

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

WRIT PETITION NO.381 OF 2016

- 1) Dr.Chatur Pundlik Sawant,
Age: 54 Yrs., occu. Service,
R/o Nandurbar, Tq. And Dist.
Nandurbar.
- 2) Dr.Vijay Yashwantrao Jadhav,
age: 59 Yrs., occu. Service,
R/o Nandurbar, Tq. And Dist.
Nandurbar.
- 3) Dr.Girish Haribhau Mahajan,
age: 58 Yrs., occu. Service.
R/o Nandurbar, Tq. And Dist.
Nandurbar.
- 4) Dr.Khalid Mohamad Sharif,
age: 58 Yrs., occu. Service,
R/o Nandurbar, Tq. And Dist.
Nandurbar.
- 5) Dr.Shakhila Khalid Sharif,
age: 57 Yrs., occu. Service,
R/o Nandurbar, Tq. And Dist.
Nandurbar.

- PETITIONERS

VERSUS

- 1) The State of Maharashtra
Through its Principal Secretary,

Higher & Technical Educational
Department, Mantralaya, Mumbai.

- 2) The Director of Higher Education,
Maharashtra State, Central Bldg.
Pune, District Pune.
- 3) The Joint Director of Higher
Education, Department of
Higher Education,
Dr.Ambedkar Road, Pune,
District Pune.
- 4) North Maharashtra University,
Jalgaon, Through its
Registrar.
- 5) G.T.Patil Arts, Commerce &
Science College, Nandurbar,
Through its Principal.

- RESPONDENTS

Mr.DS Bagul, Advocate for Petitioner/s
Mr.PG Borade,AGP for State.
Mr.LS Mahajan, Adv. For Respondent No.5.

**CORAM : S.S.SHINDE &
P.R.BORA,JJ.**

DATE OF RESERVING JUDGMENT :24th February,2016.
DATE OF PRONOUNCING JUDGMENT: 2nd March, 2016.

JUDGMENT (PER:-P.R.BORA,J.)

- 1) Heard. Rule. Rule made returnable
forthwith. With the consent of learned Counsel

for the parties, the petition is taken up for final disposal at admission stage.

2) The petitioners are praying for issuance of Writ of Mandamus or order or direction in the nature of Writ of Mandamus, directing the respondents to step up the salary of the petitioners equivalent to the salary of Associate Professors, who are junior to them, with effect from the date of promotion of the said junior Associate Professors, as per the Government Resolution dated 12th August, 2009. The petitioners have also prayed for issuance of direction to the respondents to pay the amount admissible in accordance with the decision, together with interest at the rate of 9 per cent per annum from the date on which the amount becomes due and payable till its actual disbursement.

3) All the five petitioners in the present petition are admittedly senior to one Dr. Mrs.

V.S.Patil. Till 30th August, 2008, said Mrs. Patil was drawing salary in the lower pay scale than all the petitioners. However, by virtue of three increments released in her favour by virtue of her acquiring the degree of Ph.D., basic pay of Mrs. Patil was fixed at Rs.47,630/- w.e.f. 1.9.2008; whereas the basic pay of the petitioners remained the same i.e. Rs.44,230/-. In the circumstances, relying upon the Government Resolution dated 12th August, 2009, Note 6 of which provides that in case where the senior teacher promoted to higher post before 1st day of January, 2006 draws less pay in the revised pay structure than his junior, who is promoted to the higher post on or after first day of January, 2006, pay of such senior teacher should be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher post, the petitioners have prayed for stepping up their pay at par with Dr. Mrs. Patil, who is junior to them.

4) We have not indulged in reproducing the facts of the case in detail since the same are not disputed by the respondents. Moreover, sufficient material has been placed on record by the petitioners, about their qualifications, appointment, approval, pay scales and increments etc. Similar issue was involved in the matter of **Sudamrao Keshavrao Aher** (cited supra) and the learned Division Bench of this Court, while dealing with the controversy raised in the said matter, in Para 15 of the said judgment has, observed thus, -

“15. In present matter, according to us, the incentives while implementing 6th Pay Commission for Ph.D. cannot be so given so as to give a junior teacher more pay than the senior who is otherwise equally qualified. Rather he has more experience and is senior even in the acquisition of the Ph.D. Degree. All things given to be the same at a given point of time, junior teacher could not be getting more salary than the senior

only because the junior has just acquired the Ph.D. Degree. The Constitution has goal under Article 39(d) that there should be equal pay for equal work. If the arguments as raised on behalf of the Respondents are accepted, the same would amount to discriminating to teachers only on the basis of junior teacher having acquired Ph.D. Degree recently under new Pay Commission. This would be violative of the principles as enunciated in Article 16 of the Constitution and such position cannot be allowed to be maintained. It is different when one person is having higher qualifications. However, it would be discriminatory when both are having similar qualifications and a person not only senior in service but also equally qualified is so discriminated so as to be put in disadvantageous position as if it was a fault to have acquired Ph.D. Degree earlier."

- 5) In the instant matter, we reiterate that the petitioners are admittedly senior to one Dr.

Mrs. V.S.Patil, but are receiving less salary than her from 1.9.2008. As held by the Division Bench of this Court in the case of Sudamrao Keshavrao Aher (supra), such position cannot be allowed to be maintained.

6) In view of the reasons set out in the judgment of **Sudamrao Keshavrao Aher & Ors.** (cited supra), the instant petition also deserves to be allowed and the same is accordingly allowed. We direct the respondents to step up the salary of the petitioners at par with the similarly placed teachers junior to them and compute the salary and arrears payable to the petitioners in accordance with the judgment and order passed by the Division Bench of this Court in the aforesaid matter of **Sudamrao Keshavrao Aher & Ors.** (cited supra) and release the said amount to the petitioners as expeditiously as possible, and preferably, within six months from the date of this order.

7) Rule is accordingly made absolute in the
aforesaid terms with no order as to costs.

sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

bdv/

fldr 25.2.16