

DDR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3969 OF 2013**

Survase Magan Pandharinath

& ors.

..Petitioners

Vs.

The State of Maharashtra & ors.

..Respondents

.....

Mr. Sanjeev P. Kadam for the petitioners.

Mr. V.M. Mali, AGP for respondent Nos. 1 and 2.

Mr. N.R. Prajapati for respondent No.4 – UOI.

.....

CORAM : S.C. DHARMADHIKARI &

M.S. KARNIK, JJ.

RESERVED ON : 9th JANUARY, 2019

PRONOUNCED ON : 28th JANUARY, 2019

JUDGMENT (PER M.S.KARNIK, J.) :- :

Heard counsel for the parties.

2. The petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution of India. The petitioners are working as Lecturers in different colleges affiliated to Shivaji University, Kolhapur and Dr. Babasaheb Ambedkar Marathwada University, Aurangabad. The petitioners

pray for an appropriate direction to the respondents to grant benefit of fixing pay scale of the petitioners in pay scale of Rs.14,940/- upon completion of five years of service from the date on which they were eligible to be placed in the Selection Grade. The petitioners have further prayed for appropriate directions for grant of all consequential benefits like monetary differences in the pay scale and salary by fixing the pay scale of Rs.14,940/- and other consequential benefits calculated on the basis of fixation of pay scale at Rs.14,940/- from the date of completion of five years from placement in Selection Grade including the post retirement benefits by implementing the Career Advancement Scheme from 1/1/1996 and all consequential increments, pension, promotion, etc.

3. It is indisputable that identical relief was claimed by the counterparts of the petitioners before the Kerala High Court by way of Writ Petitions under Article 226 of the Constitution of India. Against the said decision the University Grants Commission preferred an appeal before the Division Bench of

the Kerala High Court. The Division Bench disposed of the said Petitions on the following basis :

“ These are appeals filed by the Union of India and University Grants Commission aggrieved by the common judgment dated 16.1.2008 in O.P.No.36112/2002, W.P.(C)3123/2004 and Cont. Case (Civil) No.451/2006. The issue essentially pertains to the claim made by the writ petitioners who are Selection grade Lecturers in various colleges in the State seeking a scale of pay of Rs.14,940/- on completion of five years in the post of Reader/ Section Grade Lecturer.

2 Heard the learned Additional Solicitor General Sri.Raveendran, learned counsel for the respondents and also the learned counsel appearing for the Writ Petitioners.

3. Though various related issues are also taken up in the writ petitions, learned counsel for the writ petitioners submit that W.A.No.1394/2008 & Conn.cases they confine their grievance only to the claim for a scale of pay of Rs.14,940/- from the date of completion of five years as Reader/Selection Grade Lecturer. Earned Additional Solicitor General submits that the Government on India and the University Grants Commission have no objection in granting the scale of pay of Rs.14,940/- from the date of completion of five years as Reader/Selection Grade Lecturer. The dispute hitherto was as to whether teachers should be Selection grade Lecturers as on 01.01.1996. In view of the clarification made by the learned Additional Solicitor General that Government of India and the University Grants Commission do not intend to prescribe and insist for such a cut off date and such insistence is only with regard to the eligibility on completion of five years as Reader/Selection Grade Lecturers, we need not go into that question.

4. Yet another apprehension expressed by the learned

Additional Solicitor General was that in the case of those Selection Grade Lecturers who have already completed five years prior to 01.01.1996, they may not claim the scale of pay of Rs.14,940/- from the date of completion of five years to W.A.No.1394/08 & Conn.Cases 01.01.1996. We make it clear that since the scheme itself has been introduced only with effect from 01.01.1996, even in the case of those teachers who had completed five years prior to 01.01.1996, they will be entitled to the scale of pay of Rs.14,940/- only with effect from 01.01.1996. Those teachers who were Lecturers as on 01.01.1996 and who were subsequently placed in the Selection Grade after 01.01.1996, they will be entitled to draw the scale of pay of Rs.14,940/- on completion of five years in the Selection Grade. Subject to the above clarifications, these writ appeals are disposed of. We make it clear that in case the benefits have not been disbursed so far owing to the pendency of the writ appeals, now that the writ appeals have been disposed of, the eligible benefits to the writ petitioners shall be disbursed within a period of three months from the date of production of a copy of this judgment. We have fixed the time as above in view of the submission made by the learned Additional Solicitor General that the liability of the Union Ministry and the University Grants Commission will be disbursed to the State within a period of one W.A.No.1394/08 & Conn.Cases month from the date of receipt of the requisition from the State, if not already disbursed.”

4. Similar reliefs were prayed by Shivaji University Teachers' Association and other persons in Writ Petition No. 3324 of 2010. This Court by an order dated 8th April, 2011 disposed of the Writ Petition No.3324 of 2010 by making rule

absolute in terms of prayer clause (a) and (b) of said Writ Petition. There is no dispute that similar orders are passed on 26th April, 2012 in Writ Petition No.1741 of 2012 by this Court.

5. Learned counsel for the petitioners prayed that he would be satisfied with the grant of reliefs similar to one in Writ Petition No. 9218 of 2011 and Writ Petition No. 1741 of 2012.

6. The petitioners' case is squarely covered by the decision of this Court. As we are satisfied that similar reliefs were prayed by the Shivaji University Teachers' Association and other persons, who are similarly placed as that of the present petitioners, the present Petition can be disposed of on the same terms as ordered in Writ Petition No. 3324/2010 and other connected Petitions. As a result, even this Petition ought to succeed on the same terms.

7. After the arguments were concluded and judgment was reserved, learned AGP invited our attention to the order dated 15th July, 2016 passed by the Hon'ble Supreme Court

which has stayed the operation of the judgment of the High Court of Kerala in W.A.No. 1394/2008 and other connected matters. He therefore submitted that the decision of this Writ Petition must now await till the issue is resolved by the Hon'ble Apex Court.

8. We are not in agreement with the submission of learned AGP. It is well settled that when the Court of Appeal stays any judgment, it stays further implementation as between the parties, of the operative portion thereof. The decision of the coordinate Bench cannot be ignored merely because the operation of the said order is stayed. The decision of Kerala High Court which has been followed by this Court would hold the field till it is set aside in Appeal. We therefore have no hesitation in following the decision of the Kerala High Court and this Court.

9. The Petition is therefore allowed on the following terms :

(a) The respondents are directed to give benefit of fixing pay scale of the petitioners in pay scale of Rs.14,940/- upon completion of five years of service from the date on which they were fixed in Selection Grade and particularly mentioned in Exhibit 'A'.

(b) The respondents are directed to implement Career Advancement Scheme with effect from 1/1/1996 and to give benefit of fixing the pay scale at Rs.14,940/- and all consequential increments as provided under the Scheme.

10. The Writ Petition is allowed in above terms with no order as to costs.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)