

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

WRIT PETITION NO. 11251 OF 2013

Maharashtra Federation of Principal's
Association of Non Government Colleges ... Petitioner

Vs

1 The State of Maharashtra & ors. ... Respondents

**WITH
WRIT PETITION NO. 1260 OF 2014**

Maharashtra Federation of Principal's
Association of Non Government Colleges ... Petitioner

Vs

1 The State of Maharashtra & ors. ... Respondents

Mr. Venkatesh A. Shastry for the Petitioners in both the Writ
Petitions.

Mr. S.S. Panchpor, AGP, for the Respondent Nos.1 to 12 - State in
Writ Petition No.11251 of 2013.

Mr. V.M. Mali for the Respondent Nos.1 to 12 - State in Writ
Petition No.1260 of 2014.

**CORAM : S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

THURSDAY, 13TH DECEMBER, 2018

P.C. :

1 In these two writ petitions, the writ petitioners are pressing for a direction to the respondents to grant benefit of 3/2 increments to their members. The members, whose names are listed at Annexure A-1, are claiming these increments with effect from 1st January, 1986. As a consequence, it is prayed that the arrears be paid along with interest at eighteen per cent per annum in the pay scale after the increments are awarded to them.

2 The writ petitions are filed by a Federation stated to be Maharashtra Federation of Principals' Association of non-Government colleges. The only contention raised before us is that in terms of a Government Resolution dated 27th February, 1989, and after the Fourth Pay Commission recommendations were accepted by the State, it was decided to extend the benefit of increments to such of the Lecturers who, on the date of appointments, had acquired the Doctorate Degree Ph.D. Thus, if they were Ph.Ds, then, these increments were admissible to them. They were also admissible to such of those Lecturers who, during the course of their service, improve upon or acquire higher

educational qualifications like Ph.D. It is, therefore, in terms of the Fourth Pay Commission's recommendations their pay scales were to be revised, inclusive of these increments.

3 The argument is that this policy would also cover the Principals for Principals have to be teachers and unless and until they are teachers, they would not be able to head any Educational Institution as Principal. For them to be appointed and promoted as Principal, they must possess this qualification and, *inter alia*, a Ph.D. Once they are possessed of this qualification, then, in terms of this Government Resolution, they are automatically covered. For all these reasons and because the individual members of this Federation could not take up their claims that they joined this Federation or formed / established it. Once the Federation took up their cause and prosecuted it, the writ petition came to be filed. Hence, the entitlement may be from a prior date, but the claim cannot be said to be either given up or cannot be said to be barred by delay and laches because the writ petition has been brought in the year 2013.

4 Mr. Venkatesh Shastry arguing the petition invited

our attention to the Government Resolution, copy of which is at Annexure A2 to the writ petition. He also brought to our knowledge, the list of such members whose cause is espoused by the Federation in the petition.

5 Mr. Shastry would contend that paragraph 2 of this Government Resolution at page 42 of the paper-book under the head 'Coverage' covers not only the teachers, but Principals as well. His further argument is that in terms of the policy enunciated and particularly to encourage research in continuation of the Post Graduate studies, candidates who, at the time of the recommendation, if Lecturers / Librarians etc. possessed Ph.D. or M.Phil. Degree, will be sanctioned three and one advance increments respectively in the scale of Rs.2200-4000 along with the benefit of corresponding years of service for the purpose of promotion. Once existing incumbents without research degree and those similar situated recommended in future are eligible for similar benefit in service for the purpose of promotion as and when they acquire research degrees, but will not be eligible for advance increments would denote, according to Mr. Shastry, that the Principals are included. Hence, merely

because a petition is filed by the Federation of Principals of such colleges (non-Government) would not mean that the stand taken in the affidavit of the reply of the State is correct and accurate. That stand overlooks the basic, elementary connotation of the word “teacher” which includes a Principal.

6 This being the thrust of his argument and during the course of which he relied upon another Government Resolution dated 13th October, 2000, to urge that it is this Government Resolution which at best makes the distinction but even there the clauses / paras 4.2.1 and 4.2.2 prescribed Ph.D. or any equivalent qualification. This is for the first time and this would not take in its import those who were recruited and appointed or promoted as Principal prior thereto.

