

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

WRIT PETITION NO. 1504 OF 2011

Sunil Hari Pawar
and others

... Petitioners.

Versus

The State of Maharashtra
and others

... Respondents.

**WITH
WRIT PETITION NO.9229 OF 2011**

Mukund Namdeorao Khandve
and others

... Petitioners.

Versus

The State of Maharashtra
and others

... Respondents.

**WITH
WRIT PETITION NO.9267 OF 2012**

Sau. Asmita Sanjay Kapse
and others

... Petitioners.

Versus

The State of Maharashtra
and others

... Respondents.

....

Mr. A.D. Pawar, Advocate for the Petitioners in WP 1504/2011
and WP/9267/2012.

Mr. S.R. Barlinge, Advocate for the Petitioners in
WP/9229/2011.

Ms. D.S. Jape, A.G.P. for Respondent-State

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**CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

DATED : 24th FEBRUARY, 2018

ORDER (PER T.V. NALAWADE, J.)

1. All the petitioners are filed under Article 226 of the Constitution of India. The petitioners are working as a full time instructor in H.S.C. vocational course conducted by the respondent authorities. The Petitioner from Writ Petition No.1504/2011 have contended that they are having qualification of Diploma in Engineering. They want pay equal to pay paid to teachers of H.S.C. vocational course and they also want equal status. Some other petitioners are having different qualifications. By making amendment in the proceedings, the petitioners have also prayed for quashing of the Government decision dated 18.10.2016. Both the sides are heard.

2. It was submitted that in this State there are three kinds of vocational courses. In the present matter, H.S.C vocational course is involved. The institution like the present respondents conducting H.S.C. vocational course has a Laboratory-Workshop where the instructors are appointed for demonstration purpose. The petitioners are working as instructors. On the other hand,

full time teachers impart theoretical knowledge, the science behind experiments and techniques which are demonstrated in the Laboratory-Workshop.

3. It is the case of the petitioners that the nature of their work is similar to the nature of work of theory teachers though the qualifications prescribed for theory teachers are different. It is the case of petitioners that they have more work load in comparison to work load of theory teachers. It is their case that when they made a representation to the authority, the authority, In-charge Deputy Director also recommended to give them equal status.

4. It is the contention of the State that educational qualification prescribed for instructors is different from the qualification of full time teachers and the other eligibility conditions are also different. It is the case of the State that the duties of full time teachers are different than the duties of full time instructors.

5. It appears that, during the pendency of the present matter, decision was taken on representation made by the petitioner and

the Government changed the name of their post to make it full time teachers (practical) from full time instructor. However, the Government has made it clear that the nature of work will not change and the instructors like the petitioners will not be entitled to get equal status and the pay prescribed for full time teachers.

6. The learned A.G.P. drew the attention of this Court to the different qualifications prescribed for the two posts. The qualifications are as under:

“FULL TIME TEACHERS : Degree / Diploma in industrial Electronics / Electronic and Radio Engineering / Electronics & Tele-communication / Digital Electronics or equivalent in at least IInd class.

AND

1 year experience in case of Degree holders and 3 years experience in case of Diploma holders.

*FULL TIME
INSTRUCTOR*

: Degree / Diploma in industrial Electronics/Electronics & Radio Engg. /Electronics and Tele-communication / Digital Electronics in at least Second Class, at least one year experience in case of Diploma holders.

OR

S.S.C. and I.T.I. or N.C.V.T.

*Course in Mech. General
Electronics / Mech. Radio & T.V.
and C.T.I. / A.T.I. Pass.*

OR

*H.S.C. with Vocational
Technician Course in Electronics
Technology and prescribed
Teachers Training.*

AND

3 years experience.”

7. It is true that the diploma holders can get the post of full time teachers in view of education qualification mentioned above, but other condition is required to be fulfilled like having experience of three years. Further, when the post of full time teacher is advertised, there is always competition for getting that post. One diploma holder may succeed in that competition and may get the post of full time teacher, but another who is not found to be competent may not get that post. Such other diploma holder ordinarily tries for the post of full time instructor. Similarly, the educational qualification for full time instructor shows that even a candidate who has completed S.S.C. and I.T.I. as mentioned above can also get the post of full time instructor. Thus, the qualifications and eligibility conditions for the two posts are different. Competency is also involved for getting the post of full time teacher as already observed. Though

in the letter of recommendation, the authority of the Government, In-charge Director had proposed to give equal status, his recommendation dated 29.08.2009 does not show that he had taken into consideration aforesaid aspect, eligibility conditions for getting the two posts. This single circumstance was sufficient to discard the recommendation made the by In-charge Director.

