

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7905 OF 2014

POPAT PANDURANG KADU AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. Hon Vinayak D., senior counsel

AGP for Respondent No.1: Mr. R.P. Phatke

Advocate for Respondent No.2 : Mr. Avishkar S. Shelke

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

DATED : 17th JULY, 2015

P.C. :-

1. Mr. Hon, the learned senior counsel submits that the petitioners have joined the services with the respondent No.2 University as Junior Research Assistants. Thereafter, they have completed their post graduate in M.Sc. (Agri). According the learned senior counsel, many of the petitioners have also completed their Ph. D. The petitioners have joined the services in the year 1982. They are also promoted to the post of Senior Research Assistants. The pay scale of the petitioners is also revised pursuant to the Government Resolution dated 14.1.1999. So also, subsequently, the revision of pay scale has been done applying the scale as per 5th and 6th pay Commissions. On 15.4.1999, the State came out with a Resolution thereby re-fixing the scale w.e.f. 1.1.1996. As per the

said scale fixed for the post of Senior Research Assistants, it was Rs.7450-11500. The learned senior counsel submits that the respondent No.2 issued circular on 17.8.2010 directing all those who have been promoted on the post of Senior Research Assistants and granted pay scale of Rs.7450-11500 working in class I, II and III to get verified their service books within a period of one month. The petitioners have made representations that they have received pay scale as was fixed from time to time. According to the learned senior counsel, the petitioners had approached the State government by making representations. The State Government initially had protected the petitioners. Thereafter, the directions are issued to verify the service books of the candidates and also to take necessary steps for recovery.

2. Mr. Hon, the learned senior counsel submits that the said circular is in pursuance of the judgment of the Division Bench of this Court at Nagpur Bench, in writ petition No. 2750 of 1990, delivered on 21.6.2006. The learned senior counsel submits that the Division Bench, in the said judgment, had not directed to reduce the pay scale of Senior Research Assistants in the scale of Rs.680-1250, however, has directed to step up the pay scale of the petitioners therein so as to bring them on par with the pay scale which has been received by the present petitioners in the scale of Rs.680-1250.

3. Learned senior counsel submits that even otherwise the said scale was granted more than 10 years back and many of the petitioners are on the verge of retirement. The recovery in any case on the said count cannot be claimed. The learned senior counsel relies on the judgment of the Apex Court in the case of **State of Punjab vs. Rafiq Masih**, delivered on 18.12.2014.

4. Mr. Shelke, the learned counsel for the respondent No.2 submits that the Government Resolution dated 7.8.1981 has been interpreted by the Division Bench of this court in the judgment (referred supra), wherein it is held that to get the said pay scale of Rs.680-1250, it was necessary that the said person completes 5 years as Senior Research Assistant. It is only on completion of five years as Senior Research Assistant, the said scale is to be given. These petitioners were given the said scale from date of their entry as Senior Research Assistant. According to the learned counsel re-fixation is rightly done and recovery is rightly claimed. According to learned counsel, if erroneously some excess amount is paid, then recovery of the same can be made as per the Rule 132 and 134-A of the Maharashtra Civil Services (Pension) Rules.

5. We have considered the submissions canvassed by the

learned counsel for the respective parties. The steps taken by the respondents are pursuant to the judgment of the Division Bench of this court in writ petition No. 2750 of 1990, dated 21.6.2006. The relevant paragraphs i.e. paras 14 and 15 of the said judgment are quoted herein below:-

"14. It cannot be lost sight of that the petitioners have challenged their fixation which has been done in terms of Government Resolution dated 7.8.1981. The learned counsel for the respondents have argued that several Junior Research Assistants have already been given benefit of fixation in pay scale of Rs.680-1250 and those persons are not parties before this court. We find that the grievance of the petitioners can be ventilated by directing the respondents to step up their pay to the existing pay of the Senior Research Assistants who got the fixation in scale of 680-1250 accordingly prior to them because of completion of total five years of service in University but is junior to them in cadre of Senior Research Assistant. Thus, if pay of petitioners is stepped up, no injustice will be caused to such junior in cadre of Senior Research Assistants who were already placed in time scale of Rs.680-1250 at the relevant time and whose salary has been revised accordingly from time to time.

15. We accordingly hold that the condition of having five years total experience of University service for claiming pay scale of Rs.680-1250 in the cadre of Senior Research Assistants is unsustainable. The five years service has to

be after the candidate is appointed or promoted as the Senior Research Assistant. In view of this interpretation given by us, it is not necessary to quash or set aside the said condition. The respondents are directed to step up the pay of the petitioners as mentioned above and to release to them all consequential arrears and to complete said exercise as early as possible and in any case within a period of four months from today. Writ petition is allowed accordingly. Rule is made absolute in the above terms. There shall be no order as to costs."

6. The petitioners therein were selected on the post of Senior Research Assistants on the basis of post graduate degree held by them. The petitioners therein claimed that they should be placed in the pay scale from beginning itself i.e from the date on which they became the Senior Research Assistants. The petitioners in the said petition claimed that they should be paid pay scale of Rs.680-1250 instead of Rs.500-900.

7. The Division Bench of this Court directed the respondents to step up the pay scale of the petitioners in said writ petition at par with the Senior Research Assistants, who were given pay scale of 680-1250 prior to the present petitioners because of completion of total five years of service in the University and who are junior to them in the cadre of Senior Research Assistants. The petitioners are persons, who had got benefit of pay scale of Rs.680-1250 on

completion of total five years of service with the University. The Division Bench at Nagpur did not direct to reduce their pay scale. However, directed to step up the pay scale of the petitioners therein to bring at par with such of the Senior Research Assistants like that of the present petitioners. If the pay scale was given to the petitioners for more than 10 to 15 years back, the recovery at such belated stage will not be permitted in view of the judgment in the case of **State of Punjab vs. Rafiq Masih (White Washer)**, (referred supra).

8. In the light of above, we pass the following order.

9. The respondents shall not revise/refix the pay scale of the petitioners pursuant to the impugned circular nor any recovery shall be claimed against the petitioners pursuant to the impugned communication.

10. Writ petition is accordingly disposed of. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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