

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 6001 OF 2013**

1. Sanjay Shrirangrao Surwase,  
Age: 40 years, Occu.: Service,  
R/o "Padmashri Nivas"  
House No. 1 / 464, Ramnagar,  
Osmanabad 413 501
2. Mahesh Narayan Karanjkar,  
Age : 36 years, Occu. : Shivganga Nagar,  
No. 1, Jule Solapur,  
Solapur - 413 04
3. Shamrao Narayanrao Doijode,  
Age : 48 years, Occu. : Service,  
R/o C/o Digambarrao Khamitkar,  
House No. 7/1218, Mazade Nagar,  
Behind Maharashtra College,  
Latur
4. Adekar Ravindra Harishchandra,  
Age : 42 years, Occu. : Service,  
R/o Saraswati Nivas,  
Near Jijamata School,  
Behind Jagadale Complex,  
Osmanabad Road,  
Tuljapur- 413 601
5. Mrs. Ghadge Chhaya Arjun,  
Age : 49 years, Occu. : Service,  
R/o Near Gholave Kirana Stores,

Bombale Hanuman Road,  
Osmanabad 413 501

6. Tatyasaheb Narsingrao Jagtap,  
Age : 49 years, Occu. : Service,  
R/o Staff Quarter No. C 4/2,  
Near Circuit House,  
Tuljapur - 413 601
7. Dattatraya Maruti Dalwe,  
Age : 47 years, Occu. : Service,  
R/o 10-A, Adhyapak Nagar,  
Vaijapur Road, Solapur- 413 004
8. Sanjeev Dadarao Bhosale,  
Age : 44 years, Occu. : Service,  
R/o Near Borgaonkar Complex,  
Naldurg Road, Tuljapur - 413 601
9. Namdev Devidas Pergad,  
Age : 49 years, Occu. : Service,  
Kutval Nivas,  
Near Lohiya Mangal Karyalay,  
Tuljapur - 413 601
10. Pradeep Tatyarao Suryawanshi,  
Age : 37 years, Occu. : Service,  
R/o Tambri Vibhag,  
Near Old Gas Godown,  
Osmanabad-413 501

.. Petitioners

**Versus**

1. The State of Maharashtra,  
Through Secretary,  
Department of Technical Education  
Mantralaya, Mumbai-32
2. Joint Director of Technical Education,  
Railway Station Road,  
Aurangabad
3. Chairman (Collector),  
Osmanabad
4. Shri Tulja Bhawani Temple Trust,  
Tuljapur, Office of the Collector,  
Osmanabad
5. Principal,  
Shri Tulja Bhawani Temple Trust,  
Shri Tulja Bhawani College of Engineering,  
Naldurga Road, Tuljapur,  
Tq. Tuljapur, Dist. Osmanabad .. Respondents

Shri S. R. Choukidar, Advocate for Petitioners.

Smt. M. S. Patni, A. G. P. for Respondent Nos. 1 and 2.

Shri P. V. Mandlik Senior counsel i/b Mr. Amol Gandhi Advocate  
for the respondent Nos. 3 to 5

**CORAM : S. V. GANGAPURWALA AND  
V. K. JADHAV, JJ.**

**CLOSED FOR JUDGMENT ON : 03RD DECEMBER, 2014  
JUDGMENT PRONOUNCED ON : 10TH FEBRUARY, 2015**

**JUDGMENT (Per S. V. Gangapurwala, J.) :-**

1) Rule. Rule returnable forthwith. With the consent of the learned counsel for the parties taken up for final hearing.

2) The petitioners assail the order dated 24<sup>th</sup> May, 2013 passed by the respondent No. 3 Chairman (Collector) of respondent No. 4 Trust, whereby the pay scale of Rs. 37,400 – 67,000 granted to the petitioners on 1<sup>st</sup> March, 2012 is withdrawn and the petitioners are placed in the pay scale of Rs. 15,600 – 39,100 so also recovery is directed for excess payment of the salary paid between 1<sup>st</sup> March, 2012 to 30<sup>th</sup> October, 2012.

3) Mr. Choukidar the learned counsel for the petitioner strenuously contends that -

A] The petitioners are appointed as Assistant Professors by following due selection process. The services of the petitioners are also approved by the University by issuing approval orders.

