

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1017 OF 2016

1. The State of Maharashtra,
through the Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai
2. The Director of Technical
Education, Mumbai
3. The Joint Director of Technical
Education, Osmanpura, Aurangabad
4. The Principal,
Government Polytechnic,
Aurangabad

PETITIONERS

VERSUS

1. Ravindra Hanmantrao Kulkarni,
Age : 32 years, Occu. Service,
R/o Kulkarni Niwas,
Tilak Road, Beed
2. Vishwajit Anantrao Landge,
Age : 33 years, Occu. Service,
R/o Near Sangli Bank,
Ashirwad Colony, Subhash Road,
Beed
3. Umesh Uttamrao Kamlaaskar,
Age : 33 years, Occu. Service,
R/o Keskar Niwas, Sahyog Nagar,
Beed

RESPONDENTS

Mr. S.B. Yawalkar, A.G.P. for the petitioners

Mr. Chandrakant R. Thorat, Advocate for the respondents

**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.**

**JUDGMENT RESERVED ON : 17th JUNE, 2016
JUDGMENT PRONOUNCED ON : 29th JUNE, 2016**

JUDGMENT (PER : SANGITRAO S. PATIL, J.):

The petitioners have taken exception to the order dated 10th December, 2014, passed by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad ("M.A.T.", for short) in Original Application No. 71 of 2012, filed by the present respondents, whereby the present petitioners have been directed to fix the pay of the respondents in the scale of Rs. 5500-9000 as per the Fifth Pay Commission and its equivalent as per the Sixth Pay Commission.

2. Respondent Nos. 1 and 2 joined as the Instructors in Printing Technology in the Government Polytechnic at Beed on 4th March, 2015, while respondent No. 3 joined the said post on 4th October, 2008. Since the above mentioned dates, they have been continuously serving on the said posts. They have been given pay

scale of Rs. 4000-6000 as per the Fifth Pay Commission. The said Government Polytechnic is being run under the control of petitioner Nos. 1 to 3. The Joint Director of Technical Education, Mumbai, who is equivalent in rank to respondent no.3, filled up three posts of Instructors in the Government Institute of Printing Technology at Mumbai (hereinafter referred to as "the Instructors at Mumbai" for short) as per the order dated 16th March, 2007 in the pay scale of Rs. 5500-9000 as per the Fifth Pay Commission. The said Institute also is under the control of petitioner Nos. 1 and 2.

3. According to the respondents, the eligibility criterion for recruitment and the nature of the duties of the Instructors at Mumbai are similar to that of the respondents. There is absolutely no reason to have disparity in their pay scale qua the pay scale of the Instructors at Mumbai. They are entitled to get the pay scale of Rs. 5500-9000 as per the Fifth Pay Commission and its equivalent pay scale as per the Sixth Pay Commission, on the principle of "equal pay for equal work". Therefore, they made several representations to the petitioners for granting them the said pay scales.

However, it was of no use. Therefore, they filed the above numbered original application before the M.A.T.

4. The petitioners opposed the said original application by filing affidavit-in-reply through Vijay Laxman Bhangre, working as Assistant Director (Non Technical) in the office of petitioner No. 3. According to the petitioners, the Diploma in Printing Technology was started at Government Polytechnic, Beed in the year 1996. The posts of Instructors were created for the Government Polytechnic, Beed as per the Government Resolution dated 17th January, 2003, issued by the Department of Higher and Technical Education, in the pay scale of Rs. 4000-6000. The Government Institute of Printing Technology at Mumbai is a unique institute running from the year 1962, where all the diploma level printing courses only are being conducted. The posts of Instructors have been created for this Institute in the year 1962 in the pre-revised pay scale of Rs. 5500-9000 as per the Fifth Pay Commission. The said posts are under the purview of Regional Office, Mumbai. It is admitted that the same procedure has been followed for filling up the posts of the Instructors in the Institute

of Printing Technology, Mumbai and in the Government Polytechnic at Beed by the Regional Offices at Mumbai and Aurangabad, respectively. The Regional Office at Aurangabad, in the advertisement dated 20th April, 2008, mentioned the pay scale of Rs. 4000-100-6000 for the post of Instructor (Printing) in Government Polytechnic, Beed because the said post was newly created vide Government Resolution dated 17th January, 2003. As per the Sixty Pay Commission, the pay scale of the Instructors at Mumbai is Rs. 9300-34,800/- and grade pay of Rs. 4300/-, while that of the Instructors at Beed is Rs. 5200-20,200 with grade pay of Rs. 2400/-. It is stated that the Institute at Mumbai and Government Polytechnic at Beed are conducting different types of courses. They are working under different Directorates. Their duties and responsibilities are different. It is stated that the Institute at Mumbai conducts full-time diploma level printing technology courses. Therefore, it is contended that there cannot be comparison between the Instructors working at Mumbai and the Instructors working at Beed for the purpose of pay scales. On these grounds, the petitioners prayed for dismissal of original application No. 71/2012.

