

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5402 OF 2012

Shri. Pandurang Abhimanyu Patil & Ors.

..Petitioners

Vs.

State of Maharashtra & Ors.

..Respondents

WITH

WRIT PETITION NO.8020 OF 2016

Prakash Vasudeo Amate & Ors.

..Petitioners

Vs.

State of Maharashtra & Ors.

..Respondents

Mr. Yashodeep Deshmukh with Mr. P.R. Patil for petitioners in both petitions.

Mr. V.N. Sagare, AGP for respondent nos.1, 2 & 5 in W.P. No.5402/12 and for respondent nos.1 & 3 in W.P. No.8020/16.

Mr. G.S. Godbole i/b. Mr. S.S. Kothari for respondent nos.7 to 9 in W.P. No.5402/12 and for respondent nos.5 & 6 in W.P. No.8020/16.

**CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.**

DATE : 17th JULY 2017

ORDER:

1. By an order dated 5th February, 2013, Rule in Writ Petition No.5402 of 2012 has already been issued.

Rule in Writ Petition No.8020 of 2016, returnable forthwith.

Mr. V.N. Sagare, AGP, waives service for respondent nos.1 and 3

and Mr. G.S. Godbole, learned counsel, waives service for respondent nos.5 and 6. Heard learned counsel for the parties.

2. The present petitioners seek a direction to the respondents to ensure that respondent no.7 management shall implement the pay scale of Sixth Pay Commission as applied by the State of Maharashtra to the teachers with effect from 1st January 2006 and for consequential benefits for the period from 1st January 2006 upto 31st December 2011.

3. The facts in the present case are undisputed. The petitioners were appointed as Assistant Professors by respondent no.7 management. The State of Maharashtra on the basis of recommendation made by the All India Council for Technical Education has issued a Government Resolution dated 20th August 2010 by which the benefit of Sixth Pay Commission has been given with retrospective effect from 1st January 2006. The said Government Resolution further provides that those of the teachers working as Assistant Professors and Lecturers (Selection Grade) and who have completed 3 years in the pre-revised scale of Rs.12000 – 18300 as on 1st January 2006, are to be placed automatically in the pay scale of Rs.37400 – 67000 with Annual Grade Pay of Rs.9,000/- and shall be re-designated as Associate Professor.

4. We find that the controversy in the present petitions is no more *res-integra*. The Division Bench of this Court at Aurangabad

in Writ Petition No.6001 of 2013 (Sanjay Shrirangrao Surwase & Ors. Versus The State of Maharashtra & Ors.) had an occasion to consider the Government Resolution dated 20th August 2010 and the notification issued by A.I.C.T.E. dated 8th November 2012. The Division Bench after applying the principal of harmonious construction has observed thus:

“Perusal of all the aforesaid clauses of the notification and the Government Resolution it is crystal clear that all Assistant Professors who have completed three years of service will be entitled to pay band of Rs.37400 – 67000 and for increase in the Academic Grade Pay they will have to satisfy the other conditions that may be prescribed by the AICTE. Clause 12 of the notification as well as of the Government Resolution will have to be read as limited to the extent of the higher AGP of Rs.9000. Unless the petitioners satisfy the compliance of other conditions as laid down by the AICTE, they will not be entitled for the AGP of Rs.9000. However for moving to the pay band of Rs.37400 – 67000 clause 10 of the Government Resolution nowhere prescribes that the petitioners / Assistant Professors should satisfy the other conditions prescribed by the AICTE. If clause 12 is read in a manner as has been sought to be read by the respondents it would render clause 10 nugatory and superfluous. The same is not permissible under any rules of interpretation.

Reading all these clauses succinctly it is clear that the satisfaction of the other conditions of eligibility is with regard to the different stages of Academic Grade Pay whereas the pay of the teachers is to be fixed in two pay bands – (1) 15600 – 39100 and (2) 37400 – 67000.

The notification dated 08/11/2012 issued by the AICTE and relied by the respondents is applicable only for the purpose of benefit in the

carrier advancement scheme. We are not concerned with the same in the present matter.”

5. After observing the aforesaid, the Division Bench has directed thus:-

“It is held that the petitioners on completion of the three years in service as Assistant Professors shall be entitled for the pay band of Rs.37400 – 67000, however for grant of AGP of Rs.9000 they will have to satisfy the other conditions laid down by the AICTE. The petitioners may file an application for grant of AGP of Rs.9000 with the respondents, which the respondents shall consider and decide about the entitlement of the petitioners of AGP of Rs.9000 on its own merits within a period of three (3) months from the date of receipt of representation from the petitioners. However respondents shall pay the petitioners pay band of Rs. 37400 – 67000 on completion of their three years of service from the date of their appointment as Assistant Professors through proper selection process.”

6. The aforesaid judgment came up for challenge before Their Lordships of the Apex Court. Their Lordships vide judgment delivered in the case of **Secretary Mahatma Gandhi Mission & Another v. Bhartiya Kamgar Sena & Others**, reported in **2017 SCC OnLine SC 22**, though disagreed with the reasons given by the Division Bench, has upheld the view taken by the Division Bench of this Court and dismissed the appeals.

7. Mr. Godbole, learned counsel appearing on behalf of the respondent-management, states that the management proposes to challenge Clause 53 of the notification dated 4th January 2016 and,

therefore, the present petitions should be adjourned.

8. We find that Clause 53 of the said notification has nothing to do with the applicability of the Sixth Pay Commission. It only deals with the issue as to whether the Assistant Professors who were not able to complete the Ph.D. in 7 years are required to be reverted or as to whether their increment is to be stopped. We find that no purpose would be served in adjourning the matters wherein the issues are clearly covered by the decision of the Division Bench of this Court and the conclusions of this Court having been upheld by the Apex Court, though on different grounds.

9. In that view of the matter, we are not inclined to adjourn the matters as requested by Mr. Godbole. However, we observe that the orders passed by this Court would have no effect on the petition of the management, if they desire to challenge clause 53 of the notification.

10. In the result, we find that the present petitions also deserve to be allowed in terms of the operative part of the order passed by Aurangabad Bench of this Court.

11. Rule is, therefore, made absolute in terms of paragraph 12 of the judgment dated 10th February 2015 passed by the Division Bench of this Court at Aurangabad in Writ Petition No.6001 of 2013. Needless to state that except the aforesaid issue, the judgment would not come in the way of rival parties, if they have any rival claims beyond the scope of this judgment. The

respondents are directed to clear the arrears within a period of six (6) months. No order as to costs.

[RIYAZ I. CHAGLA J.]

[B.R. GAVAI, J.]