

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

1018 WRIT PETITION NO. 513 OF 2018

SAYED RAUF SAYED YUSUF QUARI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AD OTHERS

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Advocate for Petitioners : Mr. Kudale Bhagwan S. and
Mr. A.R. Tapse

AGP for Respondent No. 1: Mr.P.S. Patil

Advocate for Respondent Nos 2 & 3 : Mr. Panpatte V.S.

Advocate for Respondent No 2 : Mr. S.S. Bora

Advocate for Respondent No 3 : Mr. S.P. Chate

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CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.

DATE : JULY 27, 2018

O R D E R :

The petitioners assail the order, dated 7.4.2012, so also seeks directions to the respondents to grant pay scale of Rs. 1200-2040 since 1986 and pay scale of Rs.4500-7000 since 1996 onwards.

2. The petitioners are retired teachers serving with respondent no. 2 and 3. The petitioners are appointed prior to 1972 and they possess qualification

of SSC and HSC. The said qualification as per Government Resolution dated 4.10.1983 was deemed to be the qualification for trained teacher in the year 1991. The Chief Executive Officer issued order declaring the petitioners as trained teachers. On or about 7.4.2012, the Chief Executive Officer declared the pay scale to the deemed trained teachers including the petitioners in the pay scale of Rs.1200-1800 for the year 1986 and Rs.4,000-6000 for 1996 onwards.

3. The learned counsel for petitioners submits that the pay scale has been erroneously fixed and same ought to be Rs. 1200-2040 since 1986 and pay scale of Rs.4500-7000 since 1996 onwards. The learned counsel relies on various judgments and the orders passed by this Court in Writ Petition no. 10418 of 2014, dated 14.1.2015, so also in Writ Petition bearing Nos. 1311 of 1997 with Writ Petition No. 9798 of 2012 with connecting Writ Petitions,

dated 13.2.2014.

4. Mr. Patil, learned counsel submits that this court may not entertain the Writ Petition. The petitioners have approached this court after 35 years. Because of the delay the present Writ Petition is not maintainable. The law helps diligent. The learned counsel relies on the following judgments of the Apex Court.

1) Union of India and others vs M.K.Sarkar, reported 2010 (2) SCC 59

2) State of Uttaranchal and another vs Sri Shiv Charan Singh Bhandari and others, reported in 2013 (12) SCC 179

3) C.Jacob vs Director of Geology and Mining Indus. Est. And Another, reported in 2008 (10) SCC 115

4) Jagdishlal vs State of Haryana, reported in 1997 (6) SCC 538

5. Learned counsel submits that the delay disentitles the party discretionary relief under Article 226 of the Constitution of India.

6. We have considered the submissions canvassed by learned counsel for the respective parties.

7. The petitioners are agitating violation of their right to get pay scale in proper pay band. Fixation of proper scale is the responsibility and duty of respondent nos. 2 and 3. Respondents cannot take advantage of their own wrong. On one hand, they fix wrong pay scale of the petitioners and thereafter agitate that the case of the petitioners should not be entertained on the ground of delay. Respondent nos. 2 and 3 are not expected to indulge in an adversarial litigation. Respondent Nos. 2 and 3 have to keep in mind that they are the Local Authority and the instrumentality of the State. They are expected to be model litigants.

8. The contention of the respondents that petitioners have approached this court after long gap of 35 years is on the face of it erroneous. The pay

fixation was done by the Education Officer in the year 2012. In the year 2012 wrong pay fixation was done by the Education Officer, which compelled the petitioners to approach this court. The said pay fixation was absolutely against the decision given by this court in various Writ Petitions reported (supra).

9. As the decision was taken for the first time in the year 2012 the petitioners got cause to agitate the same before this court. The petitioners are seeking enforcement of their right which has been denied by the respondents - instrumentality of the State.

10. There cannot be any dispute in proposition that in normal parlance in an adversarial litigation the delay would dis-entitle a party from claiming relief. In the present case authority erroneously fixed pay scale for its own employees in the year

2012. The pay fixation was wrongly done which was squarely against the judgments of this court referred supra.

11. The issue that the petitioners would be entitled for the pay scale on par with those persons who are appointed prior to 1972 and hold SSC qualification are entitled for pay band of Rs. 1200-2040 since 1986 and pay band of Rs. 4500-7000 since the year 1996 is not in dispute.

12. The issue is no longer res-integra in view of the judgment of the Division Bench of this Court in Writ Petition No. 1311 of 1997 with connected Writ Petitions dated 13.2.2014. For the reasons recorded in the said judgment, we pass the following order.

(a) The impugned order is quashed and set aside.

(b) The petitioners if are appointed prior to

1972 and were holding SSC qualification then those petitioners are entitled for the pay band of Rs.1200-2040 since 1986 and pay band of Rs.4500-7000 since 1996. The Respondents on satisfying themselves about the said fact and if they find the petitioners eligible, shall release the said benefits to the petitioners expeditiously and preferably within six (6) months.

(c) The writ petition is accordingly disposed of. No costs.

[**SUNIL K.KOTWAL, J.**] [**S.V.GANGAPURWALA, J.**]

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