5. Considering the rival contentions of the parties and the documents produced on record, the learned Bench of M.A.T. found substance in the claim of the respondents for parity of pay scale with that of the Instructors at Mumbai and as per the impugned order, directed the petitioners to fix the pay scale of the respondents at par with that of the Instructors at Mumbai.

6. The learned A.G.P., appearing for the petitioners submits that the nature of the duties assigned to the Instructors working at Government Polytechnic, Beed and the Instructors at Mumbai are totally different. The Instructors at Mumbai are running the full-time courses in printing technology only, while the Instructors at Beed are conducting various courses and one of the courses is the Diploma in Printing. Therefore, the Instructors at Beed cannot claim parity in the pay scale with the Instructors at Mumbai. He further submits that even if it is assumed that the Instructors at Beed are holding identical posts, performing identical and similar duties under the same employer as that of the Instructors at Mumbai, they

cannot claim parity of pay scales with the Instructors at Mumbai in view of the judgment in the case of ***Hukum Chand Gupta Vs. Director General, Indian Council of Agricultural Research and others (2012) 12 S.C.C. 666.***

7. Relying on the judgments in the cases of ***Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others (1988) 3 S.C.C. 91*** and ***Steel Authority of India Limited and others Vs. Dibyendu Bhattacharya (2011) 11 S.C.C. 122***, the learned A.G.P. submits that the equality clause can be invoked in respect of the pay scales only when there is wholesome/wholesale identity between holders of two posts and the burden of establishing such identity lies on the persons who claim such right. The learned A.G.P. submits that considering the difference in the nature of the courses conducted by the Institute at Mumbai and the Government Polytechnic at Beed, the respondents are not entitled to claim the pay scale which is being paid to the Instructors at Mumbai on the principle of "equal pay for equal work". He submits that the learned Bench of the M.A.T. has wrongly allowed the original application and wrongly

directed the petitioners to fix the pay scales of the Instructors at Beed at par with that of the Instructors at Mumbai. He, therefore, submits that the impugned order may be set aside.

8. As against this, the learned counsel for the respondents submits that the nomenclature of the posts held by the Instructors at Government Polytechnic, Beed (i.e. the respondents), the eligibility criterion for their recruitment and the nature of their duties is totally identical with that of the Instructors at Mumbai. There is absolutely no rationale to cause disparity in the pay scales of the Instructors at Beed and the Instructors at Mumbai. The respondents have been subjected to discrimination by asking them to work on a lower pay scale than that of the Instructors at Mumbai, which is against the provisions of Articles 14 and 21 of the Constitution of India. Relying on the judgment in the case of ***Union of India and others Vs. Dineshan K.K. AIR 2008 S.C. 1026***, he submits that the disparity in the pay scale of the Instructors at Beed and that of the Instructors at Mumbai is irrational, arbitrary and unjust. He, therefore, supports the impugned order

which has removed this disparity and prays that the writ petition may be dismissed.

9. There is no dispute that the nomenclature of the posts held by the respondents is identical to that of their counterparts working in the Institute at Mumbai. The copies of the advertisements of the years 2006 and 2008 whereunder the Instructors at Mumbai and the present respondents (Instructors at Beed) respectively were recruited, show that the eligibility criterion for filling up the said posts was identical i.e. S.S.C. and Diploma in Printing Technology. In paragraph No. 3 of the original application, it is specifically mentioned that the Lecturers working in Government Institute of Printing Technology, Mumbai were being transferred in Government Polytechnic, Beed. This fact has not been denied by the present petitioners in their reply. On the contrary, it is admitted that initially, some Lecturers had been transferred from the Institute at Mumbai to the Polytechnic at Beed when the course of Printing Technology was started in the year 2003. Now, the present respondents are holding the said posts of Instructors in printing and imparting training

for the Diploma of Printing. The Instructors at Mumbai are imparting the same training in the Institute at Mumbai. Thus, not only the nomenclature, but the eligibility, mode of selection, responsibilities and nature of duties of the Instructors at Beed and the Instructors at Mumbai are quite identical.

10. In view of the above circumstances, merely because the posts of the Instructors at Beed and that of the Instructors at Mumbai were created under two different Government Resolutions and the Institute at Mumbai is unique one, the Instructors at Beed cannot be denied the pay scale equal to that of the Instructors at Mumbai.

