

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

WRIT PETITION NO.5988 OF 2014

The State of Maharashtra,
through the Secretary,
Social Welfare, Cultural
Activities and Sports
Department, Mantralaya,
Mumbai - 32

..Petitioner

Vs.

1. Parshuram s/o. Laxman Karandikar,
[since deceased, through his L.Rs.]
- 1-A. Smt. Kalpana w/o. Parshuram
Karandikar, Age : 53 years,
Occ. Household,
r/o. 3002-B, "Kirtan Prasad",
Mahadwar Chowk, Barshi,
Dist. Solapur
- 1-B. Keshav s/o. Parshuram Karandikar,
Age : 34 years,
Occ. Private Service,
r/o. 13/1, Shreya Nagar,
New Usmanpura, Aurangabad
- 1-C. Mrs. Gauri w/o. Aniruddha Bagul,
Age : 29 years, Occ. Household,
r/o. "Radheya", c/o. Anita Motors,
Chambharli, Rasayani,
Dist. Raigad
2. Dnyaneshwar s/o. Dhanuji Shrinathe,
Age : 43 years, Occ. as above
r/o. Raviwar Peth, Ambejogai
Dist. Beed

3. Namdeo s/o. Gyandeo Kadam,
Age 40 years, Occ. Service,
[Special Tacher – Deaf and
Dumb Section],
r/o. Jogaiwadi Area,
Ambejogai, Dist. Beed
4. Revannath s/o. Rangnathrao Landge,
Age : 37 years, Occ. As above,
r/o. Raviwar Peth,
Ambejogai, Dist. Beed

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Mr.A.R.Borulkar, A.G.P. for petitioner – State

Mr.R.S.Deshmukh and Mr.A.S.Deshmukh, Advocate for
respondent no.1-A and 1-B

Mr.D.K.Rajput, Advocate for respondent no.3

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**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.
DATE : FEBRUARY 07, 2017**

JUDGMENT (*Per Sangitrao S. Patil, J.*) :

Heard.

2. Rule. Rule made returnable forthwith.
With the consent of the learned A.G.P. for the
petitioner and the learned Counsel appearing for
the respondents, heard finally.

3. The petitioner – State of Maharashtra has challenged the judgment and order dated 03.05.2010 passed in Original Application No.1128 of 1999 by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad, whereby the petitioner has been directed to grant to the respondents as well as to other similarly placed special teachers of the Government schools meant for specially challenged children, the three-tier pay scales, as recommended by the National Commission for Teachers under the Chairmanship of Prof. D.P. Chattopadhyay, as granted vide Government Resolution dated 05.06.1992 to the special teachers working in the private schools run for specially challenged children, with all consequential benefits.

4. The deceased respondent no.1 was and respondent nos.2 to 4 are special teachers attached to the Government Multipurpose Mixed Disabled Centre, Ambejogai, Dist. Beed. They were

duly trained in teaching the specially challenged children. They had worked as such for 27 years, 18 years, 16 years and 11 years, respectively, at the time of filing the above-referred Original Application. The respondents – teachers and their counterparts in the Government aided private schools were drawing the same pay scales and allowances vide Government Resolution dated 01.11.1989 as recommended by the 4th Pay Commission with effect from 01.11.1986.

5. The Government of India set up a National Commission headed by Prof. D.P. Chattopadhyay to recommend, among other things, pay scales, improved career prospects and service conditions for teachers. The said Commission recommended uniform three-tier pay scales for all the teachers in the country. The report of the said Commission was accepted by the Central Government as well as the petitioner vide Government Resolution dated 05.06.1992. The petitioner – State extended

benefits of three-tier pay scales to the teachers of the Special Schools for specially challenged children run by autonomous bodies. However, the said benefits were not extended to the respondents, who were rendering their services in the specially challenged children schools run by the petitioner. The respondents and other similarly situated teachers made several representations to the petitioner for getting benefits of the recommendations of Chattopadhyay Commission, however, it was of no use.

6. According to the respondents, they have received training for teaching specially challenged children. Their eligibility, service conditions, nature of duties and syllabus taught by them are similar to that of the special teachers working in the Government aided private institutions. In the circumstances, there was no reason for the petitioner to deny the benefits of the recommendations of Chattopadhyay Commission

to the respondents, which were extended to their counterparts in the schools for specially challenged children run by the Government aided private institutions. The respondents, therefore, filed the above-numbered Original Application before the Tribunal seeking directions against the petitioner to grant higher/revised three-tier pay scales as recommended by the Chattopadhyay Commission with all consequential benefits.

