

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

WRIT PETITION NO. 4099 OF 2001

1. Hukumchand S/o Shivram Kumbhar
Age:33 yers,Occ.Lecturer
R/o Boradi,Tq.Shirpur,
Dist.Dhule.
2. Bapu S/o Khandu Patil
Age 32 years, Occu:Agril.Asstt.
R/o: As above.
3. Prakash Mahadevrao Patil,
Since deceased through his
Legal Heirs and representative.
 - 3-A) Nalinibai W/o Prakash Patil,
Age-47 years,Occu.Household,
 - 3-B) Sheetal D/o Prakash Patil,
Age-21 years, Occu.Education,
 - 3-C) Sushma D/o Prakash Patil,
Age-19 years,Occu.Education,
 - 3-D) Nikita D/o Prakash Patil,
Age-15 years, Occu.Education,
 - 3-E) Kaveri D/o Prakash Patil,
Age-13 years,Occu.Education,
 - 3-F) Tejas S/o Prakash Patil,
Age-10 years, Occu.Education,

3-D to 3-F Minor, represented
Through their natural Guardian
Nalinibai,Mother 3-A
All R/o Boradi,
Tq.Shirpur,Dist.Dhule.
4. Subhash Namdeo Buwa
Since deceased, through his L.Rs.
 - 4-A) Sumanbai W/o Subhash Buwa,

Age:50 years, Occu.Household,

4-B) Rekha D/o Subhash Buwa,
Age:24 years, Occu.Education,

4-C) Sushma W/o Bhushan Gosavi,
Age-28 years, Occu.Household,

4-D) Yogesh S/o Subhash Buwa,
Age-21 years, Occu.Education.

All R/o Boradi,Tq.Shirpur,
Dist.Dhule.

5. Tukaram S/o Godha Dhanger
Age:45 years,Occu.Clerk
R/o: As above.

6. Babulal Raoji Barde(Pawara)
Since Deceased through his L.Rs.

6-A)Gitabai Babulal Pawara
Age: 50 years,Occu.Household,

6-B)Anilkumar Babulal Pawara
Age:32 years, Occu.Agri.,

6-C)Anita Babulal Pawara
Age:30 years, Occu.Household,

7. Chandrakant S/o Jagannath Bavisker
Age:26 years, Occu: Gardener
R/o: As above.

8. Sanjay S/o Shivram Tirmale
Age:26 years, Occu.Gardener
R/o: As above.

9. Prakash S/o Pandit Tirmale
Age:26 years, Occu.Gardener,
R/o As above.

10. Vijay S/o Pandurang Bari
since deceased through his
heirs and legal representatives

10-A) Smt. Meenabai w/o Vijay Bari,
Age: 40 years, Occu. Household,

10-B) Roshani D/o Vijay Bari,
Age: 18 years, Occu. Education,

10-C) Ritesh S/o Vijay Bari,
Age: 16 years, Occu. Education,
Minor through his natural
guardian Mother petitioner
no. 10-A

All R/o Bari Galli, Shirpur,
District : Dhule.

11. Walmik S/o Sudam Wagh
Age: 28 years, Occu. Peon
R/o as above.
12. Ramesh S/o Motiram Buwa
Age: 23 years, Occu. Peon
R/o: As above.
13. Rameshwar S/o Ganpat Ahire
Age: 33 years, Occu. Peon,
R/o: As above.

... **Petitioners**

VERSUS

1. Kisan Vidya Prasarak Sanstha,
Shirpur, through its President,
Vyankattrao s/o Tanaji Randhir,
Age: 78 years, Occ: Social Service,
R/o Boradi, Tq. Shirpur, Dist. Dhule.
2. Kisan Vidya Prasarak Sanstha,
Shirpur, through its Secretary,
Vishwasrao s/o Vyankatrao Randhir,
Age: 49 years, R/o: As above.
3. Dr. V. M. Patil Agricultural School,
Dairy Business Management Diploma,
Gardening Education Center,
Boradi, Tq. Shirpur, Dist. Dhule,
through its Principal,
4. Mahatma Fule Krushi Vidyapith,
Rahuri, Dist. Ahmednagar, through

its Registrar, Rahuri, Dist.
Ahmednagar.

5. State of Maharashtra

... **Respondents**

Mr. L. V. Sangeet Advocate h/for Mr. V. J. Dixit, Senior Advocate and Mr. P. S. Tripathi, Adv. for the petitioners.
Mr. S. P. Bramhe, Advocate for respondent Nos. 1 to 3
Mrs. M. A. Deshpande, Addl. G.P. for Respondent No. 5

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

RESERVED ON : 16th December, 2016.

