STATE OF MAHARASHTRA

v.

MINISTERIAL SERVICE ASSOCIATION

October 8, 1965

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, M. HIDAYATULLAH, J. C. SHAH AND S. M. SIKRI, JJ.]

States Reorganisation Act (37 *of* 1956), *s.* 115 *and Allocated Government Servants* (*Absorption, etc.*) *Rules of Bombay*, 1957, *rr.* 10 *and* 12—*Scope of.*

By virtue of the powers conferred by s. 115 of the States Reorganisation Act, 1956, read with Art. 309 of the Constitution, the Allocated Government Servants (Absorption etc.) Rules were made by the Government of the reorganised State of Bombay. In October 1960, Government resolved, that the post of first grade clerks in the Revenue Department in the districts of the Nagpur division which were integrated with the former Bombay State to form the new State, need not be equated to any other post but that its pay-scale should be revised from 1st May 1960. Some of the first grade clerks filed a petition in the High Court for the issue of appropriate writs to quash the resolution and for ordering the Government to equate their posts with the post of *Aval Karkuns* in the former State of Bombay or in the alternative for directing the Government to fix the revised scale of pay from 1st November 1956 on which date the Act took effect, instead of 1st May, 1960. The High Court rejected the contention of the petitioners as to equivalence but accepted their contention that the new scales of pay ought to commence on 1st November, 1956 and not 1st May, 1960 as ordered by Government. The clerks as well as the State appealed to the Supreme Court.

In their appeal, the clerks contended that: (i) the Government was bound to find an equivalent post for them and that the nearest equivalent post was that of *Aval Karkuns* and (ii) by not assigning them to an equivalent post they had been discriminated against, and r. 12, which provides that a post need not be equated to an equivalent post is discriminatory. In its appeal, the State Government contended that, under r. 10 it was open to Government to fix the pay scales of an allocated Government servant not only from 1st November, 1956, but also from any subsequent date because the words of the rule "except where Government otherwise directs".

HELD: (i) The duties of *Aval Karkuns* in the former State of Bombay were entirely different from those which first grade clerks performed and therefore, it was not possible to make the post of *Aval Karkuns* as an equivalent post to that of first grade clerks. [138 G-H]

(ii) Discrimination can be proved only if equivalence is not carried out although an equivalent post is available. A rule which provides for a special treatment of an odd case is not necessarily discriminatory. Rule 12 was made in view of the multifariousness of the posts existing in the different components from which the principal successor State was formed and because, some existing posts could not be equated with posts in the principal successor State and had to be treated on an independent footing. [139 A]

A (iii) On the sense of the matter, as well as on their construction and position, the words of r. 10 were not intended to change the date on which the scales of pay were to come into operation, namely, 1st November, 1956, but to enable Government to make special orders which were not in accordance with cls. (i) and (ii) of the rule. [140 C-D]

The power which is conferred on Government by r. 12 to prescribe a new pay-scale must be exercised from 1st November, 1956. Every one of B the rules, 14 to 19 and r. 23 mention over and over again that the new scales of pay shall be as on or from 1st November, 1956. The intention was to enable Government to make a change in the scale of pay but not to change the date of 1st November, 1956, which was always the fixed date line. [140 F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 259 C and 260 of 1964.

Appeals from the judgment and order dated October 27, 1961 of the Bombay High Court in Special Civil Application No. 42 of 1961.

S. V. Gupte, Solicitor-General, Ganapathy Iyer and *B. R. G. K. Achar,* D for the appellants (in C.A. No. 259 of 1964) and the respondent (in C.A. No: 260 of 1964).

N. D. Kharkhanis and *A. G. Ratnaparkhi,* for the respondent (in C.A. No. 259 of 1964) and appellant (in C.A. No. 260 of 1964).

