

PETITIONER:
PROF. C.D TASE

Vs.

RESPONDENT:
UNIVERSITY OF BOMBAY & ORS.

DATE OF JUDGMENT 16/02/1989

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
AHMADI, A.M. (J)
KULDIP SINGH (J)

CITATION:
1989 AIR 829 1989 SCR (1) 736
1989 SCC Supl. (1) 273 JT 1989 (1) 364
1989 SCALE (1) 432

ACT:

Labour and Services: Lecturers--Pay scales--Implementation of Third Pay Commission's recommendations--Entitlement to placement in the pay scale on the basis of recommendations of the earlier report that was accepted by Government--Valid and protected--Fixation in the revised scale giving effect to the Third Pay Commission's recommendations to take into account such placement before fixation--Benefit of such placement cannot be denied.

HEADNOTE:

The appellant joined as a Lecturer in 1971, in a College affiliated to Pune University in the scale of Rs.300-600 prescribed by the University Grants Commission. Earlier, in 1967 the State Government accepted in principle the Government of India Scheme based on recommendations of the University Grants Commission for improvement of pay-scales of all university and college teachers, and issued directions to all universities in the State. The Universities in turn directed all the affiliated colleges accordingly. The new scales were Rs.300-25-600 (Lecturers, Junior Scale), Rs.400-30-640-40-800 (Lecturers, Senior Scale) and Rs.700-40-1100 (Senior Lecturers) and were to take effect from 1.4.1966. The number of Senior Lecturers and Lecturers (Sr. Scale) was not to exceed 1/4 of the total strength of Lecturers.

Again, in 1978, it was decided to implement the next report, viz, the Third Pay Commissioner's report which prescribed a running scale of Rs.700-1600 with effect from 1.1.1973. All the Universities in the State were directed to implement the same. A question was raised as to whether placement of teachers already made after 1.1.1973 in the pre 1973 scales would be valid on the implementation of the revised scale with effect from 1.1.1973. The Government clarified that such a placement would be valid and protected, subject to the prescribed conditions. However, the Pune University directed the College Managements to ignore the pay-scales prescribed by the earlier Pay Commission in case of teachers who became entitled to the higher scale after 1.1.73. Against this, the appellant and two others ap-

proached the High Court by way of a Writ Petition. However, the High Court felt that there was

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nothing very inequitable about the decision taken by the University authorities and declined to interfere.

This appeal, by special leave, is against the said judgment of the High Court.

Before the Court, the appellant argued that the High Court failed to appreciate the fact that the decision of the University authorities was highly prejudicial to the appellant and others who were similarly situated, as it resulted in substantial monetary loss.

Allowing the appeal,

HELD: 1. The decision of the university not only appears to be 'inequitable' but also discriminatory inasmuch as it sought to treat equals as unequals by protecting those who had secured the placement and denying the same to others whose names the college managements had failed to forward in good time. The appellant was entitled to placement in the higher scale of Rs.700-1100 before being brought over to the revised scale of Rs.700-1600. [742B]

2. The Lecturers whose names were recommended for placement in the higher scale before October 4, 1975 were entitled to such placement before being brought over to the revised scale of Rs.700-1600. The appellant was entitled to placement in the higher scale of Rs.700-1600 w.e.f. June 15, 1975. The college authorities failed, for no fault of the appellant and his companions, to forward their names to the University in the prescribed proforma for reasons best known to them. To deny the benefit to which the appellant and his companions were entitled on account of the lapse on the part of the college authorities would be highly unfair and unjust. The High Court, however took the view that there was 'nothing very inequitable' about the decision of the University to deny such placement to the appellant and his companions, but it is obvious that if they had been granted placement on the due dates they would have been entitled to higher salary and allowances related to basic salary e.g. dearness allowance which is a certain percentage of basic salary, would have gone up. [741F-H; 742A]

3. The respondents are directed to grant the benefit of placement in the higher scale of Rs.700-1100 to the appellant from the date he became entitled to the same i.e. June 15, 1975 and thereafter fix his pay revised scale of Rs.700-1600. The appellant will be entitled to the monetary benefit accruing to him on the implementation of the above

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directive which should be worked out and paid to him within three months. [742C-D]

[The Court expressed the hope that the authorities will extend the same benefit also to the two companions of the appellant notwithstanding their failure to approach this Court, perhaps on account of cost constraint, and not drive them to another round of litigation.] [742F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 785 of 1988.

From the Judgment and Order dated 6.3. 1987 of the Bombay High Court in Writ Petition No. 1166 of 1981. Appellant in person.

Dr. Y.S. Chitale and V.B. Joshi for the Respondents.

The Judgment of the Court was delivered by

AHMADI, J. This is an appeal by Special Leave under Article 136 of the Constitution of India from the Judgment of Bombay High Court dated 6th March, 1987 in Writ Petition No. 1166 of 1981.

