

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

907 WRIT PETITION NO.3354 OF 2017

Shivdas Pratap Rathod,
Age-61 years, Occu-Retired,
R/o.Pachora, Taluka, Pachora,
Dist. Jalgaon

...PETITIONER

VERSUS

1. The State of Maharashtra, **...RESPONDENTS**
Through its Principal Secretary,
School Education & Sports Department,
Mantralaya, Madam Cama Marg,
Hutatma Rajguru Chowk, Mumbai-32
2. The State of Maharashtra,
Through its Principal Secretary
Finance Department, Mantralaya,
Madam Cama Marg,
Hutatma Rajguru Chowk,
Mumbai-32
3. The State of Maharashtra,
Through its Principal Secretary
General Administration Department, Mantralaya,
Madam Cama Marg,
Hutatma Rajguru Chowk,
Mumbai-32
4. The Education Officer (Secondary),
Zilla Parishad, Jalgaon,
Taluka and Dist. Jalgaon
5. The Accounts Officer,
Education Department, Jalgaon,

Survey No. 31/2, Plot No.45,
Ayodhya Nagar, Jalgaon,
Taluka & Dist. Jalgaon

Mr.Surendra V. Suryawanshi, Advocate for the petitioner
Mr.P.N.Kutti, AGP for the respondents/State

**CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.**

DATE : 12.07.2019

ORAL JUDGMENT [PER: SUNIL P. DESHMUKH, J.]

. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally by consent.

2. At the outset learned counsel for the petitioner seeks leave to amend prayer clause in the writ petition. Leave granted. Amendment be carried out forthwith.

3. There is no dispute that the petitioner had been appointed as 'Laboratory Assistant' in Navajeevan Vidyalyaya, Pachora, an aided institute. The petitioner in due course, around 1998, had been given benefits of time bound promotion/ assured career progress as a non-teaching employee in tune with government resolution dated 08-06-1995 w.e.f. 01-10-1994 and accordingly entries were effected in the service book of the petitioner. In 2006, while the petitioner had been eligible for second benefit of time bound promotion/ assured career progress scheme, a request accordingly had been made by him. However, the same had not been responded to and the petitioner retired on

superannuation.

4. Subsequently one more request had been made, to award the benefit of time bound promotion to which he was eligible and that has been purportedly turned down under communication dated 09-02-2016 as such the petitioner is before this court.

5. In response to the writ petition, stand is being taken that Government Resolution dated 01-04-2010 would show that it governs only employees of State Government and Zilla Parishad establishments and that the benefit is by virtue of resolution issued by the Education department and not by Finance department. Benefit is not extended by issuing any separate resolution to grant second time bound promotion after 24 years to non-teaching staff.

6. Though, respondent No. 5 purports to take such a stand, benefit of first time bound promotion /assured career progress scheme had been granted to the petitioner. There is no explanation as to how such benefit would be granted to the teaching staff segregating the non-teaching staff from the employees. Over and above, the position appears to be no longer *res-integra* having regard to the decision of a division bench at Principal seat of this Court dated 4th October, 2018 in group of writ petitions bearing No. 334 of 2018 and others, wherein it has been categorically observed in paragraphs No.2, 4, 5 and 6 as under:

"2. *In so far as the whether the benefit of the Assured*

Career Progression Scheme to the non teaching staff is concerned, the struggle of the said class of employees seems to be unending. The issue as to the applicability of the scheme to the non teaching staff was resolved at the first instance. Thereafter whether it could be made applicable to the unaided institutions was resolved and lastly whether the services put in the non aided section could be counted for computing the initial period of 12 years was resolved. It is after the aforesaid issues were resolved by orders passed by this Court from time to time that the issue as to whether the second benefit i.e. after 24 years of service under the Assured Career Progression Scheme could be given, raised its head. There is no dispute about the fact that all the petitioners have been given the first benefit i.e. the benefit after putting in 12 years of service and what remains to be given is therefore the second benefit after putting in 24 years of service. The said issue is no more res-integra and is covered by the orders/judgments of this court in writ petition No.922 of 2014 and writ petition No.924 of 2014.

4. *In so far as writ petition No.924 of 2014 is concerned, there is absolutely no answer forthcoming as to why the said order is not applicable in the facts and circumstances of the present writ petition. Significantly an affidavit in reply is filed in the above writ petition No.334 of 2018. In paragraph 4 of the said affidavit, it is stated that on account of the loan waiver and incentive benefit scheme for the farmers, the state is expected to incur expenditure putting heavy burden on already stretched State Finances if the benefits of Assured Career Progression scheme are extended, the same would*

adversely affect the infrastructure projects in sectors such as irrigation, power and transport. Hence the stand taken by the State Government is on account of the stretched State Finances i.e. on account of financial stringency that the State Government would be facing and not based on any legal disentitlement of the petitioners.

5. Having regard to the fact that there are already precedents by way of order passed in writ petition No.922 of 2014 and writ petition No.924 of 2014, we deem it appropriate to follow the said precedents. We are also informed by the learned counsel appearing on behalf of the petitioners that the second benefit is already extended by the Higher Education Department by Government Resolution dated 15.02.2011 to the teaching staff, as also the teachers working in the School Education Department are getting the said benefit. We therefore find no reason as to why the said benefit cannot be extended to the petitioners above named. The above petitions are accordingly allowed to the extent of directing the respondents to grant the second benefit after 24 years of service to the petitioners, if they are entitled to the same. The same to be done within 8 weeks from date. Rule is accordingly made absolute in the aforesaid terms.

6. We hope and trust that the respondents would extend the benefit of the Assured Career Progression Scheme in so far as the second benefit after 24 years is concerned to all the non teaching staff who are similarly situated as the petitioners above named and it would not be necessary for them to approach this court for getting the said relief."

7. The petitioner appears to be not only eligible but entitled to benefits as given to petitioners in those petitions. In view of the same, we deem it appropriate to allow the writ petition in terms of prayer clauses-(B) and (C).

8. Writ petition accordingly is granted in terms of prayer clauses- (B) and (C).

9. Rule made absolute accordingly. The petition is disposed of.

10. Hopefully, the benefits to the petitioner would be given expeditiously, preferably within a period of twelve weeks from the date of receipt of this order.

[S.M.GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]