

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

WRIT PETITION NO. 9267 OF 2016

Bhaskar s/o Datatraya Deshpande
age 54 years, occ. Service as
Deputy Registrar, High Court
Bombay, Bench at Aurangabad
r/o Flat No. 5, Creative Plaza
Chatrapati Nagar
Garkheda Parisar,
Aurangabad.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through the Principal Secretary
Department of Law and Judiciary
Mantralaya, Mumbai 400 032.
2. The Principal Secretary
Government of Maharashtra
Department of Finance
Mantralaya, Mumbai 400 032.
3. The Registrar General
High Court of Judicature
of Bombay 400 032.
4. The Registrar (Administration)
High Court of Judicature
of Bombay, Bench at Aurangabad.

.. RESPONDENTS

Mr. P.R. Katneshwarkar, advocate for petitioner.
Mr. V.M. Kangne, AGP for the State.
Mr. R.J. Godbole, advocate for respondents 3 and 4.

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CORAM : R.M. BORDE &

K. K. SONAWANE, JJ.

RESERVED ON : 24th OCTOBER, 2016.

PRONOUNCED ON : 6th JANUARY, 2017.

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith.

2. Heard finally at admission stage with the consent of learned counsel for the respective parties.

3. Petitioner, who is functioning as Deputy Registrar at High Court of Bombay, Bench at Aurangabad, is praying for quashment of the communicationS dated 27.08.2015 and 30.06.2016 issued by the State Government rejecting recommendation made by respondent no. 4 – Registrar(Administration), High Court of Judicature of Bombay, Bench at Aurangabad, annexed at Exhs. D and G. Petitioner is also praying for issuance of directions to respondents 1 and 2 to step up his pay at Rs. 34,730/- together with all consequential benefits such as increment etc. with effect from 01.07.2013.

4. Petitioner was inducted in employment as Clerk from 01.03.1982. By order dated 31.01.1986, he came to be promoted to the post of Assistant. Petitioner was awarded further promotion on 06.04.1990 as Section Officer and thereafter next promotion to the post of Assistant Registrar was awarded on 13.12.2004. Petitioner came to be promoted to the post of Deputy Registrar by order dated 21.01.2012 and his salary was prescribed in Pay Band -3 i.e. (15,600-39,100 + 7,600 GP). One Mr. Mohd. Ayub who is admittedly junior to the petitioner came to be promoted as Deputy Registrar on 24.06.2013. Petitioner was given option in accordance with Rule 11(1)(a) of Maharashtra Civil Services (Pay) Rules, 1981 and he opted that he should be paid salary amounting to Rs. 32,780/- (25,180 + 7,600) with effect from 21.1.2012. Salary of petitioner was fixed accordingly on the basis of option

exercised by him.

5. Petitioner states that Mr. Mohd. Ayub who came to be promoted at a later stage than that of the petitioner on 24.03.2013 has exercised his option and his scale of pay was fixed at Rs. 34,730/- from 01.07.2013 i.e. at next increment in the the old post. Pay scale drawn by Mr. Mohd. Ayub who is junior to the petitioner is more than that of the petitioner though both the officers occupy the post in the same cadre. It is the contention of petitioner that in view of instructions 1 and 2 under Rule 11 of Maharashtra Civil Services (Pay) Rules, 1981, the pay of petitioner shall have to be stepped up so as to bring it in conformity with pay drawn by his junior. Instruction no. 2 provides that in case the senior Government servant promoted on or after 1st April 1971 but drawing less pay than his junior promoted subsequently to another identical post, the pay of the senior Government servant should be stepped up to a figure equal to the pay of his junior in that higher post under Rule 40 with effect from the date of promotion of his junior subject to the fulfillment of the conditions mentioned at (I) to (iv) of instruction I. The conditions mentioned under instructions (i) to (iv) are as quoted below :

(i) both, the junior and senior Government servants should belong to one and the same cadre and the posts in which they have been promoted or appointed, should be identical and in the same cadre and in the same line of promotion;

(ii) the scale of pay of the lower and higher post in which they are entitled to draw pay should be identical;

(iii) the anomaly should be directly as a result of the application of rule 11. For example, if even in the lower post the junior Government servant

draws from time to time a higher rate of pay than the senior by virtue of fixation of pay under the normal rules or by grant of advance increments (s) for any other reason, these provisions shall not be invoked to step up the pay of the senior Government servant;

(iv) the next increment of the senior person whose pay has been stepped up should be drawn on completion of the requisite service with effect from the date of re-fixation of pay.

6. Petitioner contends that he fulfills the requirements in respect of stepping up of pay equal to the pay drawn by his junior with effect from 01.07.2013, the date on which his junior was awarded promotion and his pay was fixed at higher stage. In view of Rule 11, petitioner tendered an application to the Registrar (Administration), High Court of Bombay, Bench at Aurangabad on 13.03.2015 and requested that his pay shall have to be stepped up. The Registrar (Administration) has considered the representation of petitioner and forwarded the same with favourable recommendations to the Government on 23.04.2015. However, the State Government rejected the representation by communication dated 27.07.2015 for the reason that option given once by an employee is final and that there is no provision to change the same. Similar recommendation was again made by the Registrar Administration to the State Government on 16.06.2016 however, the same was also turned down by the State Government recording identical reasons.