The appellant, C.D. Tase, joined the college run by Vidhya Prasarak Mandal, Thane, on June 15, 1971 as a lecturer in the pay scale of Rs.300-25-600 prescribed by the University Grants Commission pursuant to the recommendations made by the Second Pay Commission. By Government Resolution No. USG 1167-U dated November 6, 1967, the Government of Maharashtra had accepted in principle the Government of India scheme based on the recommendations of the University Grants Commission for improvement of salary scales of university teachers and teachers in affiliated Arts, Science, Commerce and Secondary Training Colleges. Accordingly, the Government of Maharashtra directed all the Universities in the State to implement the pay-scales recommended by the Commission. The scales recommended were to take effect from April 1, 1966. Three scales were recommended for lecturers, namely, Rs.300-25-600 (Lecturers, Junior Scale), Rs.400-30-640-40-800 (Lecturers, Senior Scale) and Rs.700-40-1100 (Senior Lecturers). The Universities in turn directed colleges affiliated to them to implement the recommendations accepted by the State of Maharashtra. The appellant's college was at the material time affiliated to the University of Pune. The Additional Director of Education, Maharashtra State by his letter No. S-95/127-A

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dated January 18, 1968 addressed to the Principals of non-Government Arts, Science, Commerce and S.T. Colleges in the State directed the colleges to implement the recommendations made by the Second Pay Commission as approved by the State of Maharashtra. The University in turn by its letter No. PU/Stat/F.3/A/67-68/236 dated February 7, 1968 directed the Principals of all colleges to implement the new pay scales with effect from April 1, 1966. Thus, in the category of lecturers (excluding Principals) three scales as stated above were prescribed subject to the condition that the number of senior lecturers and lecturers, senior scale, was not to exceed 1/4th of the total strength of lecturers. It was left to the Universities to formulate norms which the lecturers must satisfy for being considered for the posts of senior lecturers and/or lecturers, senior scale, as the case may be. The High Court while disposing of the writ petition filed by the appellant and his two companions, Writ Petition No. 1166 of 1981, observed:

"There does not appear to be much dispute that if the report of the Second Pay Commission of University Grants Commission was implemented in letter and spirit, the petitioners would have respectively qualified for the category of Senior Lecturers in the pay-scale of Rs.700-40-1100 on 2nd March, 1974, 15th June, 1974 and 15th June, 1975 respectively."

It is evident from the above observation of the High Court that the appellant was entitled to placement in the senior scale of Rs.700-40-1100 with effect from June 15, 1975.

In the meantime, sometime in 1978, a decision was taken to implement the Third Pay Commission Report prescribing a running scale of Rs.700-1600 for teachers with effect from January 1, 1973. All the Universities in the State were directed to implement the new scale of Rs.700-1600 prescribed for senior lecturers. This raised the question whether placement of teachers already made after January 1, 1973 in the higher pre-1973 scales would be valid on the

implementation of the revised scale w.e.f. January 1, 1973. By Government Resolution No. USG 1178/24585/XXXII (Cell) dated June 27, 1978, it was clarified that placement of teachers made in one of the higher pre-1973 scales of 400-800 and Rs.700-1100 on or after January 1, 1973 would be considered valid and protected subject to the prescribed conditions. The High Court points out that if the above clarification is accepted as correct the appellant would be entitled to placement in the high scale of Rs.700-1100. However, relying on the University of Pune's subse-

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quent letter of March 10, 1978 whereby the college managements were directed to ignore the pay-scales prescribed pursuant to the recommendations of the Second Pay Commission in the case of teachers who became entitled to the higher scale after January 1, 1973, it was submitted before the High Court that since the new pay-scale of Rs.700-1600 was made operative from January 1, 1973, lecturers who were not given the benefit of the revised scale of Rs.700-40-1100 could be fixed in the new scale of Rs.700-1600 with effect from January 1, 1973 as per the Circular No. Aff/Recg/193 of 1977 dated May 19, 1977. This submission made on behalf of the University authorities found favour with the learned Judges of the High Court as they thought that there was 'nothing very inequitable' about the decision taken by the university authorities.

