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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7295 OF 2018

1. Abhay Yuva Kalayan Kendra, Dhule PETITIONERS
Through its President,
Dr. Sudhakar s/o Motiram Borse
Age – 78 years, Occupation – Social Service
R/o Dhule Taluka and District – Dhule
2. Kala Mahila Mahavidalya, Dhule
run by Abhay Yuva Kalayan Kendra, Dhule
District – Dhule (Through its Principal)
3. Shri Dilip Pandit Mahajan,
Age – 58 years, Occ – Retired Junior Clerk
R/o Abhay Yuva Kalyan Kendra Sanchalit
Kala Mahila Mahavidalya, Deopur,
Dhule, District - Dhule

VERSUS

1. The State of Maharashtra RESPONDENTS
Through its Secretary,
Higher Education Department,
Mantralaya, Mumbai – 32
2. The Joint Director
High Education Department,
Jalgaon Division, Jalgaon
District – Jalgaon

WITH
WRIT PETITION NO.5204 OF 2019

1. Abhay Yuva Kalayan Kendra, Dhule PETITIONERS
Through its President,
Dr. Sudhakar s/o Motiram Borse
Age – 78 years, Occupation – Social Service

R/o Dhule Taluka and District – Dhule

2. Kala Mahila Mahavidalya, Dhule
run by Abhay Yuva Kalayan Kendra, Dhule
District – Dhule (Through its Principal)
3. Shri Naval Shalikrao Patil,
Age – 57 years, Occ – Service
R/o 44, Indraprastha Colony,
Gondur Road, Deopur,
Dhule, District - Dhule

VERSUS

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| <ol style="list-style-type: none">1. The State of Maharashtra
Through its Secretary,
Higher Education Department,
Mantralaya, Mumbai – 322. The Joint Director
High Education Department,
Jalgaon Division, Jalgaon
District – Jalgaon | <p>RESPONDENTS</p> |
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Mr. V. D. Sapkal, Senior Advocate i/b Mr. S. R. Sapkal, Advocate for petitioners

Mr. S. P. Sonpawale, AGP for respondent - State

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

DATE : 8th MARCH, 2021

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

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

2. Petitioners in aforesaid two writ petitions, viz: writ petition No. 7295 of 2018 and 5204 of 2019 question legality and validity of communications dated 14-06-2018 and 31-03-2019 issued by respondent no. 2 – joint director, higher education department issued to petitioners no. 3 respectively, whereunder period of their service in the college of education which is run on non-grant-in-aid basis, is sought to be excluded from computation of period of their entire service with a direction to fix their pay and recover excess amount paid which the petitioners consider is improper and may downscale the benefits, *inter-alia*, pensionery etc.

3. The petitions are being considered and decided under this common judgment as both the petitions raise similar questions and challenge is posed on same/similar grounds to aforesaid communications (hereinafter referred to as ‘impugned orders/communications’).

4. The petitioners no. 3 in respective petitions were appointed initially by petitioner no. 1 – educational institution and the trust in its college of education on 01-07-1987 and 31-07-1986 as junior clerk and head clerk. Said college was being run by petitioner no. 1

on non-grant-in-aid basis. Their services were confirmed by petitioner no. 1 under resolutions. Petitioner no. 1 transferred the petitioners no. 3 in respective petitions on 30-03-1991 and 27-07-1989, to its Arts, Commerce and Science college for women.

5. Petitioners when were transferred, their last pay certificates were also issued by the principal of college of education. Upon transfer, their pay scales were fixed and those were verified by Senior Auditor. Petitioners were even continuously been given increments and their pay was fixed and approved by the authorities from time to time. Its benefits were also given to petitioners no. 3 all through their service period. Petitioners were also given benefit of time bound promotional pay scale.

6. Petitioners no. 3 retired on 31-05-2018 and 31-05-2019, respectively. Their retiral benefit proposals were submitted to concerned authorities in advance along with necessary details. There had been correspondence in respect of the retirement proposals, certain defects were perceived, those were removed by submitting necessary documents. However, the process culminated into impugned communications purporting to exclude the period of their

service in college of education, the period being spent in a college not receiving grant-in-aid, referring to government resolution dated 22-11-1993 with instructions to recover excess payment made to petitioners.

7. Petitioners' pay had been fixed, taking into account their past services in aforesaid college. Pay scales of the petitioners had been verified by senior auditor and the same were approved. Petitioners were also given time bound promotional pay scales.

