

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 2191 OF 2005

Sunil S/o Bajarang Kakde  
Age : 42 years, Occu. : Service  
As Senior Laboratory Technician  
M.I.T. Polytechnic College,  
R/o. Banjara Colony,  
Aurangabad

.. Petitioner

**Versus**

- 1) The Secretary,  
Technical Education Dept.,  
Mantralaya, Mumbai
- 2) Director of Tech. Education,  
Maharashtra State,  
3, Post Box No. 1967,  
Mahapallika Road,  
Mumbai - 1
- 3) Joint Director of Technical Education,  
Station Road, Aurangabad
- 4) The Director of Vocational Training,  
3, Mahapalika Marg,  
Mumbai
- 5) The Deputy Director of Vocational Training  
Marathwada Region, Bhadkal Gate,  
Aurangabad
- 6) The Member Secretary,  
All India Council for Tech. Education  
Western India Region,  
Churchgate, Mumbai
- 7) The Principal,  
M.I.T. Polytechnic College,  
Satara Parisar,  
Beed By-pass Road,  
Aurangabad

8) The Secretary,  
Gramodyogic Shikshan Mandal  
C/o. M.I.T. Polytechnic College,  
Satara Parisar,  
Beed By-pass Road,  
Aurangabad

.. Respondents

...

Mr. S.R. Choukidar, Advocate for petitioner

Mrs. S.S. Raut, A.G.P. for respondent - State

Ms. Neha B. Kamble, Advocate h/f Mr. S.V. Advant, Advocate for  
respondent no.6

Mr. Ajay Deshpande, Advocate for respondents no. 7 and 8

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CORAM : SUNIL P. DESHMUKH &  
SANGITRAO S. PATIL, JJ.

RESERVED ON : 04-10-2017

PRONOUNCED ON : 22-12-2017

ORAL JUDGMENT (PER - SUNIL P. DESHMUKH, J.)

1. The petitioner who is bachelor of science with Mathematics had been appointed as Instructor (Mathematics) by respondent no. 7 in its establishment - Industrial Training Center at Aurangabad under an order dated 04-12-1991. He was appointed temporarily for period from 04-12-1991 to 31-05-1992 on a consolidated fixed pay of Rs. 600/-. Petitioner claims that he continued as such and had been issued a certificate to that effect on 06-10-1995 by respondent no. 7. Subsequently, Industrial

Training Center along with such Centers at other places were closed down by respondents no. 7 and 8 and their winding up was under process and services of employees were brought to an end.

2. Quite a few terminated employees had been before the High Court in Writ Petitions requesting for their absorption in services of other establishments of respondents no. 7 and 8 *viz.* Polytechnic and Engineering colleges. Under order dated 08-08-1997 passed in Writ Petition no. 4681 of 1996, the High Court had directed respondents - respondents no. 7 and 8 herein, to consider petitioners for appointment in their other establishments, if the petitioners are qualified and eligible, whenever posts would be available. Subject to such observation, petition had been rejected.

3. Pursuant to the same, petitioner claims to have been appointed on 25-01-1998 as Laboratory Assistant in Marathwada Institute of Technology, Aurangabad in the pay scale of Rs.950-1500/-, fixing the same at Rs.950/- per month.

4. Petitioner was later transferred to Marathwada Institute of Technology Center at Ambajogai, Beed district under order dated 29-09-2000. Said transfer order had been subject matter of

challenge in Writ Petition no. 2537 of 2001. Thereafter, an understanding had been reached between union of employees and respondent - management and the transfer order had been withdrawn by management on 07-08-2001. Petitioner's services were dis-continued from end of September, 2004. Before the same, the petitioner had purportedly sent representation to the authorities demanding proper pay scale, continuity of service and other service conditions on the basis of his appointment as Instructor from 04-12-1991 and consequential, incidental benefits arising therefrom.

5. Since the representation did not bring about desired effect, present Writ Petition had been filed. Petitioner contends that the Industrial Training Centers were being closed down, ostensibly with permission of the authorities, was an action in collusion. According to petitioner, as a matter of fact, posts were available for absorption of the employees in other establishments run by respondents no. 7 and 8, yet, their services were brought to an end by issuing termination orders.

6. Petitioner contends that he had been taking up, espousing cause of employees and pursuing for payments and conditions of service, as are required according to law and

directions issued in those respect by authorities concerned from time to time.

