

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
67 WRIT PETITION NO.1956 OF 2018**

RAJENDRA BALWANT PATHAK

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Pramod A. Pisal, Advocate for the Petitioner.

Mr. S. B. Yawalkar, AGP for Respondents-State.

Mr. Mahesh S. Deshmukh, Advocate for Respondent No.4.

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**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATED : 21st AUGUST, 2019.

PER COURT:-

1. Heard.

2. Learned counsel for the petitioner states that respondent No. 4 is a formal party and seeks leave to delete respondent No. 4. Leave granted.

3. Learned Assistant Government Pleader accepts notice for respondent Nos. 1 to 3.

4. Mr. Pisal, learned counsel submits that junior to the petitioner is being paid more salary than the petitioner only on the count that junior to the petitioner has completed his Ph. D. after enforcement of 6th Pay Commission. Learned counsel submits that the petitioner has completed his Ph. D. in 2002 and a senior cannot be paid salary less

than his junior. Learned counsel also relies on the Government Resolution, dated 12.08.2009, more particularly Note 6 to Appendix I and also on the judgment of this Court dated 18.10.2016 in Writ Petition No. 10271 of 2016, so also judgments in similar Writ Petitions.

5. Learned Additional Govt. Pleader on going through the judgment in Writ Petition No. 10271 of 2016 affirms the fact that the petitioner would be covered by the said judgment.

6. Note 6 to Appendix I of Government Resolution dated 12.08.2009 reads as under:

" Appendix I

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Note 6 – In case where a senior teacher promoted to a higher post before the 1st day of January, 2006 draws less pay in the revised pay structure than his junior who is promoted to the higher post on or after the 1st day of January, 2006, the pay in the pay band of such senior teacher should be stepped up to an amount equal to the pay in pay band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of

promotion of the junior teacher subject to the fulfillment of the following conditions.

(i) both the junior and the senior teacher should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.

(ii) the preremitted scale of pay and revised Pay Band and Academic Grade Pay of the lower and higher posts in which they are entitled to draw pay should be identical.

(iii) the senior teacher at the time of promotion should have been drawing equal or more pay than the junior.

(iv) the anomaly should be directly as a result of the application of the provision of these rules or any other rules or order regulating pay fixation on such promotion in the revised pay structure.

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7. This Court in its order dated 18.10.2016 in Writ Petition No. 10271 of 2016 has also held that the discrimination cannot be made only on the ground that the junior teacher has acquired Ph. D. degree after implementation of 6th Pay Commission.

8. Considering the above, Rule is made absolute in terms of prayer clause 'A'. The arrears be paid to the petitioner expeditiously and preferably within a period of three (03) months from today. No costs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE