

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

WRIT PETITION NO. 5738 OF 2017

1. Bharat Dagaji Patil,
Age : 42 years, Occu. : Service,
2. Smt. Balubai Santosh Bhambare,
Age: 40 years, Occu. : Service,
3. Kishor Bhimrao Desale,
Age;- 42 years, Occu. :- Service,
4. Manoj S/o Hiralal Thakare,
Age:- 34 years, Occu. :- Service,
5. Santip s/o Vishwas Desale,
Age :- 31 years, Occu. :- Service,

All Petitioner No. 1 to 5 are
R/o Village Malich, Tq. Sindhkheda,
Dist. Dhule.

.. Petitioners

Versus

1. The State of Maharashtra,
Through Secretary,
Tribal Development Department,
Mantralaya, Mumbai - 32.
2. The Additional Commissioner,
Tribal Development Department
Nasik Division, Old Mumbai Agra Road,
Gadkari Chowk, Nasik.

3. The Project Officer,
Integrated Tribal Development
Department, Dhule,
Tq. & Dist. Dhule. .. Respondents

Shri Ajay D. Pawar, Advocate for Petitioners.
Shri V. S. Badakh, A.G.P. for Respondents/State.

**CORAM : S. V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.
DATE : 27TH APRIL, 2017.**

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Heard.

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

3. The petitioners are the employees of aided private Ashram Schools and are working as Class-III and Class-IV employees. The petitioners were appointed by following due process of law and their appointments were approved by the competent authorities. The petitioners are claiming their entitlement to higher pay scale under Assured Career Progress Scheme (for short "**the ACPS**") on completion of 12 years' of qualifying service from the date of their initial appointments.

4. It is the contention of the petitioners that the employees

serving in private aided Ashram Schools are discriminated, and have been denied benefits whereas, the benefits are made available to the Ashram Schools conducted by the Social Welfare Department and other private aided schools conducted by other Departments.

5. The issue raised in the petition is no more *res-integra* in view of judgment of the Division Bench at the Principal Seat of the Bombay High Court in Writ Petition No. 2358/2013 and other companion matters decided on 21st September, 2013. The Division Bench in paragraph nos. 17 to 19 of the order has observed thus:"

"17. The Assured Career Progress Scheme is a welfare scheme which is basically brought about to remove stagnation as very few promotion avenues are available to Group "C" and "D" employees. The ACPS enables the eligible employees to be placed in higher pay scale. The eligible non-teaching staff of the aided Secondary Schools in Group 'C' and 'D' category gets the benefit of ACPS. But the similar category of employees in the aided private Ashram Schools who perform identical duties have been denied the benefit of ACPS which infringes their fundamental rights under Articles 14 and 16 of the Constitution of India. The action of

denial of benefits to the similarly placed employees discharging similar duties is arbitrary and violative of Article 14 of the Constitution of India.

18. Only on the basis of purported ground of financial crunch, we fail to understand the approach of the State Government of discriminating between the non-teaching staff of aided Ashram Schools and non-teaching staff of aided private Schools. At one stage both the Schools were functioning under the control of only one department.

19. In our view the denial of benefit of ACPS amounts to discrimination, which is hit by the rights guaranteed by Articles 14 and 16 of the Constitution of India."

6. In view of the decision rendered by the Division Bench, referred to above, the petition deserves to be allowed and the same is accordingly allowed.

7. The respondents are directed to examine the cases of the petitioners for deciding whether they satisfy the criteria laid down for claiming benefits under the ACPS to the private aided Government schools under the Government Resolution dated 30th April 1998, as modified from time to time, and if it is found that the petitioners are entitled to claim benefits under the

ACPS and they satisfy the eligibility criteria, the respondents shall extend the benefits to the petitioners. The respondents shall scrutinize the cases of the petitioners within a period of six months and shall extend him the benefits to them as expeditiously as possible, and preferably within a period of four months from such scrutiny.

8. Rule made absolute in above terms. No costs.

Sd/-

[SANGITRAO S. PATIL, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/April 17