PRONOUNCED ON : 2nd February, 2017

JUDGMENT (Per K. L. Wadane, J.):

1. Heard the learned counsel for the parties.

2. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final disposal.

3. The petitioners have filed this writ petition with the following prayers.

"(A) For a writ of mandamus, order or direction in the nature of mandamus, declaring that the petitioners are entitled for the benefits of the 5th Pay Commission Recommendations on par with the employees employed in private aided agricultural university, and accordingly further direction be

issued to the respondent no.1 to 3 to disburse the necessary monetary benefits in favour of petitioners flowing from the 5th Pay Commission Recommendations within such a period as this Hon'ble Court may direct;

(B) For a writ of mandamus, order or direction in the nature of mandamus, directing the respondents no.1 to 3 herein to grant the benefits of 5th Pay Commission Recommendation to the petitioners with regard to their pay scale, House Rent Allowance, Dearness Allowance and all other benefits flowing from the said recommendations to the petitioners w.e.f.1st January 1996 and further writ of mandamus, order or direction be issued against the said respondents to disburse the arrears of its salary and allowances as payable under 4th Pay Commission as well as under 5th Pay Commission Recommendations within the period of 3 months or within such a period as this Hon'ble Court may deem fit and proper;

(C) For a writ of mandamus, order or direction in the nature of mandamus, directing the respondents no.1 to 3 herein to maintain the service book and

record of the petitioners with the college as per the services rendered by the petitioners and to give necessary copy of the said service book to the petitioners."

4. The petitioners are the employees of respondents 1 to 3. At present they are working on different posts with respondent No.3-Agricultural School and they are claiming monetary benefits as per the recommendation of 5th Pay Commission, which are made applicable to the similarly situate persons.

5. Petitioner No.1 was appointed by respondent Nos. 1 and 2 as a Lecturer on 1st January, 1995 on consolidated salary of Rs.1500/- per month and it was increased up to Rs.2200/- per month. Petitioner No.2 was appointed as Agricultural Assistant on 5th June, 1989 on consolidated salary of Rs.400/- per month and it was increased up to Rs.1500/- per month. Petitioner No.3 was appointed as Agricultural Assistant on 01.01.1990 on monthly salary of Rs.450/- per month and it was increased up to Rs.1500/- per month. Petitioner No.4 was appointed as Live Stock Supervisor on 02.01.1987 on monthly salary of Rs.300/- and it was increased up to Rs.1500/- per month. Petitioner No.5

was appointed on 1st August, 1994 on monthly salary of Rs.350/- and it was increased up to Rs.1000/- per month. Petitioner No. 6 was appointed as Gardner on 01.09.1989 on salary of Rs.600/- per month and it was increased up to Rs.1200/- per month. Petitioner Nos. 7 to 13 were appointed on different posts such as Peon, Gardner, on monthly salary of Rs.300 to 750/- and it present, they are getting Rs.1000/- per month.

6. All the petitioners are in continuous service of respondents 1 to 3 and in fact they were not paid as per the pay scale which is required to be calculated and disbursed to them as per recommendation of 5th Pay commission together with all other allowances.

7. Respondent No.4 issued circular on 27th May, 1999 and clarified that the Lecturers and other employees of the University are entitled to get benefit of 5th Pay Commission. The petitioners have made representations to Respondent Nos.1 to 3 on 12.07.2000, 10th October, 2000 and 20th November, 2000 to grant necessary pay scales and benefits as per the 5th Pay Commission. The representations of the petitioners were not considered by the respondents therefore, the petitioners are required to approach this Court for the

reliefs mentioned above.

8. Affidavit in reply on behalf of respondent Nos. 1 to 3 is filed on record. They have denied the claims of the petitioners as to the pay recommended by the 5th Pay commission. It is submitted that the respondent No.3 school is un-aided school. It imparts training in certificate course. The said school is allotted quota of 50 seats. Sanctioned strength of staff is 1 Principal, 3 Assistant Professors, 3 Agricultural Assistants, 1 Gardner and 1 accountant.

9. It is submitted that at present, only petitioner Nos. 1, 6, 7, 8, 11 and 13 are working with the respondents. Petitioner No.2 abandoned the service. Respondent Nos. 3, 4, and 10 are dead. Petitioner No.5 was terminated from service and petitioner Nos. 9 and 12 have resigned. According to the respondents, the appointment of the petitioners were not made by following due procedure of law. No advertisement was issued. The selection was not done by the duly constituted committee of respondent No.4. The petitioners are not the permanent employee, so they are not entitled to claim pay scale at par with the employees of similarity situate school receiving grant.

