

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

WRIT PETITION NO.6371 OF 2019

- 1) Sharad Ramchandra Kulkarni,
Age-66 years, Occu:Retd.,
R/o-Padmashrinagar, Loni (Kh),
Tq-Rahata, Dist-Ahmednagar,
- 2) Namdeo Radhuji Nirmal,
Age-61 years, Occu:Retd.,
R/o-At Post Nirmal Pimpri,
Tq-Rahata, Dist-Ahmednagar,
- 3) Kacheshwar Bhau Patil Khalkar,
Age-65 years, Occu:Retd.,
R/o-At Post Ranjangaon Deshmukh,
Tq-Kopargaon, Dist-Ahmednagar,
- 4) Keshav Shriram Godge,
Age-61 years, Occu:Retd.,
R/o-Near Church, Loni (Kh),
Tq-Rahata, Dist-Ahmednagar,
- 5) Shivnath Bhausaheb Vikhe,
Age-65 years, Occu:Retd.,
R/o-Songaon Road, At Post Loni (Bk.),
Tq-Rahata, Dist-Ahmednagar,
- 6) Sukhlal Goru Dangore,
Age-66 years, Occu:Retd.,
R/o-Polytechnic Quarter, Loni (Bk.),
Tq-Rahata, Dist-Ahmednagar,

(Died on 29.08.2019) Through L.R.s:

- 6-A) Kalabai wd/o Sukhlal Dangore,
Age-54 years, Occu:Service,

6-B) Sunil s/o Sukhlal Dangore,
Age-41 years, Occu:service,

6-C) Sagar s/o Sukhlal Dangore,
Age-34 years, Occu:Private Job Work,

All above R/o- Polytechnic Quarter,
Loni (Bk.), Tq-Rahata, Dist-Ahmednagar.

7) Dinkar Namdeo Sathe,
Age-60 years, Occu:Retd.,
R/o-Satyam Bunglow, Saraswatinagar,
Loni (Kh), Tq-Rahata, Dist-Ahmednagar.

...PETITIONERS

VERSUS

1) The State of Maharashtra,
Through Principal Secretary,
Ministry for Higher & Technical
Education, Mantralaya, Mumbai,

2) The State of Maharashtra,
Through Ministry of Finance,
Through Principal Secretary,
Mantralaya, Mumbai-32,

3) The Director of Technical Education,
Maharashtra State, 3,
Municipal Corporation Road,
Post Box No. 1967, Mumbai 400 001,

4) The Joint/Dy. Director of Technical
Education, Regional Office,
New Polytechnic Area, Post Box
No.219, Samangaon Road, Nasik Road,
Nasik 422 101,

5) Pravara Rural College of Pharmacy, Pravaranagar,
Through it's Principal, At Post-Loni Bk.
Tq-Rahata, Dist-Ahmednagar.

...RESPONDENTS

...
Mr.Ajit Manohar Gholap Advocate for Petitioners.
Mr.S.P. Sonpawale, A.G.P. for Respondents No. 1 to 4.
Mr.A.V. Hon Advocate for Respondent No. 5.
...

**CORAM: SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.**

DATE : 1st FEBRUARY, 2021

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

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

2. The petitioners are employees appointed during the period 1981 to 1988 in aided institutions. By virtue of their such employment, as they were entitled to, they have been given first time scale promotion on respective dates of completion of 12 years services. While the petitioners retired during the period 2011 to 2017, after completion of next 12 years of services the benefit which shall ensue as per the Assured Career Progression Scheme, is not being given to them and thus the present writ petition.

3. Learned counsel for petitioners has taken us through various decisions passed by this court, particularly in a group of writ petitions bearing No. 334 of 2018 and companion petitions, dated 4th October 2018, observing thus:

“ 2. In so far as 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.

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 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 is 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.*

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. ”

4. Learned counsel also, foreseeing that there would be an argument about said order being under review in certain proceedings, refers to order dated 15th July 2019 passed by division bench at Nagpur, in a group of writ petitions bearing No. 1188 of 2018 and other petitions, wherein following are the observations:-

“ 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.

6. It is also submitted on behalf of the State that now the 7th Pay Commission's recommendations have been accepted for their implementation and as per the G.R. dated 1st January, 2019 there is no need to grant any benefit under the aforesaid Scheme to the petitioner. As rightly submitted by the learned counsel for the respective petitioner this Government Resolution has got nothing to do with the benefit conferred upon the employees under the old Scheme which was the Assured Career Progression Scheme framed vide G.R. dated 1.4.2010 and the G.R. dated 1st January, 2019 does not speak anything about the withdrawal of the Scheme with retrospective effect. We think, he is right as the G.R. only says that the Assured Career Progression Scheme has been modified and so, we would say, such modification will be applicable with prospective effect. ”

5. In addition to aforesaid, learned counsel also refers to a decision of this court in group of writ petitions bearing No. 1945 of 2017 and other petitions, dated 20th August 2019.

6. As was the resistance in aforesaid concerned writ petitions, in present matter as well the learned AGP purports to argue that government resolution dated 1st April 2010 extending the benefits 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 institutions and that resolution by education department of government is necessary clarifying the beneficiary group or as to whom it should be made applicable

and that the petitioners' case would not be covered by said government resolution as like government and zilla parishad employees.

7. Though it is submitted so, while the core factual situation is similar to the one as involved in the writ petitions, referred to above is not disputed at all, it is difficult to go by the submissions of learned AGP, especially when those have not weighed with division benches deciding the matters in similar circumstances. We, therefore, follow the course adopted in the decisions referred to above and pass following order:-

ORDER

I) The petitioners would be allowed second time benefit under Assured Career Progression 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 benefits as referred to above 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.

[ABHAY AHUJA, J.]

[SUNIL P. DESHMUKH, J.]

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