E The Judgment of the Court was delivered by

Hidayatullah, J. This judgment will also dispose of Civil Appeal No. 260 of 1964. These appeals arise from a judgment dated October 27, 1961 of the High Court of Bombay in a petition under Art. 226 of the Constitution, filed by three First Grade F clerks attached to the offices of the Collectors of Wardha, Bhandara and Chanda districts. They are the three respondents in this appeal. The petition in the High Court was originally filled by two of these respondents as Secretary and Member of the Ministerial Services Associations, Wardha and Bhandara respectively but they were treated as petitions on their personal behalf. The G petitioners asked for a writ of *mandamus* against the Government of Bombay for the equation of their posts with *Aval Karkuns* in the State of Bombay (later the State of Maharashtra) under ss. 115 and 116 of the States Reorganization Act, 1956 (Act 37 of 1956) read with the Allocated Government Servants (Absorption, Seniority, Pay & Allowances) Rules 1957. As a first step the petitioners asked that Government Resolution No. SR/INT/ 1057/VI dated October 21, 1957, together with Item No. 8 and Note 5 of the Statement accompanying that resolution, should be

quashed by a writ of *certiorari* or by some other writ or order. By that Resolution the posts of First Grade clerks in the Deputy Commissioner's offices were ordered to continue on the existing scale of pay of Rs. 80-5-130. As a second step the petitioners asked that Government be ordered by a writ of *mandamus* to equate their posts with the post of *Aval Karkuns*. Alternatively, the petitioners asked that the Government Resolution No. SR/INT/2159/21365-F dated October 12, 1960 should be quashed inasmuch as it fixed new scales of pay (Rs. 100-8-140) for the posts held by the petitioners from May 1, 1960 and for a *mandamus* commanding Government to fix the scale from November 1, 1956 on which date the States reorganisation under the above Act took effect. The High Court rejected the contention of the petitioners as to equivalence but accepted their contention that the new scales of pay ought to commence on November 1, 1956 and not May 1, 1960 as ordered by Government. Appropriate writs to effectuate the latter part of the order of the High Court issued. The High Court, however, certified the case under Art. 132(1) and curiously enough under all the three clauses of Art. 133 of the Constitution and the two rival appeals have, therefore, been filed by the three petitioners and the State Government questioning the judgment of the High Court in so far as it goes respectively against them.

A B C D

After the reorganisation of the States in 1956 it was necessary to divide and integrate the Services in the various States affected by the reorganisation. Part X of the Act, particularly ss. 115 and 116 dealt with the manner in which the division and the integration of Services was to be made. It is not necessary to refer to these sections in detail. They provided for the establishment of Advisory Committees, making of rules and all other matters by which the Services in the different States could be separated or integrated. as the case may be. By virtue of the powers conferred by s. 115 of the Act read with Art. 309 of the Constitution, the Allocated Government Servants (Absorption, etc.) Rules were made by the Government of Bombay. The present dispute is governed by rules 10 and 12 of the Rules and we shall proceed to consider them.

E F G

For the proper understanding of the scheme of the Rules in relation to pay scales obtaining in the different States and how they were affected or modified as a result of the integration, certain terms and their definitions have to be borne in mind. Rule 2 of these Rules gives definition of "Allocated Government servant" and "Equivalent post". By "allocated Government servant" is

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A meant a person allotted for service in the new State of Bombay under the provisions of s. 115 of the Act including servants of the former Bombay State who continue in the service of the new State of Bombay. "Equivalent post" means (a) a post in the former State of Bombay, or (b) any other post which is declared as equivalent to a post, whether permanent or temporary, sanctioned by the B Government of any former State which integrated into the new State of Bombay. Equivalence is established between the posts in the principal successor State, that is to say, the new State of Bombay, and those in the existing States, territories of which were integrated with the former State of Bombay. Rules 10 and 12 read as follows :—

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"10. The pay-scale applicable to an allocated Government servant on the 1st November 1956, shall, except where Government otherwise directs, be—

(i) if he was a Government servant of the former State of Bombay, the Bombay scale of the post which was D held or may be held by him in the Bombay State on or after the 1st November, 1956, as if he had continued to be in the service of the former State of Bombay;

(ii) if he was allotted from a State other than the former State of Bombay, the Bombay scale of the equi- E valent post :

Provided that . . . . . .

