

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

12 WRIT PETITION NO. 8390 OF 2015

1. Shri. Sanjay s/o. Rangnath Patare,
Age: 42 Years, Occu.: Lecturer,
R/at. House No.73, Ananad Nagar,
Pathardi, Dist. Ahemdagar.
2. Shri. Sanjeevkumar s/o. Kashinath Chelve,
Age: 43 Years, Occu.: Lecturer,
R/at. Siddheshwar Krupa Building,
Plot No.48, Survey No.28/8,
Shevgaon-Gaichap Road,
Anand Nagar, Pathardi, Dist. Ahemdagar.
3. Shravan s/o Sangoji Rathod,
Age: 47 Years, Occu.: Lecturer,
R/at. C/o. Ashok Mahadeo Sudke,
Sudke Niwas, Anandnagar,
Pathardi, Dist. Ahemdagar.
4. Sunil s/o Damodar Mahajan,
Age: 41 Years, Occu.: Lecturer,
R/at. Near Sena Maharaj mandir,
Anand Nagar, Pathardi, Dist. Ahemdagar.
5. Ravindra s/o Pandurang Kasar,
Age: 44 Years, Occu.: Sneior Clerk,
R/at. Ganesh Peth, Pathardi, Dist. Ahemdagar.
6. Satish s/o. Trimbak Palse,
Age: 47 Years, Occu.: Lab Assistant,
R/at. At Post Pathrud, Tq. Bhoom,
Dist. Osmanabad.
7. Vijay s/o. Bhausahab Khatik,
Age: 47 Years, Occu.: Lab Assistant,
R/at. Dangewadi, Post Pathardi,
Dist. Ahemdagar.
8. Ramesh s/o. Bhagchand Satpute,
Age: 47 Years, Occu.: Lab Attendant,
R/at. Behind Anand College, Anand Nagar,

Pathardi, Dist. Ahemdnagar.

9. Pramod s/o Vilas Rodi,
Age: 41 Years, Occu.: Lab Attendant,
R/at. Ganesh Peth, Pathardi,
Dist. Ahemdnagar.
10. Bhausahab s/o Sitaram Kute,
Age: 40 Years, Occu.: Lab Attendant,
R/at. Post Dhamangaon Deviche,
Tq. Pathardi, Dist. Ahemdnagar.
11. Raju s/o Ganpat Gosavi,
Age: 40 Years, Occu.: Lab Attendant,
R/at. Kasba Wes, Near Kholeshwar Mandir,
Pathardi, Dist. Ahemdnagar.
12. Anna s/o Chabu Kalokhe,
Age: 45 Years, Occu.: Peon,
R/at. Kasba Wes, Near Maroti Mandir,
Koradgaon Road, Pathardi,
Dist. Ahemdnagar. ..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Higher And Technical Education Department,
Mantralaya, Mumbai.
2. All India Council for Technical Education,
Human Resources and Development
Department, 7th Floor, Chandralok
Building, Janpath, New Delhi.
3. The Pharmacy Council of India,
Combined Council Building, Tempal Lane,
Kothala Road, Aiwan-E-Ghalib Marg,
P.B.No.7020, New Delhi – 110002.
4. The Director,
Directorate of Technical Education,
Maharashtra State, 3,
Mahapalika Marg, Post Box No.1967,
Mumbai – 400001.

5. The Joint Director,
Directorate of Technical Education,
Regional Office, Samangaon Road,
Government Polytechnic Area,
Nashik Road, Post Box No.219,
Nashik – 422101.
6. Shri. Tilok Jain Dnyan Prasarak Mandal,
Pathardi, Tq. Pathardi, Dist. Ahemdnagar,
Through its Secretary-
Satish s/o Chandmal Gugale,
Age: 48 Years, Occu.: Business,
R/at. Shri. Tilok Jain Dnyan Prasarak Mandal,
Lakar Lane, Pathardi, Tq. Pathardi,
Dist. Ahemdnagar.
7. The Principal,
Shri. Anand College of Pharmacy,
Pathardi, Tq. Pathardi,
Dist. Ahemdnagar. ..RESPONDENTS

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Mr. U. R. Awate, Advocate for the Petitioners.
Mr. S. B. Joshi, AGP for Respondent-State.
Mr. S. R. Barlinge, Advocate for the Respondent
No.6.
Mr. Prashant R. Nangare, Advocate for Respondent
No.7.