8. Mr. Sapkal, learned senior advocate appearing on behalf of the petitioners submits that petitioners were appointed in college being run on non grant in aid basis, yet, pay scales given to them had been as is applicable to employees working in colleges receiving grant in aid. Pay scales are governed by statutory provisions. The petitioners' service conditions were being governed under regime of rules while they were serving in non-grant-in-aid basis college as were applicable to the institutions running with grant-in-aid. There is no difference in educational qualifications and the kind of duties performed by the junior clerk and head clerk serving in non-grant-in-aid and grant-in-aid basis establishments. While petitioners No. 3 were transferred to

college receiving grant in aid, the principal had issued last pay certificates to them. Their pay scales accordingly had been fixed, taking into account pay scales applicable and being received by petitioners no. 3 in their erstwhile employment. Their pay scales had in fact been verified by senior auditor and had been approved upon their induction in the college run with grant in aid. Fixation of pay scale in the college receiving grant in aid, had not been disturbed at any point of time before respondent No. 2 started communicating upon proposals of retirement of petitioners No.3. In the interregnum petitioners No. 3 have received all other incidental, ancillary and consequential benefits. They had also been given benefit of Assured Careers Progress Scheme (ACPS). He submits that even otherwise there is no plausible rationale in making distinction in services rendered by employees like petitioners, in the establishment receiving grant in aid and the ones not receiving grant in aid.

9. He submits, during all these years, there had been no reference to 1993 government resolution which is sought to be made use of, to decline payment of legitimate retirement benefits to the petitioners. He submits that there is no rationale in the condition in 1993 government resolution, save and except economic advantage to the

State. However, he goes on to submit that such a distinction would not stand the test of Article 14 of the Constitution of India. Apart from aforesaid, he submits that the situation is no longer *res-integra*. Efficacy of the condition from the government resolution of 1993 is enervated and attenuated and is of no significance having regard to various decisions of the Supreme Court and the High Court. He submits that reference to government resolution dated 22nd November, 1993 in the circumstances is unwarranted.

10. Learned senior advocate refers to decisions of this court in the cases of “*Suman Lahanu Wakchaure V/s State of Maharashtra and Others*” reported in 2009 (1) Bom.C. R. 216 and “*Raskar Vidya Damodar (Mrs)@ Bhujbal Vidya V.s Maharashtra Arogya Mandal and Others*” reported in 2001 (2) Bom.C.R. 284. This court in *Raskar Vidya Damodar (supra)* has categorically observed that “*it is settled position now that pay scale has to be maintained, whether school is aided one or not, is a Government one or private*”. It appears to have been observed in said judgment that there has to be parity of pay scales between teachers of private schools which are aided as well as unaided. Similarly, there should be parity of pay scales between teachers working in private aided schools and schools run by the

State Government. It is not permissible in law for a private unaided educational institution to put forward the hypotheses that it is not liable to pay salaries to its teachers as per the pay scales prescribed under the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Decisions of the Supreme Court in the cases of “*K. Krishnamacharyulu and Others V/s Sri Venkateswara Hindu College of Engineering and Another*” reported in 1997 (1) CLR 1133 as well as “*Chandigarh Administration and Others Vs Rajani Vali and Others*” reported in J.T. 2000 (1) SC 159 have been referred to wherein it has been observed that there is no justification for denying parity of pay scales. He also refers to an order of this court in writ petition No. 5932 of 2009 dated 9th October, 2013 (*Abdul Hamid Buzurg Shaikh Vs. State of Maharashtra and Others*), wherein benefit of past service was directed to be considered for revised pension.

11. He also refers to decision of this Court in writ petitions 3264 of 2012 and 3265 of 2012 (*Shakeela Shaikh Fakruddin and others Vs. The State of Maharashtra and others*) wherein the division bench of this court had considered that period of service during which a school was not an aided school cannot be kept out of consideration while computing qualifying service of 12 years. It has been noted then that decision in the case of *S.T. Devare and others Vs. The Accounts*

Officer dated 14th September, 2000 (writ petition no. 4336 of 2000) had been followed in several cases.

12. Learned Senior Advocate has also referred to a decision of another division bench of this court reported in *Sunanda w/o Pandharinath Adhav (Mrs.) and others Vs. State of Maharashtra and others 2001 (1) Bom.C.R. 809* whereunder teachers in unaided schools were given parity with the pay scales applicable to teachers in aided schools which in turn had referred to various supreme court decisions.

13. He refers to, observations in the case of “*Dattatray Eknath Mahadik and Others V/s Deputy Director of Education and Others*” in writ petition No. 989 of 2006 dated 27th April, 2006 may be relevant in this respect, which are to the effect that whether school is aided or not, the school has to pay same pay scales to its staff, whether it is teaching or non teaching. Once that be the case, whether school receives grant in aid or not, would be immaterial so long as employees have been appointed and their appointments have been approved, relevant date would be date of their initial regular appointment.

14. Respondents in their affidavit-in-reply purport to resist the petitions. It is being submitted that the period of service in a college which was not receiving grant-in-aid would not be computed in view of the condition under government resolution dated 22nd November, 1993. Rule 31 of Maharashtra Civil Services (Pension) Rules, 1982 is also referred to.

