

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 319/89

Transfer Application No:

DATE OF DECISION: 29.9.1994

M.G.Mokashi

Petitioner

Shri S.R.Atre.

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri J.G.Sawant.

Advocate for the Respondents

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri K.D.Saha, Member(A).

1. To be referred to the Reporter or not? NO
2. Whether it needs to be circulated to other Benches of the Tribunal? NO


(M.S.DESHPANDE)
VICE-CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.ORIGINAL APPLICATION NO.319/89.

M.G.Mokashi.

.... Applicant.

V/s.

Union of India & Ors.

.... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri K.D.Saha, Member(A).Appearances:-Applicant by Shri S.R.Atre,
Respondents by Shri J.G.Sawant.Oral Judgment :-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 29.9.1994.

We have heard Shri S.R.Atre, counsel for the applicant and Shri J.G.Sawant, counsel for the Respondents.

2. Two prayers have been made by the present application. One is for a direction to the Respondents to grant proper teaching staff structure to the teachers of All India Institute of Physical Medicine and Rehabilitation viz. Professor, Associate Professor and Lecturer and to bring the same at par with the teaching staff structure of University of Bombay and also to grant to the applicant and similarly situated teachers the proper pay scales by bringing them on parity with the teachers of University of Bombay in any other discipline. Second is to grant to the applicant the pay scale and status equivalent to that of a lecturer of University of Bombay from the years 1970 to 1978, the status and pay equivalent to that of an Associate Professor of University of Bombay between May, 1970 to 1974 and the pay and status equivalent to that of an Associate Professor and/or Professor of University of Bombay from the year 1978 onwards and direct the Respondents to

grant the applicant the said status and pay-scales together with consequential benefits including arrears of pay etc.

3. The applicant was working as Chief Physiotherapist and was also holding the substantive post of Lecturer, Physiotherapy in the All India Institute of Physical Medicine and Rehabilitation at Mahalaxmi, Bombay and was imparting training to the various students appearing in the Post Graduate Courses recognised by the University of Bombay. The applicant, was however, not granted status and scales of pay equivalent to his counterparts in the University of Bombay. The courses in Physiotherapy were converted into full fledged Degree Course in the year 1978 and Post Graduate degree course in Physiotherapy and Occupational Therapy training which were imparted by the applicant came to be recognised by the University of Bombay and Master of Science degree was granted in the field of Physical and Occupational therapy by the University. In 1970 the posts of Chief of the Physiotherapy and Occupational Therapy department were created, but no teaching cadre was simultaneously introduced. The quantity and quantum of Post Graduate teaching and guided Research Projects of students increased due to the long term PGDR and M.Sc. courses for the year 1972 and 1978 respectively. The Registrar of Bombay University by his letter dt. 31.7.1973 appointed the applicant on the Committee under the provisions of Section 35(2)(iv)(a) for the purpose of recognition of persons as teachers of Bombay University in the subject of Physiotherapy. He was also designated by the letter dated 31.7.1973 as a teacher in the University of Bombay

as an expert on the subject. The applicant's submission is that in view of this the applicant should have been granted the pay and status which accrue to the teachers similarly placed in the University of Bombay. The Respondents by their letter dt. 10.12.1975 agreed to certain conditions imposed by the University one of which was that the teaching staff will be given a suitable pay scale, but none was granted despite that undertaking (vide annexure A-2). On 3.6.1977 the Dy. Director informed the University that the conditions had been substantially taken care of by the respondents and the proposal for designation and pay scale of teachers had been sent to the Government of India and that was under the consideration by the Government (vide Annexure A-3). It is not necessary to refer to the other averments made in the application. Suffice it to say that the applicant on this basis originally made the first prayer which we have reproduced above and later by amendment sought certain directions regarding the status that shall have to be accorded to him together with the pay scales. The Respondents filed two written statements denying the allegations of the applicant. In the second reply it was stated that the applicant was appointed by the Institute of which the 3rd Respondent is a Director w.e.f. 4.3.1961. The order at (Annexure - I) to the reply shows that he was appointed to the post of Physiotherapist carrying pay scale of Rs.200-10-300 on Rs.200/- subject to certain conditions. The applicants appointment as Chief of the Physiotherapy Department was merely on an ad hoc basis and the

applicant could not have been given any pay scales different from those provided by the C.C.S. Rules. The quantum of teaching responsibility which was placed on the applicant was very meagre as compared to Professors and Assistant Professors of Bombay University as would be apparent from (Ex.4) to the reply. The teaching part of the duties which were discharged was only a part and that would not enable the applicant for claiming the same pay scales as the full time teachers of the institutions affiliated to Bombay University.

