

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

WRIT PETITION NO. 4675 OF 2017

1. Rajendra S/o. Mukundrao Bhosale, ...**RESPONDENTS**
Age-55 years, Occu-Service,
R/o. Khondamali,
Tq. And Dist. Nandurbar
2. Suresh S/o. Dattu Patil,
Age-56 years, Occu-Service,
R/o. Sindhagavhan,
Tq. & Dist. Nandurbar

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32
2. The Education Officer (Secondary),
Zilla Parishad, Nandurbar
3. The Accounts Officer (Senor Auditor),
Education Department, Nandurbar,
Tq. & Dist. Nandurbar
4. Nutan Madhyamik Vidyalaya,
Khondamali, Tq. & Dist. Nandurbar
Through its Headmaster
5. Sarvodaya Vidyalaya, Sindhgavhan,
Tq. & Dist. Nandurbar,
Through its Headmaster

Mr. Ajay D. Pawar, Advocate for the petitioners
Mr. P.N.Kutti, AGP for the respondents/State

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

DATE : 09-09-2019

ORAL JUDGMENT (PER: SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard finally with consent of the learned counsel appearing for the parties.

2. Almost all the facts and circumstances in present writ petition we are dealing with, are the same as involved in various petitions dealt with and disposed of by several division benches of this court at Nagpur and principal seat at Mumbai, in respect of employees comprising non-teaching staff as in the present case. The petitioners have been accorded their first benefit of time bound promotion pay scale after completion of 12 years of qualifying service with effect from their initial date of appointment.

3. Present writ petition has been moved as second time benefit under Assured Career Progress Scheme (ACPS) had not been coming the way of petitioners, wherein scheme of time bound

promotion pay scale, subsequently had been merged. There is also no dispute that petitioners have been given first benefit under earlier scheme. It appears that there is reluctance on the part of state government to extend second time benefit to the posts pursuant to further decision under government resolution dated 1st April, 2010.

4. Learned Assistant Government Pleader purports to resist request of petitioners under present writ petition, contending that resolution dated 1st April, 2010 extending the benefit for second time after completion of 24 years of qualifying service is applicable only to government and zilla parishad employees and would not cover non-teaching employees of aided / non-aided private schools and further referring to that it is necessary for education department to issue separate government resolution clarifying the beneficiary group or as to whom it should be made applicable. For isolated posts in respect of non-teaching staff, a separate government resolution dated 5th July, 2010 has been issued by finance department which is also not applicable to employees in private aided / non-aided schools.

5. Learned Assistant Government Pleader further contends that non-teaching staff gets the benefit by virtue of government resolution issued by education department. It is contended that government resolution extending benefit to non-teaching staff for second time higher pay scale after 24 years of qualifying service has not yet been issued by the education department. Learned Assistant Government Pleader, thus, purports to resist the request under present writ petition.

6. Present situation would be said to be no longer *res integra* as learned counsel for the petitioners points out a decision in a group of writ petitions bearing No. 334 of 2018 and other companion writ petitions, whereunder a division bench at principal seat under order 4th October, 2018 has taken stock of the situation and observed that as far as the benefit of the Assured Career Progress Scheme is concerned, the struggle of said class of employees seems to be unending. The division bench has dealt with similar situation in aforesaid order, observing in paragraphs no. 2, 3, 4 and 5, thereof, thus,

“ 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-intergra and is covered by the orders/judgments of this court in Writ Petition no. 922 of 2014 and Writ Petition no. 924 of 2014.

3 *In Writ Petition No.922 of 2014 the relief sought was identical to the relief sought in the instant Petitions. The Learned AGP appearing in the said Writ Petition No.922 of 2014 had fairly conceded that the Petitioner in the said Writ Petition was identically situated as the Petitioner in Writ Petition No.6089 of 2013, in which an order dated 26-4-2013 came to be passed by a Division Bench of this Court by recording the statement of the Learned AGP that the said Writ Petition No.6089 of 2013 came to be allowed resulting in the benefit of the second promotion being granted to the Petitioners in the said Writ Petition No.922 of 2014. In so far as Writ Petition No.924 of 2014 is concerned, the factual basis can be said to be the same as in the instant Petitions. The said Writ Petition came to be allowed by a Division Bench of this Court by order dated 3-5-2017 relying upon the orders passed in Writ Petition No.2897 of 2012 dated 26-4-2012 and Writ Petition No.922 of 2014 i.e. the order dated 26-3-2015. The order passed in Writ Petition No.922 of 2014 is sought to be distinguished on the ground that the said order has been passed on the basis of a concession made by the Learned AGP. We are unable to countenance the said submission especially having regard to the fact that the factual basis in the said Writ Petition No.922 of 2014 is the same as in the instant Petitions.*

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 15-2-2011 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.*
"

7. Learned Assistant Government Pleader during the submissions also referred to that review of aforesaid order has been sought, seemingly suggesting hearing of the matter be deferred.

8. However, this aspects has been gone into by a division

bench of this court at Nagpur under order dated 15th July, 2019 passed in writ petitions bearing no. 1188 of 2018 and 1179 of 2018 and has observed in paragraphs no. 4 and 5 thereof, thus,

" 4. As a matter of record, this fact has also been noted by this Court while granting time to the State for obtaining any order in the proposed review application, if any, before the appropriate Court at Mumbai. This order was passed on 28th February, 2019 and thereafter further time was granted to the State for producing on record any specific order. While, the review application has been filed, no order staying the effect and operation of the judgment dated 4th October, 2018 and several of similar judgments which constituted the precedent for the Division Bench to follow in that case is passed. Therefore, now the time is ripe up for this Court to not allow any departure from the consistent line of precedents. The reply filed by the State, however, disputes any similarity of facts. But, we must say that such resistance is only for the sake of it as the facts discussed in the judgment dated 4th October, 2018 show that those facts are similar to the facts involved in this petition. In that judgment, the facts gave rise to an issue as to whether or not non-teaching staff could be granted second benefit under the Assured Career Progression Scheme after completion of 24 years of Service and it was answered in favour of the employees or the petitioners. Same issue is also involved in this petition and, therefore, the resistance put up by the State Government is seen by us only as being something like opposing the case for the sake of it.

5. In view of above, we are inclined to allow this petition only to the extent of allowing of second benefit to the petitioners under the Assured Career Progression Scheme after completion of 24 years of their respective service, provided they are otherwise eligible for it. "

9. Having regard to the deniable position that the facts and circumstances involved in the present writ petition are indistinguishable as referred to above while benefit was given to

single isolated posts given under Government Resolution dated 5th July, 2010, it would be appropriate to give similar treatment to present writ petition. Hence, we pass the following order,

ORDER

- I) The petitioners would be allowed second time bound benefit under Assured Career Progress Scheme as well on completion of 24 years service, provided otherwise petitioners are eligible in the terms of Government resolutions dated 1st April, 2010 and 5th July, 2010.
- II) The benefit of said Government resolution be made available to the petitioners along with arrears within a period of six (6) months from the date of receipt of writ of order of this court.
- III) Rule made absolute accordingly.
- IV) Writ petition is disposed of.

[S.M. GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]