

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

WRIT PETITION NO. 11296 OF 2016

Dr. Shantilal s/o Dagdu RATHOD
age 51 years, occ. service
r/o D2/1, Samyak Arcade, N-5 Cidco
Aurangabad
Tq. & Dist. Aurangabad

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary
Higher and Technical Education Department,
Mantralaya, Mumbai 32.
2. The Director,
Higher Education Maharashtra State,
Pune.
3. The Joint Director,
Higher Education, Aurangabad Region,
Aurangabad.
4. The Principal } Deleted vide order
Milind College of Science, } dated 17.11.2016.
Nagsenvana Aurangabad, }
Tq. Aurangabad, Dist. Aurangabad.

.. RESPONDENTS

Mr. N.D. Kendre, advocate for petitioner.
Mr. K.D. Mundhe, AGP for the State.

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**CORAM : R.M. BORDE &
SANGITRAO S. PATIL, JJ.
DATE : 17th NOVEMBER, 2016.**

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Leave to delete name of respondent no. 4 from the array of respondents.

2. Heard.

3. Rule. With the consent of the parties, petition is taken up for final decision at admission stage.

4. The facts giving rise to the instant petition are identical to the facts of the matter decided by Division Bench of this Court on 21st November, 2013, i.e. Writ Petition No. 10283 of 2012 and other companion matters. In paragraph no. 15 of the judgment, the Division Bench has observed thus :

“15. In the present matter, according to us, the incentives while implementing 6th Pay Commission for Ph.D. cannot be 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 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 it was a fault to have acquired Ph.D. Degree earlier. It is not a case of keeping the incentive separate and not part of pay. If pay fixation of petitioner no. 1 (as at page 60-61 in Paper Book) is seen, on 1st July, 2008, his basic pay is shown as Rs. 57,260/- while that of Shri S.S. Nighut (See page 107) was Rs. 55,870/-. Then in the proforma of Pay Fixation, entry on 22nd September, 2008 for Shri S.S. Nighut shows his

basic pay as "55870 + 5030 = 60900". Thus the increments were merged in the basic. This would be discriminative between Senior Teacher and Junior Teacher. Note 5 below Appendix I of the G.r. Needs to be applied that such discrimination is removed."

5. The factual details of the matter prompting the petitioners to approach this Court need not be stated. This petition can be disposed of in view of the reasons set out in the Judgment cited supra, decided by this Court on 21-11-2013.

6. For the reasons recorded above, the instant petition needs to be allowed and the same is accordingly allowed. Respondents shall take necessary steps to step-up pay of the petitioners so as to bring it on par with their juniors and there shall be no discrimination only on account of the fact that the junior teacher has acquired Ph.D. Degree after implementation of 6th Pay Commission.

7. Writ petition is allowed in terms of prayer clause 'A'. Respondents are directed to refix pay of the petitioners and arrears be paid within a period of three months.

8. Rule is accordingly made absolute. There shall be no order as to costs.

(SANGITRAO S. PATIL)
JUDGE

dyb

(R. M. BORDE)
JUDGE