

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

**REVIEW APPLICATION STAMP NO. 4161 OF 2019
IN
WRIT PETITION NO. 8390 OF 2015**

Shri Tilok Jain Dnyan Prasarak Mandal
Pathardi Through its Secretary and
another .. Applicants

Versus

Sanjay Rangnath Patare and others .. Respondents

Shri Yogesh Mehata, Advocate h/f Shri S. R. Barlinge and Shri
Prashant R. Nangare, Advocates for Applicants.

Shri U. R. Awate, Advocate h/f Shri S. B. Talekar, Advocate for
Respondent Nos. 1 to 6, 8 to 12.

Shri Alok Sharma, Advocate for the Respondent No. 15.

Shri S. B. Yawalkar, Addl.G.P. for Respondent Nos. 13 and 17.

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

DATE : 08TH NOVEMBER, 2019.

FINAL ORDER :

. The applicants seek review of the judgment and order passed by this Court on 03rd December, 2018 thereby partly allowing the writ petition and directing the present review applicants to pay the salary to the original writ petitioners as per 6th Pay Commission in tune with the Government Resolution dated 07.05.2010 and 20.08.2010 for a period starting from three years prior to the filing of the writ petition.

2. The learned advocate for review applicants strenuously

contends that, the review applicants No. 1 is an unaided minority institution and same is not governed by executive instructions. Directing the review applicants to pay salary as per the 6th Pay Commission would tantamount to interference in the course of administration of the minority institution. The learned counsel relying on the judgment of the Apex Court in a case of T. M. A. Pai Foundation Vs. State of Karnataka reported in *(2002) 8 SCC 481* submits that, while answering question No. 5-C, the Apex Court has categorically held that, regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control on the management over the staff. The review applicant, a non aided minority institution cannot be governed by the regulations. The Government resolutions relied by this Court while allowing the writ petition are not binding on the review applicants/minority institutions. The learned counsel submits that, the same view has been upheld in the subsequent judgments of the Apex Court in a case of Islamic Academy of Education Vs. State of Karnataka reported in *AIR 2003 SC 3724* and in a case of P. A. Inamdar Vs. State of Maharashtra reported in *AIR 2005 SC 3226*.

3. The learned advocate further submits that, question would be about viability and feasibility to pay the salary as per 6th Pay Commission. It would not be viable and feasible for non aided institutions to pay the pay scale as per 6th Pay Commission. The learned counsel submits that, this Court relied upon the

judgment of the Division Bench of this Court in Writ Petition No. 9904 of 2011 dated 23rd February, 2018. The said judgment does not consider the judgment of the Apex Court in a case of **T. M. A. Pai Foundation Vs. State of Karnataka** (supra) in its correct perspective. According to the learned counsel 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* deals with non aided non minority institutions and would not be applicable to the present case.

4. Mr. Awate, the learned counsel for non applicants supports the judgment under review and submits that, the Apex Court in a case of **Mrs. Satimbla Sharma and others Vs. St. Paul's Senior Secondary School and others** reported in *2011 STPL (Web) 687 SC* has held that, if the regulations or executive instructions are framed then, the unaided institutions are bound to pay the salary as per the 6th Pay Commission. According to the learned counsel, the review applicants cannot be allowed to exploit the non applicants.

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

6. The jurisdiction of this Court to entertain the review would be in narrow compass. Same cannot be exercised as an appellate jurisdiction in disguise.

7. The minority institutions do have autonomy in

administration of their institution by virtue of Article 30 of the Constitution of India. However, prescribing the qualification of the teachers, their pay scales would not tantamount an interference in the administration of the minority institution. The State has issued Government Resolutions viz G. R. dated 07.05.2010 and 20.08.2010 prescribing the pay scale for unaided institutions. It does not make any distinction between a minority and non minority institution. The employees of the minority unaided institutions also have a right to get the salary as is paid to the employees of unaided non minority institutions. Executive instructions are holding the field. They are not subject matter of challenge. The review applicants are bound by the executive instructions, which are issued on the recommendations of the A.I.C.T.E. The Apex Court in a case of **Secretary Mahatma Gandhi Mission and another Vs. Bhartiya Kamgar Sena and others** (supra) has clearly observed that, these regulations are in force and unaided institutions are also liable to pay the salary as per executive instructions. Said executive instructions are based upon the recommendations of the A. I. C. T. E. established under the provisions of the A. I. C. T. E. Act, 1987.

8. In case of **Mrs. Satimbla Sharma and others Vs. St. Paul's Senior Secondary School and others** (supra) the Apex Court was also dealing with non minority unaided institutions. In the said case, the Apex Court has observed that, in absence of statutory provision, no directions can be issued by the High Court under Article 226 of the Constitution of India. Where statutory

provision casts a duty on a private unaided school to pay the same salary and allowance to its teachers as are being paid to teachers of Government aided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty. In the present case, the State government under its executive powers referable to Article 162 of the Constitution of India has issued executive instructions by virtue of Government Resolution dated 07th May, 2010 and 20th August, 2010 prescribing pay scale to be paid to the teaching and non teaching staff of unaided institutions.

9. In the light of the above, we do not find any merit in the review application. The review application is dismissed. No costs.

[R. G. AVACHAT, J.]

[S. V. GANGAPURWALA, J.]

bsb/Nov. 19