IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5859 OF 2016

1. Sunil s/o Sambhaji Mayee,
   Age : 57 years, Occu. Service,
   R/o B-301, Breeze Park,
   Abhiyanta Colony, Jalgaon,
   District Jalgaon

2. Ramesh s/o Tukaram Potdar,
   Age : 59 years, Occu. Service,
   R/o 38/3, Ranchhod Nagar,
   Jalgaon, District Jalgaon

3. Ashok s/o Dinkar Khachane,
   Age : 55 years, Occu. Service,
   R/o CHUNAR, 39/102,
   Bhushan Colony, Jalgaon,
   District Jalgaon

4. Sau Sarala w/o Mohan Chaudhari,
   Age : 57 years, Occu. Service,
   R/o Plot No. 1, Ideal Colony,
   Jalgaon, District Jalgaon **PETITIONERS**

VERSUS

1. The State of Maharashtra,
   through its Principal Secretary,
   Higher and Technical Education
   Department, Mantralaya Annex,
   Mumbai

2. The Director of Higher Education,
   Maharashtra State,
   Central Building,
   Pune

3. The Joint Director of Higher Education,
   1st Floor, Maharashtra Jeevan
   Pradhikaran Building, Jalgaon,
   District Jalgaon

4. Dr. Annasaheb G.D. Bendale
Mahila Mahavidyalaya,
Zilla Peth, Jalgaon,
District Jalgaon,
through its Principal **RESPONDENTS**

Mr. P.A. Pisal, Advocate for the petitioners
Mr. A.G. Magre, A.G.P. for respondent Nos. 1 to 3
None for respondent No. 4, though served

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

JUDGMENT RESERVED ON : 15th JULY, 2016
JUDGMENT PRONOUNCED ON : 2nd AUGUST, 2016

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

Rule. Rule made returnable forthwith. With the consent of the learned counsel for the petitioners and the learned A.G.P., heard finally.

2. All the petitioners are working as Associate Professors with respondent No. 4 College. They have claimed benefit of Note 6, Appendix I of the Government Resolution dated 12th August, 2009, which reads as under :-

> "**Note 6** – In case where a senior teacher promoted to a higher post before the 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 the 1st day of

> January, 2006, the pay in the pay band of such senior teacher should be stepped up to an amount equal to the pay in pay band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior teacher subject to the fulfillment of the following conditions :-
>
> > (i) both the junior and the senior teacher should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
> >
> > (ii) the pre-revised scale of pay and revised Pay Band and Academic Grade Pay of the lower and higher posts in which they are entitled to draw pay should be identical.
> >
> > (iii) the senior teacher at the time of promotion should have been drawing equal or more pay than the junior.
> >
> > (iv) the anomaly should be directly as a result of the application of the provision of these rules or any other rules or order regulating pay fixation on such promotion in the revised pay structure."

3. The learned counsel for the petitioners submits that the provisions of Note No. 6 are squarely applicable to the cases of the petitioners. The juniors of the petitioners are getting more pay than that of the petitioners only because the juniors obtained Ph.D. degrees after 1st January, 2006. This anomaly has to be

removed by stepping up the pay of the petitioners to make them equivalent to the pay of their juniors and the petitioners should be paid arrears of pay with interest at the rate of Rs. 18% per annum. The learned counsel for the petitioners further submits that the similar issue has been decided by the Division Bench of this Court in the case of ***Sudamrao Keshawrao Aher & others Vs. The State of Maharashtra & others, 2014 (1) ALL MR 697*** and the persons similarly situated with the present petitioners have been given benefit of Note 6 of the Government Resolution dated 12th August, 2009, for stepping up of their pay with their juniors. The said judgment has been confirmed by the Hon'ble Supreme Court in Petitions for Special Leave to Appeal (C) Nos. 15053-15056/2015 vide order dated 17.11.2015. As such, the said issue is no more *res integra*. Therefore, he claims that the petitioners should be granted the same relief by allowing the present writ petition.

4. Respondent No. 3 filed affidavit-in-reply for himself and on behalf of respondent Nos. 1 and 2 to oppose the claims of the petitioners.

5. The learned Assistant Government Pleader appearing for respondent Nos. 1 to 3 could not controvert the contentions of the petitioners that consequent upon implementation of the Sixth Pay Commission recommendations, the persons who are junior to the petitioners are getting more pay than that of the petitioners and that the petitioners are entitled to get their respective pay stepped up. He further could not show that the judgment in the case of ***Sudamrao Keshawrao Aher*** (supra) is not applicable to the facts of the present petition.

6. We have considered the facts of the present petition, arguments of the learned counsel for the petitioners and that of the learned Assistant Government Pleader, the documents produced on record and the judgment in the case of ***Sudamrao Keshawrao Aher*** (supra). We are satisfied that the ratio laid down in the case of ***Sudamrao Keshawrao Aher*** (supra) is fully applicable to the facts of the present petition.

7. In the above circumstances, we do not find any impediment in accepting the claim of the petitioners for stepping up of their respective pay to bring them at par

with the pay of their juniors fixed as per the recommendations of the Sixth Pay Commission with effect from 1st January, 2006.

8. In the result, we pass the following order :-

(i) The writ petition is allowed.

(ii) We direct the respondents to step up the pay of the petitioners to bring it at par with the pay of their juniors, compute the amount payable to the petitioners towards pay in accordance with the judgment and order passed by this Court in the case of ***Sudamrao Keshawrao Aher & others Vs. The State of Maharashtra & others*** (supra) and release the said amount to them, as expeditiously as possible and preferably within a period of six months from today.

(iii) Rule is made absolute in the aforesaid terms.

(iv) The parties are left to bear their own costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[S.S. SHINDE]
JUDGE