly allowed leaving the parties to bear their own costs.

.....J.
[Kurian Joseph]

.....J.
[Sanjay Kishan Kaul]

New Delhi.
August 16, 2018.