7. The petitioner opposed the Original Application by filing reply. According to the petitioner, there is a lot of difference between the service conditions of the teachers working in the Government aided private schools and the Government schools. The pensionery benefits as well as the time bound higher pay scales, as are admissible to the teachers working in the Government schools, are not available to the teachers working in the Government aided private schools. The recruitment rules, educational

qualifications of the special teachers and the syllabus are different for these two types of schools. Therefore, the respondents are not entitled to claim parity in the pay scales meant for the special teachers working in the schools for specially challenged children run by Government aided private institutions. The petitioner further challenged the decision of the Tribunal to entertain and try the Original Application.

8. After evaluating the rival contentions of the parties as well as the documents produced on record in support of the said contentions, the Tribunal held that it has jurisdiction to entertain and try the Original Application. The Tribunal further found substance in the claim of the respondents for their entitlement to get three-tier pay scale as recommended by the Chattopadhyay Commission. The Tribunal, therefore, allowed the Original Application filed by the

respondents and directed the petitioner to grant to the respondents as also to the similarly placed special teachers of the Government schools meant for specially challenged children, the three-tier pay scales, as recommended by the Chattopadhyay Commission, as granted vide Maharashtra Government Resolution dated 05.06.1992 to the special teachers working in the private institutions, with all consequential benefits.

9. The learned A.G.P. submits that respondent nos.3 and 4 and other eight special teachers had filed Writ Petition No.8019 of 2009 claiming the pay parity with the primary teachers working in Zilla Parishad and private schools run for specially challenged children, as recommended by the 5th Pay Commission. The said Writ Petition was allowed by this Court on 08.06.2011. Accordingly, the petitioner passed a Resolution on 26.12.2012 and awarded the benefits of 5th Pay Commission to them by revising their pay scale

from Rs.4000-100-6000/- to Rs.4500-125-7000/- with effect from 01.01.1996. The learned A.G.P. submits that when respondent nos.3 and 4 and the similarly situated teachers claimed benefits of the pay scales under the 5th Pay Commission only, it was not open for them, again to claim three-tier pay scales recommended by Chattopadhyay Commission. He submits that in view of the judgment dated 08.06.2011 delivered by this Court in Writ Petition No.8019 of 2009 granting benefits of 5th Pay Commission to the respondents, the impugned order passed by the Tribunal on 03.05.2010 would get merged into the order passed by this Court and would not be enforceable. He submits that considering the difference between the service conditions, eligibility criteria for appointment, syllabus to be taught in the schools for specially challenged children run by the Government and that of such schools run by the Government aided private institutions, the respondents are not

entitled to claim parity in the pay scales with those special teachers working in the private schools. He submits that the impugned order passed by the Tribunal is not legal, proper and correct. He, therefore, prays that the impugned order passed by the Tribunal may be quashed and set aside.

10. On the other hand, the learned Counsel for the respondents submits that the Tribunal has considered all the factual aspects of the matter and has concluded that there is absolutely no difference between the service conditions of the respondents and that of the special teachers working in the Government aided private schools. He further submits that the learned Tribunal found that the syllabus to be taught, the duties and nature of duties of the respondents – teachers, is quite similar to that of the special teachers working in the Government aided private schools. He submits that when the petitioner has extended

the benefits of Chattopadhyay Commission to the counterparts of the respondents working in the Government aided private schools, denial of the said benefits to the respondents, would amount to subjecting the respondents to discrimination. He submits that as per the judgment delivered by this Court in Writ Petition No.8019 of 2009, respondent nos.3 and 4, who were parties thereto amongst others, were extended the benefits of 5th Pay Commission to bring them at par with the special teachers serving in the Government aided private schools. Now, since the special teachers working in Government aided private schools are getting benefits of Chattopadhyay Commission and are entitled to get higher pay scales than that was given to them as per the 5th Pay Commission, the respondents also are entitled to claim parity with them on the principle of equality. In support of this contention, learned Counsel for the respondents cited a judgment in the case of **Union**

of India Vs. Buoy Lal Ghosh, 1998(3) SCC 362, wherein it has been held that the benefits of the recommendations of Chattopadhyay Commission are not confined to any specified territory and they were wide enough to include all classes of teachers in the entire territory of the country. He submits that since the petitioner has accepted recommendations of Chattopadhyay Commission and extended benefits thereof to the special teachers working in the Government aided private schools, it is bound to extend the same benefits to the special teachers working in the Government schools for specially challenged children (i.e. the respondents and other similarly placed teachers). He supports the impugned order and prays that the Writ Petition may be dismissed.