7. Petitioner further contends that while petitioner could have been absorbed in the posts available in other establishments run by respondents no. 7 and 8, petitioner's services were continued in Polytechnic which had been virtually closed down with a view to bring his services to an end and had accordingly, discontinued the services of the petitioner end September, 2004.

8. Petitioner contends that he had been entitled to pay scale of Rs.1400-2600/- from the date of his appointment as Instructor on 04-12-1991 and to the revised pay scale according to fifth pay commission recommendation, of Rs.5500-9000/- and the pay scale made applicable to Instructor working with Government and Government aided institutions, whereas he had been paid only Rs.3,42,883/-.

9. Petitioner contends that the pay scales for his post are governed by the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "M.E.P.S. Act") Schedule C Part IV and he is entitled to the same along with the revision. It is contended that payment of proper pay scale was also obligation under circular issued dated 29-09-

1995. Petitioner purports to contend that his demands and representations with the management for grant of proper pay scale, regularization of service, promotional post and payment of arrears did not produce any result. Thus, the petitioner has prayed for declaration that denial by management of giving benefits to regularization in service, continuity and payment of arrears of pay is unjust, illegal and unconstitutional with a direction to respondent - management to fix salary of the petitioner in the pay scale of Rs.1400-2600/- from 04-12-1991 along with allowances, increments and revision in the same with effect from 01-06-1996 to Rs.5500-9000/- with other benefits and to pay to the petitioner a sum of Rs.7,13,658/- till end of September, 2004 being unpaid amount towards arrears of salary and in case of failure, recognition and approval to establishment of Engineering college be withdrawn.

10. In support of his submissions, the petitioner has annexed copy of his appointment order dated 04-12-1991, certificate issued by Marathwada Institute of Technology Center, Aurangabad on 06-10-1995. Order of this Court dated 08-08-1997 passed in Writ Petition no. 4681 of 1996, order dated 25-01-1998, appointing petitioner as Laboratory Assistant in Marathwada

Institute of Technology Center, Aurangabad. Transfer order dated 29-09-2000 and then order of withdrawal of the transfer order and Government resolution dated 17-01-2004 and communication dated 29-09-1995 issued by Director of Technical Education, Maharashtra State, Mumbai to non-aided Engineering, Technical, Pharmaceutical, Archeology, Management, Cookery, Computer, Canteen and Diploma courses, communicating that the salary and allowances and other benefits are obligatory to be paid in accordance with the instructions issued by Government from time to time. He has also annexed decision of this Court dated 03-07-2001 in Writ Petition no. 364 of 1999 and a table of calculations for period from December, 1991 to September, 2004, claiming difference of salary of Rs.7,14,054/- and notice by counsel for the petitioner dated 03-10-2003 seeking action as per the relevant claim.

11. Respondent no.8 had resisted the claims under the Writ Petition stating that petitioner has been given all the benefits according to the settlements arrived at with his union from time to time. It is contended that for 15 long years, the petitioner has not made any grievance in respect of pay scale, regularization etc. and had accepted the employment without any demur. The petitioner

had accepted appointment on consolidated pay as he did not possess requisite qualification and as he lacked eligibility criteria. The requisite qualification for the post of Instructor is contended to be diploma in engineering. The claim about petitioner having been a permanent employee pursuant to the provisions of M.E.P.S. Act and particularly section 5 thereof is denied for want of requisite qualification for the post of Instructor. It is purportedly contended that provisions of M.E.P.S. Act and rules therein would not be applicable to Industrial Training Center where petitioner had been working.

12. The Industrial Training Centers, including where the petitioner was working, had been self-funded establishment having been rendered unviable and it was not feasible to run the same with change in the policy of the Government. It is submitted that the observations of the High Court under its order categorically refer to accommodation to persons possessing qualification and eligibility and subject to availability of posts.

13. It is contended that the petitioner had been required to be transferred for want of requisite students at the Center at Aurangabad. However, subsequently, the transfer order had been

withdrawn and the petitioner was asked to join services at Aurangabad. In the interregnum, there has been time lag of about 10 months constituting break in service. It is contended that though National Council for Vocational Training had recommended 2/3rd of salary be paid to faculty/staff members of private Industrial Training Institutes, yet, said amount is payable to persons holding qualifications prescribed for the post. According to the management, Government resolution dated 17-01-2004 has no significance which does not cover unaided and non-funded, self-funding institutions.