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**CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.**

DATED : 3rd DECEMBER, 2018.

JUDGMENT (Per S. V. Gangapurwala, J.) :-

1. Rule. Rule made returnable forthwith.
With consent of the parties, matter is taken up for
hearing at admission stage.

2. The petitioners claim to be a members of

the teaching and non teaching staff of Respondent No. 7- Junior College of Pharmacy run by Respondent No. 6- Society. The grievance of the petitioners is that they are not paid the salaries as per the recommendation of the 5th and 6th pay commission.

3. Mr. Awate, the learned counsel for petitioners states that he is instructed to submit that petitioners would be restricting their claim for payment as per 6th pay commission from 01.01.2006. The learned advocate submits that petitioners are the members of the teaching and non teaching staff of Respondent No. 7- Junior College of Pharmacy. The Respondent No. 7 is unaided institution. The Respondent No. 6 is governed by the A.I.C.T.E. rules and regulations framed and issued by the A.I.C.T.E. According to the learned counsel on or about 27th February, 2003 the Higher and Technical Education Department, Government of Maharashtra passed a resolution thereby prescribing the pay scales of the teachers in the non-government Pharmacy College. The pay fixation was done as per the 5th pay commission. Thereafter, on 20th August, 2010 the Higher and Technical Department, Government of Maharashtra made pay fixation of the Lecturers in non-government institutions as per the 6th pay commission.

4. Mr. Awate, the learned counsel further submits that this court has called for the report

from the Director of Technical Education and report is submitted that payment has been made as per the 5th pay commission and no payment has been made as per 6th Pay Commission.

5. For non teaching staff the Higher and Technical Education Department under resolution dated 20th October, 2000 prescribed the pay scales as per the 5th pay commission and under Government Resolution dated 7th May, 2010 prescribed the pay scales of the members of the non teaching staff as per 6th Pay Commission. The Respondent Nos. 5 and 6 were duty bound to implement the said Government Resolutions, wherein the pay has been fixed. The pay scales prescribed for teaching and non teaching staff of aided private colleges can not be different than the salaries to be paid by unaided college. The pay scales would be uniform. The learned counsel to substantiate his submissions relies on the judgment of the Apex Court in a case of **Secretary Mahatma Gandhi Mission and Another Vs. Bhartiya Kamgar Sena and Others**, reported in 2017 (4) SCC 449.

6. The learned counsel submits that the issue about salaries of the members of the teaching and non teaching staff of private unaided colleges is no longer res integra and is decided by the Division Bench of this Court at Bombay as well Aurangabad. The learned counsel relies on the judgment of the

Division Bench of this Court at Aurangabad in Writ Petition No. 5150 of 2013 dated 15th January, 2018 and another judgment of the Division Bench of this Court at the Principle Seat at Bombay in Writ Petition No. 8493 of 2004 dated 16th August, 2018.

7. Mr. Barlinge, the learned counsel for the Respondent Nos. 5 and 6 submits that the Diploma in Pharmacy course is included under definition of school and is governed by the provisions of M.E.P.S. Act and Rules. Pay scales are prescribed under Schedule 'C' of the M.E.P.S. Rules. The parties would be governed by the pay scales as prescribed in Schedule 'C' of the M.E.P.S. Rules. M.E.P.S. Rules prescribes the pay scale for the lecturers and also the non teaching staff of college of education. The same pay scale would be applicable to the members of the teaching and non teaching staff of Junior College of Pharmacy. The learned counsel relies on the definition of school under Section 2 (24) of the M.E.P.S. Act. The learned counsel submits that the executive instruction/Government Resolutions relied by the petitioners deal with the pay scales of non-government aided institutions and government institutions. The said resolutions are not applicable to unaided colleges. The Respondent No. 7 is unaided college. According to the learned counsel the letter of the Director of the Higher Technical Education Department dated 18th May 2010

