

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.6214 OF 1999
WITH
CIVIL APPLICATION NO.1514 OF 2014
WITH
CIVIL APPLICATION NO.750 OF 2008**

1. J.R. Gaikwad
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
2. R.L. Fulpagare
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
3. Smt. V.Y. Sathe
(since deceased)
Yeshwant Mahadeo Sathe
R. at : Flat No.6, Monica Appts.,
Karve Nagar, Pune 52.
4. R.S. Gholap
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
5. Smt. K.U. Mahadik
(since deceased)
Umesh Vishwanath Mahadik
Ganesh Darshan Kunj,
Opp. of M.C.P. Refineries,
Near Patel Tiles,
Shivajinagar, Pune - 5.
6. Smt. M.T. Paithankar
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
7. R.P. Tannu
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.

8. K.D. Chavan
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
9. H.S. Borate
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
10. L.G. Patil
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
11. V.S. Garud
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
12. A.P. Kudre
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
13. D.D. Borade
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
14. Smt. A.B. Deodhar
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
15. B.K. Chavan
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
16. M.B. Bhor
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
17. D.K. Chaugule
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
18. V.A. Jadhav
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.

19. D.A. Ranpise
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
20. S.V. Bhadre
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
21. R.S. Kadam
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
22. U.S. Ghayal
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
23. Y.N. Nikalje
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
24. D.S. Jadhav
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
25. M.V. Pawar
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
26. S.A. Shaikh
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
27. U.A. Variath
Laboratory Assistant,
C.W.P.R.S., Pune 411 024.
28. R.K. Prasad
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
29. N.G. Ovhal
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.

30. Smt. S.M. Mirashi
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
31. Smt. S.S. Mangade
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
32. Smt. V. Saroja
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
33. S.G. Nerlekar
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
34. Y.M. Sathe
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
35. A.V. Kulkarni
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
36. S.A. Rokade
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
37. G.L. Pardesi
Laboratory Assistant Gr. II,
C.W.P.R.S., Pune 411 024.
38. G.T. Gaikwad
Laboratory Assistant Gr. I,
C.W.P.R.S., Pune 411 024.
39. G.V. Dhende
Laboratory Assistant Gr. I,
C.W.P.R.S., Pune 411 024.

...Petitioners.

versus

1. Union of India
Through, The Secretary,
Ministry of Water Resources,

'Shram Shakti' Bhavan,
Rafi Marg,
New Delhi 110 001.

2. The Director
Central Water and Power
Research Station,
Pune 400 024.

..Respondents.

.....
Mr. Sanjeev J. Rairkar with Mr. Nikhil Vidwans for the Petitioners.

Mr. P.B. Shah i/b Mr. Kayval P. Shah for the Applicants in CAW/1514/14.

Mrs. S.V. Bharucha with Mr. D.A. Dube for Respondent No.1 - Union of India.

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**CORAM : NARESH H. PATIL &
A.S. GADKARI, JJ.**

29th January, 2015.

ORAL JUDGMENT (PER NARESH H. PATIL, J.) :

1. The Petitioners pray for a writ of Certiorari for setting aside the judgment and order delivered in Original Application No.856 of 1996 by the Central Administrative Tribunal, Mumbai dated 23rd March, 1999 and 6th April, 1999. The Petitioners pray for the grant of pay scale of Rs.425-700. Petitioner Nos.1 to 37 contend that they were working as Laboratory Assistant, Grade-II, whereas Petitioner Nos.38 and 39 are presently working as Laboratory Assistant, Grade-I with Respondent No.2 as mentioned in Annexure A to the Petition. The pay scales as existed prior to 1980 are described in paragraph 3 of the Petition. The Central Government had appointed a committee known

as 'Dr. Swaminathan committee' to look into the organisational structure of the research station and to suggest staffing pattern, method of recruitment, training of research personnel etc. The said Committee in its report observed that there was anomaly in the scale and pay of Senior Observers, Computer 'A' and the report submitted on 20th August, 1987. The Committee recommended new pay scales for such categories which were referred to as under :

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|----|-----------------|------------|---|
| 1. | Observer | Rs.260-430 | The said categories merged and redesignated as Laboratory Asst. Grade III in the scale of Rs.260-430. |
| | Computer 'B' | Rs.260-400 | |
| 2. | Senior Observer | Rs.380-560 | These categories were merged and redesignated as Laboratory Asst. Grade II in the scale of Rs.380-560. |
| | Computer 'A' | Rs.330-560 | |
| 3. | Computer 'A' | Rs.425-700 | The said category was continued and redesignated as Laboratory Asst. Grade I in the same pay scale of Rs.425-700. |

2. The recommendations made by Dr. Swaminathan Committee were accepted by the Central Government and implemented. The recommendations were made effective from 23rd December, 1980.

