

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

915 WRIT PETITION NO.12793 OF 2022

HARI MAROTI NAIKWADE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH ITS SECRETARY AND OTHERS

AND

WRIT PETITION NO.12816 OF 2022
(Not on the Board. Mentioned.)

SADASHIV KARBHARI BHOSALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH ITS SECRETARY AND OTHERS

...
Advocate for Petitioners : Mr. Vijay A. Dhakne.
AGP for Respondent/State: Mr. P. S. Patil.
...

CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 14th December, 2022.

Per Court:

1. Writ Petition No.12816 of 2022 is not on board. Being identical, taken on board, by the consent of the parties.

2. The petitioners are seeking first ACPS benefit.

3. The petitioners have put forth prayer clause B and C as under :-

“B) To direct the respondents to grant the higher pay scale to the

petitioners under the Assured Career Progress Scheme on account of completion of 12 years of their services with effect from 11.06.2018 and 18.06.2013 respectively with all other consequential benefits, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be.

C) To direct the respondents no. 3, 4 and 5 to scrutinize and consider the proposals of the petitioners for extending the higher pay scale benefits under the Assured Career Progress Scheme in the light of the Judgments passed by the Division Bench of this Hon'ble Court in writ petition no. 2358/ 2013 with other connected matters and writ petition no. 8441/ 2014, pending hearing and final disposal of this petition."

4. The Issue raised by the petitioners is no longer *res integra*. By a judgment dated 21/09/2013, delivered by this Court [Coram : Abhay S. Oka (as his Lordship then was) and Revati Mohite Dere, JJ.] in Writ Petition No.2358/2003, filed by Kiran Namdeo Shinde and others Vs. State of Maharashtra and others and a group of matters, at the Principal Seat and further orders passed by this Court at Aurangabad, the claim of all such petitioners have been accepted. It would be appropriate for us to reproduce the directions issued by this Court in Kiran Namdeo Shinde (supra) in paragraph Nos.18 to 21, as under :-

"18. Only on the basis of purported ground of financial crunch, we fail to understand the approach of the State Government of discriminating between the non-teaching staff of aided Ashram

Schools and non-teaching staff of aided Private Schools. At one stage both the Schools were functioning under the control of only one department.

19. In our view the denial of benefit of ACPS amounts to discrimination, which is hit by the rights guaranteed by Articles 14 and 16 of the Constitution of India.

20. As we have already noted that there is already a Government Resolution and a Policy which grants the benefit of ACPS to non-teaching staff of the aided Private Schools, the petitioners who are claiming benefit on the basis of parity will have to satisfy the criteria laid down by the policy which governs the cases of the similarly placed non-teaching staff of the private aided Schools. Though, we are holding that non-teaching staff in Group 'C' and 'D' posts in aided private Ashram Schools will be entitled to the benefit of ACPS, which is already extended to the non-teaching staff of the aided Private Schools, the question whether individual petitioners satisfy the requirements incorporated in the Government Policy applicable to non-teaching staff of private government aided schools will have to be left to be decided by the appropriate Authorities.

21. Hence, we dispose of the petitions, by passing the following order :-

(i) We declare that the benefit of ACPS, which is applicable to the employees of Group 'C' and 'D' non-teaching staff of the aided Private Schools in the State under the Government Resolution dated 30th April, 1998 as modified from time to time shall be available to the non-teaching staff of the same category in the private aided Ashram Schools ;

(ii) The appropriate Authority appointed by the State Government shall examine the individual cases of the petitioners for deciding whether they satisfy the criteria laid down for availability of the benefit of ACPS to the private aided Government Schools under the Government Resolution dated 30th April, 1998 as modified from time to

time;

(iii) We make it clear that the petitioners will be entitled to the benefit of the said scheme, provided they satisfy the eligibility criteria which is prescribed for the corresponding non-teaching staff of the private aided Schools;

(iv) We grant time of six months to the respondents to scrutinize the cases of the petitioners and to consider whether they are eligible for the benefit of ACPS;

(v) To those petitioners who are found eligible, the benefit shall be extended, as expeditiously as possible;

(vi) Petitions are disposed of on above terms.”

5. The learned A.G.P. representing the respondents submit that, they cannot argue against the law and since there is a judicial pronouncement by this Court, the Authorities would scrutinize and examine the case of the petitioners and after confirming that the petitioners are eligible for the benefits of the first ACPS, such benefits would be extended to them.

6. In the light of the above, both the petitions are disposed off. The directions set out in paragraph No.21 in Kiran Namdeo Shinde (Supra), reproduced above, will be applicable to the case of the petitioners.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]