The appellant who argued the case in person submitted that the High Court failed to appreciate the fact that the decision of the university authorities was highly prejudicial to the appellant and others similarly situated, as it resulted in substantial monetary loss. It must be realised that the decision to implement the recommendation of the Third Pay Commission w.e.f. January 1, 1973 was taken sometime in 1978. In the meantime, several lecturers of affiliated colleges were placed in the higher scale of Rs.700-1100. That is why, it became necessary to seek a clarification from the Government whether the placement allowed to such lecturers in the higher scale would be treated as valid having regard to the implementation of the new scale of Rs.700-1600 w.e.f. January 1, 1973. As pointed out earlier, the Government by their Resolution of June 27, 1978 clarified that such placement in the higher scale of Rs.700-1100 was valid subject to the fulfilment of the prescribed conditions. The placement of such lecturers in the higher scale of Rs.700-1100 was therefore directed to be protected while bringing them on the revised scale of Rs.700-1600. It follows that if the appellant had been placed in the higher scale of Rs.700-1100 when he became entitled to it on June 15, 1975 his pay would have been protected as per the clarification while being placed in the revised scale of Rs.700-1600. The appellant is, therefore, justified in making a grievance that merely because the college/ university authorities did not place him in the higher scale of Rs.700-1100 w.e.f. June 15, 1975 he cannot be made to suffer on the ground that he will get the benefit of two reports simultaneously if he is first placed on the scale of Rs.700-1100 and, thereafter brought on the scale of Rs.700-1600. It is evident from the letter No. BY/Genl/1981-82 dated January 28, 1982 addressed to all the Principals of Arts, Science and Commerce Colleges by the Administrative Officer of Higher Edu-

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cation Grants, Bombay Region, Bombay that the college authorities were directed to furnish information in the prescribed form in respect of teachers who were entitled to the

benefit of the pre-revised scales of Rs.700-1100 and Rs.400-800. The Principal of the college forwarded the information to the Administrative Officer under his letter ACC/ TNE/2080 dated March 13/15, 1982 in the prescribed proforma which includes the name of the appellant as one of the persons entitled to the same benefit. We may incidentally mention that his two companions in the High Court Dr. M.P. Kendurkar and Professor N. Krishnan were also included in the list of eligible lecturers entitled to the higher scale of Rs.700-1100. The subsequent Resolution No. USG-1178/ 160692(19) UNI/4 dated April 7, 1983 issued by the State of Maharashtra also stipulates as under:

"The question of placement of these teachers was, therefore, under consideration of Government for sometime past. Government is now pleased to direct that the placement of only those teachers whose names were recommended for placement in the senior lecturers scale of I.S.S. viz.--Rs. 1100 and 400-800 to the universities by the respective colleges managements prior to 4th October, 1975 i.e. the date of issue of Government Resolution assigning revised University Grants Commission recommended scales but their placement was not effected due to some reason or the other, should be made with effect from the dates the placement is approved by the concerned Universities."

It is evident from the above decision that lecturers whose name were recommended for placement in the higher scale before October 4, 1975 were entitled to such placement before being brought over to the revised scale of Rs. 700-1600. The appellant was entitled to placement in the higher scale of Rs.700-1600 w.e.f. June 15, 1975. The college authorities failed, for no fault of the appellant and his companions, to forward their names to the University in the prescribed proforma for reasons best known to them. To deny the benefit to which the appellant and his companions were entitled on account of the lapse on the part of the college authorities would be highly unfair and unjust. The High Court, however took the view that there was 'nothing very inequitable' about the decision of the University to deny such placement to the appellant and his companions, but it is obvious that if they had been granted placement on the due dates they would have been entitled to higher salary and allowances related to basic salary e.g. dearness allowance which is a certain percentage of basic

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salary, would have gone up. In addition they would have earned increments by the time they became entitled to the revised scale of Rs.700-1600. It is, therefore, obvious that the decision of the university not only appears to be 'inequitable' but also discriminatory inasmuch as it sought to treat equals as unequals by protecting those who had secured the placement and denying the same to others whose names the college managements had failed to forward in good time. We are, therefore, of the opinion that the appellant was entitled to placement in the higher scale of Rs.700-1100 before being brought over to the revised scale of Rs.700-1600.

For the above reasons, we allow the appeal and set aside the impugned order of the High Court dated March 6, 1987. We direct the respondents to grant the benefit of placement in the higher scale of Rs.700-1100 to the appellant from the date he became entitled to the same i.e. June 15, 1975 and thereafter fix his pay in the revised scale of Rs.700-1600.

The appellant will be entitled to the monetary benefit accruing to him on the implementation of the above directive which should be worked out and paid to him within three months from today. The appellant will also be entitled to cost from the University of Bombay which we quantify at Rs.2500.

Before we part, we may mention that the two companions of the appellant who were writ petitioners in the High Court have not approached this Court under Article 136 of the Constitution but we find that they were similarly situated and were entitled to placement in the higher scale of Rs.700-1600 w.e.L March 2, 1974 and June 15, 1975. We hope that the authorities will extend the same benefit to them also notwithstanding their failure to approach this Court, perhaps on account of cost constraint. It would be highly unfair to deny to them the monetary benefits to which they are legally entitled. We do hope that the concerned authorities will not drive them to another round of litigation.

G.N.
allowed.
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Appeal al-