3. Three Original Applications bearing Nos.380/90, 488/90 and 534/90 were filed by the employees working with Respondent No.2 before the Central Administrative Tribunal, Mumbai. Original Application No.534 of 1990 was filed by 50 staff members working under Respondent No.2, as Laboratory Assistant Grade II. The Tribunal disposed of these Original Applications by a common judgment and order passed on 5th December, 1994. In respect of the Applicants in Original Application No.534 of 1990, the Tribunal directed the Respondents to give the pay scale of Rs.425-700 from the date on which they became entitled to. The Petitioners further contended that the judgment and order delivered in Original Application No.534 of 1990 was implemented by the Respondents. The Applicants in the Original Application being Laboratory Assistants Grade-II were given the scale of Rs.425-700 which was subsequently revised to Rs.1400-2300 with effect from 1st January, 1986. The Petitioners submit that they are similarly placed as the applicants in Original Application No.534 of 1990. The Respondents herein had granted the pay scale of Rs.425-700 to the applicants in Original Application No.534 of 1990, but the same was denied to the Petitioners. It is the case of the Petitioners that they were denied the pay scale without any justifiable valid reasons and grounds.

4. The learned counsel appearing for the Petitioners submitted that the Tribunal did not address the relevant issues while deciding the Original Application filed by the Petitioners. The Tribunal had dismissed the Original Application in view of the judgment of the Full Bench of the Tribunal which was not the correct approach. In the submissions of the learned counsel the Tribunal ought to have gone into all the relevant issues as raised by the parties before it after the matter was placed before the Tribunal consequent upon the judgment delivered by the Full Bench. It is submitted that under the Swaminathan Committee report the duties assigned to the Petitioners as Senior Observers and to the post of Computer 'A' are comparable. As per the recommendations of Dr. Swaminathan Committee, Computer 'A' and Senior Observers were placed in Grade-II category considering the similarity of the nature of work which they were discharging. The learned counsel submitted that in the petition filed by the persons discharging work as Computer 'A', the Court granted relief to them by awarding same pay scale of Laboratory Assistant Grade-I by rejecting the formula of 80 : 20. The learned counsel further urged that the Full Bench failed to consider that the duties of Computer 'A' and Senior Observer were of similar nature and therefore, if similar work is discharged by the Senior Observers, then they are entitled as of right for equal pay as was given to Computer 'A' persons. The discrimination made by the Respondents in case of the

Petitioners was contrary to the constitutional spirit of Article 14. The learned counsel has referred to the judgment of **B.S. Saini and another v. Union of India and another (T.A. No.335 of 1985)** of the Central Administrative Tribunal, Delhi and **(O.A. No.1942 OF 1987)** of the Central Administrative Tribunal New Delhi as was referred by the Full Bench. The learned counsel has further referred to two judgments of the Supreme Court in the case of **Chandra Kumar v. Union of India and others** reported in **(1997) 3 SCC 261** and **Kerala State Science & Technology Museum v. Rambal Co. and others** reported in **(2006) 6 SCC 258**. The learned counsel has further referred to a query made by the Petitioners under the Right to Information Act and the reply received by the Respondents in respect of the similarity of duties. In the alternative, the learned counsel submitted that the Division Bench of the Tribunal ought to have independently appreciated the facts, gone into the necessary details and arrived at a finding in respect of the similarity or otherwise of the duties performed by Computer 'A' and Senior Observers. In the absence thereof, the Petitioners are put to prejudice and which calls for a remand of the Petition to the Tribunal for appropriate consideration of the relevant issues.

