

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

WRIT PETITION NO.3982 OF 2017

1. Dr. Prakash Kisanrao Unchegaonkar
Age: 67 years, Occu : Pensioner,
2. Hemant Kamalkarrao Deshpande
Age: 66 years, Occu : Pensioner,
3. Zafar Mohiuddin Hasan Mohiuddin Ansari
Age: 60 years, Occu : Pensioner,
4. Mohan Jaywantrao Wadekar
Age: 62 years, Occu : Pensioner,
5. Banshidhar Madhavrao Joshi
Age: 67 years, Occu : Pensioner,
6. Govind Shrirangrao Ankush
Age: 65 years, Occu : Pensioner,
7. Faizullah Umrادraj Khan
Age: 68 years, Occu : Pensioner,
8. Prakash Damodhar Mathekar
Age: 69 years, Occu : Pensioner,
9. Sudhakar Kisanrao Deshmukh
Age: 68 years, Occu : Pensioner,
All R/o. Parbhani, Tq. & Dist. Parbhani

..... PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Secretary,
Department of Agricultural, Animal Husbandry,
Dairy Development and Fisheries,
Mantralaya, Mumbai-32.
2. The State of Maharashtra,
Through its Secretary,
Finance Department,
Mantralaya, Mumbai - 32.
3. The Vasantrao Naik Marathawada
Agricultural University, Parbhani,
Through its Registrar.

... RESPONDENTS

Mr. Sudhir K. Chavan, Advocate for the petitioners
Mr. P.N. Kutti, AGP for respondents No.1 and 2.
Mr. B.A. Shinde, Advocate for respondent No.3

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

DATED : 19-06-2019

ORAL JUDGMENT (PER :- S.M.GAVHANE, J.)

. Rule. Rule made returnable forthwith, heard finally with the consent of the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioners who are pensioners, have prayed to issue directions that the impugned order dated 30-06-2010 (Exhibit-C) issued by respondent No.1 and consequential circular dated 28-03-2012 (Exhibit-D) issued by respondent No.3 are misconstrued and not binding /applicable to the petitioners and further prayed to issue writ of mandamus directing the respondents not to revise /refix the pay scale of the petitioners and to claim recovery against them pursuant to the impugned order and circular. They have also sought directions to the respondents to pay the difference amount and all consequential service benefits as either not paid or recovered or withheld by the respondents pursuant to impugned order and circular.

3. Case of the petitioners is that they were appointed by respondent No.3-The Vasantrao Naik Marathawada Agricultural University, Parbhani following due procedure of law. They are possessing educational qualification as B.Sc. (Agri.) and M.Sc. (Agri.). For the post of Agricultural Assistant the

required minimum educational qualification was B.Sc. (Agri.) and accordingly the petitioners being eligible and qualified, came to be appointed on the post of Agricultural Assistant. The State of Maharashtra has taken a policy decision by Government Resolution dated 10-09-1980 and in the light of the same the respondent No.3 issued an order dated 10-08-1981 in favour of the petitioners thereby giving pay scale of Rs.680-40-1000-50-1250 to the petitioners. Petitioners were eligible and qualified for the said pay scale of Rs. 680-1250 and therefore the same was given to them.

4. It is further case of the petitioners that the nomenclature of post of Agricultural Officer and Agricultural Supervisor was similar for agricultural department of State of Maharashtra. Therefore, to remove the ambiguity with regard to fixation of pay scale and to avoid the confusion with regard to common nomenclature as Agricultural Officer and Agricultural Supervisor, the nomenclature of employees of agricultural universities came to be changed as Senior Research Assistant and Junior Research Assistant respectively. The posts of Junior Research Assistant and Senior Research Assistant are Class-III posts. Apart from the required educational qualification of M.Sc. (Agri.) with Second Class the petitioners are possessing the Identifiable Research Contribution as one of the requirements in order to receive pay scale of Rs.680-1250. As such, the petitioners are fulfilling all required eligibilities and qualification and hence have been given pay scale of Rs.680-1250. The petitioners have rendered their services and retired with respondent No.3. Accordingly, necessary order of retirement , fixation of family pension, gratuity etc. is issued by the respondent No.3 as detailed in paragraph five of the

petition.

