IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1290 OF 2007

1] M. M. Pathan,
Age : 57 years, Occu. : Service as
Child Development Project Officer,
Integrated Child Development Scheme,
R/o : Plot No. 9, Yusuf Colony, Parbhani,
Taluka & District : Parbhani

2] Dr. Ashok S/o Dattatraya Kolhe,
Age : 45 years, Occu.: Service as
Dy. C.E.O. (ZP) – presently working
as Associate Professor, YASHADA,
Pune, R/o : C/o Adv. Kolhe,
Kabad Galli, Beed, Taluka &
District : Beed .. Petitioners
(Orig. Applicants)

VERSUS

1] The State of Maharashtra,
through the Secretary,
General Administration Department,
M.S., Mantralaya, Mumbai – 32.

2] The Principal Secretary,
Training Division Section 12-A,
General Administration Department,
M.S., Mantralaya, Mumbai – 32.

3] The Officer on Special Duty (O.S.D.) -
- cum – Additional Collector,
Marathwada Administrative &
Development Training Institute,
Nath Nagar (North), Paithan,
District : Aurangabad .. Respondents
(Orig. Non-applicants)

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Mr. Avinash Deshmukh, Advocate h/f Mr. Rajendra Deshmukh, Advocate for the petitioners
Mr. S.K. Tambe, A.G.P. for the respondent/State

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CORAM : SUNIL P. DESHMUKH &
SANGITRAO S. PATIL, JJ.
DATE : 06-09-2017

ORAL JUDGMENT :

1. Heard learned counsel for the appearing parties, finally by consent.

2. The petition concerns payment of 15% special training allowance to petitioners on par with the persons on deputation at YASHADA, Pune to whom such an allowance is being paid.

3. Petitioner no.1 had been on deputation from 12-01-2000 to 14-01-2005 working at Marathwada Administrative and Development Training Institute, Nathnagar (North), Paithan and petitioner no.2 had been working there on deputation from August, 1998 to July, 2001.

4. It would be worthwhile to refer to that YASHADA, Pune and aforesaid Marathwada Administrative and Development Training Institute, Nath Nagar (North), Paithan are two entities created by the State Government for imparting similar training and carrying on

the same functions. These two institutes are two autonomous, independent organizations created by the State Government carrying on similar functions at two locations viz. Pune and Paithan. There is no dispute so far as aforesaid aspect is concerned.

5. Petitioners have placed on record a resolution of the State Government dated 27-04-1995 in respect of YASHADA, Pune, whereunder a decision has been taken to allow special training allowance at the rate of 15% of basic pay and, while such allowance is being accorded sanction, it has also been referred to that other allowances viz. deputation allowance or special allowance and incentives be proportionately reduced.

6. In accordance with aforesaid, it had been decided to request the State Government and to demand special training allowance also for the persons who are working on deputation at Marathwada Administrative and Development Training Institute, Paithan. Accordingly, meetings were held, decisions were taken. It may be worthwhile also to refer to that the Commissioner and the Collector had recommended payment of special training allowance, the same had also been endorsed by the Executive Committee of Registrar and Divisional Commissioner. Said decision had been forwarded to the State Government. It may also be referred that Board of Governance of the Marathwada Administrative and

Development Training Institute, headed by its Chairman / Principal Secretary, General Administrative Department, Government of Maharashtra had accorded approval to the decision. Aforesaid decisions were sent for approval under signature of the Divisional Commissioner. A long correspondence had thereafter ensued, however, no decision had been taken and finally a communication had been issued on 09-01-2006, intimating that the request could not be considered having regard to the financial condition of the State Government.

7. Under the circumstances, the petitioners had been before Maharashtra Administrative Tribunal, Aurangabad. The Maharashtra Administrative Tribunal under decision dated 31-08-2006 has referred to that the applicants were admittedly on deputation to the institution, however, it appears to have been considered by the tribunal that no approval to the proposal had been given by the Government nor Government had taken any policy decision to extend such benefits to persons working in Marathwada Administrative and Development Training Institute. The tribunal further appears to have preferred not to go ahead issuing directions to the State Government to extend monetary benefits since that may burden the State exchequer. It has been considered by the tribunal that whether a particular pay scale or allowance is to be sanctioned, is a matter to be decided by the State Government. It is

under the circumstances, the tribunal declined the request made under the original application and, as such, the petitioners are before this Court.

8. The grievance of petitioners is while similarly situated persons, who work at YASHADA, Pune on deputation, are being paid special training allowance at the rate of 15% of basic pay, their legitimate request for 15% special training allowance for the period they had worked on deputation is not being considered despite requests, representations, decision of the institute and recommendations of Commissioner and Collector, and is declined by a very cursory and terse, unreasoned and unsubstantiated ground.

9. Learned counsel Mr. Avinash Deshmukh h/f Mr. Rajendra Deshmukh, appearing for the petitioners submits that while there is no dispute that petitioners were working on deputation at Marathwada Administrative and Development Training Institute and were performing and discharging the same duties, as those by the persons who are/were on deputation at YASHADA, Pune, to whom the benefit of 15% special training allowance has been made available pursuant to government resolution dated 27-04-1995, refusal to grant similar allowance to the petitioners is discrimination that stares in the face. He submits that the financial constraints, which have been referred to under communication of 09-01-2006 is

the only reason given declining legitimate request/demand made by present petitioners. He submits that it is not a case, the Government has under a policy, declined request of the petitioners. The petitioners had been carrying on the same functions as the persons working on deputation at YASHADA, Pune. In such a case, parity in paying allowance ought to have been observed. The tribunal has been in error in not acceding to legitimate request being made under the original application. He submits that the tribunal has not considered relevant aspects in the matter *viz.* the functions and discharge of duties of the persons on deputation at YASHADA, Pune is similar or rather the same, as those which were carried on and performed by present petitioners. He submits that even otherwise the financial burden would not be a reason to decline the legitimate request, for in the present matter, looking at that the financial burden by granting similar allowance to petitioners, would be minuscule or a micro burden on the State exchequer. He, therefore, urges to allow the writ petition, and, incidentally set aside the decision of tribunal on original application.