8. The competency in practical or demonstration which is required to be done in Laboratory-Workshop cannot be compared with the competency in theory lecture. The theory involves giving the knowledge of science behind the experiments and techniques. This aspect needs to be necessarily considered at the time of selection of full time teachers. The qualification of S.S.C. and I.T.I. is sufficient for the post of instructor. For all these reasons, this Court holds that if the petitions are allowed, due to the appointment of the full time instructors on the post of full time teachers, the standard of education will definitely come down. Such decision will not be in the interest of students and in turn in the interest of society at large.

9. When the State takes some policy decision and two separate classes of teachers are created for a particular course like vocational course, the Court needs to go with the presumption that the decision is taken by the State on the basis of experts opinion and after studying the matter carefully from all the angles. The Courts are not expected to interfere in such policy decision taken by the State. The eligibility conditions are applicable at the entry point of the post and so subsequently at least the Court is not expected to take a decision in favour of the employees who have entered other class due to their less educational qualification and less competency.

10. In the matters like the present one, factor like workload cannot be a relevant factor. Only the eligibility conditions and the nature of work can be the relevant factors in the present matters. Thus, there are no merits in the claim made by the petitioners.

11. The learned counsel for the petitioner placed reliance on observations made in some reported cases. A copy of the decision given by the Supreme Court in *Civil Appeal No.632/2008*

(State of Punjab & Ors. Vs. The Senior Vocational Staff Masters Association & Ors.) dated 18.08.2017 is produced on record. The facts of this case were altogether different. Due to the change in policy of the Government, one class of employees was divided into two classes of employees on the basis of educational qualification. At entry level, the class which was to get lower scale was having requisite qualification, but subsequently the other class which was having higher educational qualification was given higher scale. In view of those facts, the Apex Court held that the Government was discriminating the employees who were similarly placed and who were doing similar work.

12. Reliance was placed on the decision of Nagpur Bench of this Court in *Writ Petition No.1180/1987 (Aniruddha Balkrishna Gawande and Ors. Vs. State of Maharashtra and Ors.)*. The facts of this case were also different. There was discrimination between full time teachers of vocational course and full time teachers of other courses of the same junior college. The nature of work was similar and so this Court held that their status needs to be equal.

13. The facts of other case on which the reliance was placed by the learned counsel for the petitioners like **1986 DGLS (Supreme Court) 925 (State of Mysore Vs. B. Basavalingappa)** were also different. The facts of this reported case were similar to the facts of the case ***The Senior Vocational Staff Masters Association*** cited supra.

14. Reliance was placed on the case reported in **1988 DGLS (Supreme Court) 405 (Jaipal & Ors. Vs. State of Harayana)**. In this case, the Apex held that the duties of the petitioners in that matter were similar to the duties of squad teachers working in other department like Social Education Scheme in Haryana. On facts, it was held that they were discharging similar duties and other conditions were also similar. In that case, mode of recruitment was different, but duties were similar.

15. The learned A.G.P. placed reliance on the judgment reported in **2014(13) JT 532 (Secretary, Department of Personnel and Ors. Vs. T.V.L.N. Mallikarjuna Rao and Ors.)**. The facts of this case were also different. Learned A.G.P. also

placed reliance on judgment reported in **1994 (2) SCC 521 (Shyam Babu Verma Vs. Union of India)**. In this case, the Apex Court has laid down that for one service also there can be two scales based on academic qualification or experience justifying classification. The Apex Court has observed that in such case the doctrine of equal pay for equal work will not be attracted. Thus, if two different classes are created right at the entry point on the basis of educational qualification, the persons having lower educational qualification cannot have grievance about that. There cannot be dispute over this preposition also.

16. Learned A.G.P. placed reliance on the judgment reported in **2009 (12) SCC 231 (Harayana State Electricity Board & Anr. Vs. Gulshan Lal & Ors.)**. In this case, the Apex Court has held that 'equal pay for equal work' doctrine has no automatic application. The Apex Court has laid down that the application of this doctrine involves several factors like qualification, experience and other factors which may be relevant for different posts. This preposition also cannot be disputed.

17. In the present matter, not only there was a difference in the educational qualification at the entry level, but there is a difference in the nature of work of these two classes. So, this Court holds that, the full time instructions, who will be now called as full time teachers (practical) cannot get equal status with full time teachers (theory) and they cannot get equal pay also.

In the result, all the petitions stand dismissed with no order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

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