

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

WRIT PETITION NO. 12277 OF 2016

Arun Laxman Kumbhare, .. Petitioner
Age. 66 years, Occ. Retired,
R/o. B/4, Flat No.401,
Comfort Zone3 Plus,
Next to Comfort Zone Baner,
Balewadi Road, Pune.

Versus

1. The State of Maharashtra .. Respondents
Through its Principal Secretary,
Higher & Technical Education
Department, Mantralaya,
Mumbai – 431 032.
2. The Director of Higher Education,
Maharashtra State, Central Building,
Pune, District Pune.
3. The Joint Director of Higher
Education, Department of Higher
Education, 17, Dr. Ambedkar Road,
Pune, District Pune.
4. The University of Pune,
Ganesh Khind, Pune, Through its
Registrar.
5. New Arts, Commerce and Science
College, Ahmednagar, District
Ahmednagar.

Mr.P.S. Paranjape, Advocate for the petitioner.
Mr.S.B. Yawalkar, AGP for respondent Nos. 1 to 3.

**CORAM : S.S.SHINDE AND
S.M.GAVHANE, JJ.**
RESERVED ON : 23.01.2018
PRONOUNCED ON : 01.03.2018

JUDGMENT [PER : S.M.GAVHANE, J.] :-

1. Heard the learned Counsel appearing for the petitioner and learned AGP for respondent Nos. 1 to 3.
2. Rule. Rule made returnable forthwith and heard finally with the consent of learned Counsels appearing for the parties.
3. The petitioner has filed this petition mainly for the following prayers :-

"a. By a Writ of Mandamus or Orders or directions in the nature of mandamus, petitioner's basic pay be stepped up equivalent to his junior Associate Professor w.e.f. the date of promotion of the junior Associate professor till the date of retirement of the petitioner as per the Government Resolution dated 12.08.2009 (Exhibit 'A').

b. By a Writ of Mandamus or Orders or directions in the nature of mandamus, respondents be directed to pay the interest @ 18% p.a. On arrears of salary

from the date it became due and payable to the petitioner as per Note 6 of the Government Resolution dated 12.08.2009 (Exhibit 'A').

c. By a Writ of Mandamus or Orders or directions in the nature of mandamus, respondents be directed to revise the pension benefits of the petitioner as per the revised salary after stepping up as per Government Resolution dated 12.08.2009 (Exhibit 'A').

d. By a Writ of Mandamus or Orders or directions in the nature of mandamus, respondents be directed to pay the interest @ 18% p.a. on arrears of pension benefits from the date it became due and payable to the petitioner as per Note 6 of the Government Resolution dated 12.08.2009 (Exhibit 'A').

e. By a Writ of Mandamus or Orders or directions in the nature of mandamus, respondent no.1 Principal Secretary, Higher & Technical Education, Maharashtra State be directed to hold an enquiry for denial to the present petitioner the benefits of Note 6 of the Government Resolution dated 12.08.2009 (Exhibit 'A') and the officers guilty of lapses in their duties may be dealt with disciplinary action."

4. It is case of the petitioner that he was appointed as a Lecturer on 12.03.1976 by the Ahmednagar Jilha Maratha Vidya Prasarak Samaj's New Arts, Commerce & Science College, Ahmednagar. On 25.06.1983 he obtained Ph.D. Degree from the University of Poona. There are other professors junior to the petitioner, who obtained

Ph.D. Degree subsequent to the petitioner, however, due to implementation of 6th Pay Commission, other professors junior to the petitioner are getting higher salaries than the petitioner.

5. It is further case of the petitioner that as per rules in respect of seniority under statute 422 framed by respondent No.4 University of Poona, the petitioner is senior to the other associate professor. On 12.08.2009 the Higher and Technical Education Department of State of Maharashtra issued a Government Resolution for stepping up of the salaries. Under Note 6 of the said Government Resolution, a provision is made up for stepping up salaries of the teachers whose juniors are getting more pay because of implementation of the 6th Pay Commission. The petitioner is fulfilling all the four conditions as described in Note 6 of the Government Resolution dated 12.08.2009. The anomaly has arose as the Lecturers who have received Ph.D. Degrees after 01.01.2006 are entitled to get three increments, each increment is of 3% of the

basic pay plus academic grade pay. When the petitioner completed his Ph.D. Degree before 01.01.2006, he was entitled to two increments of Rs.420/- each totaling to Rs.840/- while the teachers who got their Ph.D. Degrees subsequently got almost increase of Rs.9000/- per month.

