

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

WRIT PETITION NO. 11679 OF 2013

Shri Anant Namdeo Shinde .. Appellants
Age : 42 yrs., Occ.: Service
R/ at Flat No.24, Vasant Prasad
Apartment, Vasant Vihar Colony,
Jail Road, Nashik Road,
Nashik - 422 001.

Versus

- 1) State of Maharashtra
through the Principal Secretary,
Medical Education and Drugs
Department, Mantralaya,
Mumbai - 400 032
- 2) The Principal Secretary, Finance
Department, Mantralaya, Mumbai-32
Respondent No.1 and 2 to be served
Government Pleader's Office, P.W.D.
Building, Bombay High Court, Fort,
Mumbai - 400 032.
- 3) Maharashtra University of Health
Sciences, Nashik, through its Vice
Chancellor and/or Registrar, having
its office at Dindori Road, Mhasarul,
Nashik - 422 004. .. Respondents

Mr.N.V.Bandiwadekar, Advocate, i/by Mr. J. D. Khairnar,
Advocate for the Petitioner.

Ms. Priyanka Damle, Advocate i/by Res Juris for Respondent
No.1.

Mr. R. V. Govilkar, Advocate for Respondent No. 3.

Mr. B. V. Samant, AGP for Respondent Nos. 1 and 2.

**CORAM : S. C. DHARMADHIKARI AND
SMT.BHARATI H. DANGRE, JJ.
DATE : 29th NOVEMBER, 2017**

**(JUDGMENT RESERVED ON : 15.11. 2017)
(--"-- PRONOUNCED ON : 29.11.2017)**

JUDGMENT : (Per Smt.Bharati H. Dangre, J.)

Rule. Respondents waive service. By consent heard finally.

1 The present petition is filed by the Petitioner, seeking issuance of a writ in the nature of certiorari and direction to the Respondent No. 1 to withdraw the impugned letter-cum- order dated 26th July, 2013 and confer the revised pay-scale on the petitioner from the date of his appointment to the post of "Wireman"/ 'Electrician", as per the Maharashtra Civil Services (Pay) Rules, 1981 and as per the Maharashtra Civil Services (Revised Pay) Rules, 2009.

2 Issue involved in the petition is a short one. The petitioner was appointed to the post of 'Wireman" and he joined in the said capacity on 26th May, 2003 on the establishment of Maharashtra University of Health Sciences, Nashik, the Respondent No.3 herein. The appointment order

issued to the petitioner on 16.07.2004, provides that tenure appointment of the petitioner is converted into probation on the post of 'Wireman' in the pay-scale of Rs. 3050 to Rs. 4590. The order mentions that the probation period shall be deemed to have been started from the date of joining on the tenure post i.e. w.e.f. 26.05.2003. It was also mentioned that conversion of the tenure / appointment (probation) shall not be deemed, as confirmed unless he is issued with the order, at the end of the confirmation on the completion of period of probation. On 17th February, 2005, the Medical Education and Drugs Department granted permission to create 117 posts on the establishment of the Respondent No 3, which included the post of electrician in the pay-scale of Rs. 3050- 4590. though it did not include post of 'Wireman'. On 23rd March, 2006, the Respondent No.3-university declared that the petitioner has completed his probation period successfully, as per the provisions under section 7(5)(a) of the Standard Code Rules, 1984 and the respondent no. 3 confirmed the services of the petitioner on the post of 'Electrician' in the pay-scale of Rs.

3050-75-3950-80-4590 w.e.f. 28th May, 2005. It was also declared that the services of the petitioner would be governed by the provisions of the Maharashtra University of Health Sciences Act, 1998, including civil manuals, ordinance, regulations and rules of the University for the time being in force and as made by the University from time to time and rules of the State Government.

The petitioner was entrusted with the post of “Electric Supervisor” by the respondent no.3 and he was screened for the said post and found eligible for the same and was continued on the said post from 20.11.2009 till 06.04.2012 in the pay-scale of Rs. 9300-34800 – 4300, Grade Pay, as per the 6th Pay Commission. However, on 2nd April, 2012, the petitioner received a letter from Respondent No. 3, asking him to exercise his option whether to continue as “Electric Supervisor” or to be reverted back to the post of “Wireman' / 'Electrician”. The Petitioner preferred to be reverted back to the original post and from 7th April, 2012, he was continued as Wireman/ Electrician in the pay-scale of

Rs. 5200-2020-1900, grade pay. It is to be noted that the post of “electric supervisor” was not a government approved post but was on the separate establishment of the University and the University was paying / bearing the salary of the said post.