B] The Government of Maharashtra has issued Government Resolution dated 20<sup>th</sup> August, 2010 revising

the pay scale as per 6<sup>th</sup> Pay Commission. The All India Council for Technical Education has also issued notification dated 20th August, 2010 revising pay scale. The petitioners were initially paid as per 5<sup>th</sup> Pay Commission in the pay band of Rs.12,000 – 4200 – 18,300. The joint director of technical education has also approved the note interalia approved that the petitioners are entitled for the pay band of Rs. 37,400 – 67,000 with AGP of Rs. 9000. The said order was also implemented and the actual salary was paid in the pay band of Rs. 37,400 – 67,000 with AGP of Rs. 9,000 between March, 2012 to October, 2012. Without notice to the petitioners the impugned order is passed thereby ordering recovery of excess payment and fixing the salary of the petitioners in the pay band of Rs. 15,600 – 39,100 with grade pay of Rs. 8,000.

C] The Government Resolution dated 20<sup>th</sup> August, 2010 would be applicable and on completion of three years on the post of Assistant Professor the petitioner would be entitled for pay band of Rs. 37,400 – 67,000 and accordingly they shall be re designated as Associate Professors. The learned counsel relies on clause 2 (a) (X)

of said Government Resolution. The learned counsel submits that clause 2(a)(XII) is concerned only with regard to the AGP and not with regard to the pay band. According to the learned counsel all the petitioners have completed the refresher course as required by AICTE regulation. On that count also the petitioners are entitled for the pay scale of Rs. 37,400 – 67,000 with AGP of Rs. 9,000. Clause 1.2 of the said Government Resolution is inapplicable.

4) Mr. Mandlik the learned senior counsel appearing for contesting respondents submits that -

A] The petitioners were getting salary in the pay scale of Rs. 12,000 – 18,300 till February, 2012. Proposal was prepared by the petitioners and submitted through the principal for opinion in the office of Joint Director of Technical Education stating that petitioners are eligible and entitled to get higher pay scale of Rs. 37,400 – 67,000 with AGP of Rs. 9,000. At that time without verifying the provisions and norms prescribed by AICTE and UGC so also without verifying the fact that petitioners are not qualified for the said pay scale, incorrect opinion was

given that the petitioners are entitled for the higher pay scale. On receiving the complaint the proposal was put before the Chairman / Collector of the Trust and on verification it was found by the Chairman of the Trust that petitioners are not qualified and eligible to receive the same. In the meanwhile the office of Joint Director also informed that petitioners are not qualified to receive such higher pay scale as per the norms laid down by the UGC and AICTE and therefore excess amount paid should be recovered from the petitioners.

B] The petitioners are not appointed as Associate Professor as they did not possess the qualification prescribed by the AICTE and UGC. The petitioners have also not completed AICTE approved refresher programme and TEQUIP sponsored programme.

C] The revision of pay scale has to be done as per AICTE scheme. The Government Regulation dated 20<sup>th</sup> August, 2010 also does not entitle the petitioners higher pay scale in the pay band of Rs. 37,400 – 67,000 with AGP of 9,000. For the said purpose the learned senior counsel relies on sub clauses 10, 12 and 18 of clause 2(a) of Government

Resolution dated 20<sup>th</sup> August, 2010. The petitioners did not qualify the said conditions.

D] Its is the selection committee of AICTE that considers the candidates for higher pay band and designation after applying parameters and standards laid down in the notification dated 08<sup>th</sup> November, 2012 read with the Government Resolution dated 20<sup>th</sup> August, 2010 and AICTE notification dated 05<sup>th</sup> March, 2010. The selection committee has not yet decided the eligibility of the petitioners for getting higher pay band. The petitioners have not completed two AICTE approved refresher programme of not less than two weeks duration and two TEQUIP sponsored programme. They were not posted as Associate Professor. The petitioners have not approached the court with clean hands. According to the learned senior counsel the petitioners have alternate remedy available, the writ petition be dismissed.

5) We have considered the submissions canvassed by the learned counsel for respective parties. Before we proceed to deal with the contentions as raised by the learned counsel for respective parties it would be appropriate to refer to the relevant

clauses of the notification and the Government Resolution relied by the respective parties.

**“Government Resolution dated 20<sup>th</sup> August, 2010 :-**

**Clause 2 (a) :**

*(X) Incumbent Assistant Professor and Incumbent Lecturers (Selection Grade) who had not completed three years in the pay scale of Rs. 12000 – 18300 on 1.1.2006 shall be placed at the appropriate stage in the Pay Band of Rs. 15600 – 39100 with AGP of Rs. 8000 till they complete 3 years of service in the grade of Lecturer (Selection Grade), and thereafter shall be placed in the higher Pay Band of Rs. 37400 – 67000 and accordingly re-designated as Associate Professor.*

*(Xii) Assistant Professors completing 3 years of teaching in the AGP of Rs. 8000 shall be eligible, subject to other conditions, that may be prescribed by AICTE as applicable, to move to the Pay Band of Rs. 37400 – 67000 with AGP of Rs. 9000 and to be designated as Associate Professor.*