14. It is contended that claim of petitioner is barred by limitation having not been made within statutory period of limitation and in the circumstances, petitioner cannot claim any relief invoking extra-ordinary jurisdiction conferred upon this Court.

15. Along with the reply, annexed are, extract of manual about qualifications, the communication dated 07-01-1997 to the President and Principals of Non-Government Industrial Training Centers / Institutions depicting that non-Government Industrial Training Center teaching and non-teaching staff shall be paid at the rate of 2/3rd of salary of Government employees, the

communication by Joint Director, Technical Education has been dated 10-02-2002 is stated to be issued in accordance with the settlement between the employees of respondent - management and the employee's union as also the document depicting settlement dated 03-03-2000 and certain other documents with respect to complaints against the petitioner and the union members.

16. In the rejoinder, the petitioner purports to append copy of Rules of 1962 setting forth the qualifications for the post of Instructor.

17. Learned counsel for petitioner Mr. Choukidar submits that management had been absolutely unfair to its employees in respect of payment of salary, pay scale as well as other service conditions. It is emphasized that for the post of Instructor, while petitioner had been appointed in 1991, the pay scale of Rs.1200/- - 2600/- and upon revision, the same has been Rs.5500/- - 9000/-. Looking at that the petitioner had been employed from 1991 continuously, he had been entitled not only to claim permanency but also continuity of service and with reference to the same, further promotions in the hierarchy in the natural course, were due to him legitimately, yet, under the unfair employment practices,

the petitioner and similarly situated employees have been deprived of such benefits. Constrained and compelled, the petitioner and his union was required to take up the cause of employees with the management. However, taking interest and espousing the cause of employees and union members has developed grudge against him by the management and, as such, his services were discontinued. He was not properly absorbed and not granted proper pay scale. He was transferred. Transfer order was cancelled. Settlements were entered into and yet, his services were discontinued after September, 2004.

18. He submits that pursuant to decision of this Court in Writ Petition no. 333 of 2002 dated 19-12-2003, the benefit of fifth pay commission recommendation are due and payable to the non-teaching staff.

19. He submits that even for temporary employees, principle of equal pay and equal work has been made applicable giving them the minimum of pay scale of regularly engaged government employees holding the same post.

20. It is further submitted with reference to decision in the case of *Teachers Association for Non-Aided Polytechnics and others Vs. Hindi Seva Mandal, Bhusaval, Through its President and others* annexed to the

petition and also reported in *2003 Supp. (1) B.C.R. 846* that a belated approach would not dis-entitle petitioner from claiming benefits.

21. He submits that while the question of granting of sixth pay recommendation had arisen in Writ Petition preferred, the benefits were granted to the petitioner therein and while the matter was taken to Apex Court, the Apex Court had referred to that as far as non-teaching staff is concerned, there has been a settlement, referring to paragraph no. 55 from said decision.

22. Learned counsel for respondent Mr. Deshpande submits that since the petitioner does not hold basic qualifications for appointment to the post of Instructor, his claims based on his appointment as Instructor are fragile and friable. He submits that though ostensibly, the appointment order had been as Instructor but the same also was temporary and particularly had been for a specific period on a consolidated pay which he had accepted without demur, since petitioner was aware, he is not qualified to hold said post. He had, thereafter, at any point of time till he filed Writ Petition in 2004, not made any grievance in respect of pay scale to his such appointment. Moreover, petitioner's appointment as Instructor had come to an end in 1995. He had, not before his termination order, or at any point thereafter, till he filed Writ

Petitioner, made any grievance in respect of the pay scale or consequent claims / benefits. Thus, almost 10 years down thereafter, to make such a claim is not only outside the period of limitation but also hit by principle of *estoppel*. Petitioner had subsequently accepted fresh appointment as Laboratory Assistant and had continued as such till end of September, 2004, and not on a single occasion, such a request with reference to the pay scale of Instructor had been made by him. He further submits that petitioner claims benefits only on the basis of his appointment on 04-12-1991 and no other. Therefore, the claim made with reference to same in Writ Petition in 2004, is barred by law of limitation and is hit by *laches*. Apart from aforesaid, he submits that the entitlement claimed to the pay scale and revision pursuant to the M.E.P.S. Act, the same shall fall flat on the ground for want of requisite qualification. Pay scale demanded are meant for the employees possessing requisite qualifications, which the petitioner does not hold at all. It is not the petitioner's case that he holds diploma in engineering which is the requisite qualification, referring to the qualification prescribed in the manual, extract of which is stated to have been produced along with the affidavit-in-reply. Learned counsel on instructions submits that so far as balance amount as may be payable to petitioner from the

settlement entered into between union employees and the management, the same would be paid by management to the petitioner, however, the other claims and the declaration sought by the petitioner are absolutely untenable and do not deserve to be considered at all. He submits that circular relied on would not hold the petitioner's case for want of qualification and he submits that the decision relied on does not meet the aspect with respect to qualification for the post of Instructor. As such, demand only based on judgment is *de hors* qualification.

