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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3392 OF 2016**

Vitthal Marutirao Ekbote ..Petitioner
Vs.
Government of Maharashtra through
its Principal Secretary & ors. ..Respondents

.....
Mr. Vitthal M. Ekbote, petitioner-in-person.
Mrs. Rupali Shinde, AGP for State – respondent Nos. 1 to 3.
Ms.Swati Jadhav i/b.Mr.Rajendra Anbhule for respondent No.4.

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**CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

**RESERVED ON : 29th JANUARY, 2019
PRONOUNCED ON : 13th FEBRUARY, 2019**

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

Heard.

2. Rule. The respondents waive service. By consent,
Rule made returnable forthwith.

3. The petitioner by this Petition filed under Article 226
of the Constitution of India prays that he may be paid Fifth Pay

Commission's pay scale of Rs.8000-13500 from 1/1/1996 to 31/3/2005 and Rs.10,000-15,200 from 1/4/2005 to 31/12/2005 with revised designation as Personal/Private Secretary and also the Sixth Pay Commission's pay scale in the pay band of Rs.15600-39100 with Grade Pay Rs.6600 from 1/1/2006 to 31/12/2010 with revised designation as Senior Personal Assistant.

4. The claim of the petitioner is based on the principle of 'equal pay for equal work'. The petitioner, who retired as Personal Assistant from the University of Pune, claims parity of pay with Personal/Private Secretaries and Personal Assistants (for short 'PS/PAs') of the High Court.

5. The brief facts of the case are as under :

The petitioner was selected and appointed to the post of Stenographer (English) with the University of Pune and joined services on 11/6/1979 with the office of the Presiding Officer, Pune Shivaji University College Tribunal, Pune (hereinafter referred to as "the Tribunal"). The services of the

petitioner are governed by the provisions of the Maharashtra Non Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of Non-Teaching Employees) Rules, 1984 (hereinafter referred to as “the rules of 1984”). The petitioner was promoted to the post of Personal Assistant with effect from 27/6/1997 and confirmed on the post of Personal Assistant on 27/6/1999. The petitioner retired on 31/12/2010 as a Personal Assistant. The total service of the petitioner is 31 years and 20 days. The total service of the petitioner as Personal Assistant (English) is 13 years.

6. The Higher and Technical Education Department, Government of Maharashtra, Mantralaya, Mumbai, prescribed the pay scales and salaries to the non-teaching employees of the Non-Agricultural Universities and Affiliated Colleges in Maharashtra.

7. The petitioner appeared in person. The petitioner invited our attention to the pleadings in the Petition and the relevant exhibits annexed to the Petition. According to

petitioner, the status of the Presiding Officer of the Tribunal is that of Judge of the High Court. It is his contention that the Presiding Officers are appointed by the State Government to various Universities and College Tribunals from amongst the senior most retired High Court Judges. The petitioner has been granted pay scale of Rs.7450-225-11500 from 1/1/1996 vide Notification of the State Government dated 4/2/1999. The petitioner represented to the Government on 11/4/2007 requesting it to implement the pay scale of Rs.8000-13500, which is applicable to the post of Personal Assistants to the Hon'ble Vice Chancellor/Personal Assistants serving with all Universities in Maharashtra, also to the petitioner on the principle of "equal pay for equal work". The petitioner urged that his colleagues viz. Personal Assistants and Personal Secretaries serving with High Court, Bombay, made a similar representation and they have been granted pay scale of Rs.10000-15200 and Rs.8000-13500 in respect of those having an earlier pay scale of Rs.7450-11500 vide G.R. dated 7th June, 2007.

8. The petitioner invited our attention to paragraph 9 of the Petition where it is stated that the petitioner's duties and responsibilities as Personal Assistant to the Hon'ble Presiding Officer of the Tribunal are equal/equivalent with the duties and responsibilities being discharged by the Personal Assistants and Personal Secretaries attached with the Judges of the High Court, Bombay. He submits that a representation, therefore, came to be made to the Government through the University of Pune on 4th December, 2010 for grant of pay scales similar to those granted to Personal Assistants/Personal Secretaries of the Judges of High Court. It is pointed out that the Pune University by a communication dated 27th March, 2011 addressed to the Director of Education (High Education), Pune, recommended the case of the petitioner for further action. Thereafter, again by a communication dated 22nd June, 2011 the Pune University addressed a letter to respondent No.1 for sanctioning the revised designation of the Stenographer category instead of present designation viz. from Personal Assistant designation to that of Administrative Officer/Senior Personal Assistant in pay band of

Rs.15600-39100 with grade pay of Rs.6600/-.