is only dealing with the pay scales of aided institutions and not of unaided institutions. The learned counsel submits that the Nagpur Bench of this Court in a case of **Mahadev Pandurang More & Ors. Vs. The State of Maharashtra & Ors.** reported in **2014 (5) ALL MR Page 1** has held that for schools the pay scale applicable would be as per the schedule 'C' of the M.E.P.S. Rules and it is also held by the Division Bench of this Court that the Junior College comes within the purview of the definition of school.

8. Mr. Barlinge, learned counsel further submits that the schedule has been amended in the year 2017. Till the year 2017 the parties would be governed by unamended schedule 'C'. The learned counsel submits that when the rules are holding the field, the government instructions would not prevail. The learned counsel in alternate submits that the petitioner has approached the court belatedly. There is an inordinate delay in approaching the Court. The petition is filed in the year 2015. The claim of the petitioner should not be considered for the period prior to the filing of petition.

9. The learned A.G.P. submits that it is the responsibility of Respondent No. 6 to implement respective pay scales and pay arrears of the salary.

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

11. The Junior College running diploma in Pharmacy Course is within the realm of the definition of school as contemplated under section 2(24) of the M.E.P.S. is no longer res integra. It has been held in catena of judgments that junior college running diploma in pharmacy course is within the purview of the definition of school and the provision of M.E.P.S. Act and Rules apply.

12. The M.E.P.S. Act and Rules regulate the recruitment and the conditions of service of the employees in private schools. Schedule 'C' of M.E.P.S. Rules prescribes the pay scale payable to the teachers. The said Rules are framed by the State Government pursuant to its powers under section 4 of the M.E.P.S. Act. We had asked the learned counsel for the respondent-Institution the pay scale prescribed under the said schedule for the teachers for diploma in pharmacy course. No such provision could be pointed out. The learned counsel contended that the pay scale applicable to the teachers in college of education shall be made applicable. The petitioners are not the members of the teaching and non-teaching staff of college of education, but are of the junior college of diploma in pharmacy. The schedule 'C' nor other provisions in the M.E.P.S. Act or Rules prescribe the pay

scales payable to the teachers in the junior college (school) running diploma in pharmacy course. In such a scenario the State can exercise its executive powers by issuing administrative orders, circulars, instructions or resolutions, so long as the legislature does not make any law on that subject. In absence of the pay scale being provided by the Rules certainly reliance can be placed on the Government instructions issued from time to time.

13. We need not refer to the Government Resolutions providing pay fixation as per 5th Pay Commission, as the petition is now restricted claiming pay scale as per the 6th Pay Commission as effective from 01.01.2006.

14. One of the limb of the argument of the respondent is that the Government Resolution deal with the pay scale to be paid to the aided non-government institution and respondent-Institution is unaided institution. The aspect of the pay scale for unaided institution was subject matter of consideration before the Apex Court in a case of **Secretary Mahatma Gandhi Mission and Another Vs. Bhartiya Kamgar Sena and Others** (supra).

15. The respondent no.7-Institution is covered under the definition of Technical Education as provided under section 2 (h) of the All India Council for Technical Education Act, 1987. The A.I.C.T.E. has made recommendations regarding the

qualification and the pay scales for teachers under the Higher and Technical Education. The A.I.C.T.E. has prescribed the pay scales. The All India Council for Technical Education is established under the provision of A.I.C.T.E. Act, 1987. In exercise of its power, the Council had framed the norms and standards for colleges offering diploma course such as Polytechnic and Pharmacy. The A.I.C.T.E. has under the notification dated 05.03.2010 enforced All India Council for Technical Education [pay scales, service conditions and qualifications for teachers and other academic staff in technical institution (diploma)] Regulations, 2010. It states that the said regulations shall apply to the teachers in the polytechnic namely Lecturers, Head of the Department and Workshop Superintendent. The pay scales and the career advancement of the teachers and the conditions of eligibility and academic qualification is provided by the A.I.C.T.E.. The affidavit filed by the A.I.C.T.E. further says as under:

"7. I further say that the applicability of the Scheme under the regulation, prescribes the following:

(i) This scheme shall be applicable to teachers in Technical Institution and other equivalent cadres in library and physical education personnel in all the AICTE approved institutions. The implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter

as well as the regulations to be framed by the AICTE in this behalf.