23. Learned counsel on either side have made their submissions in respect of qualifications for the post of Instructor, the rules which are purportedly relied on of 1962, depict that Instructor (Mathematics) has been referred to and, educational qualifications are Graduate in Science faculty with technical training background, whereas the extract of manual relied on shows that for the post of Instructor (Workshop calculation and science), the qualification is Diploma in Engineering.

24. Rule 6 about qualification placed reliance on behalf of petitioner reads thus :-

*" 6. Recruitment Rule for the post of Instructor (Mathematics)*

*Appointment to the post shall be made by nomination from amongst candidates who:*

(i) *unless already in the service of the Government of Maharashtra, are not more than 35 years of age;*

(ii) *hold Bachelor's degree or have passed Intermediate Examination of recognized University with good technical background and experience in the subject or possess good general education with systematic Training in Engineering shop practices class sound practical experience subsequent to training and preferably some experience of teaching the subject.*

*Provided that age limit may be relaxed in the cases of candidates possessing and/or experience."*

whereas, Sr. no. 7, in the extract of Manual referred to by respondent - management reads thus :-

| Sr. No. | Name of Post and its status                 | Qualifications                                                                                              |
|---------|---------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| -----   |                                             |                                                                                                             |
| 7.      | Workshop Calculation and Science Instructor | ...<br>A person with diploma in engineering may be appointed for the above post to teach both the subjects. |
| -----   |                                             |                                                                                                             |

25. It is not the case of the petitioner that the petitioner apart from Graduation in Science, holds the further requisite training or proficiency or skill, or had been trained in those respect. He appears to have chosen to go on with the consolidated pay of Rs.600/- for quite some time. It appears that the establishment which is stated to had been rendered unviable, had been closed down, and his services had been brought to an end. The High Court under its order, had directed absorption

subject to the possession of qualification and eligibility. Thereafter, the petitioner had been appointed as Laboratory Assistant. None of the parties have brought before this Court the qualifications required for said post and the petitioner had accepted such appointment without any demur, which appears to be a fresh appointment. The petitioner thereafter had continued as such, for quite some time with some interlude, upon an order of transfer. All the while during this period, he had not made any grievance in respect of his pay scale nor has submitted along with the Petition, any document in respect of the same. It is only in 2003, he purported to have made grievance in respect of the pay scale of the post of instructor by issuing notice and then a writ petition has been filed.

26. Thus things which clearly emerge are, there is no dispute that establishment where petitioner had been appointed, had been closed down and that he had not made any grievance during his tenure about the pay scale much less based on the qualification with respect to the rules now being referred to nor any representation had been filed with reference to the Circular of 1995 or for that matter, Government resolution issued in 2004 while he had been still in employment.

27. Though learned counsel for the petitioner has referred to the case of *Teachers Association for Non-Aided Polytechnics and others Vs. Hindi Seva Mandal, Bhusaval, Through its President and others, 2003 Supp. (1) B.C.R. 846 (supra)*, the observations relied on by learned counsel for petitioner are from paragraph no.7 therein, which are reproduced hereinbelow :-

" 7. So far as the point of belated approach to this Court is concerned, we note that the said ground is unsustainable as the petitioners have sought directions to implement the instructions given by the Government of Maharashtra vide circular dated 29th September, 1995 and, thereafter, representations have been made to the management as well as to the respondent No.4 in 1998. As there was no response from either of them, the petitioners approached this Court."

The fact situation in the present matter appears to be quite apart from one that was considered while observing as aforesaid. As such, the observations therein may not carry forward the case on that count for the petitioner.