5. Further it is the case of the petitioners that respondent No.3 issued impugned circular dated 28-03-2012 directing to recover the amount of excess payment and to reduce the basic pension amount of the petitioners. When the petitioners alongwith other employees and few union members approached respondent No.3, they came to know that respondent No.1 by impugned order dated 30-06-2010 issued directions of recovery of excess payment and refixation. Five employees those who have not received the pay scale of Rs.680-1250 preferred Writ Petition No. 2750 of 1990 in the High Court, Bench at Nagpur and in order dated 21-06-2006 in the said writ petition in paragraph No.15 it is specifically observed that, the respondents therein were directed to step up the pay of the petitioners therein and to release them all consequential arrears. However, respondent No.1 misinterpreting the judgment and order dated 21-06-2010 in the said writ petition issued impugned order dated 30-06-2010 directing to make recovery and to revise pay fixation of the employees who have been given pay scale of Rs.680-1250 including the petitioners. The respondent No.3 had no option except to implement the impugned order of respondent No.1. Therefore, petitioners alongwith other employees and union members had given request application and requested to take legal opinion. The petitioners alongwith others also moved request application to the Hon'ble Vice-Chancellor of the respondent No.3 and thereby tried to convince the respondents. The respondent No.3 considered the legal perspective and thereafter, modifying its view issued circular dated 28-03-012 and it had decided not to recover excess payment of

employees till 30-06-2010 and that the same is recoverable from 01-07-2010. In respect of the pensioners it is decided to review the pension orders and revised pension order would be issued from 01-07-2010 and for those it is decided not to recover the amount till 30-06-2010.

6. The similarly situated persons approached to this Court by preferring Writ Petition No. 6919 of 2012, Writ Petition No. 11131 of 2014 and Writ Petition No.9494 of 2015. This Court allowed the said writ petitions. The Hon'ble Apex Court in S.L.P. (Civil) No. 17273 of 2014 and S.L.P. (Civil) No. 26033 of 2014 upheld the order in Writ Petition No. 6919 of 2012. The petitioners are seeking similar relief of directions against the respondents.

7. Mr. S. K. Chavan, learned counsel for the petitioners made submissions in the light of aforesaid contentions of the petitioners and placed reliance upon the orders dated 12-02-2014 in Writ Petition No. 6919 of 2012 and dated 22-07-2015 in Writ Petition No. 11131 of 2014 and order of the Apex Court dismissing aforesaid Special Leave Petition filed against the order in Writ Petition No. 6919 of 2012.

8. In Writ Petition No. 6919 of 2012 the petitioner had claimed relief to quash the order dated 31-03-2012 issued by respondent No.2 directing revision of pay scale and recovery of amount from the pensionary benefits accruable to the petitioner as a consequence of revision of pay scale from 30-05-1984 onwards. The petitioner was initially employed in 1978 as a Junior Assistant Scientist and has retired on 31-05-2010 on attaining age of

superannuation. He was considered eligible for promotion to the post of Senior Assistant Scientist in the pay scale of Rs.680-1250 as per the order dated 15-09-1984. He possesses qualification of M.Sc. in the First Class and was having five years experience. The order impugned in the petition was issued in pursuance of the circular issued by respondent-University on 17-08-2010. It was held in paragraph No.19 as under:

"19. For the reasons recorded above, writ petition deserves to be allowed and same is accordingly allowed. The order issued by the Respondent-University on 31-03-2012 is quashed and set aside. Respondents are directed to repay the amount to the petitioner, which has already been deducted in pursuance to the aforesaid order, as expeditiously as possible, preferably within a period of six months from today."