9. Vide GR dated 3rd November, 2012, the Government sanctioned the revised non-teaching posts for the University of Pune. The petitioner represented against this resolution pointing out that though Personal Assistants pay scales of Rs.7450-11500 and 7500-12000 comes under Grade A category, but they are wrongly shown in Grade 'B' category. The petitioner was assured that a decision would be taken after scrutiny of the proposals received from the concerned departments. Even thereafter the petitioner by his representation dated 9/2/2014 requested for revising the pay scales and pointed out that the post of Personal Assistant is a Grade A post even as per GR dated 11/2/2013 and therefore, the GR dated 3rd November 2012 is not applicable to the petitioner's post in which Personal Assistant (English) is shown as Grade 'B'. Despite repeated representations and a notice dated 23rd May, 2014 issued by the petitioner, the petitioner pointed out that as no action was taken, he was constrained to approach the Hon'ble Governor and Chancellor,

Savitribai Phule Pune University, Mumbai, by way of his representation dated 22/1/2015. The petitioner approached all State functionaries even at the highest level but his grievance is not redressed.

10. The petitioner was at pains to point out that the Tribunal is presided over by a retired Judge of the High Court and therefore, the petitioner is entitled to the same pay scales which the Personal/Private Secretaries/Personal Assistants working with the Judges of High Court are entitled to. The petitioner urged that this is based on the principle of 'equal pay for equal work'. According to the petitioner, he is doing the same work which is done by the Personal/Private Secretaries/Personal Assistants of the High Court Judges. The petitioner, therefore, contends that on parity as well as on the principle of 'equal pay for equal work', particularly in view of the fact that senior most retired High Court Judge is appointed as Presiding Officer of the Tribunal, the petitioner is justified in seeking the pay scales prayed by him. The petitioner has also

filed a rejoinder. We have gone through the same.

11. Learned AGP appearing for the State of Maharashtra opposing the Petition has invited our attention to the affidavit-in-reply dated 7th July, 2017 filed on behalf of the respondent Nos.1,2 and 3 affirmed by one Shri Vijay Pandurang Narkhede, working as Joint Director of Higher Education, Pune Region, Pune. It is stated that the petitioner's services are governed by the Rules of 1984. It is further stated that the petitioner's grievance is to implement the pay scales of Rs.8000-13500 applicable to the post of Personal Assistant to Hon'ble Vice Chancellor/Personal Assistant serving with all Universities in Maharashtra. It is stated that the Government of Maharashtra has implemented the Sixth Revised Pay Scales to the Government servants and other Universities and Colleges/Institutes on the basis of the recommendation of "Hakim Committee" with effect from 1st January, 2006. The Government constituted Removal of Discrepancy Committee to look into the discrepancy in salary/pay scales applicable

according to the Sixth Revised Pay Scales. It is further stated that the determination of the pay scales are exclusively within the jurisdiction of the Committee constituted by the Government. Based on the recommendations of the Committee, the pay scales are being made applicable to the concerned employees by the Government from time to time. It is further stated that the petitioner was working under the control of University and therefore the University was under obligation to submit the proposal for removal of discrepancy as regards the correct pay scales applicable to the Committee constituted by the Government. According to learned AGP, the grievance of the petitioner is completely misconceived and untenable.

12. We have heard the petitioner in person and learned AGP on behalf of the respondents. We have also gone through the Petition and the annexures. After the hearing was over and the matter was reserved for judgment, the petitioner has tendered one more G.R. on which he placed reliance in support of his case. We have gone through the Affidavit-in-reply and the Rejoinder.

13. It is the petitioner's grievance that he should be placed in the same pay scale as the Personal Secretaries/Personal Assistants working in the High Court are entitled to. The argument of the petitioner, that because the petitioner is working as a Personal Assistant to the Presiding Officer of the Tribunal, which post is occupied by a retired High Court Judge and therefore, the petitioner is equivalent to a Personal Assistant of High Court Judge, is an argument which can only be stated to be rejected. For one, the Tribunal constituted/established under a statute cannot be equated with the High Court established under the Constitution of India. No doubt, for being eligible to be appointed as Presiding Officer of the Tribunal, the incumbent should have been a Judge of the High Court. This is a requirement of the statute under which the Tribunal is constituted. This by itself will not confer any right on the petitioner to claim parity of pay with the Personal Secretaries/Personal Assistants working in the High Court.