28. The petitioner claims benefits be given to him considering him as a full-fledged instructor having qualifications to hold said post with effect from 04-12-1991 onwards continuously including all incidental and consequential benefits, promotion and the pay scale. While the petitioner had referred to definite pay scale as applicable at the time of his appointment i.e. Rs.1200-

1600 yet, he has not given details as to how and when he would have been qualified and eligible to further promotion and what was said post and what was pay scale of said post prevailing then and whether such a post had been available with the management where he had been employed after his appointment. Further, while he had been terminated and had been appointed again in 1998 as laboratory assistant, he has not referred to in the petition as to what were the qualifications for said post and whether he possessed such eligibility / qualification to hold on to such post and what was pay scale attached to said post under the circulars issued from time to time by the government or under the M.E.P.S. Act or for that matter on application of pay scales under the 5<sup>th</sup> Central Pay Commission. He has vaguely demanded all the benefits only based on his appointment as instructor in 1991. There is no sufficient material placed on record with further augmentation either in the post or the pay scale albeit he has claimed entitlement to certain pay scale pursuant to circulars issued by State government and with reference to M.E.P.S. Act and the rules thereunder. Yet, we may have to take into account that it is undisputed position by petitioner himself that his services as instructor were brought to an end and terminated around 1995. Thereafter he had never claimed said post at any point of time as

is apparent from record in the writ petition till he has issued notice in 2003. As a matter of fact, record bears out that petitioner had accepted post of laboratory assistant in one of the establishments of the management. He has not given clear picture as to whether any post equivalent to instructor had been available for his appointment based on his qualification; as to whether he had demanded the same at any time after 1998.

29. Thus, we are not in a position to grant the request. The petitioner appears to have acquiesced in the pay as had been paid to him till his termination as instructor. It may be a case that he had been forced to accept the post of laboratory assistant yet, he does not appear to have been aggrieved by the same till he filed writ petition.

30. Learned counsel Mr. Deshpande appearing for the petitioner during the course of his hearing has shown willingness for payment to the petitioner of difference of pay which has not been paid to him which according to the settlement with the management.

31. While, the petitioner purports to rely on 1962 rules as appended along with the affidavit-in-rejoinder which appears to

prescribe bachelors degree with good technical background and experience in the subject or posses good general education with systematic training in Engineering shop practices class sound practical experience subsequent to training and preferably some experience of teaching the subject, whereas the one relied on from the manual by respondents is "Instructor (Workshop calculation and science)" and qualification prescribed is the person shall possess diploma in engineering. Neither party has adequately and properly addressed this issue with regard to qualification for the post of Instructor.

32. As such, the dispute about the entitlement to pay scale and the incidental, consequential benefits has been raised with reference to the qualifications held by the petitioner. The situation in the Writ Petition based on the material as available, appears to be rather ambiguous.

33. Further, it may have to be noted that a claim for pay scale and benefits arising from continuation in service including augmentation in the posts are being demanded by issuing notice in 2003 and then filing Writ Petition in 2004. Petitioner claims benefit of appointment as Instructor which stood terminated in 1995/96. What possibly can now be granted to him is only compensation in

monetary form. The petitioner has not challenged termination from said post. As such, claim with regard to the post of Instructor and augmentation in the same is reduced to a monetary claim based on the post of Instructor. Apart from that, the demand of corresponding pay scale is being made after a huge gap and long after acceptance of the post of Laboratory Assistant in 1998, i.e. in 2004 in writ petition or for that matter by representations in 2003 does not appear to be a claim which can be supported on the ground of limitation. It is far too belated and the payment for said post and consequential further post appears to be obstructed by limitation therefor, for recovery, as a money claim.

34. So far as the claim which would be based for appointment on the post of Laboratory Assistant in 1998 is concerned, the petitioner has not referred to the pay scales applicable to said post or for that matter qualifications for the same. The petitioner claims to have been dis-continued from end of September, 2004, however, for want of requisite material in respect of said post, it is difficult to form any judgment with reference to the scanty documentation available. His claim for pay scale for said post for preceding three years therefrom may be having some substance. As such, it is open for for the petitioner

to make such a request, supporting the same with material along with applicable rules, instructions, guidelines, resolutions etc. to the management as well as with the concerned authorities to whom representations can be made.

35. So far as claim based on the post of Instructor is concerned, the same is not accepted and Writ Petition is disposed of with observations as contained in paragraph no. 34.

36. Rule stands discharged.

[SANGITRAO S. PATIL]  
JUDGE

[SUNIL P. DESHMUKH]  
JUDGE

arp/