

**State of Maharashtra and ors. Vs. Ganesh Narayan Gadekar**

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**Court :** Mumbai

**Decided On :** Nov-25-1999

**Reported in :** (2000)IIILLJ690Bom

**Judge :** B.P. Saraf and ;D.K. Deshmukh, JJ.

**Appeal No. :** O.O.C.J. Appeal No. 665/1980

**Appellant :** State of Maharashtra and ors.

**Respondent :** Ganesh Narayan Gadekar

**Disposition :** Appeal dismissed

**Judgement :**

ORDER

**D.K. Deshmukh, J.**

1. By this appeal, the appellants challenge the judgment dated July 3/4, 1980 given by the learned single Judge of this Court in Miscellaneous Petition No. 656 of 1976. That petition was filed by the petitioners, who were employees of the respondents Nos. 2 & 3 to the original petition, challenging the rules framed by the respondents Nos. 2 & 3 governing the conditions of service of their employees. The petitioners were initially in the service of the Government of Maharashtra. However, after the formation of 2nd and 3rd respondents, they were absorbed in

the service of the respondents Nos. 2 & 3. At that time, the Government of Maharashtra had issued a resolution that on their absorption by the 2nd and 3rd respondents, their conditions of service would be governed by the rules and regulations of the respondents Nos. 2 and 3. However, those terms shall not be less favourable than their existing terms and conditions of service. It was the case of the petitioners that in the rules that have been framed by the second respondent, their conditions of service are less favourable than the conditions of service which were in existence when they were in the service of the Government of Maharashtra.

2. The learned single Judge by his judgment, which is impugned in this appeal, allowed the petition. It was directed that the respondents should apply to the petitioner No. 2 and the employees represented by them, the conditions of service which are not less favourable than those available to them till, August 31, 1975. The respondent no. 1 was directed to enforce the resolution dated April 30, 1975 against the respondent No. 2. Some other directions were also given.

3. At the hearing of the appeal, the learned: counsel for the appellants submitted that the grievance of the appellants is restricted to the provision that has been made in the rules that have been declared to be invalid by the learned single Judge in relation to sick leave and half: pay leave. According to the learned counsel the findings recorded by the learned single Judge that conditions of service in this regard prescribed by the respondent No. 2 are not less favourable to the conditions of service, which were in existence in 1975, when the petitioners were in service of the Government of Maharashtra. Therefore, we asked the learned counsel for the appellants to point out to us the rules, which were in force in 1975 governing the conditions of service of the employees of the State Government on the above referred aspect so that those rules can be compared with the rules framed by the respondent No. 2, which were subject matter of challenge before the learned single Judge. However, the learned counsel appearing for the appellants was not able to point out to us the rules, which were in force in 1975. He expressed his inability to do so. It is to be seen that in order to find out whether the learned single Judge was justified in striking down the rules on the above referred two aspects of the matter framed by the respondent No. 2,

we will have to compare the rules governing the conditions of service of the employees of the Government of Maharashtra as in force in the year 1975 with the rules framed by the respondent No. 2. As the learned counsel for the appellants is not in a position to point out those rules to us, we cannot compare the two rules. In this view of the matter, therefore, we find no fault with the judgment of the learned single Judge, which is impugned in this appeal.

4. In the result, the appeal fails and is dismissed with costs.

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