

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

WRIT PETITION NO.9259 OF 2015

1. Dr. Bhimrao s/o Vishwanathrao Hallale
Age - 59 years, Occu.: Service as,
Asso. Professor in Dnyansopasak
Shikshan Mandal's College of Arts,
Commers & Science, Parbhani.
2. Dr. Wamanrao s/o Nivruttirao Jadhav,
Age - 52 years, Occu.: Service as,
Asso. Professor in Dnyansopasak
Shikshan Mandal's College of Arts,
Commers & Science, Parbhani.
3. Dr. Ashok s/o Eknathrao Jadhav
Age: 52 years, Occu.: Service as,
Asso. Professor in Dnyansopasak
Shikshan Mandal's College of Arts,
Commers & Science, Parbhani.
4. Dr. Prabhakar s/o Yashvantrao Harkal
Age: 56 years, Occu.: Service as,
Asso. Professor in Dnyansopasak
Shikshan Mandal's College of Arts,
Commers & Science, Parbhani.
5. Dr. Vasant s/o Bhujangrao Garad
Age: 56 years, Occu.: Service as,
Asso. Professor in Dnyansopasak
Shikshan Mandal's College of Arts,
Commers & Science, Parbhani.
6. Dr. Malhari s/o Namdeorao Sondge
Age: 57 years, Occu.: Service as,
Asso. Professor in Dnyansopasak
Shikshan Mandal's College of Arts,
Commers & Science, Parbhani.
7. Dr. Hameedulla Khan s/o Hafeezulla
Age: 63 years, Occu.: Service as,
Asso. Professor in Dnyansopasak
Shikshan Mandal's College of Arts,
Commers & Science, Parbhani.

.. PETITIONERS

Versus

1. The State of Maharashtra,
Through the Secretary,
Higher & Technical Education Department,
Maharashtra State, Mantralaya,
Mumbai - 32.
2. The Director of Higher Education,
Maharashtra State,
Central Building,
Pune – 410 001.
3. The Joint Director,
Higher Education, Nanded Region,
Govt. Polytechnic College area,
Nanded – 431 602.
4. The Secretary,
University Grants Commission,
Bahadur Shah Jafar Marg,
New Delhi – 110 002.
5. The Registrar,
Swami Ramanand Teerth
Marathwada University, Nanded.
6. The Principal,
Dnyanopasak Shikshan Mandal's
College of Arts, Commerce & Science,
Parbhani.

.. RESPONDENTS

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Mr. Sunil B Jadhav, Advocate for Petitioners;

Mr. D.R.Kale , AGP for State;

Mr. Alok Sharma Advocate for Respondent No.4;

Mr. V.P.Latange, Advocate for Respondent No.5;

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

DATED : 03rd February, 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 heard finally.

2) Petitioners have invoked the jurisdiction of this Court, by filing the present writ petition under article 226 of the Constitution of India, praying for to issue the directions to the respondents, and particularly respondent Nos 1 to 3 to step up their salaries at par with the teachers junior to them, who are receiving more pay after implementation of the 6th Pay Commission.

3) Petitioners are servicing as Associate Professors in respondent No.6 college. All of them are holding the Doctoral (Ph.D) degree. The particulars as about their date of appointment and of acquiring Ph.D degree are provided in para 11 of the petition in tabular form along with such particulars in respect of Dr.Shrirame and Sr. Khade. We deem it appropriate to reproduce the said particulars herein below:

Table- A

Sr. No.	Name of Teachers	Date of appointment	Date of Ph.D
01.	Dr. Hallale B.V. (Sr.)	15.07.1985	29.12.1984
02.	Dr. Jadhav W.N. (Sr)	31.12.1984	15.07.1996
03.	Dr. Jadhav A.E. (Sr.)	14.07.1986	06.09.2004
04.	Dr. Harkal P.Y. (Sr.)	14.07.1986	26.03.2002
05.	Dr. Garad V.B. (Sr.)	23.07.1984	11.03.1993
06.	Dr. Sondge M.N. (Sr.)	27.07.1984	18.03.2002
07.	Dr. Shrirame A.H. (Jr.)	16.07.1986	25.05.2007

Table - B

Sr. No.	Name of Teachers	Date of appointment	Date of Ph.D
01.	Dr. Khan H.H. (Sr.)	15.07.1988	02.01.2004
02.	Dr. Khade B.C. (Jr)	10.07.1989	14.03.2007

4) It is the contention of the petitioners that, there are two Associate Professors namely Dr. Shrirame A.H and Dr. Khade B.C. who are junior to them and who have obtained Ph.D. Degree subsequent to the petitioners, however, after implementation of 6th Pay Commission, the said juniors are getting higher salaries than the petitioners. As provided in the petition, Dr. A.H. Shrirame has been appointed on 16.07.1986 and he acquired the Ph.D. degree on 25.05.2007, whereas Dr. Khade B.C. has been appointed on 10.07.1989 and has acquired the Ph.D. Degree on

14.03.2007. It is the further contention of the petitioners that, petitioner Nos.1 to 6 are senior to Dr. Shrirame. Dr. Shrirame came to be appointed with effect from 16.06.1986, whereas petitioner Nos.1 to 6 were appointed prior to that and are thus senior to said Dr. Shrirame. Similarly, petitioner No.7 Dr. Khan is senior to Dr. B.C. Khade. Dr. Khan was appointed with effect from 15.07.1988, whereas Dr. B.D.Khade came to be appointed on 10.07.1989. In so far as acquiring the degree of Ph.D. is concerned, all the petitioners have acquired the same earlier to Dr. Shrirame and Dr. Khade acquired it.