It is further contended that the respondents have no major source of income and the petitioners were paid as sumptuously as possible by the respondents. It is submitted that petitioner No. 1 was not having experience at the time of appointment. He was not appointed on the sanctioned post and he was terminated. Petitioner No.6 only was appointed against sanctioned post of Gardner. Petitioner Nos. 7, 8,11 and 13 were not appointed against the sanctioned post. The respondents have specifically denied the averments of the writ petition in para 16 to 19 and lastly prayed for dismissal of the petition.

10. We have heard the arguments of Mr.L. V. Sangeet learned counsel for the petitioners, Mr.S.P. Bramhe, learned counsel for respondent Nos. 1 to 3 and Mrs M. A. Deshpande, learned Addl. G.P. for Respondent No.5.

11. Mr. Sangeet, the learned counsel appearing for the petitioner argued that respondent No.4 has issued a Circular dated 27.05.1999 thereby recommendations of 5th Pay commission are made applicable to the similarly situate persons/employees. Therefore, on the basis of the principles of "equal pay for equal work" the petitioners are entitled to the pay scale as per the

recommendations of 5th Pay Commission. Non payment of salary as per the 5th Pay Commission's recommendations is discrimination. It is further argued that respondents 1 to 3 are affiliated to respondent No.4 and controlled by respondent No.5 State. In such circumstances, various circulars issued by respondents 4 and 5 from time to time are binding upon respondents 1 to 3. Therefore the petitioners are entitled to the salary and other monetary benefits as per the recommendations of 5th Pay Commission.

12. The learned counsel appearing for the petitioner relies on the observations in the case **Shivaji Shikshan Prasarak Mandal & ors. Vs. The State of Maharashtra and others, reported in (2005) 13 Supreme Court Cases 407**, in which, it is observed that the teachers in private unaided school are entitled to revised pay scale and allowances as per recommendations of 5th Pay Commission. The learned counsel also relied the judgments in the case of **Chandigar Admn. Vs. Rajni Vali reported in (2002) 2 Supreme Court Cases 42**, and in the case of **State of Haryana Vs. Rajpal Sharma reported in (1996)5 Supreme Court Cases 273**.

13. The learned counsel for the petitioners also

relied upon the decision of this Court in the case of **Bhartiya Kamgar Sena & ors. Vs. The state of Maharashtra and others** reported in **2013 (1) Bom. C. R. 466**, in which it observed that the policy decision is binding upon the management. In case of both, teaching and non teaching staff, the management is bound to apply hierarchical structure of teaching and non teaching staff prepared by the AICTE and the State Government respectively and it is also bound to apply the pay scales applied by the State Government.

14. As against this, Mr. Bramhe, the learned counsel for respondents 1 to 3 submitted that respondent No.3 school is unaided school. The Circular issued by respondent No.4, dated 27th May, 1999 is not applicable to the respondent Schools. Therefore, on the basis of the observations of the Division Bench of this Court in the case of **Mahadeo s/o Pandurang More & ors Vs. State of Maharashtra and others, reported in 2014 (5) Mh.L.J.877**, the petitioners are not entitled to claim salary as per the recommendations of 5th Pay Commission. Mr. Bramhe, the learned counsel further argued that rights and obligation arising out of relationship of employer employees between the petitioners and the respondents 1 to 3 are purely

contractual. There is no statutory obligation compelling the respondents to pay anything more than what is agreed to at the time of their employment. The learned counsel further argued that respondent No.3 being unaided school, cannot be compelled to pay salary and other allowances to its employees in terms of recommendations of 5th pay commission in absence of any statutory obligation to make such payment.

15. Mr. Bramhe, the learned counsel argued that the petition suffers from delay and latches because the petitioners have filed the petition in July, 2001. Though the petitioners were appointed during the period from 1989 to 1995. Therefore, the petition is liable to be dismissed on this sole ground. It is material to note that 5th Pay Commission is implemented with effect from 01.01.1996. From the record it appears that the petitioners and their Association have made representations to the respondents to give benefits of the recommendations of 5th pay commission. However, the representations made by the petitioners and their association have not been decided up-till now. In such circumstances, it cannot be said that the petition suffers from delay and latches. At the same time, it is to be noted that the petitioners have

approached this Court after about five years from the date of implementation of the recommendations of 5th Pay commission. Therefore, this delay has to be taken into consideration while giving effect to the payment of salary as per the recommendation of 5th Pay Commission.

16. Considering rival contentions of both the sides, and upon hearing both the sides it reveals that the petitioners are claiming salary as per the recommendations of 5th pay Commission as other similar situate persons are getting such benefits. Therefore, on the basis of "equal pay for equal work" the petitioner are entitled to such relief.