11. The contention of the learned A.G.P. that the Instructors at Beed and the Instructors at Mumbai are controlled by two different departments cannot be accepted. The advertisements in response to which the posts of Instructors at Mumbai and that of Beed were filled up, show that those were issued by the Joint Directors of Technical Education, Regional Offices at Mumbai and Beed, respectively, which are under the control of respondent Nos. 1 and 2. Their pay scales

have been fixed by the Director of Technical Education only. Thus, the Instructors at Mumbai and that of Beed are controlled by the same department i.e. Higher and Technical Education Department.

12. In the case of ***Federation of All India Customs and Central Excise Stenographers (Recognised) and others*** (supra), the petitioners who were personal assistants and stenographers, attached to the heads of the departments in the Customs and Central Excise Departments of the Ministry of Finance, had claimed parity in the pay scale with that of the personal assistants and stenographers attached to the joint secretaries and officers above them in the Ministry. The claim of the said petitioners was rejected considering the difference in the nature and the types of the work done by them and the other stenographers and the personal assistants who were getting higher pay scales. In paragraph No. 11 of the judgment, it was observed that in the light of the averments made in the facts mentioned-before, it is not possible to say that the differentiation is based on no rational nexus with the object sought for to be achieved.

13. In the case of **Steel Authority of India Limited and others** (supra), it has been observed in paragraph No. 30 of the judgment as under :-

"30. In view of the above, the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39 (d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties."

14. As stated above, in the present case, it is specifically pleaded and proved by the respondents before the learned Bench of the M.A.T. that there is complete identity between the Instructors working in the Institute at Mumbai and themselves. Therefore, the judgments cited and relied upon by the learned A.G.P. would be of no help to the petitioners to deny the benefit of the principal of "equal pay for equal work" to the respondents.

15. In the case of **Hukum Chand Gupta** (supra), the petitioner was promoted to the post of Superintendent in the pay scale of Rs. 1640-2900 after passing the departmental examination and then was further promoted as Assistant Administrative Officer on the basis of seniority-cum-fitness on 7th March, 1994. The respondents therein revised the pay scale of Assistants on 17th June, 1995 from Rs. 1400-2600 to Rs. 1640-2900 with effect from 1st January, 1986. However, the pay scale of Superintendent was not revised. Therefore, the petitioner submitted a representation on 24th October, 1995, requesting that his pay scale may be revised on the ground that in the headquarters of Indian Council of

Agricultural Research (ICAR), the post of Superintendent is a promotional post from that of Assistant which carries the pay scale of Rs. 1640-2900. He approached the Central Administrative Tribunal, Bench at Chandigarh. His Original Application No. 299/HR of 2003 filed before the Central Administrative Tribunal was dismissed on the ground that his post at headquarters cannot be compared with the post at institutional level as both are governed by different sets of service rules. The writ petition filed by the appellant therein also came to be dismissed by the High Court. The civil appeal filed by the said appellant before the Hon'ble Supreme Court also came to be dismissed with the following observations made in paragraph No. 20 of the judgment :-

"20. We are also not inclined to accept the submission of the appellant that there can be no distinction in the pay scales between the employees working at headquarters and the employees working at the institutional level. It is a matter of record that the employees working at headquarters are governed by a completely different set of rules. Even the hierarchy of the posts and the channels of

promotion are different. Also, merely because any two posts at the headquarters and the institutional level have the same nomenclature, would not necessarily require that the pay scales on the two posts should also be the same. In our opinion, the prescription of two different pay scales would not violate the principle of equal pay for equal work. Such action would not be arbitrary or violate Articles 14, 16 and 39-D of the Constitution of India....."

16. In the present case, the nomenclature, the eligibility criterion for recruitment, the nature of the duties of the Instructors at Beed and that of Mumbai, their responsibilities and status are quite identical. There is absolutely no justifiable reason shown by the petitioners to prescribe two different pay scales for the Instructors at Beed and that of Mumbai. The disparity in the pay scales of Instructors at Beed and that of Mumbai is exfacie arbitrary and unreasonable. It is sans rationale and justification. In the circumstances, the above cited judgment would be of no help to the learned A.G.P. to justify the disparity in the pay scales of the Instructors at Beed and that of Mumbai.

17. The learned Bench of the M.A.T. has considered all the factual aspects about the nomenclature, the eligibility criterion for recruitment and the nature of the duties of the Instructors at Beed and that of Mumbai and found that the disparity in their pay scales is not at all justifiable. It is observed that there is absolutely no basis for discriminating the Instructors at Beed in the matter of pay scales as against the Instructors at Mumbai. We do not find any reason to differ from the view taken by the learned Bench of the M.A.T. The impugned order is supported by the documents produced on record. It is not at all perverse. It does not call for any interference.

18. In the result, we dismiss the writ petition.
No costs.

Sd/-

[SANGITRAO S. PATIL]
JUDGE

Sd/-

[S.S. SHINDE]
JUDGE