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Provided further that where an allocated Government servant is on or after the 1st November 1956, F absorbed in a post which is other than the corresponding post in the former State or the equivalent Bombay post, the pay-scale applicable shall unless the Government otherwise directs, be the Bombay scale of the post of absorption or in the case of allocated Government servant referred to in clauses (a), (b) and (c) of the first G proviso above, the pay scale applicable immediately before the 1st November, 1956, to the post held by him in substantive capacity or officiating capacity or temporary capacity as the case may be, as the allocated Government servant may elect".

"12. Notwithstanding anything contained in the fore- H going rules the pay-scale applicable to the allocated Government servant who immediately before the 1st November, 1956 held at a post to which Government has

not declared an equivalent post or has decided that it is not necessary to declare an equivalent post, shall be the pay-scale which would have been applicable had the allocated Government servant continued in the service of the former State or such other pay-scale as Government may by general or special orders prescribe :

Provided that if under these rules the pay-scale applicable is the pay-scale prescribed by Government, the allocated Government servant shall, if he belongs to a category referred to in clauses (a), (b) and (c) of the first proviso to rule 10 above, have the option to exercise the elections referred to in the said rule 10 in the manner and within the period prescribed in rule 11."

The question whether the First Grade clerks ought to be assimilated to *Aval Karkuns* was decided against the three original petitioners by the High Court and the question whether the revised scales of pay should begin on May 1, 1960 or on November 1, 1956 was decided against the State Government. These appeals involve these two questions but the three petitioners (who are appellants in Civil Appeal No. 260 of 1964) have raised a question of discrimination. We shall deal first with the complaint of the three petitioners.

They contend that Government was bound to find an equivalent post for them and they submit that the nearest equivalent post was that *Aval Karkuns*. They also contend that by not assigning them to an equivalent post they have been discriminated against and that rule 12 which enables that a post need not be equated to an equivalent post is discriminatory. In our judgment neither submission is correct. There is no question of discrimination because it was always possible that a special post might not fit into the kinds of posts there were in the principal successor State. Such a post would be required to be treated by itself and regard being had to the scales of pay obtaining generally in the principal successor State, the old scales of pay would either be retained or modified for such a post. In the case of First Grade clerks in the Collectorate no equivalent post was found as the duties of *Aval Karkuns* in the former Bombay State were entirely different from those which First Grade clerks performed. Therefore, it was not possible to make the post of *Aval Karkuns* as an equivalent post to that of First Grade clerks. We do not think that the State Government was wrong in declining to equate the posts. Nor do we think that there was discrimination in doing so or Rule 12 under which it was done was discriminatory. A rule which provides for

A a special treatment of an odd case is not necessarily discriminatory. Discrimination can be proved only if equivalence is not carried out although an equivalent post is available. Rule 12 was made in view of the multifariousness of the posts existing in the different components from which the principal successor State was formed because it was obvious that some existing posts could not simply B be equated with posts in the principal successor State. They had to be treated on an independent footing and this is what has been done. There is also nothing in ss. 115 and 116 of the Reorganisation Act which compels equivalence in every case. The contention of the appellants in Civil Appeal No. 260 of 1964 must, therefore, fail.