3 The Petitioner is aggrieved by non-fixation of his pay-scale as applicable to the post of 'Electrician' in the State of Maharashtra so also in other universities and its departments. According to the petitioner, the respondent no. 3 recommended the case of the petitioner to the State Government on the ground that the State Government has already approved the pay-scale of Rs. 4000 -6000 for all non-teaching posts with the required qualification of SSC plus two years' diploma /certificate course (ITI) of two years. The State Government, however, turned down the said request and the same is reflected in government resolution dated 11.02.2013 issued by the State Government, revising the pay-scale of several posts on recommendation of the Pay Revision

Committee (Anomaly Committee) and the grievance of the petitioner is that the Committee did not confer the benefits of revised pay-scales on the petitioner, specifically, when according to the petitioner, the pay-scale for the posts of 'Electrician' and 'Wireman' is on par and the said fact has been ignored by the Committee. Being aggrieved, the petitioner has approached this court, seeking the aforesaid reliefs, which we have mentioned above.

4 In response to the petition, the Section Officer of the respondent no. 3 University has filed an affidavit on 19th November, 2014, wherein it is mentioned that the University had issued an advertisement on 03.07.2001 - Advertisement no. 04 of 2001, inviting the applications to fill the non-teaching post including the posts of Wireman, which was created from its own funds for a tenure of three years. It is stated on affidavit that the pay-scale for the post of wireman was prescribed as Rs.3050-4590/-. The affidavit also states that the petitioner was selected for the said tenure post and

was appointed vide order dated 30.04.2003. It is also stated in the affidavit that the post of wireman was not sanctioned by the State Government and it was temporarily created from its own fund by the University. However, the Government of Maharashtra vide government resolution dated 30.03.2005 has sanctioned 117 new non-teaching posts for the university and it was mentioned in the said resolution that the preference may be given to the candidates who were already working on the posts created from university fund i.e. temporary /tenure posts. The said government resolution had approved/sanctioned the post of 'Electrician' with pay scale of Rs. 3050-75-3950-80-4590. Therefore, the appointment of the petitioner, which was on tenure post, was transferred from the post created by the university from its own fund to the corresponding post of 'Electrician' in the same pay-scale which was sanctioned by the said Government Resolution and the petitioner was retrospectively absorbed against the corresponding post of 'Electrician', sanctioned vide G.R. Dated 30.03.2005 from the date of the creation of the post i.e. w.e.f.

17.02.2005. It was further mentioned in the order issued by the university on 23.03.2006, that the services of the petitioner would be counted from the date of his joining on the tenure post i.e. on 26.05.2003 for the purpose of post retirement benefits. The university has admitted in the affidavit that the respondent no.3-university does not come under the purview of Higher and Technical Education Department and, therefore, the government notification dated 04.02.1999 was not made applicable to the university, whereas the recommendations of 5th Pay Commission were made applicable to the respondent university vide government resolution dated 30.05.2000. The respondent no. 3 has further stated in the affidavit that the pay-scale of the petitioner was not revised and the university had submitted the proposal of the petitioner for revision of the pay-scale to Rs.4000-6000 to the State government.

5 Perusal of the proposal which has been forwarded by the university to the State government on 03.05.2013

reveals that the post of Public Relation Officers (PRO), Telephone Operator and Electrician call for a revision in pay-scale and necessary information in relation to the said posts was forwarded to the State government in regards to the post of 'Electrician', the respondent no. 3 has recommended that the post of 'Electrician' and 'Wireman' on the establishment of the university belong to the same cadre and it is also clarified that on incorporation of the university, the permission was granted to the university to create 88 posts from the funds of the university and to fill in up the said posts, pursuant to which the advertisement no. 04 of 2001 was issued by the university and that the present petitioner was appointed as 'Wireman', by adopting the procedure, in the pay scale of Rs. 3050-4590. The respondent no.3 -university also clarified that the petitioner possessed the requisite qualification for the post of 'Wireman'.

6 When the matter was heard by us on 7th November, 2017, we noted that the issue involved is whether the

petitioner can be termed as an Electrician when respondent no.3- university had issued an advertisement for recruitment to the post of Wireman and the Petitioner was recruited in the said capacity. We had also observed that the petitioner came to be appointed as Wireman and his post was designated as 'Electrician' with retrospective effect. We have also taken note of the clarification from the university that the eligibility criteria for appointment to both the posts was identical and in this background, the university had requested the State government to correct the anomaly or disparity in the pay-scales so as to enable the petitioner to draw pay as per both 5th and 6th pay commissions.

No affidavit filed by the State government in response to the writ petition, and, therefore, we directed production of original records by the Department of Medical Education and Drugs and also directed the concerned Deputy Secretary in the Department of Finance, Government of Maharashtra to remain personally present with the original records in relation to the proposal forwarded by the University

of Health Sciences to the Department of Medical Education and Drugs, which was further forwarded to the Finance Department for its opinion.