14. Secondly, the Personal Secretaries/Personal Assistants working in the High Court and the Personal Assistants

of the Presiding Officers of the Tribunal are working in two distinct and independent establishments. For the applicability of the principle of 'equal pay for equal work' various factors are to be considered. The principle of 'equal pay for equal work' is applicable only when the second set of employees are similarly situate and are discharging similar functions and yet are getting different pay scales. In the case in hand, the petitioner was working as a Personal Assistant of the Presiding Officer of the Tribunal, whereas the Personal Secretaries/Personal Assistants of the High Courts are working on the establishment of the High Court. Admittedly, when the petitioner is working in altogether different establishment, the question of applicability of doctrine of 'equal pay for equal work' would not arise. The Personal Secretaries/Personal Assistants working in the establishment of the High Court constitute a completely different class from those Personal Assistants working in the Tribunal. In these facts, the petitioner cannot allege discrimination.

15. Though the petitioner has claimed parity of pay with those PS/PAs of the High Court, the petitioner has not brought

on record any materials to demonstrate the exact nature of duties and work carried out by them to lay the foundation for claiming parity. In our opinion, even assuming the petitioner is to place on record materials as to the nature and functions of the PS/PAs of the High Court with whom the petitioner seeks parity, even then the claim of the petitioner cannot succeed, as the establishment on which the petitioner is working is altogether different from the establishment of the High Court. The Apex Court in the case of **P.K.Ramachandra Iyer and others Vs. Union of India and others AIR 1984 Supreme Court 541** has held that the principle of 'equal pay for equal work' may be properly applied to the cases of unequal pay scales based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.

16. A useful reference to the decision of the Apex Court can be made in the case of **Mew Ram Kanojia Vs. All India Institute of Medical Sciences and others (1989) 2 Supreme**

Court Cases 235 where it has been clearly held that if employer is not the same, the principle of 'equal pay for equal work' is not applicable. The claim of the petitioner for parity of pay with the PS/PAs of the High Court only because the Tribunal is presided over by a retired High Court Judge is completely misconceived and untenable. This cannot be a case of discrimination under Article 14 of the Constitution of India.

17. The affidavit-in-reply filed on behalf of the respondents reveals that the Government of Maharashtra has implemented Sixth Revised Pay Scales to the government servants and employees of other Universities and Colleges/Institutes on the basis of the recommendation of "Hakim Committee" with effect from 01/01/2006. The Government constituted Removal of Discrepancy Committee to look into the discrepancy in salaries/pay scales applicable in accordance with the Sixth Revised Pay Scales. It is the settled principle of law that determination of pay scales is exclusively within the jurisdiction of the State Government or the

Committee constituted by the Government. The pay-scales are made applicable based on the recommendations of the Committee.

18. The Apex Court in the case of **Deputy Director General of Geological Survey of India and another Vs R. Yadaiah And Others (2001) 10 Supreme Court Cases 563** has held that ordinarily, the Courts or Tribunal should not go into the question of fitment of the officers in a particular group or the pay-scale thereto. These matters are best left to the discretion and expertise of the special commission like the Pay-Commission, unless the Court finds on materials produced that there is some apparent error. The function of the pay scale is essentially the function of the executive. The scale is interlinked with the evaluation of the duties and responsibilities attached to the post and duties and pay scales are normally linked with the conclusion arrived at by expert bodies like the Pay Commission. We do not find that the materials and the G.Rs. relied by the petitioner are sufficient to conclude that there is some error

apparent in the fixation.

19. In this view of the matter, based on the recommendations of the pay Committee if scales are prescribed and in view of the constitution of Removal of Discrepancy Committee to look into the discrepancy in the salaries / pay scales applicable according to the Sixth Pay Commission Revised Pay Scales, it is not possible for us to grant relief to the petitioner, as by doing that we would virtually be determining the pay scale applicable to the petitioner's post. We agree with the submission of the learned AGP that determinations of the pay scales are exclusively within the jurisdiction of the Committee constituted by the Government.

20. We, therefore, do not find any merits in the Petition and the same is dismissed.

21. Rule is discharged with no order as to costs.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)