5) As is revealing from the contents of the petition, the basic pay of Dr. Shrirame was Rs.39,960/- in the month of April, 2007. Dr. Shrirame acquired the Ph.D. Degree on 25.05.2007, and consequently his salary was increased in the month of May, 2007 to the basic pay of Rs.44,370/-. As against it, the basic pay of petitioner No.1 in the month of May, 2007 was Rs.43,660, whereas the basic pay of the petitioner Nos. 2 to 6 was to the tune of Rs.41,160/-. Thus, Dr. Shrirame who was drawing his wages in the lower pay scale than petitioner Nos. 1 to 6 till the month of April, 2007, started drawing the wages in the higher pay scale than petitioner Nos. 1 to 6 from the month of May, 2007, by virtue of his acquiring the Ph.D. Degree. Similarly, Dr. Khade who was receiving the salary in the pay scale

lower to the pay scale in which petitioner No.7 Dr. Khan was receiving the salary till the month of April, 2007 started receiving salary in the higher pay scale than Dr.Khan with effect from May, 2007, by virtue of his acquiring degree of Ph.D in March, 2007. Dr. Khade was receiving the salary till the month of April, 2007 in the basic pay of Rs.37,400, whereas at the relevant time, Dr. Khan was drawing his salary in the pay scale of Rs.39,960/-. From May, 2007. Dr. Khade started receiving the salary in the pay scale of Rs.43,120/-, whereas pay scale of Dr. Khan remained the same i.e. Rs.39,960/-.

6) In the aforesaid factual background, the petitioners have prayed for stepping up their salaries at par with the persons junior to them.

7) Learned Counsel appearing for the petitioners submitted that the issue raised in the present petition is no more res integra in view of the judgment delivered by the Division Bench of this court in the case of Sudamrao Keshavrao Aher & Ors. Vs. The State of Maharashtra and Ors. - 2014(1) ALL MR 697. Learned Counsel, therefore, prayed for allowing the petition by directing the respondents to step up the salaries of the petitioners at par with the persons junior to them.

8) Learned AGP has opposed the submissions made on behalf of the petitioners and has prayed for dismissal of the petition.

9) After having considered the facts involved in the present petition, in the light of the judgment delivered by the Division Bench of this Court in the matter of Sudamrao Keshawrao Aher & Ors. (cited supra), we have no doubt that, the case of the present petitioners is squarely covered by the aforementioned judgment of the Division Bench.

10) The Petitioners have relied upon the Government Resolution dated 12.08.2009, note 6 of which provides that, in case where the 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. In the present petition also, it is apparent that the incentives were given to the petitioners as also to their juniors, but in the process, the juniors are getting a substantial sum more every month than the petitioners. This anomaly has occurred for the reason that, the teachers junior to the petitioners who have been

awarded Ph.D. Degree after 01st January, 2006 are made entitled to three non compoundable increments, whereas the petitioners who acquired Ph.D. degrees before 1st January 2006, were extended only two increments.

11) The aforesaid controversy has been dealt with by the Division Bench of this Court in the matter of Sudamrao Keshawrao Aher & Ors. (cited supra). In para 15 of the said judgment, the Division Bench 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.

12) We reiterate that, in the instant case, petitioner nos. 1 to 6 are admittedly senior to Dr. A.H.Shrirame and were admittedly drawing their salary in higher scale than said Dr. Shrirame till April, 2007. However, after said Dr. Shrirame acquired the Ph.D. degree in May, 2007, he was provided with the additional increments and was placed in the basic pay of Rs. 44,370/- i.e. higher than the basic pay of Rs.41,160/- applicable to the petitioner nos. 1 to 6. Similarly, Dr. B.C.Khade who was junior to petitioner no.7 Dr. Khan started receiving the salary in the basic pay of Rs.43,120/- after he acquired the Ph.D. degree on 14.03.2007, whereas Dr. Khan was drawing the salary in the basic pay of Rs.39,960/-. As held by the Division Bench of this Court in the case of Sudamrao Keshawrao Aher & Ors., such position cannot be allowed to be maintained.

13) For the reasons stated above, we allow the present petition and 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 arrears payable to the petitioners in accordance with the judgment and order passed by the Division Bench of this Court in the case of Sudamrao Keshawrao & Ors. (cited supra) and release the said amount to the petitioners, as expeditiously as possible and preferably within a period of six months from today.

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

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

SPR