17. Admittedly, the petitioner are in continuous service with the respondents School since their respective dates of appointment in the year 1989 to 1995. Further, the respondents Schools are affiliated to respondent No.4 University which is controlled by respondent No.5-State of Maharashtra. It is undisputed that the other similarly situated persons in other educational institutions controlled by respondents 4 and 5 are getting benefits of 5th Pay Commission. As such, the petitioners are also entitled to such

benefits on the basis of principles of "equal pay for equal work". The principles of "equal pay for equal work" is applicable to the employees employed in private schools which are run as unaided schools and the parity in the pay scale has to be maintained between the employees engaged in unaided schools and aided schools.

18. On perusal of the Circular dated 27th May, 1999, it reveals that the Government of Maharashtra, Agricultural, Animal Husbandry and Dairy Development Department has issued circular for revision of pay scale as per the 5th Pay Commission to the non teaching employees of Mahatma Phule Krushi Vidyapeeth i.e. respondent No.4. Admittedly the respondents 1 to 3 Schools are affiliated to respondent No.4 University. Thus the circular issued by respondent No.4 obviously binding upon the respondents school.

19. Even if it is assumed that MEPS Act is applicable then also new amendment is made in the MEPS Act with regard to pay scale as per 5th Pay Commission. The judgment of this Court in the case of **Mahadeo Pandurang More** (supra) may not enure to the benefit of the respondents. In the said judgment,

this Court observed that:

"26. After perusal of these cases we find that any law intended to regulate the service conditions of employees of aided educational institutions equally applies to minority aided or unaided institutions also, provided that such law does not interfere with the overall administrative control of the management over the staff. Law or Rules prescribing the service conditions or their pay scales are only regulatory in nature and do not impinge upon the basic character of the minority institutions. Except for urging the inability to pay, the respondents have not shown how payment of revised wages prejudices its basic nature. Financial problems is also found not a valid defence to deny fair treatment to the staff in paragraph 23 of Frank Anthony Public School Employees' Assn. v. Union of India (supra) by the Hon'ble Apex Court.

28. Thus this precedent shows that where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid to teachers of government aided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty. The writ jurisdiction of the High Court under Article 226 of the Constitution is wide enough to issue a writ for payment of pay on a par with government employees. But in the case before the Apex Court,

there were no executive instructions issued by the Government requiring private schools to pay the same salary and allowances to their teachers as are being paid to teachers of government schools or government aided schools. But then it can not be forgotten that Hon'ble Court also directed respondent no.3 State of Himachal Pradesh to consider making rules under Section 23 read with Section 38(2)(1) of the 2009 Act prescribing the salary and allowances of teachers keeping in mind Article 39(d) of the Constitution as early as possible. P.A. Inamdar vs. State of Maharashtra and Ors. (supra) shows that once an educational institution seeks recognition, the State may grant recognition accompanied by certain restrictions or conditions which must be followed as essential to its grant. Thus this judgment does not help the minority institution in any way. More over, here Section 4 of 1977 Act read with Rule 6 of 1981 Rules also do not make any distinction between aided and unaided schools or nonminority and minority schools qua scales of pay mentioned in Schedule "C" of the 1981 Rules.

41. We have already seen above the legislative design in Rule 7 of 1981 Rules. State Government has been denied power to vary scales of pay in Schedule "C" through executive fiat. Thus schedule "C" itself being part of 1981 Rules, unless and until the rules are amended by following the process stated in Section 16(3), new pay scales can not be read into and become part of that schedule. So long as private aided

schools are concerned, the enhancement of pay does not result in any loss or prejudice to them and as such enhanced wages are paid directly by the State to employees, no cause of action accrues to such schools. Opportunity of raising the objection may be availed only by unaided schools whose budget may be adversely affected by such rise. As the schedule "C" is not amended after 1989, scales of pay prescribed by Vth or VIth wage revision reports for State Government employees are not part of 1981 Rules and coercive measures stipulated in Rule 6 are not open."

In the present case, the respondent school is affiliated to the University. As observed above, the Circular dated 27.05.1999 would be binding on the parties. The said circular mandates revision of pay scale as per 5th Pay Commission.

20. In view of the aforesaid discussions, we are of the opinion that the petitioners are entitled to the benefits/ pay scales as per recommendations of 5th Pay commission from the date three years prior to the filing of the present petition. The petition is filed in July, 2001. As such, it is declared that the petitioners are entitled to the benefits/pay scales as per recommendations of 5th Pay commission from July, 1998.

21. The Respondents are directed to accord pay scales as per recommendation of 5th Pay commission to the petitioners with effect from 1.7.1998.

22. The respondents shall disburse the necessary monetary benefits in favour of petitioners flowing from the 5th Pay Commission Recommendations within six months from today.

23. The Respondents Management is entitled to deduct the amount which is already paid to the petitioners from the amount of arrears.

24. Rule is made absolute in aforesaid terms. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC