

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

WRIT PETITION NO.4399 OF 2016

Devidas s/o. Ramkishan Shinde,
Age : 41 years, Occ. Service,
r/o.Bahaddarpura, Tq.Kandhar,
Dist. Nanded ..Petitioner

Vs.

1. The State of Maharashtra,
(Through its Secretary,
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai – 32)
2. The Regional Deputy Commissioner,
Social Welfare Department,
Latur Division, Latur
3. The District Social Welfare
Officer,
Zilla Parishad, Nanded ..Respondents

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Mr.V.A.Dhakne, Advocate for petitioner

Mr.P.N.Kutti, AGP for respondent nos.1 and 2

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**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.
DATE : JULY 15, 2016**

ORAL JUDGMENT (Per S.S. Shinde, J.) :

Heard.

2. Rule. Rule made returnable forthwith and heard finally by consent of the learned Counsel appearing for the parties.

3. The petitioner has filed the present Petition with the following prayers :-

B) To direct respondent no.3 to grant the pay scale of trained Hostel Superintendent i.e. Rs.4500-7000 to the petitioner from the date of his initial appointment along-with the arrears of salary with all consequential benefits, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be.

C) To direct the respondents to consider the claim of the petitioner for extending monetary benefits of difference in the pay scale from the date of initial appointment in the light of the law laid

down by the Division Bench of this Hon'ble Court vide its judgment dated 4.11.2009 in the matter of Sahebrao Karbhari Gunjal and others Vs. the State of Maharashtra and others in Writ Petition No.1491 of 2001 as well as in the judgment dated 4.05.2010 in Writ Petition No.2352/2010 and connected matters, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be."

4. It is the case of petitioner that he is working as Hostel Superintendent in Matoshree Anusayabai Shankarrao Gholap Primary Ashram School, Bahaddarpura, Tq. Kandhar, Dist.Nanded since 14.06.1999. The petitioner possess H.S.C. qualification. It is the case of the petitioner that every year the services of the petitioner were approved as untrained Hostel Superintendent by the respondent No.3, as he does not possess D.Ed. qualification.

5. It is further the case of the petitioner that on 05.02.2000, the State Government issued a Resolution relaxing the condition of holding D.Ed. qualification and further laying down that the persons holding H.S.C. qualification are eligible for the appointment as Hostel Superintendent. Despite that, the services of the Hostel Superintendents like the petitioner, working under the Social Welfare Department, were not approved as trained Hostel Superintendent. It is the case of the petitioner that thereafter, even the Tribal Development Department has issued a Resolution on 03.06.2008, relaxing the condition of holding D.Ed. qualification to the Hostel Superintendents and directing to grant them the pay scale of trained Hostel Superintendent i.e. Rs.4500-7000/- with effect from 01.06.2008.

6. It is the case of the petitioner that in the cases of similarly placed persons, who do not

possess D.Ed. qualification working under Social Justice Department, the Government of Maharashtra issued Government Resolution dated 04.11.2009 directing to pay the pay scale of Rs.4500-7000/- to them from the date of initial appointment in view of the judgment passed by this Court in the case of Sahebrao Karbhari Gunjal Vs. The State of Maharashtra in Writ petition No.1491 of 2001.

7. It is the case of the petitioner that the Hostel Superintendent of both Departments were given equal emoluments up to IV Pay Commission and the nature of duties and responsibilities allotted to Hostel Superintendent of both the departments are same and even the qualification, eligibility, pay scale and other service conditions of the teaching and non-teaching staff of both departments are same. Therefore, it is utmost necessary to have parity of the pay scale between the Hostel Superintendent working under the Social

Justice Department and the Tribal Development Department. Thus, the discrimination and disparity between the Hostel Superintendent working in the Ashram Schools in the Tribal Development Department and the Social Justice Department is unreasonable and unconstitutional. Therefore, the petitioner is entitled to the monetary benefits at par with Hostel Superintendent working in Tribal Development Department.

8. It is further the case of the petitioner that on 15.03.2014, even the respondent No.2 the Regional Deputy Commissioner has granted the pay scale of trained Hostel Superintendent to similarly placed persons like the petitioner working under the Tribal Development Department from the date of their initial appointments with the arrears of salary in pursuance to Judgment and Order passed by this Court in their matters. However, at the same time, the respondent No.2 has failed to consider

the claim of the petitioner for granting the pay scale of trained Hostel Superintendent from his initial appointment without any valid reason.

9. The prayers in the Petition are vehemently opposed by the learned A.G.P. appearing for the State. According to the learned A.G.P. there is no policy framed by the Social Welfare Department, so as to extend the benefit as claimed by the petitioner, working as Hostel Superintendent under the Social Welfare Department, at par with the Hostel Superintendent working in the Tribal Development Department.

10. We have given due consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned A.G.P. appearing for the Respondent/State and also perused the documents placed on record.

11. The Division Bench of this Court in **Writ Petition No. 8737 of 2011 in the case of Maroti S/o Datta Dharshanwad and others V/s The State of Maharashtra, decided on 15th October, 2013**, while considering the similar fact situation, has partly allowed the Writ Petition and issued certain directions. We propose to issue similar directions in this Writ Petition.

12. In this view of the matter, we dispose of the petition with following directions :

The respondents are directed to consider claim of the petitioner in the light of the law laid down by the Division Bench of this Court in the judgment dated 4th November, 2009, in the case of *Sahebrao Karbhari Gunjal & others Vs. The State of Maharashtra and others (Writ Petition No. 1491 of 2001)*

and decide the same, as expeditiously as possible and, in any case, within a period of four months from today. It is further made clear that, if the petitioner is found to be entitled to receive monetary benefits, the payment shall be made within a period of three months from the date of such decision. However, the Authorities will be entitled to verify the basic qualification required for the post of Hostel Superintendent.

13. Rule is made absolute in aforesaid terms. However, there shall be no order as to costs.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]