In pursuance of our order, the learned Assistant Government Pleader Mr. Samant, has produced before us original records and we had an opportunity to peruse the same.

7 The recommendations which are forwarded by the university to the State government on 03.06.2013, which is placed at Exh. 'H' to the petition, in relation to the post of petitioner clearly mentions that on incorporation of the university, it was granted permission to fill in 88 posts in various cadre from the funds of the university and after following due procedure, the petitioner came to be appointed as 'Wireman' in pursuance of an advertisement no. 04 of 2001 in the pay-scale of Rs. 3050-4590. It was also mentioned that in the advertisement, following educational qualifications were prescribed for the post of 'Wireman' :

Pay -scale	Educational Qualification
Wireman : (Scale 3050-4590)	Essential : i) Candidate should have passed Electrician course of Electric wireman of ITI or equivalent Institute. ii) Candidate should have 3 years experience of Electrical work in reputed organization. Iii) Age limit between 18-35 years at the time of appointment.

It is also mentioned that on issuance of the government resolution dated 17.02.2005, the State government granted permission to the university to create 117 posts in various cadres and directions were also issued that the persons, occupying the said post on the establishment of the university should be given preference. In the list of 117 posts, the post of wireman is not included. However, the university in pursuance of the decision of the State government dated 17.02.2005 and in furtherance of the resolution of the Management Council vide resolution no. 05 of 2006 issued an order on 23.03.2006, for absorbing the petitioner in the post of 'Electrician'. It is further relevant to note that by the

government resolution dated 05.03.2010, the pay-scales recommended by the 6th Pay Commission were made applicable to the respondent no.3-university and the pay-scales prescribed for the post of Electrician is in the pay-band of Rs. 5200-20200 with a grade pay Rs.1900/-. It is also relevant to note that the notification issued by the higher technical education department on 07.10.2009, made the recommendations of 6th Pay Commission applicable to the post of 'Electrician' and 'Wireman', and they have been brought in the pay-scale of Rs. 5200-20200, grade pay Rs. 2400/-. It is also mentioned that in the year 1997, the Pay Revision Committee of State Government had prescribed the qualification of passing SCC examination with two years diploma/ certificate ITI, as minimum educational qualification for corresponding pay-scale of Rs. 4000-6000 (S-7). The university also recommended that the educational qualification prescribed for the post of electrician in Swami Ramanand Tirth Marathwada University, Nanded is the same as the post of electrician in the respondent no.3 university.

With this background, the university requested or recommended to the State government that for the post of electrician, the pay-scale of Rs. 5200-20200 and grade pay of Rs.2400/- should be made applicable.

8 From the perusal of the recommendations made by the Respondent No.3- University and the affidavit in reply filed by the university before us, it is clear that the respondent no.3-university has admitted that the petitioner was appointed as wireman initially on the post which was created by the university on its establishment and the petitioner was issued with an order of appointment as wireman. However, subsequently the State government granted approval to 117 posts which included the post of electrician, the university had issued an office order on 23.03.2006 by taking recourse to the government resolution dated 17.02.2005 and the resolution of the management council, and transferred the post created by the university from its own fund to the corresponding post of electrician in the pay-scale of Rs.3050-75-3950-80-4590 and

absorbed the petitioner retrospectively from the date of creation of the post. The university, however, clarified that the services of the petitioner in the university for all pre and post retirement benefits shall be counted from the date of joining the tenure post i.e. on 26.05.2003. The respondent no.3-university, therefore, treated the petitioner as 'Electrician' from the date of his joining with the university i.e. on 26.05.2003. The university also recommended the case of the petitioner for being extended the pay-scale of Rs. 5200-20200 and, grade pay-2400, on par with the post of 'Electrician' and 'Wireman' in all universities under the control of the Higher and Technical Education Department. The university has, therefore, supported the case of the petitioner for extension of the revised pay-scale for being made applicable to the petitioner.

9 When we perused the record, produced before us by the learned Assistant Government pleader, we have noted that the pay anomaly committee in its report of 2012 dealt

with the proposal of the respondent no.3-university in respect of the post of the petitioner, where the petitioner was placed in the pay-scale of Rs.3050-4590 and it was recommended by the university to confer the pay-scale of Rs. 5200-20200 with grade pay 2400 for the said post. The pay anomaly committee observed that there is no anomaly/disparity in the pay-scale conferred and it concluded that the government resolution issued by the Medical Education and Drugs Department on 17.02.2005 has created the cadre of electrician in the non-revised pay-scale of Rs.3050-4590. The committee further observed that the petitioner was appointed as 'Wireman' and the posts of electrician and wireman are different cadre posts and, therefore, it would not be proper to make any comments on the pay-scale applicable to the post of 'Electrician'. The committee further observed that the said post have been sanctioned a revised pay band in the 6th pay commission, which was equivalent to the non-revised pay band in the 5th pay commission and therefore, there

is no anomaly in the pay band made applicable to the said cadre.