4. With regard to the undertakings given to the University Shri J.G.Sawant, the learned counsel for the applicant urged that the Respondents have stated in their additional reply filed on 22.6.1994 that the Dy. Director was not authorised and was not competent to send the letter dt. 10.12.1975 by which he had informed the University that as desired an undertaking covering the 5 terms was being given. Term No.4 of that undertaking reads:

"It is agreed that the teachers when recognised will be designated as Professor, Assistant Professor and Lecturer and will be given a suitable pay scale."

It is difficult to accept the contention that when the University on the faith of the representation made by the Dy. Director granted recognition, the Respondent Government can be allowed to wriggle out of that undertaking merely by saying that the Dy. Director was not competent to give that undertaking. The letter dt. 3.6.1977 page 29 does not find any reference in the reply dt. 22nd June, 1994 and that letter which is addressed was also by the Dy. Director to the Registrar of the University of Bombay informing the latter that the conditions have been complied with. With regard to granting of pay scales it is mentioned

that the proposal for designation ^{and} of pay scale for teachers had been sent to the Government of India and was under consideration. With regard to this letter also the submission was that this undertaking would not bind the Government of India and we are distressed to hear such a submission being made before us when the recognition of the University could not have continued unless the terms and conditions imposed by the University for granting recognition, were ~~xxx~~ not fulfilled. In the reply dt. 22.6.1994 para 12 it is stated that the Dy. Director had written to the Head of the Department in the Ministry of Health and Family Welfare, Government of India, New Delhi making certain proposals for revision of scales of the post of Chief Physiotherapist ~~Department~~ but the Government of India had not so far accepted the proposals. With regard to the first prayer, when the Institute, apart from functioning as a Clinical Institution, also took over the activities of imparting education every effort should have been made to see that proper infrastructure was ~~created~~ for the purpose of imparting education. Such an offer was made to the University and the proposal also had been made to the Government ~~in~~ the year 1977. It is unfortunate that no decision has been taken on that proposal though about 17 years have passed and we think that as far as the first prayer is concerned the Respondents should be directed to take a decision in respect of the offer made to the University which in substance is what prayer 'A' to the petition seeks.

5. With regard to the pecuniary relief to which the applicant is claiming it is apparent from the

material^{to} which we have referred above that the applicant has not placed before us sufficient data showing that he has been performing the duties as a full time Professor, Associated Professor or a Lecturer. His own submission is that he has been substantially performing those functions. The second relief which has been claimed could have been granted^{only} if the applicant were to be in a position to substantiate his contention⁾ that he was performing the same duties as his counter-parts in the other teaching institutions. In the absence of such material we⁾ cannot grant any relief on the basis of the averments made in the application. Shri Atre learned counsel for the applicant referred us to the decision of the Bombay High Court in Writ Petition No.1434 of 1985 (Annexure A-13) Mrs.N.R.Chitnavia & Ors. v/s. State of Maharashtra & Ors. decided on 5.1.1988 where identical pay scales came to be granted to the applicants therein, on par with the Readers, Lecturers of the Degree Colleges at Nagpur University. A reference to para 6 and 7 of the Judgment would show that on facts there was no dispute in the case before the High Court about the functions which the Petitioners therein performed. The Judgment proceeds on the assumption that the petitioner therein performed the same duties as their counterparts in the other teaching institution viz. the Government Medical College at Nagpur and so the relief came to be granted. Such is not the position here. We^{are} therefore, not in a position to grant the second relief claimed by the applicant.

6. In the result, we direct the Respondent No. I Union of India to take a decision on the question of granting proper teaching staff structure to the All India Institute of Physical Medicine and Rehabilitation and consider whether they can be brought on par with

the teaching staff structure of the University of Bombay or any other University and see whether equivalence in the matter of status and pay scales could be granted to the teaching staff of the Institute of Physical Medicine and Rehabilitation. Since the matter is before the Respondent No.1 since the year 1977 we direct the Respondent No.1 to take a decision in this respect within six months from the date of receipt of a copy of this order. No order as to costs.


(K.D.SAHA)
MEMBER(A)


(M.S.DESHPANDE)
VICE-CHAIRMAN

B.