7 Upon reading of these two Government Resolutions, we are unable to agree with Mr. Shastry. The first Government Resolution, heavily relied upon, itself clarifies that it is a Resolution on the subject of revision of pay scales of teachers and outlines measures of maintenance of standards in higher education. The preamble to this Resolution says that the Fourth

Pay Commission recommendations were accepted and the Government of Maharashtra had approved the implementation of the revised pay scales for University and College teachers with effect from 1st January, 1973, by the Government Resolution referred therein. After the appointment of the Fourth Pay Commission for Central Government employees, the UGC appointed a Committee under the Chairmanship of Professor Mehrotra to examine the present structure of emoluments and conditions in service of University and College teachers. After considering this report, the UGC submitted its recommendations to the Government of India in February, 1987. After examination of the report, the Government of India evolved a Scheme of pay revision for the University and College teachers and other measures for improvement of standards in higher education. The Government of India recommended the State Government to implement this Scheme. The question of implementing this Government of India's Scheme of revision of pay scales and other relevant guidelines and notifications issued by the UGC from time to time was under consideration of the Government of Maharashtra. After careful consideration, the Government of India's Package Scheme 1986 for maintenance of standards in

higher education and after an agreement with the Maharashtra Federation of University and College Teachers' Organisation, the State Government decided to implement the terms and conditions of service. It is very clear that the para / clause pertaining to 'Coverage' cannot be read as suggested by Mr. Shastry. The revised scales and other measures for improvement of the standards in higher education are applicable to all categories of full time teachers employed by the University of Pune and by non-Government Colleges and recognised Institutions in the faculties of Arts, Science, Commerce and Education that are affiliated to the University of Pune. The revised pay scales are also applicable to Teachers, Principals, Librarians etc. in the affiliated unaided Colleges and recognised Institutions having faculties in the above subjects and affiliated to the University of Pune. However, these colleges will not be entitled to any financial assistance from the State Government and the same will be the case with the non approved posts in affiliated aided colleges and the non-agricultural universities in the State. The revised scales are not applicable to teachers who retired on or before 31st December, 1985 and who worked on re-employment on that date, including those whose period of re-employment was extended after that

date.

8 Therefore, the further stipulations in the Government Resolutions and particularly with regard to pay scales, manner of fixation of pay would have to be construed accordingly. The recruitment and qualifications are set down in the further part of this Resolution and what is material is that for entitlement to the revised pay scales, a provision has been made also in relation to such teachers who, at the threshold, have a Ph.D. or M.Phil. Degree. In order to encourage research and in continuation of the Post Graduate studies, such of these candidates who possessed a Ph.D. or M.Phil. Degree at the time of their recruitment as Lecturers, will be sanctioned these increments. Those without such Degrees, but already appointed would also be entitled for a similar benefit in future for the purpose of promotion and when they acquire such Degrees, but they will not be eligible for advance increments. This is an encouragement, therefore, to acquire higher qualifications during the course of service. In the case of such of the candidates who already possessed this higher qualification, they have been held entitled to draw the increments. There is a complete mechanism set in place and that

is for the standards and quality of education. It may be that Mr. Shastry refers to workload and says that teaching assignments are also to be fulfilled by a Principal, but we see no connection or nexus, in the sense, once the Pay Commission recommendations are accepted and the pays are to be revised naturally teachers include also Principals and, therefore, once they are College Principals, they do not cease to be teachers and hence entitled to revised pay scales.

9 The writ petition is filed by the Federation of Principals who say that they will be entitled and as of right to the increments and in terms of the Resolution referred by us herein above. Once that Government Resolution itself does not speak of anything of this nature, but grants the increments only to those Lecturers who have in their possession Ph.D. or M.Phil. Degrees and also those who may acquire them in future, then, a Federation of Principals and their members cannot rely on such Government Resolution to claim the increments. We are, therefore, in agreement with Mr. Mali, who relies upon the affidavit-in-reply to urge that the same amply clarifies the policy.

10 On perusing this detailed affidavit filed by the Joint Director of Education, Pune Region, Pune, we are clear that this policy does not enable the Principals or the members of the petitioner-Federation to draw the increments. Once the writ petition is founded on such a Government Resolution and which itself has no application, then, it cannot succeed.

11 Barring the difference in the number of increments, there is no distinction between this writ petition and a companion writ petition.

12 As a result of the above discussion, both the writ petitions are thoroughly misconceived and must fail. They are, accordingly dismissed, but with no order as to costs.

13 The reliance by Mr. Shastry on the Government Resolution dated 13th October, 2000, is also misplaced for that extends the benefit of the Fifth Pay Commission recommendations to those who have been covered thereby. Those are the categories of teachers and placed in the Institutions of the above referred category. For enabling them to such revised pay

scales in terms of the Fifth Pay Commission recommendations, the stipulations have been put in place. These include Principal and it is evident that the condition they must possess a Ph.D or equivalent qualification was always in place. The reference and reliance on this Resolution would not enable the petitioners to claim the increments as are claimed in this petition. Hence, we have rightly relied upon the affidavit-in-reply and the submissions of Mr. Mali to dismiss the petitions.

SMT. BHARATI H. DANGRE, J.

S.C. DHARMADHIKARI, J.