10 We find that the said decision by the Pay Anomaly Committee overlooks an important factual aspect involved in the issue. The respondent no. 3-university had issued an advertisement, inviting applications for the post of wireman and the qualifications prescribed for the said post, required the candidates to pass certificate course of electrician/electric/wireman from ITI or equivalent Institute. It also required that the candidates should have three years experience of any electrical work in a reputed organization. The petitioner possessed the said requisite qualification as he has completed the course in the trade of electrician from the Industrial Training Institute, Parbhani. The petitioner is also in possession of the National Trade Certificate issued by the State Council for Vocational Training, Ministry of Labour, Government of India. In view of the said qualification, he was selected for the said post of 'Wireman' and appointed

accordingly. The contention of the petitioner is that the State, by issuing resolution on 17.01.2014, was pleased to direct that the Maharashtra Civil Services Rules will be made applicable to the employees of the respondent no.3 university till the time a separate statute is framed. The petitioner's contention is that in view of the applicability of the Maharashtra Civil Services (Pay) Rules, 1981 to the cadre of the petitioner, who is an employee of respondent no.3-university, the petitioner is entitled for the benefit of salary as per the Maharashtra Civil Services (Pay) Rules, as revised from time to time. The requisite qualification for the post of wireman and electrician is the same and the university has admitted the said fact. The advertisement issued for the purpose of electrician in the State owned department i.e. the office of the Director General of Police, Maharashtra State, Pune also prescribes the similar qualification for being appointed to the post of electrician as the one which is prescribed by the respondent no.3-university for the post of wireman and a person who possesses a diploma in electrician

trade from ITI is qualified. It is not the case of the State Government that the qualification of the petitioner is not commensurate with the qualification prescribed in the advertisement. The only reason given by the Pay Anomaly Committee is that the posts of “Electrician” and “Wireman” belong to different cadres. We have seen that there is a single isolated post of electrician in the respondent no.3 university and if the relief sought by the petitioner is granted, no financial loss is going to be caused to the State government nor it requires re-structuring of the pay of the entire cadre of wireman. However, it is only an issue of single post of the petitioner who, according to the university, was selected as 'Wireman' but subsequently absorbed into its services as 'Electrician'. In our view the petitioner is, therefore, entitled for the pay-scale of the electrician as applicable in the other universities and as revised by the 5th and 6th Pay Commissions.

11 The State Government had issued a Government Resolution on 11th February, 2013 on recommendations by

the Pay Anomaly Committee and resolved in Appendix “D”, that post of 'Electrician' (Item 175) within the purview of the Maharashtra Health University, Nasik does not call for a change in the pay-scale since the Pay Anomaly Committee has not noted any lacuna in the pay-scales of the said cadre. The respondent no. 3 -university has also been communicated by the Pay Anomaly Committee that there was no lacuna in the pay structure of the post of electrician and the proposal of the university is rejected. We find that the decision of the Pay Anomaly Committee and also the communication to the respondent no. 3 university on 26.07.2013, are not sustainable for the reasons which we have noted in the above paragraphs.

It is not the cadre of which the pay-scale is required to be revised but it is the case where only the petitioner is to be held entitled for the pay-scale of the post of Electrician and the university has admitted that he was appointed to said post in the light of the decision of the State Government contained in the Government Resolution dated 17.01.2014, where the State Government has resolved to apply the Maharashtra Civil

Services Rules to the non-teaching staff of the Maharashtra Health University, Nasik and the petitioner, being an employee of the Maharashtra Health University, is entitled for extension of the said benefits.

12 In these circumstances, in our opinion, it would be unjust to deprive the petitioner of the benefits of pay on revision as per 5th and 6th Pay Commission applicable to the post of electrician, which the petitioner is undisputedly occupying on the establishment of the respondent no.3. The government resolution dated 11.02.2013 to the extent of the post of the Petitioner ('Electrician') at item no. 175 under the Appendix "D" is, therefore, liable to be set aside and the petitioner is declared as eligible to receive the revised pay-scale in terms of the Maharashtra Civil Services (Revised Pay) Rules, 2009 as applicable to the post of 'Electrician'.

13 The Writ Petition is allowed in terms of prayer clauses (b) and (c). Rule is made absolute accordingly. No order as to costs.

(SMT.BHARATI H.DANGRE,J.) (S.C.DHARMADHIKARI,J.)

.....