

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

WRIT PETITION NO.11437 OF 2015

Parmeshwar s/o. Digambar Kandilkar,
Age 39 years, Occ. Service,
r/o. At post Malegaon,
Tq. Ardhapur, Dist. Nanded

..Petitioner

Vs.

- 1] The State of Maharashtra,
Through Principal Secretary,
Social Justice Department,
Mantralaya, Mumbai 32
- 2] Principal Secretary,
Finance Department,
Mantralaya, Mumbai 32
- 3] The Director,
Vimukt Jati Nomadic Tribe,
Other Backward Class,
Special Backward Class,
Pune
- 4] Regional Deputy Commissioner,
Social Welfare Department,
Latur, Dist.Latur
- 5] Special District Social Welfare
Officer, Nanded
now termed/designated as under
Assistant Commissioner,
Social Welfare Department,
Nanded

..Respondents

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Mr.R.K.Ingole-Patil, Advocate for petitioner

Mrs.M.A.Deshpande, AGP for respondents

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

DATE : JUNE 22, 2016

ORAL JUDGMENT :

Heard.

2] Rule. Rule made returnable forthwith. By consent of the learned Counsel appearing for the parties, the petition is heard finally.

3] This petition is filed with the following prayer :-

“(D) To hold that the petitioner is also entitled to get the benefits of the earlier orders passed by this Hon'ble Court dated 04.11.2009 in W.P.No.1491/2009, order dated 04.05.2010 in W.P.No.2352/2010, order dated 30.09.2010 in W.P.No.6830/2010 and order dated 17.06.2011 in W.P.No.2121/2011 to the extent of monitory benefits of difference in Pay Scale as well as Higher Grade and Selection Grade Pay Scale within the period of three months and other

consequential relief that might have accrued in favour of the petitioner by issuing necessary writ or direction as the case may be."

4] The petitioner has been appointed as a Hostel Superintendent in Primary Ashram School, Daur, Tq. Ardhapur. It is the case of the petitioner that the Social Justice Department, Government of Maharashtra on 03.04.2007, issued a Corrigendum to the Government Resolution dated 18.09.2000, by which the Hostel Superintendents, who are having S.S.C., D.Ed. qualification and appointed prior to 05.02.2000 were brought at par with the Hostel Superintendents of the Ashram Schools under the Tribal Development Department, thereby providing pay scale of Rs.4500-125-7000 and rest of the Hostel Superintendents were kept in the earlier pay scale of Rs.4000-100-6000. The said Corrigendum dated 03.04.2007 was made applicable from 01.01.1996 to 30.11.2006.

5] The learned Counsel appearing for the petitioner submits that the said Corrigendum dated 03.04.2007 was challenged before this Court by one Sahebrao Karbhari Gunjal and others by way of Writ Petition No.1491 of 2001. In that Writ Petition, the Division Bench of this Court vide judgment dated 04.11.2009, has taken a view that Clauses 2 and 3 of the said Corrigendum are unreasonable and unconstitutional to the extent of disparity between the Hostel Superintendents of Ashram Schools recognised by the Tribal Development Department and the Hostel Superintendents of Ashram Schools recognised by the Social Welfare Department.

6] The learned Counsel appearing for the petitioner further submits that in case of a similarly situated employee namely, Shaktiraj Dilipsing Patil, who was appointed as Hostel

Superintendent in Primary Ashram School at Warkhede (Bk.), Tq. Chalisgaon, Dist. Jalgaon and possessing educational qualification as H.S.C., has been granted the pay scale of Rs.4500-125-7000 with effect from 01.05.2000. The learned Counsel invited our attention to another order passed by the respondents, by which such benefit of revision of pay scale has been given and the said employee has been placed in the pay scale of Rs.4500-125-7000.

7] The sum and substance of the arguments advanced by the learned Counsel appearing for the petitioner is that though the petitioner is not possessing the D.Ed. qualification and also has been appointed after the cut-off date, which is given in the above-referred Government Resolution, in view of the decision of the Division Bench of this Court in the case of **Sahebrao Karbhari Gunjal and others Vs. State of Maharashtra and ors.** in

Writ Petition No.1491 of 2001 decided on 04.11.2009, the present Writ Petition deserves to be allowed by giving directions to the respondents to revise the pay scale of the petitioner and place him in the pay scale of Rs.4500-125-7000.