10. Countering aforesaid submissions, learned A.G.P. Mr. Tambe submits may be the two institutes YASHADA, Pune and Marathwada Administrative and Development Training Institute, Patihan are created under the aegis of the Government, but are two independent, autonomous entities and as such, they would be

governed by different sets of rules and regulations. Parity in the same had not been envisaged while they were being created. He submits that financial burden on the State exchequer would be increased if the request of the petitioners is allowed as the activity carried on by the institute is perennial in nature and the financial burden would be an ongoing burden.

11. Learned A.G.P. Mr. Tambe goes on to submit that having regard to the decision, as has been communicated under letter dated 09-01-2006 to the institute, it may tantamount to policy by the State Government wherever State exchequer is burdened.

12. Aforesaid argument on behalf of the State is sought to be countered by learned counsel Mr. Deshmukh, referring to decision of Supreme Court in the case of *Delhi Development Authority, N.D. And anr. V. Joint Action Committee, Allottee of SFS Flats and Ors.* reported in *AIR 2008 S.C. 1343*. He refers to paragraphs 59 and 60 therein, reading thus :-

> "*Policy decision :*
>
> *59. An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior Courts may not interfere with the nitty gritties of the policy, or substitute one by the other but it will not be correct to contend that the Court shall like its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior Court would not be without jurisdiction as it is subject to judicial review.*
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> *60. Broadly, a policy decision is subject to judicial review on the following grounds :*

(a) if it is unconstitutional;

(b) if it is dehors the provisions of the Act and the Regulations;

(c) if the delegatee has acted beyond its power of delegation.

(d) if the executive policy is contrary to the statutory or a larger policy."

13. He submits that in fact communication dated 09-01-2016 is not a policy decision at all and even if for the sake of argument, it is considered as a policy decision, in such a case, it is not such a decision, which is immune to judicial review.

14. Learned counsel Mr. Deshmukh during course of his submissions, referred to that looking at that Paithan does not happen to be a city rather a remote mofussil area, the employees are required to be induced and such inducement can be in the form of incentive by payment of allowance. This ought to have been kept in view by the State Government while making communication dated 09-01-2016.

15. Having heard learned counsel as aforesaid, while it emerges that there is no dispute about the nature of functions of the two institutes and, the duties performed and discharged by the petitioners, who were on deputation to Marathwada Administrative and Development Training Institute, Paithan, is the same as that of

functions carried on by persons on deputation at YASHADA, Pune and petitioners were discharging same duties and performing the same functions, it had been legitimately expected by petitioners to have parity in payment of allowances.

16. Aforesaid apart, one may have to take into account, there is no dispute about work performed by the petitioners is of the same nature as the ones performed by persons on deputation at YASHADA, Pune and having regard further to that the reason of financial burden on the State in the present case, appears to be rather too perfunctorily put forth without referring as to whether the burden would be of such a scale, as would crumble the finances of State Government. The petitioners have referred to that burden on State exchequer would be minuscule or rather micro and absolutely unnoticeable. Further special training allowance is to be adjusted and reduced by amounts which are payable to them towards other allowances, as referred to in the Government Resolution dated 27-04-1995. In the circumstances, financial reason being put forth to decline the otherwise legitimate request, causes discrimination particularly, when special training allowance is made available in the city like Pune and the same is being declined to persons, who are being sent to remote places on deputation where generally there is disinclination to go.

17. It may not be out of place to refer to that the very reason underlying General Administration Department's decision in respect of YASHADA, Pune in making available payment of special training allowance, is to induce and attract talented persons to accept the posting in that training center. We have also considered that such payment of special training allowance would, to quite some extent, may act as an incentive to persons sent on deputation for the purpose for which the institute has been created at Paithan.

18. It may also have to be noted, beyond terse communication dated 09-01-2016, the State Government has not placed anything on record which would indicate that the financial burden is such that would cause any dent worth consideration in the finances of the State and it would not be appropriate for the State Government to refuse the incentive being made available in the form of special training allowance for the petitioners working at Paithan that while the two institutes carry on the same functions, it would not be appropriate on the ground of burden on the State exchequer.

19. Having regard to aforesaid, in our estimate, the tribunal's decision appears to be rather cursory, and as such, unsustainable. The same, therefore, is set aside. In the circumstances, writ petition is allowed.

20. Respondent no.3 would pay to the petitioners arrears of monthly special training allowance for the period for which they had been respectively working in Marathwada Administrative and Development Training Institute, Paithan on par with the persons on deputation as referred to in Government Resolution dated 27-04-1995 and as per the same terms and conditions.

21. We earnestly hope that whatever dues accruing under this order, would be taken care of and paid by the State Government within a period of six (6) months from the date of receipt of copy of this order.

22. Rule is made absolute accordingly.

[SANGITRAO S. PATIL] JUDGE	[SUNIL P. DESHMUKH] JUDGE

arp/