*(XVi) For initial direct recruitment at the level of Associate Professors and Professors, the eligibility conditions in respect of academic and research requirements shall be as may be or have been prescribed by the AICTE, through Regulations and as may be laid down by the AICTE.*

*(XViii) All advancements to higher grade pays in various cadres will be effected subject to completion of two AICTE approved refresher programs of not less than two weeks duration each and two TEQIP sponsored programs, each of one week duration.”*

**“All India Council for Technical Education notification dated 05<sup>th</sup> March, 2010 :-**

**Clause (a) Assistant Professor/ associate Professors/ Professors in Technical Instituion:**

*(iii) Assistant Professors possessing Master’s degree in the relevant branch / discipline as defined for technical education shall be eligible for the AGP of Rs. 7,000 after completion of 5 years service as Assistant Professor.*

*(Vii) Assistant Professors with completed service of 5 years at the AGP of Rs. 7000 shall be eligible, subject to other requirements laid down by the AICTE to move up to the AGP of Rs. 8000.*

*(Viii) Posts of Associate Professor shall be in the Pay Band of Rs. 37400 – 67000 with AGP of Rs. 9000. Directly recruited Associate Professors shall be placed in the Pay Band of Rs. 37400 – 67000 with an AGP of Rs. 9000 at the appropriate stage in the Pay Band in terms of the conditions of appointment.*

*(iX) Incumbent Assistant Professor and Incumbent Lecturers (Selection Grade) who have completed 3 years in the pre-revised pay scale of Rs. 12000 –*

*18300 on 1.1.2006 shall be placed in Pay Band of Rs. 37400 – 67000 with AGP Pay of Rs. 9000 and shall be re-designated as Associate Professor.*

*(X) Incumbent Assistant Professor and Incumbent Lecturers (Selection Grade) who had not completed three years in the pay scale of Rs. 12000-18300 on 1.1.2006 shall be placed at the appropriate stage in the Pay Band of Rs. 15600 – 39100 with AGP of Rs. 8000 till they complete 3 years of service in the grade of Lecturer (Selection Grade) and thereafter shall be placed in the higher Pay Band of Rs. 37400 – 67000 and accordingly re-designated as Associate Professor.*

*(Xii) Assistant Professors completing 3 years of teaching in the AGP of Rs.8000 shall be eligible, subject to other conditions, that may be prescribed by AICTE as applicable, to move to the Pay Band of Rs. 37400 – 67000 with AGP of Rs. 9000 and to be designated as Associate Professor.”*

**“All India Council for Technical Education  
Notification dated 08<sup>th</sup> November, 2012:-**

**1. Short Title, Application and  
Commencement :**

*1.1 These Regulations may be called the All India Council for Technical Education (Career Advancement Scheme for the Teachers and Other Academic Staff in Technical Institutions) (Degree) Regulations, 2012.*

*1.2 They shall apply to all technical institutions approved by the AICTE and Universities including Institutions deemed to be Universities imparting technical education and such other courses/Programs and areas as notified by the AICTE from time to time.”*

6) The dispute between the parties is in a narrow compass that is with regard to the pay band applicable to the petitioners and the Academic Grade Pay (AGP).

7) It is an admitted fact that the petitioners are appointed as Assistant Professors by following due selection process and at the time of their appointment as Assistant Professors they possessed the required qualification. Petitioners 1 to 3 and 7 are appointed on 01/02/2008, petitioner number 4 is appointed on 01/07/2009, petitioner number 5 is appointed on 06/02/2008, petitioner number 9 is appointed on 15/06/2007 and petitioner number 10 is appointed on 01/07/2009. There appears to be some difference in the date of appointment of petitioners 4 and 10. According to the petitioner petitioner number 4 is appointed on 01/07/2009 and petitioner number 10 is appointed on 01/07/2009. According to the respondents petitioners 4 and 10 are appointed on 04/06/2010.

8) It is also not disputed that all these petitioners were appointed in pay band of Rs. 12000 - 18300. The pay band and the AGP of the petitioners will have to be fixed in consonance and in tune with the Government Resolution dated 20th August, 2010 so also the notification issued by the AICTE dated 05th March, 2010. In fact reading the notification dated 05th March, 2010 issued by the AICTE and Government Resolution dated 20th August, 2010 it is manifest that both are replica of each other. They bear the same clause with regard to the pay band and the AGP.

9) While reading the notification of the AICTE and the Government Resolution all the clauses of the notification and the Government Resolution will have to be read in consonance with each other so that they are construed harmoniously. Each and every clause will have to be given its due credence. Head on collusion between two clauses of the said Government Resolution and the notification will have to be avoided. One clause can not be read in a manner so as to render another clause of the said resolution or notification a dead letter. Distinction will have to be made between pay band on one hand and AGP on another. Sub clause 10 of clause 2A of the Government resolution dated 20th August, 2010 and clause 3 and 10 of notification dated 05th

March, 2010 issued by the AICTE specifically lays down that incumbent Assistant Professors who had not completed three years in the pay scale of Rs. 12000 - 18300 on 01/01/2006 shall be placed at the appropriate stage in the pay band of Rs. 15600 - 39100 with AGP of Rs. 8000 till they complete three years of service in the grade of lecturer (Selection Grade) and thereafter shall be placed in the higher pay band of Rs. 37400 - 67000. Clause 12 deals with the pay band with AGP applicable to the Assistant Professor completing three years of teaching in the AGP of Rs. 8000. The relevant conditions in the clause 12 which is subject to other conditions that may be prescribed by the AICTE will have to be made applicable for grant of AGP of Rs. 9000 to the Assistant Professor completing three years of service in the grade of lecturer (Selection Grade). The condition of satisfying other terms and conditions as laid down by AICTE is not detailed. Clause 1 of notification dated 5th March, 2010 issued by the AICTE and 2 A (i) specifically lays down that there shall be only three designations in respect of the teachers in the universities and colleges namely Assistant Professor, Associate Professor and Professor so also clause 3 further lays down that the pay of teachers and equivalent positions in technical institutions shall be fixed according to the designations in two pay bands 15600 - 39100 and Rs. 37,400 - 67000 with appropriate

Academic Grade Pay. It further clarifies that each pay band shall have different stages of Academic Grade Pay which shall ensure that teachers and other equivalent cadres covered under the scheme subject to other conditions of eligibility being satisfied have multiple opportunities for upward movement towards their career.

Perusal of all the aforesaid clauses of the notification and the Government Resolution it is crystal clear that all Assistant Professors who have completed three years of service will be entitled to pay band of Rs. 37400 - 67000 and for increase in the Academic Grade Pay they will have to satisfy the other conditions that may be prescribed by the AICTE. Clause 12 of the notification as well as of the Government Resolution will have to be read as limited to the extent of the higher AGP of Rs. 9000. Unless the petitioners satisfy the compliance of other conditions as laid down by the AICTE, they will not be entitled for the AGP of Rs. 9000. However for moving to the pay band of Rs. 37400 - 67000 clause 10 of the Government Resolution nowhere prescribes that the petitioners / Assistant Professors should satisfy the other conditions prescribed by the AICTE. If clause 12 is read in a manner as has been sought to be read by the respondents it would render clause 10 nugatory and

superfluous. The same is not permissible under any rules of interpretation.

Reading all these clauses succinctly it is clear that the satisfaction of the other conditions of eligibility is with regard to the different stages of Academic Grade Pay whereas the pay of the teachers is to be fixed in two pay bands - (1) 15600 - 39100 and (2) 37400 - 67000.

10) The notification dated 08/11/2012 issued by the AICTE and relied by the respondents is applicable only for the purpose of benefit in the career advancement scheme. We are not concerned with the same in the present matter.

11) The orders are also passed without giving notice to the petitioners and without hearing to petitioners. The same is also illegal. Considering the above the impugned order cannot be sustained and is quashed and set aside.

12) It is held that the petitioners on completion of the three years in service as Assistant Professors shall be entitled for the pay band of Rs. 37400 - 67000, however for grant of AGP of Rs. 9000 they will have to satisfy the other conditions laid down

by the AICTE. The petitioners may file an application for grant of AGP of Rs. 9000 with the respondents, which the respondents shall consider and decide about the entitlement of the petitioners of AGP of Rs. 9000 on its own merits within a period of three (3) months from the date of receipt of representation from the petitioners. However respondents shall pay the petitioners pay band of Rs. 37400 - 67000 on completion of their three years of service from the date of their appointment as Assistant Professors through proper selection process.

13) Rule accordingly made absolute in above terms. No costs.

**[ V. K. JADHAV, J. ]**

**[ S. V. GANGAPURWALA, J. ]**

. At this stage Mr. Gandhi, the learned counsel for respondent Nos. 3 to 5 seeks stay of the present judgment and order for a period of eight (8) weeks. Mr. Choukidar, the learned counsel opposes the said request.

2. Considering the request made, the present judgment and order is stayed for a period of four (4) weeks from today.

**[ V. K. JADHAV, J. ]**

**[ S. V. GANGAPURWALA, J. ]**

sam/Jan.15