5. Learned counsel appearing for the Respondents submitted that the recommendations of Dr. Swaminathan Committee report have

been accepted by the Central Government and they are implemented too. The work of Computer 'A' and Senior Observers is not similar as they perform different duties. The nature of work is entirely different and therefore they cannot claim as of right, same scale and pay at par with the employees working as Computer 'A' Grade-I. It was submitted that though the Full Bench had taken note of the fact that the Applicants in Original Application Nos.534 of 1990 and 380 of 1990 had already derived the benefit of the order passed in their favour, the judgment and order in those cases had attained finality in the year 1994. The Full Bench did not strike down the order passed by the Division Bench in Original Application No.534 of 1990 and 380 of 1990, but expressed its opinion on the correctness of the said order. As the monetary benefits were already awarded to the employees therein, the Tribunal thought it fit not to withdraw these benefits. The Central Government had accepted the recommendations of Dr. Swaminathan Committee by a communication dated 23rd December, 1980. It was further submitted that the Full Bench had in detail discussed all the relevant issues, the judgment delivered in identical cases, the relevant case laws and the recommendations of Dr. Swaminathan Committee report and the facts of the present case. In view of the said judgment of the Full Bench, the Petitioners' case cannot be considered for the grant of scale as prayed by them.

6. We have perused the record placed before us, considered the submissions of the learned counsel appearing for the respective parties at length and the case law cited (*supra*).

7. In the case of **B.S. Saini** and another, a proposition of law was propounded by the Apex Court that fixing different pay scales for the same post is violative of Articles 14 and 16 of the Constitution. In the case of **A.K. Khanna and others**, the Central Administrative Tribunal, New Delhi referred the case of **Saini** and granted benefit to the applicants therein, as it was found that the applicants were similarly placed and governed by the same rules. In the case of **K.S. Munda and others v. Union of India and another (O.A. No.1682 OF 1987)**, the Central Administrative Tribunal, New Delhi placed reliance on the cases of **B.S. Saini** and **A.K. Khanna** and observed that the judgment in **Saini's** case was a judgment in rem and directed the Government to extend the same benefits to the applicants therein in respect of the pay scale.

8. The Petitioners have claimed that they may be granted similar benefits as were granted by the Tribunal to the applicants in Original Application No.534 of 1990 and other connected matters. Whilst the Petitioners had filed the Original Application, the Tribunal thought it fit to refer the matter to the Full Bench and accordingly, the Full Bench

had dealt with the issue. By a detailed judgment and order dated 23rd March, 1999 the Full Bench pronounced the order. The following two issues were referred to the Full Bench :

“(i) Whether the Saini's Judgment in T.A. No.335/85 and other Judgments based on that in the cases of Senior Computers would be applicable in the case of Senior Observers also?

(ii) If the relief granted to the Senior Computers as a result of Saini's decision would continue to apply even after the designation of Computers being eliminated after the implementation of Swaminathan Committee Report to the posts of Lab. Assistant Grade – II ?”

The Full Bench answered the issues as follows :

“ISSUE NO.1 : The Senior Observers are not entitled to get the same pay scale as given to junior Computer as per the judgment of the Tribunal in Saini's case in O.A. No.335/85 and others judgments of the Tribunal.

ISSUE NO.2 : This question is not answered, since the Senior Computers are not parties to these two cases and their disputes cannot be decided in the present O.As. The question is, therefore, not answered.”

9. The Full Bench of the Tribunal observed that the claim of the applicants was based on the judgment of the Tribunal in Original Application No.380 of 1990 in the case of A.D. Kshirsagar and others.

The Division Bench in that case placed reliance on Saini's case and other cases and was of the view that the Senior Observers are entitled to the pay scale at par with the Senior Computers. The Full Bench observed that there was no discussion as to how the Senior Observers will be given the same pay scale as given to Senior Computers. According to Dr. Swaminathan Committee recommendations, amongst the Senior Computers or Computer 'A', 20% of the posts were kept in the senior scale of Rs.425-700 and remaining 80% of Senior Computers were kept in a junior scale of Rs.330-560. The Full Bench further observed that in none of these cases the question of equating Senior Observers with Computer 'A' was raised or decided. Therefore, the Full Bench did not apply the decisions to the case of Senior Observers. The Tribunal found that there was no rationale behind extending the benefit of pay scale of Senior Computers to Senior Observers. The grievance of the Observers Association was noted by Dr. Swaminathan Committee at item No.IX at page 96 of the Report. Therefore, the Expert Body gave a new structure and new designation to the Auxiliary Services providing promotional opportunities from Grade-III to Grade-II and then to Grade-I with different scales of pay. Interference in such matters could be possible if there is hostile and invidious discrimination in dealing with the recommendations regarding fixation of pay scales. There was no such hostile discrimination demonstrated by the applicants in the