(ii)....

(iii)....

(iv) The entire liability on account of revision of pay scales etc. of Polytechnic teachers shall be that of the State Government.

State Government, taking into consideration other local conditions, may also decide in their discretion, to introduce scales of pay higher than those mentioned in the scheme, and may give effect to the revised bands/scales of pay from a date on or after 01.01.2006. However, appropriate steps to achieve the goals and objectives of MHRD's "Sub-Mission on Polytechnics" may be taken.

8. I further say that the regulations prescribe the date of implementation of revised pay and allowance and payment of arrears, as under:

(i) The revised Pay and revised rates of Dearness Allowances under this Scheme shall be effective from 01.01.2006. The revised rates of all other applicable allowances such as House Rent Allowance, Transport Allowance, Children Education Allowance, etc. and the non-compoundable advance increments shall take effect from 01.09.2008.

(ii)...

(iii)....

(iv) The revised Pay in the relevant Pay Bank and the Academic Grade Pay together with the applicable allowances including arrears of salary as mentioned above shall be paid to all eligible beneficiaries under this Scheme pending

issue of Regulations by the AICTE.

(v) Anomalies, if any, in the implementation, of this Scheme may be brought to the notice of the Department of Higher Education, Ministry of Human Resource Development and AICTE, for clarification.

16. Thus A.I.C.T.E. provides the norms/guidelines of the pay scales payable to the teachers, qualifications and service conditions for teachers and other academic staff in technical institutions (Diploma), which is to be implemented by the State Government. The affidavit further states that the respondent no.7 has given a undertaking to the A.I.C.T.E. and declared that the management/institute is paying full salary to the staff as per Rules and Regulations. The Government Resolution dated 20.08.2010 prescribes the pay scales of the teachers in diploma level technical education as per 6th Pay Commission. Under the said G.R. the Government infact accepted the recommendations issued by A.I.C.T.E. under notification dated 05.03.2010. The distinction cannot be made in respect of the pay scales payable to the members of the teaching and non-teaching staff of aided diploma in pharmacy college and unaided one.

17. This Court in a case of Kiran v. State of Maharashtra in Writ Petition No.5150 of 2013 under judgment dated 15.01.2018 has held that the members of teaching staff of the junior college running

diploma in pharmacy course are entitled for the salary as per the 6th Pay Commission. The said judgment it appears is confirmed by the Apex Court. The Division Bench of this Court at its Principal Seat at Bombay in Writ Petition No.8493 of 2004 under its judgment and order dated 16.08.2018 has also held that the teaching and non-teaching staff are entitled for the pay scales as fixed based on the recommendations of A.I.C.T.E..

18. This takes us to the next question as to the period for which the petitioners should be given benefits. The writ petition is filed in the year 2015. No plausible reason is given as to why the petitioners have not moved the Court immediately upon the introduction of the Government Resolution in the year 2010. The respondent no.7 is unaided institution. Asking the unaided institution to pay the arrears since 01.01.2006 would be putting a burden, which it may not sustain, as is contended by the learned counsel for respondent nos.6 and 7.

19. Considering the same, we grant the benefit to petitioners of payment to be made as per 6th Pay Commission in tune with the Government Resolution dated 07.05.2010 and 20.08.2010 from 10.08.2012 viz. three years prior to the filing of the writ petition.

20. The respondent nos.6 and 7 shall make payment to the petitioners accordingly henceforth regularly and the arrears from 10.08.2012 till date shall be paid within a period of three (03) months. The payment already made shall be adjusted.

21. Rule accordingly made absolute in above terms.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/December-18