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The appeal by the State Government must, in our opinion, also fail. Government seems to have acted under rules 10 and 12 which we quoted earlier, and has fixed a special pay for the First Grade clerks. The scale of pay which they enjoyed immediately before November 1, 1956 was Rs. 80-5-130. By an order D made on October 12, 1960 (Resolution No. SR/INT/2159/21365-F) the pay-scale of the post was raised to Rs. 100-8-140 but the order was to take effect from May 1, 1960. The Resolution is INT-2159/21365-F, dated 12th October, 1960 and reads :

> "RESOLUTION :—Government had under consi- E deration the question of equation of the post of 1st grade clerk in the Revenue Department in Nagpur Division with an equivalent post in former Bombay State. After considering all aspects relating to the services, service conditions, duties and responsibilities attached to the post, Government has decided that the post of 1st grade F clerk need not be equated to any other post but the pay scale attached to the post should be revised suitably. The pay-scale of Rs. 80-5-130 attached to the post of 1st grade clerk in the Revenue Department in Nagpur Division should, therefore, be raised to that of Rs. 100-8-140.
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> 2. These orders will take effect from 1-5-1960." G

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The short question is whether Government ought to have made this scale operate from November 1, 1956 as in every other H case. Government relies principally upon rule 10 and the words of the rule "except where Government otherwise directs". The State Government contends that under the rule it was open to

Government to fix the pay-scales of an allocated Government servant not only from November 1, 1956 but also from any subsequent date. This construction of the rule is erroneous. The rule indicated that the fixing of pay-scale in respect of allocated Government servant is to be on and from November 1, 1956 and in doing so, Government may act in two ways. They are indicated in (i) and (ii) of the rule. If the allocated Government servant was already a servant of the former State of Bombay, the Bombay scale of post which he held, was to continue on or after November 1, 1956 as if he had continued in the service of the former State of Bombay. If the allocated Government servant was allotted from a State other than the former State of Bombay, the Bombay scale of an equivalent post was to be given to him also from November 1, 1956. The rules, no doubt, were subject to the condition that Government might otherwise direct, but the words of the rule "except where Government otherwise directs" were not intended to change the date on which the scales of pay were to come into operation, namely, November 1, 1956, but to enable Government to make special orders which were not in accordance with (i) and (ii) of the rule. Both on the sense of the matter as well as on their construction, the words "except where Government otherwise directs" gave power to Government to depart from the two positions obtaining under (i) and (ii) of the rule, but not so as to fix scales from a date other than November 1, 1956. If it had been intended that Government might fix a later date the words "except where Government otherwise directs" would have been put at the beginning of the rule and not where they are found. In the place where they occur these words give power to Government to depart from (i) and (ii) of rule 10 but they cannot be construed to give similar power to Government to depart from the date on which the scales of pay under rule 10 have generally to come into operation. This conclusion is apparent if we take into account the provisions of the other rules. Every one of the rules, such as rules 14 to 19 (including all the sub-rules) and rule 23, mention over and over again that the new scales of pay shall be as on or from November 1, 1956. The intention was obviously to make that date as the date line on which the scales of pay in the principal successor State would start. The mistake of Government was in failing to see this vital fact. Rule 12 also provides that, notwithstanding anything contained in the foregoing rules, the pay-scale applicable to an allocated Government servant who immediately before the 1st November, 1956 held a post to which Government had not declared an equivalent post or had decided it was not necessary to have declared an equivalent post, shall be the pay-

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A scale which would have been applicable to him had the allocated Government servant continued in the service of the former State or such other pay-scale as Government by general or special order may prescribe. Here again, the old pay scale or the new pay-scale, as the case may be, commences on November 1, 1956. The power which is conferred on Government to prescribe new pay-
B scale must be exercised from November 1, 1956. This power is intended to enable Government to make a change in the scale of pay but not to change the date. November 1, 1956 is always the fixed date line. The *non-obstante* clause, with which rule 12 opens, cannot be construed to this effect. It is obviously intended to enable Government to consider special cases which do not fall
C within rule 10 but which nevertheless must be provided for on and from November 1, 1956. In this view of the matter the order of the High Court cancelling the date May 1, 1960 as the starting point of the new scales of pay and fixing November 1, 1956 as the date of start must be upheld. The appeal of the State Govern-
D ment must, therefore, stand dismissed. Both the appeals will be dismissed but in view of the circumstances there will be no order as to costs.

Appeals dismissed.