

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8914 OF 2015

The State of Maharashtra and ors.	...Petitioners
Versus	
Smita P. Bhawe and ors.	...Respondents

**WITH
WRIT PETITION NO. 8915 OF 2015**

The State of Maharashtra and ors.	...Petitioners
Versus	
Ashok K. Pusegaonkar and ors.	...Respondents

Mr. O.M. Kulkarni, AAGP for the State/Petitioners in both the petitions.

Mr. B.A. Bandiwadekar for Respondent Nos.1 to 5 inWP No. 8915/15.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 12th MARCH 2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule in both the petitions. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith in both the petitions.

3] Learned counsel for the parties agree that both these petitions can be disposed of by common judgment and order, since in both the petitions, the challenge is to the common judgment and order dated 27th August 2014 made by the Maharashtra Administrative Tribunal (MAT), Mumbai disposing of O.A. No.8 of 2009 and O.A. No. 10 of 2009 instituted by the respondents in the respective writ petitions. Accordingly, both these petitions are being disposed of common judgment and order.

4] The respondents in the two petitions, who were original applicants in O.A. No.8 of 2009 and O.A. No. 10 of 2009 were working as Full Time Teachers/Instructors at the Food Craft Institute, Pune (now named as MSIHMCT, Pune). Consequent upon the acceptance of recommendation of 5th Pay Commission, benefits so accepted were extended to these respondents by G.R. dated 1st January 2000. This G.R made it clear that such benefits were being extended not only to Industrial Training Institutes (ITIs) but also to Government Polytechnics like MSIHMCT, Pune. Since, both are institutions/departments under the department of Higher and Technical Education, Government of

Maharashtra.

5] In the year 2004, the pay scales of Full Time Teachers/Instructors at the ITIs were revised vide G.R. dated 17th January 2004. However, the benefit of such revision, was not extended to the respondents or other employees of Government Polytechnics like the MSIHMCT, even though, there is no dispute that MSIHMCT has a status of Government Polytechnics and further, like ITIs as well as Government Polytechnics are under one and the same Department of Higher and Technical Education, Government of Maharashtra. Therefore, the respondents, after making representations and securing no favourable response, instituted O.A. No.8 of 2009 and O.A. No. 10 of 2009 seeking for extension of the benefit of revised scale in terms of G.R. dated 17th January 2004 to them on the basis of parity.

6] The MAT by the common judgment and order dated 27th August 2014, after finding merit in the case of the respondents has directed the petitioners - State to extend the benefit of G.R. dated 17th January 2004 and its

corrigendum dated 20th March 2006 to Full Time Instructors and Full Time Teachers at MSIHMCT, Pune within a period of three months from the date of impugned judgment and order. Hence, the present petitions by the petitioners – State.

7] Mr. Kulkarni, learned AAGP for the petitioners – State, submits that G.R. dated 17th January 2004 was made applicable only to the Full Time Teachers and Instructors at ITIs and other Government / Non-Government Technical Secondary and Higher Secondary Schools. He submits that extension or benefits of revised pay scale is a purely policy decision and therefore, the State was entitled to decide the category of posts to which such benefit of revised scales would be extended. He submits that in a matter involving policy, the MAT, was not entitled to interfere. Since, the MAT has interfered in such a matter, the impugned judgment and order is liable to be set aside.

8] Mr. Bandiwadekar, learned counsel for the respondents-original applicants, submits that the two sets of employees have throughout been treated it par. He

submits that the qualifications and nature of duties discharging by them are almost identical. He submits that the two sets of employees belong to one and the same Department of Higher and Technical Education, Government of Maharashtra. Merely on the ground that the ITIs and the Government Polytechnics function as separate directorates, there is absolutely no reason to practice any discrimination amongst the employees of the two directorates. He submits that the MAT has examined the matter in detail and there is no jurisdictional error in the impugned judgment and order so as to warrant interference with the same.

9] The rival contentions now fall for our determination.

10] The MAT has noted that the ITIs and the Government Polytechnics are under one and the same Department of Higher and Technical Education, Government of Maharashtra. This position was not even disputed by learned counsel for the petitioners- State. However, the only submission was that the ITIs and the Government Polytechnics function under different directorates. That by

itself, may not be a good ground for differential service conditions in the matter of pay and allowances. This is more so because the MAT, upon examination of the record has concluded that the qualification and the nature of work discharged by the two sets of employees is similar, if not identical. The record indicates that the two sets of employees are discharging duties as Full Time Teachers/Instructors in Government ITIs and Government Polytechnics respectively. As noted earlier, both Government ITIs and Government Polytechnics function under one and the same Department of Higher and Technical Education, Government of Maharashtra.

11] The material on record also indicates that almost throughout, the two sets of Full Time Instructors/Full Time Teachers at the Government ITIs and Government Polytechnics have been treated on par. The benefit of the 5th pay scales was equally extended to both sets of employees without any discrimination. Until the issuance of GR dated 17th January 2004, the service conditions of the two sets of employees were virtually identical in all respects. The GR dated 17th January 2004 has revised the

pay scale in respect of employees at the Government ITIs. However, for no reason, the benefit of such revised pay scale was not extended to similarly placed employees at the Government Polytechnics. Despite several opportunities to explain the reason for such exclusion, all that the petitioners - State has contended that this is a policy decision and therefore, immune from judicial review.

12] In the absence of any reason for such differential treatment, the petitioners - State, cannot avoid compliance with the mandate of equality guaranteed by Article 14 of the Constitution of India by merely pleading that this is a matter of policy. The petitioners - State, cannot rely upon some policy, which is itself discriminatory or which breaches the guarantee of equality under Article 14 of the Constitution of India. This is not a case where the petitioners - State has justified the differential treatment on the basis of any cogent or even plausible reason.

13] The petitioners - State merely contends that since this is a matter of policy and since policy is immune from judicial review, the MAT, has exceeded its jurisdiction in

making the impugned judgment and order. Such a contention has been quite rightly been rejected by the MAT by the impugned judgment and order.

14] For the aforesaid reasons, we see no infirmity in the impugned judgment and order made by the MAT. Both the petitions are therefore dismissed. Rule in both the petitions is therefore, discharged. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)