6. The petitioner further submitted that respondent No.5 College submitted a representation bearing Outward No.2010-2011/62 to the Committee for implementation of 6th Pay Commission and for removing the anomalies in the salaries of Associate Professors of their College. The petitioner thereafter retired from services of respondent No.5. There were representations made by other petitioners and since the same were not heeded to by the respondents, they filed Writ Petition bearing Nos. 10283 of 2012 and 888 of 2013 before this Court. This Court allowed the petitions and thereafter directed the respondents to bring parity between the petitioners who were seniors and other Junior Associate Professors. Thus, the petitioner is approaching to this Court with

aforesaid prayers, who deserves higher pay scale and parity with the Junior Associate Professor.

7. No reply affidavit is filed on behalf of the respondents.

8. We have heard learned Counsel for the petitioner and learned AGP for respondent Nos.1 to 3/State. Learned Counsel for the petitioner made submissions in the light of the contentions in the petition. In support of his submission, the learned Counsel has relied upon judgments of this Court in Writ Petition No.1302 of 2016 [Satish Bhagwanrao Jadhav & Ors. Vs. The State of Maharashtra & Ors.] dated 29.08.2016, Writ Petition No.6703 of 2016 [Bhatajirao Sitaram Patil & Ors. Vs. The State of Maharashtra & Ors.] dated 18.08.2016 and Writ Petition No.10283 of 2012 [Sudamrao Keshawrao Aher & Ors. Vs. The State of Maharashtra & Ors.] with connected petitions dated 21.11.2013.

9. In the case of **Sudamrao Aher and others (Supra)**

in para 15 and 16 it was observed thus :-

"15. In present matter, according to us, the incentives while implementing 6th Pay Commission for Ph.D. cannot be so given so as to give a junior teacher more pay than the senior who is otherwise equally qualified. Rather he has more experience and is senior even in the acquisition of the Ph.D. Degree. All things given to be the same at a given point of time, junior teacher could not be getting more salary than the senior only because the junior has just acquired the Ph.D. Degree. The Constitution has goal under Article 39(d) that there should be equal pay for equal work. If the arguments as raised on behalf of the Respondents are accepted, the same would amount to discriminating to teachers only on the basis of junior teacher having acquired Ph.D. Degree recently under new Pay Commission. This would be violative of the principles as enunciated in Article 16 of the Constitution and such position cannot be allowed to be maintained. It is different when one person is having higher qualifications. However, it would be discriminatory when both are having similar qualifications and a person not only senior in service but also equally qualified is so discriminated so as to be put in disadvantageous position as if it was a fault to have acquired Ph.D. Degree earlier. It is not a case of keeping the incentive separate and not part of pay. If pay fixation of Petitioner No.1 (as at Page 6061 in Paper Book) is seen, on 1st July 2008, his basic pay is shown as Rs.57260/while that of Shri.S.S. Nighut (See Page 107) was Rs.55870/. Then in the proforma of Pay Fixation, entry on 22nd September 2008 for Shri. S.S.

Nighut shows his basic pay as "55870+5030=60900". Thus the increments were merged in the basic. This would be discriminative between Senior Teacher and Junior Teacher. Note 5 below Appendix I of the G.R. needs to be so applied that such discrimination is removed.

16. For the above reasons both the Petitions need to be allowed with directions that Respondents shall take necessary action to step up the pay of the Petitioners in both the Petitions so as to be at par with juniors where all the things given are same and shall not discriminate only because the junior teacher has acquired Ph.D. Degree in the course of 6th Pay Commission. The salaries of the Petitioners in both the Petitions may be refixed and arrears be paid within a period of THREE MONTHS. For Petitioners who have already retired, the pension shall be refixed accordingly."

10. We have carefully considered the submissions made on behalf of the either side. We have also perused the record. The petitioner's case is similar to the case of **Sudamrao Aher and others (Supra)**. Therefore, for the reasons recorded while disposing of the matter presented by **Sudamrao Aher and others (Supra)**, the instant petition also deserves to be allowed and the same is accordingly allowed.

11. The respondents shall take necessary action to step up the pay/pension of the petitioner so as to bring it at par with juniors where all the parameters are same and shall not discriminate only because the junior teachers have acquired Ph.D. Degree/M.Phil qualification as the case may be and are getting higher salary/pension during implementation of 6th Pay Commission's recommendations. The salaries of the petitioner may be re-fixed and arrears be paid within a period of six months.

12. Rule made absolute accordingly. There shall be no order as to costs.

[S . M . GAVHANE , J .]

[S . S . SHINDE , J .]