8] The learned AGP relying on the reasons assigned in the impugned communication and also the Corrigendum dated 03.04.2007 issued by the Social Justice Department submits that the request of the petitioner for revision in pay scale has been rightly turned down since such revision would be against the policy decision of the State Government. He, therefore, submits that the prayers made by the petitioner cannot be considered.

9] We have given careful consideration to the submissions advanced by the learned Counsel appearing for the parties. With their able

assistance, we have perused the pleadings in the petition, the order passed by the Division Bench of this Court in the case of **Sahebrao Gunjal and others** (supra) as also the judgment and order passed by the Division Bench of this Court in the case of **Parmeshwar s/o. Digambar Kandilkar Vs. State of Maharashtra dated 10.09.2013 in Writ Petition No.3606 of 2012**. At this juncture, it would be appropriate to reproduce the relevant portion of the Government Resolution dated 03.06.2008, by which the condition of possessing D.Ed. qualification by the Hostel Superintendents, who have been appointed before publication of the appointment rules, has been relaxed, which reads thus :-

“शासन निर्णय : आदिवासी विकास विभागांतर्गत स्वयंसेवी संस्थांमार्फत चालविण्यात येणाऱ्या अनुदानित आश्रमशाळेतील वसतिगृह अधिकांसाठी शासनाने सेवा प्रवेश नियम प्रसिध्द करण्यापूर्वी अनुदानित आश्रमशाळेतील वसतिगृह अधिका पदावर काम करत असलेल्या डी.एड. शैक्षणिक अर्हता धारण करीत नसलेल्या सर्व अधिकांबाबत डी.एड. ची अट शिथिल

करण्यात येत आहे. यावर अधिकांना प्रशिक्षित समजण्यात येऊन प्रशिक्षित अधिकांची वेतन श्रेणी रु.4500-125-7000 दिनांक 1 जून, 2008 पासून लागू करण्यास मान्यता देत आहे.

10] In view of the aforementioned Government Resolution dated 03.06.2008, the condition of possessing D.Ed. qualification by the Hostel Superintendents, who have been appointed before publication of the appointment rules, has been relaxed. In the case of **Sahebrao Gunjal and others** (supra), in the similar set of facts, the pay scales of the petitioners who were not possessing D.Ed. qualification and also appointed after 05.02.2000, after appreciating the rival contentions of the parties and the documents placed on record, the Division Bench of this Court directed to fix their pay scales at par with that of the Hostel Superintendents of Ashram Schools recognised by the Tribal Development Department holding that Clauses 2 and 3 of the said

Corrigendum dated 03.04.2007 are unreasonable and unconstitutional to the extent of disparity between the Hostel Superintendent of Ashram Schools recognised by the Tribal Development Department and the Hostel Superintendent of Ashram Schools recognised by the Social Welfare Department. Moreover, there cannot be disparity in the pay scales of the Hostel Superintendents working under the control of Social Justice Department, who possess S.S.C., D.Ed. qualification and have been appointed prior to 05.02.2000 and other Hostel Superintendents of the same Department.

11] In that view of the matter, since Clauses 2 and 3 of the Corrigendum dated 03.04.2007 have been held unreasonable and unconstitutional to the extent of disparity between the pay scales of the Hostel Superintendents of Ashram Schools recognised by the Tribal Development Department

and all the Hostel Superintendents of Ashram Schools recognised by the Social Welfare Department and therefore, they deserve to be placed in the same pay scale.

12] Hence, we pass the following order :-

(i) The Writ Petition is allowed in terms of prayer clause "D".

(ii) The respondents are directed to extend the same pay scale and other benefits to the petitioner equal to that of the Hostel Superintendents working under the control of Tribal Development Department as also the Superintendents of Social Justice Department, who possess S.S.C., D.Ed. qualification and have been appointed as such prior to 05.02.2000.

(iii) The respondents are directed to implement the above directions as expeditiously as possible,

however, within a period of three months from today and communicate the same to the petitioner.

(iv) The Writ Petition stands allowed to the above extent. Rule made absolute accordingly.

(v) No costs.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]

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