

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 426 OF 2017

Ravindra Chandrakant Indulkar,
Aged : 46 years, Indian Inhabitant of
Thane, Residing at : Room No.29,
Koushik, Shree Nagar, Thane West,
Thane-400 604.

.....Petitioner

V/s.

1. State of Maharashtra
(Through Ministry of Education)
Having its office at :
Higher 7 Technical Education Department,
Mantralaya, Mumbai-400 032.

2. The Principal Secretary Finance Department,
Government of Maharashtra,
Having Office at : Mantralaya,
Mumbai-400 032.

3. The Directorate of Technical Education,
Directorate of Technical Education,
M.S. Mumbai, having Office at :
3, Mahapalika Marg, Post Box No.1967,
Mumbai-400 001.

.....Respondents

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Mr. Shailesh K. More, Advocate for the petitioner.

Mr. A.L. Patki, Advocate for the respondents.

CORAM :- SMT. V.K. TAHILRAMANI, &

SANDEEP K. SHINDE, JJ.

DATED : 28TH JUNE, 2017.

ORAL JUDGMENT (Per :- SANDEEP K. SHINDE, J) :

1. The petitioner is one of the applicants who had filed Original Application No.1122 of 2012 before the Maharashtra Administrative Tribunal, Mumbai seeking parity in wages with Craftsman Instructors in other trades especially Printing Technology working in Government Polytechnics. The petitioner is working at Government Polytechnics (Government Leather Working School), Kherwadi, Mumbai as “Craftsman Instructor” (subject post) (Footwear and Leather Goods Technology) since 1988. The following courses were being run at the Government Leather

Working School;

(a) Diploma in Advanced Leather Goods and Footwear
Manufacturing (two years duration),

AND

(b) Certificate course in Artisan course (two years
duration).

Accordingly, post of Craftsman Instructor, besides, Assistant Superintendent, was created to teach the above courses. It appears for the subject post, there was no requirement of passing Diploma in Leather Technology, however, petitioner holds a Diploma in Advance Leather Goods and Footwear Manufacturing, which at the given point of time was of two years' duration. It is the petitioner's case that, vide G.R. dated 8th December, 1988, all Diploma Courses were transferred to Directorate of Technical Education and Certificate Courses to Directorate of Vocational Education and resultantly the examination of the Diploma in Leather Technology was started to be conducted by Board of Technical Education. The petitioner would

contend that, once the Diploma Course in Leather Technology was transferred to Directorate of Technical Education, who runs Government Polytechnics, the post of Craftsman Instructor in Leather Technology and other disciplines should have been treated at par. The petitioner would contend, after the Sixth Pay Commission, Printing Instructors in Government Institute of Printing Technology are getting pay in the pay-band i.e. to Rs.9,300-34,800 with grade-pay of Rs.4,300, whereas, the petitioner is getting pay in the grade-pay of Rs.5,200-20,200 plus grade pay of Rs.2,400/-. The petitioner would contend that, nature of duties attached to subject post and Craftsman Instructor in Printing Technology are broadly similar. He would submit that, if the State has failed to notify the recruitment rules for the post of Craftsman Instructor in Leather Technology as are notified in case of Craftsman Instructor in Printing Technology, the petitioner cannot be blamed or punished for the same.

2. The respondent, State resisted the petitioner's claim contending that, the Diploma in Leather Technology held by the petitioner is Certificate Course and not a Diploma in Engineering. The State would say that, the so called Diploma held by the petitioner was of two years duration, whereas, for the post of Craftsman Instructor in Printing Technology, requirement is Diploma of three years duration. The State further contended that, duties and responsibilities of the two posts are different and as such the petitioner is not entitled to claim pay parity in the scale as claimed by him. In other words, the State contended that, there is no violation of principle of equal pay or equal work.

3. The Tribunal held, (i) that the petitioner's could not prove that the Diploma held by him is a Diploma in Engineering as held by his counterparts in Printing Technology, (ii) that there was a Diploma Course in Leather Technology of three years in Maharashtra since 1962 and therefore the Diploma held by the petitioner is not

equivalent to Diploma in Leather Technology of three years duration. The Tribunal, further held that, petitioner/applicant holds, "Certificate Course". It held, a School (Government Leather Working School) cannot grant Advanced Diploma, which is issued by Polytechnics and as such concluded that, Diploma held by the petitioner was actually a Certificate Course.

4. The Learned Counsel appearing for the petitioner, would submit that, the Tribunal has not recorded a finding as regard to the nature of duties, the petitioner and his counterparts discharge in their respective faculties, which is imperative for answering petitioner's claim. He would submit that, parity of pay can be claimed by establishing, that the eligibility, mode of selection/recruitment, nature and quality of work and duties, functional needs, responsibilities and status of both the posts are broadly similar. He relied on the judgment of the Apex Court in the Case of **Steel Authority of India Limited and Others.**

V/s. Dibyendu Bhattacharya, (2011) 11 S.C.C. 122

and submitted that the equality clause can be invoked in respect of the pay scales only when there is wholesome/wholesale identity between the holders of two posts. He would submit, Tribunal has not considered and factually evaluated, parameters/factors as laid down by Apex Court while deciding issue of pay-parity. He would therefore submit, let Tribunal decide his claim of pay-parity afresh in view of law laid down by the Apex Court.

6. In the case in hand, the petitioner has pleaded in his O.A. that the duties and responsibilities of the Craftsman Instructor (Footwear & Leather Goods Technology) are broadly similar to the Craftsman Instructors in Printing Technology. In paragraphs-16, 17 and 19 of Original Application, petitioner-applicant has pleaded the duties, responsibilities, qualification of both the posts. Moreover, a comparative chart compiled by the Principal of erstwhile Government Institute of Leather Technology in respect of

these two posts was placed on record at Exhibit-J to OA. Petitioner-applicant has also urged that, apart from the duties, responsibilities and qualifications being similar with counterparts, they share a common nomenclature.

6. We have gone through the original application filed by the petitioner, reply filed by the State, rejoinder and sur-rejoinder filed before the Tribunal, as well as, the judgment and order of the Tribunal. In the case of *Steel Authority of India Limited and Others* (supra), it has been observed as under :-

“30. In view of the above, the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments

and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.”

. Thus, it was held that, before granting the pay parity and/or answering the claim for the pay parity, what is to be examined is wholesome/wholesale identity between holders of two posts and the burden of establishing such identity lies on the person who claims the said right.

7. Herein, petitioner's claim was overturned, only on the ground that, Diploma he holds, is not a Diploma in Engineering being issued by Government Leather Working School and as such it is Certificate Course. On this premise, his claim for pay-parity has not been accepted. It is however noticeable that, Tribunal has not examined as to whether there is wholesome identity between the post of Craftsman Instructor (Footwear and Leather Goods Technology) and Craftsman Instructor (Printing Technology), in respect of duties, responsibilities, qualifications and such other factors.

. In view of this fact and in the light of the law laid down by the Apex Court, we think it would be expedient in the interest of justice, if the Tribunal decides the 'issue' of "Pay-Parity" raised in the subject O.A. afresh on its own merits and in accordance with law, as expeditiously as possible. Resultantly, order dated 27th September, 2016 passed by the Maharashtra Administrative Tribunal in Original Application No. 1122 of 2012 is quashed and set aside and the Tribunal is directed to decide the petitioner's claim for "PAY-PARITY" afresh in accordance with law. Petition is disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)