15. It is adverted to that government resolution dated 22-11-1993 refers to that period of service in unaided college shall be considered for pensionary benefits with the services in aided college, however, such unaided college will have to come on grant in aid basis on the date of retirement of such employees and, thus, the condition being not satisfied, petitioners' will not be entitled for computation of their services in non-aided college.

16. Learned AGP in support of his submissions purports to refer to decision in the case of *Ram Inder Sharma Vs. State of Maharashtra and others 2017 DGLS (Bom.) 887* which has been in respect of grant of selection grade to the petitioners wherein the court appears to have declined to consider the request of the petitioners.

17. There is no dispute on that when petitioners were transferred to another college under the same management, from the one which had not been receiving grant in aid to the one which had been receiving, it had been accompanied by last pay certificate by the Principal of the college of education. Pay scales were being increased from time to time. Increments were being awarded to the petitioners from time to time. Petitioners had been receiving such payment from the government from the date of transfer.

18. There have been many decisions so far as pay scale is concerned, there can be no distinction between pay scale of employees working in establishment getting grant in aid and those which do not.

19. In a group of writ petitions bearing No. 451 of 2017 and others (*Sandeep Babasaheb Chate and Others V/s Shri Vardhaman Sthanakwasi Jain Shrawak Sangh and Others*), a division bench of this court, under its judgment and order dated 4th April, 2019 appears to have adverted to that unaided post and aided post is artificial discrimination. While the State is not in a position to provide education to all, private schools intervened. The government has removed word “*permanent*” from permanently non grant in aid

basis. Unaided schools are being given grants now.

20. In the present matters, factual position appears to be that pay scales of petitioner No. 3 have been approved by concerned authorities as were fixed, long back after their transfer. Same had been computed for giving other consequential and incidental benefits, including benefit of ACPS. While it comes to paying them retiral benefits, recovery is being sought to be made with reference to government resolution dated 22nd November, 1993, it appears to be an approach too technical to be approved of in the present cases.

21. We may also have the benefit of a decision of the Supreme Court in the case of *“Secretary, Mahatama Gandhi Mission and Another V/s Njartiya Kamgar Sena and Others”* reported in *AIR 2017 Supreme Court 505*, wherein the Supreme Court had considered that pay scales and service conditions of non teaching staff of unaided colleges have to be in tune with pay scales suggested by 5th Pay Commission.

22. In aforesaid decision, it has been observed to the effect that classification such as aided and non aided will have to pass through test of equality under Article 14 of the Constitution of India. Classification must bear a nexus of the object sought to be achieved.

Court had further observed that one fails to understand rationale behind classification made by the State of Maharashtra between aided and unaided colleges. It was observed that there was no justification in excluding non teaching employees of unaided educational institution while extending benefits of revised pay scale to non teaching employees of aided institutions. Such a classification is violative of Article 14 of the Constitution of India. Observations of supreme court in aforesaid decision lend lot of substance to contention of the senior advocate that condition under government resolution dated 22nd November, 1993 loses out on efficacy in present scenario.

23. Analogy from decision of the Supreme Court in the case of *“State of Punjab V/s Rafiq Masih (White Washer) etc”*. reported in *AIR 2015 SC 696* can also be made use of. It is not the case that petitioners’ pay fixation had been illegitimate and that they had played any role.

24. Having regard to aforesaid, though learned AGP purports to refer to and rely on a decision in the case of *“Ram Inder Sharma V/s State of Maharashtra and others”*, reported in *2017 DJLS (Bom.) 887*, it does not appear to be a case which would be able to hold

sway in the emerging position from decisions referred to in foregoing discussion.

25. It is not the case of the respondents that petitioners were not being paid pay scales as were applicable to the aided institutions. As a matter of fact the respondents have not even disputed the same. In the circumstances, distinction sought to be made of rendition of service in aided and non aided institutions and the reason underlying the same has not been explained by any plausible rationale. Impugned orders tend to be rather too technical, after a long lapse of time, after approving pay scales and giving all consequential benefits therefrom. It would not be appropriate at the fag end of service of the petitioners to pedantically and unreasonably refer to government resolution of 1993. In the circumstances, impugned orders would not be said to be sustainable.

26. Having regard to the aforesaid discussion, it does not appear that the benefit of past service in an unaided establishment can be declined to be given in the petitioners' case. In the result, the impugned communications dated 14-06-2018 and 31-03-2019 to the extent they purport to decline the benefit of the services rendered in

private unaided college along with a direction to recover the excess payment are set aside.

27. The proposals sent by petitioners No. 1 and 2 be considered afresh without getting bogged down by government resolution dated 22nd November, 1993.

28. Rule is made absolute accordingly. Writ Petitions are disposed of.

[ABHAY AHUJA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/-WP-7295-18