In Writ Petition No.11131 of 2014 in paragraphs No. 7, 8 and 9 it was observed thus:

"7. The Division Bench of this Court directed the respondents to step up the pay scale of the petitioners in said writ petition at par with the Senior Research Assistants, who were given pay scale of 680-1250 prior to the present petitioners because of completion of total five years of service in the University and who are junior to them in the cadre of Senior Research Assistants. The petitioners are persons, who had got benefit of pay scale of Rs.680-1250 on completion of total five years of service with the University. The Division Bench at Nagpur did not direct to reduce their pay scale. However, directed to step up the pay scale of the petitioners therein to bring at par with such of the Senior Research Assistants like that of the present petitioners. If the pay scale was given to the petitioners for more than 10 to 15 years back, the recovery at such belated stage will not be permitted in view of the judgment in the case of **State of Punjab vs. Rafiq Masih**, (referred supra).

8. In the light of above, we pass the following order.

9. The respondents shall not revise/refix the pay scale of the petitioners pursuant to the impugned circular, nor any recovery shall be claimed against the petitioners

pursuant to the impugned communication."

9. Mr. Kutti, learned AGP appearing for respondents No. 1 and 2 does not dispute the contentions of the petitioners regarding fixing the pay of the petitioners in the pay scale of Rs. 680-40-1000-50-1250 as per Government Resolution dated 10-09-1980 and passing of the impugned order and the circular by respondents No.1 and 3. Though it is stated in the affidavit filed on behalf of respondents No. 1 and 2 that there is no merit in the petition, the learned AGP does not dispute the fact of two orders passed by the Division Bench of this Court and order of the Apex Court referred earlier in the similar set of facts.

10. In the present case there is no dispute that some of the petitioners were appointed as Agricultural Assistant, some were appointed as Junior Research Assistant and Junior Clerks on different dates in 1973, 1977 and 1981 as mentioned in Annexure R-2. They were given pay scale of Rs. 680-1250 being eligible and were qualified for the post of Senior Research Assistant with effect from 1981 as mentioned in Annexure R-2. There is no dispute that five employees had filed Writ Petition No. 2750 of 1990 before the Nagpur Bench of this Court and in paragraphs No. 14 and 15 of the decision dated 21-06-2006 in the said petition it was observed thus:

"14. It cannot be lost sight of that the petitioners have challenged their fixation which has been done in terms of Government Resolution dated 7.8.1981. The learned counsel for the respondents have argued that several Junior Research Assistants have already been given benefit of fixation in pay scale of Rs. 680-1250 and those persons are not parties before this Court. We find that the grievance of the petitioners can be ventilated by directing the respondents to step up their pay to the

existing pay of the Senior Research Assistants who got the fixation in scale of 680-1250 accordingly prior to them because of completion of total five years of service in University but is junior to them in cadre of Senior Research Assistant. Thus, if pay of petitioners is stepped up, no injustice will be caused to such junior in cadre Senior Research Assistants who were already placed in time scale of Rs. 680-1250 at the relevant time and whose salary has been revised accordingly from time to time.

15. We accordingly hold that the condition of having five years total experience of University service for claiming pay scale of Rs. 680-1250 in the cadre of Senior Research Assistant is unsustainable. The 5 years service has to be after the candidate is appointed or promoted as the Senior Research Assistant. In view of this interpretation given by us, it is not necessary to quash or set aside the said condition. The respondents are directed to step up the pay of the petitioners as mentioned above and to release to them all consequential arrears and to complete said exercise as early as possible and in any case within a period of four months from today. Writ petition is allowed accordingly. Rule is made absolute in above terms. There shall be no order as to costs."

11. The said decision was referred by the two different Division Benches of this Court in Writ Petition No. 6919 of 2012 and Writ Petition No. 11131 of 2014 and said both writ petitions were allowed as observed earlier. There is no dispute that Special Leave Petition filed in the Apex Court against the decision in Writ Petition No. 6919 of 2012 was dismissed. Thus, applying the decisions in the above said writ petitions to the present case, we hold that the petitioners are entitled to the reliefs claimed.

12. Therefore, writ petition is allowed and rule is made absolute in terms of prayer clauses (B), (C) and (D). There shall be no order as to costs.

[S.M.GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]