11. We have considered the rival contentions of the parties with reference to their pleadings as well as the documents placed on record. Here

reference may be made to the conclusions drawn by the Tribunal considering the disputed factual questions involved in the matter which read as under :-

(i) The category of special teachers, to which the applicants belong, is common to both the types of schools, that is, the Government run multipurpose centres for the handicapped and the private schools for the handicapped managed by non-govt. autonomous institutes.

(ii) The educational and curricular activities for the handicapped children conducted by both the types of schools are broadly comparable in terms of the purposes served by the schools with regard to education of the handicapped children, the syllabuses followed by them and the nature of responsibilities and

job qualification of the teachers engaged by them. It is pertinent to point out that the Chart-A at page no.14 submitted by the applicant containing a summary of educational qualification, syllabuses, the various kind of schools in existence and the duties of services performed by the teachers engaged in the Govt. handicapped schools has not been disputed or challenged by the applicants. This chart very clearly shows that these schools are engaged in mainstream education of this special category of unfortunate children, who also require rehabilitation.

(iii) The respondents' stand that the Chattopadhyay Commission's recommendations are applicable only to the teachers in private institutions is borne out to be incorrect as these

recommendations had been extended to the entire range of private and Government run technical institutions.

(iv) The other point raised by the applicants that the special teachers in multipurpose Govt. schools, unlike their counterparts in the private run schools are not trained and hence the Commission's recommendations cannot be applied to them, is also not correct. The posts occupied by the applicants require them to be trained, and the applicants are all trained teachers and they have filed relevant testimonials in this behalf.

(v) It is also a fact not denied by the respondents, that till the time the National Commission's recommendations were made applicable to the private run

schools, there was complete parity in pay scales amongst teachers in the Govt. as well as private schools for the handicapped children. As rightly argued by the applicants, there are no cogent reasons as to why this long standing parity is now being done away with while implementing the National Commission's recommendations."

12. In view of the above factual conclusions, we are not inclined to accept the contention of the learned A.G.P. that the service conditions and nature of duties of the respondents are different than that of the special teachers working in the Government aided private schools meant for specially challenged children. In the case of **Union of India Vs. Buoy Lal Ghosh** (supra), it has been held that the benefits of the recommendations of Chattopadhyay Commission are not confined to

any specific territory of the country and are applicable to all classes of teachers in the entire territory of the country. In the circumstances, we do not find any reason to treat the respondents differently so as to deny them the benefits of the recommendations of the said Commission. The judgment and order dated 08.06.2011 passed by this Court in Writ Petition No.8019 of 2009 will have no adverse effect on the claim of the respondents seeking parity in the pay scales with their counterparts working in the Government aided private schools. The respondents will have to be treated equally as that of their counterparts serving in the schools for specially challenged children run by Government aided private institutions.

13. The Tribunal has considered all the factual aspects of the matter and with a well reasons judgment, allowed the Original Application filed by the respondents seeking benefits of the

recommendations of Chattopadhyay Commission. The learned Tribunal has rightly held that it has jurisdiction to entertain and try the Original Application filed by the respondents by giving specific valid reasons. It is well settled that a Tribunal or Court cannot direct the Government or an employer to give a fixed pay scale to the employees. However, a Tribunal or Court is quite competent to entertain the claim of employees for proper pay scale based on right of equality. If they are denied the pay scale which is being given to the similarly situated employees, they can certainly approach a Tribunal or Court, as the case may be, to vindicate their right of equality in the matter of pay scale.

14. Considering the findings of facts recorded by the learned Tribunal and the well reasoned judgment delivered by it, no interference is called for in exercise of our jurisdiction

under Articles 226 and 227 of the Constitution of India.

15. There is no substance in the Writ Petition. The Writ Petition is liable to be dismissed and accordingly, dismissed.

16. Rule is discharged. Writ Petition disposed of accordingly. No costs.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

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