7. Contention raised by petitioner deserves acceptance and we do not find any reason to turn down the reasonable request made by petitioner. The earlier option exercised by petitioner at the stage of his promotion has

nothing to do with stepping up of pay of petitioner on par with his junior. The reasonable request made by the employee which has been supported by the recommendations of the High Court ought not to have been brushed aside. In this context, reliance is placed on a judgment delivered by Division Bench of this Court in the matter of Sudamrao Keshurao Aher Vs. State of Maharashtra in Writ Petition No. 10283/2012 and other companion matters decided on 21.11.2013 to which one of us (R.M. Borde, J.) is a member. Dealing with the identical situation in respect of teachers, referring to the judgment of the Hon'ble Supreme Court in the matter of Gurucharan Singh Grewal and another Vs. Punjab State Electricity Board and others, reported in **(2009) 3 Supreme Court Cases 94**, the Division Bench as observed in paragraphs 14 and 15 of the judgment as quoted below :

14. Learned counsel for the petitioners relied on the case of Gurucharan Singh Grewal and another vs. Punjab State Electricity Board and others, reported in (2009) 3 Supreme court Cases 94. That was also the matter where anomaly arose due to difference of incremental benefits. The learned counsel for respondents, Mr. Chhabra, in that matter, tried to justify the disparity before the Hon'ble Supreme Court by claiming that the disparity between the pay of Shri Shori (in that matter) and appellant 1 before the Hon'ble Supreme Court was because the appellant 1 had been granted promotional scale with effect from 1st January 1996, where the benefits of increments in the scale were lower and on the other hand Shri Shori who joined the services of the Board in 1974 was granted promotional scale on 17th May 2006 with effect from 1st September 2011 when the increments in the pay-scale were higher. The Hon'ble Supreme court observed in Para 17 and 18 of the Judgment as under :-

17. Something may be said with regard to Mr. Chhabra's submissions about the difference in increment in the scales in which Appellant 1 and

Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid a lesser salary than his junior. In such circumstances, even if there was a difference in the incremental benefits in the scale given to Appellant 1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of Appellant 1 was also stepped up to that of Shri Shori, as appears to have been done in the case of Appellant 2.

18. We are unable to accept the reasoning of the High Court in this regard or the submissions made in support thereof by Mr. Chhabra, since the very object to be achieved is to bring the pay scale of Appellant 1 on a par with that of his junior. We are clearly of the opinion that the reasoning of the High Court was erroneous and Appellant 1 was also entitled to the same benefits of pay parity with Shri Shori as has been granted to Appellant 2.”

Thus, the Hon'ble Supreme court rectified the situation when incremental benefits given at different times were different so that the settled principle of law that “senior cannot be paid a lesser salary than his junior” is maintained.

15. In present matter, according to us, the incentives while implementing 6th Pay Commission for Ph.D. Cannot be so given so as to give a junior teacher more pay than the senior who is otherwise equally qualified. Rather he has more experience and is senior even in the acquisition of the Ph.D. Degree. All things given to be the same at a given point of time, junior teacher could not be getting more salary than the senior only because the junior has just acquired the Ph.D. Degree. The Constitution has goal under Article 39(d) that there should be equal pay for equal work. If the arguments as raised on behalf of the Respondents are accepted, the same would amount to discriminating to teachers only on the basis of junior teacher having acquired Ph.D. Degree recently under new Pay Commission. This would be violative of the principles as enunciated in Article 16 of the

Constitution and such position cannot be allowed to be maintained. It is different when one person is having higher qualifications. However, it would be discriminatory when both are having similar qualifications and a person not only senior in service but also equally qualified is so discriminated so as to be put in disadvantageous position as if it was a fault to have acquired Ph.D. Degree earlier. It is not a case of keeping the incentive separate and not part of pay. If pay fixation of Petitioner no. 1 (as at Page 60-61 in Paper Book) is seen, on 1st July 2008, his basic pay is shown as Rs. 57260/- while that of Shri S.S. Nighut (See Page 107) was Rs. 55870/-. then in the proforma of Pay Fixation, entry on 22nd September 2008 for Shri S.S. Nighut shows his basic pay as "55870 + 5030 = 60990". Thus the increments were merged in the basic. This would be discriminative between Senior Teacher and Junior Teacher. Note 5 below Appendix I of the G.R. needs to be so applied that such discrimination is removed.

8. In view of law laid down by the Hon'ble Supreme court in the matter of Gurucharan Singh Grewal as well as decision of Division Bench of this Court in the matter of Sudamrao Keshawrao Aher, the request made by petitioner in the instant petition deserves to be accepted. It also must be noted that the decision of the Division Bench in the matter of 'Sudamrao' has attained finality in view of rejection of Special Leave Petition, presented on behalf of the State Government, by the Hon'ble Supreme Court.

9. For the reasons recorded above, writ petition deserves to be allowed and the same is accordingly allowed. Communications dated 27.08.2015 and 30.06.2016 rejecting recommendation of respondent no. 4 by the State Government are quashed and set aside. Respondents 1 and 2 are directed to step up pay of petitioner at Rs. 34,730/- alongwith all consequential

benefits such as increments etc. with effect from 01.07.2013 and release financial benefits accruable from such decision as expeditiously as possible, preferably within a period of six months from today. Rule made absolute. No costs.

(K.K. SONAWANE)
JUDGE

(R. M. BORDE)
JUDGE

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