recommendations of Dr. Swaminathan Committee or in the Government Order passed in the year 1980 or in the Recruitment Rules of 1983. It is observed that the applicants had in fact claimed the benefit of Dr. Swaminathan Committee Report as granted by the Tribunal in the case of A.D. Kshirsagar and others (O.A. NO.380 of 1990). The Full Bench observed that the only question raised by the applicants in both the cases is that the Senior Observers should get the same pay scale of Senior Computers. The Full Bench further observed that merely because some promotion or some relief was granted wrongly to some officers could not be a ground to grant similar benefits contrary to Dr. Swaminathan Committee Report and the Service Rules.

10. The prime issue raised on behalf of the Petitioners is that as the Senior Observers are discharging similar duties like Computer 'A', they must be placed in the scale of Rs.425-700 as was directed by the Tribunal in case of Computer 'A'. Dr. Swaminathan Committee created three grades, Grade-I - Computer 'A' redesignated as Laboratory Assistant Grade-I, Grade-II - Computer 'A' / Senior Observers merged and redesignated as Laboratory Assistants Grade-II and Grade-III - Observer / Computer 'B' merged and redesignated as Laboratory Assistants Grade-III. The submission is that if the Senior Observers are clubbed along with Computer 'A', it is to be assumed that they

discharge similar duties and therefore, they shall be paid in accordance with the same scale i.e. Rs.425-700. The issue that the claim of similarity of the duties discharged by the applicants has been disputed by the Respondents. The Respondents have placed before this Court the signed documents by the responsible officer of the Respondents describing the duties of Grade-I, Grade-II and Grade-III employees and qualifications of the employees working in different Grades. We have perused the same. Dr. Swaminathan Committee has gone through all the facets and after considering the representations of the Senior Observers has placed them in Grade-II with a prescribed pay scale of Rs.330-560. Under the orders passed by the Tribunal, Computer 'A' employees got the benefit of the pay scale of Rs.425-700.

11. One of the observations under Clause 5.18 the Committee refers to recommendations for technical services. The Committee observers in Clause 5.19.4 (e) as under :

“(e) The existing category of Observers, Assistant, Silt Analyst and Laboratory Assistant would be placed as Laboratory Assistant (Gr.III). Computer B would be given the option to join the above cadre within a given time or to continue as Computer B. Similarly the Senior Observers would be designated as Laboratory Assistant (Gr.II) while Computer A would be given the option to join the above grade. The existing categories of Senior

Observer, Computer A, Silt Analyst would be placed in the category of Laboratory Assistant (Gr. II)."

12. The Report of the Committee was accepted by the Central Government and was implemented. The Petitioners are deriving benefits of the said recommendations as they are placed in Grade-II of Computer 'A'. The grant of benefit of the same pay scale as was awarded to Computer 'A' Laboratory Assistant Grade-I to the present applicants would disturb the basic recommendations of Dr. Swaminathan Committee and the grade-wise placement of the employees.

13. Learned counsel appearing for the Petitioners submitted that the Committee itself observed that the duties of Computer 'A' persons and Senior Observers are comparable. We are not persuaded to accept this contention that both the Senior Observers and Computer 'A' discharge identical and similar duties.

14. The Petitioners have raised challenge to the order passed by the Division Bench of the Tribunal and also to the Full Bench judgment of the Tribunal. We do not notice any grave error in the view adopted by the Tribunal. At this stage, we are not inclined to remand the matter back to the Tribunal. The Petition is dismissed.

15. In view of the dismissal of the Petition, Civil Application No.1514 of 2014 and Civil Application No.750 of 2008 do not survive and are disposed of.

(Naresh H. Patil, J.)

(A.S. Gadkari, J.)