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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7111 OF 2017**

1] Mrs. Vandana Jayant Damle
2] Shri Kamalkishor Rambilasji Atal Petitioners.
V/s
The State of Maharashtra and Ors. Respondents.

Mr. Sanjay D. Koban for the Petitioners.
Mr. V.M. Mali, AGP for Respondent Nos. 1 to 4.
Mr. Chetan Alai a/w Rama Somani for Respondent Nos. 8 and 9.

**CORAM: NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATE: DECEMBER 20, 2022

P.C.:-

1] Petitioners who are teachers of unaided Engineering College i.e. Respondent No.9 are seeking revised pay-scale in accordance with AICTE Regulations which are adopted by the State of Maharashtra. Petitioners are seeking extension of revised pay-scale with all financial benefits as admissible to their position and seniority and seeking monthly salary with effect from 01/01/2006 as per the 6th Pay Commission. Petitioners are also seeking arrears of salary with interest.

2] Petitioner No.1 was appointed as a Lecturer in Mathematics on 02/09/1992 and was promoted to the post of Lecturer (Senior Scale) with effect from 01/09/2009. Her appointment on promotion is duly approved by Respondent-University. Similarly, Petitioner No.2 was appointed on 30/09/1992 as a Lecturer (Senior Scale) in Mathematics and was promoted as a Lecturer (Selection Grade) with effect from 01/09/2009. Since the financial benefits under 6th Pay Commission from 01/06/2006 were not extended to the Petitioners, Petitioners have approached this Court with the reliefs claimed.

3] According to the learned Counsel for the Petitioners, the issue as to their entitlement to all financial benefits as per the 6th Pay Commission is no more *res integra* in view of the judgment of the Apex Court in the matter of *Secretary, Mahatma Gandhi Mission and another vs. Bhartiya Kamgar Sena and Others* reported in **AIR 2017 SC 505**. Submission is made that Petitioners are also entitled for benefits of 6th Pay Commission as could be inferred from Division Bench Judgment of this Court at Nagpur Bench in Writ Petition

No.3489 of 2020 (Mr Milindkumar s/o Sitaramji Jibhakate and Ors. vs. State of Maharashtra Through Secretary Technical Education Department, Mantralaya Mumbai-34 and others) with companion Writ Petition No. 2121 of 2021 decided on 29th August, 2022. According to the Petitioners, they are not incurring any disqualification in the matter of extending financial benefits and as such are entitled for financial benefits under 6th Pay Commission.

4] Aforesaid claim is disputed by Counsel for Respondent Nos. 8 and 9. It is claimed by the said Respondents that Petitioner No.2, after domestic inquiry, was dismissed from service with effect from 01/08/2019. It is further claimed that as far as Government Resolution dated 08/09/2010 is concerned, it is mandatory that person appointed on the post of Lecturer must qualify Net/Set Examination conducted by the Government. According to the said Respondents, since the College is affiliated to Non-agricultural University, it is mandatory to clear the Net/Set qualification. It is further claimed that vide Notification dated 22/1/2010 recommendations of 6th Pay Commission have been made applicable

to the Institutions/Universities imparting technical education. According to Counsel for Respondents, AICTE Notification dated 4/1/2016 makes it mandatory to teaching staff to clear Net/Set Examination. As such, it is claimed that since the Petitioners have not cleared the Net/Set Examination till this date, Petitioners are not entitled for any benefits of 6th Pay Commission, as claimed.

5] As against the above contention, Counsel for the Petitioners would submit that Petitioners are not liable to clear Net/Set Examination having regard to the fact that they are appointed on 2/9/1992 and 30/9/1992 respectively on the post of Lecturer. Relying on the Government Resolution, it is claimed that it is not mandatory for the Petitioners to clear the Net/Set Examination.

6] We have appreciated aforesaid submissions.

7] As regards the obligation on the part of Respondent-Management to extend financial benefits as per the recommendations of 6th Pay Commission to the teaching staff of the Institute is not a fact

in dispute. Only exception which the Respondent-Institution intends to carve out for refusing financial benefits of 6th Pay Commission is non-clearance of Net/Set Examination by the Petitioners. If we appreciate aforesaid submissions, fact remains that Respondent-University in its communication dated 04/2/2011 has in categorical terms stated that teachers who were appointed prior to 25th December, 2005 and were teaching mathematics and were permanently approved by the University are not required to hold Net/Set qualification. Aforesaid fact is also further justified from the Government Resolution dated 07/06/2013 which in categorical terms provides that it is not necessary for the candidates like the Petitioners who were appointed in 1991 to hold qualification of Net/Set. Though Counsel for Respondents has relied on the qualification prescribed, in view of the Government Resolution dated 8/9/2010 so also Notification dated 04/01/2016 issued by All India Council for Technical Education, the qualification prescribed therein is prospective and not retrospective. The qualification prescribed therein cannot be made applicable to the Petitioners, as appointment of the Petitioners is prior to issuance of said Government Resolution and its applicability.

8] In this backdrop, if we appreciate the law laid down by the Apex Court in the matter of *Secretary, Mahatma Gandhi Mission* cited supra and also Division Bench Judgment of Nagpur Bench of this Court in Writ Petition No.3489 of 2020 (Mr Milindkumar s/o Sitaramji Jibhakate and Ors. vs. State of Maharashtra Through Secretary Technical Education Department, Mantralaya Mumbai-34 and others) with connected matters, it is quite clear that Petitioners are entitled for benefit of 6th Pay Commission and it is not open for Respondent-Management to disqualify them for such financial benefits merely on unjust ground that they are not holding Net/Set qualification.

9] For the aforesaid reasons, Writ Petition stands allowed. It is directed that both the Petitioners are entitled for benefits of revised pay-scale as per 6th Pay Commission i.e. with effect from 01/01/2006 and consequently shall also be entitled for upgradation of their regular salary. It is directed that all financial benefits under the 6th Pay Commission be paid to the Petitioners including entire arrears within a period of three months from today. On the arrears payable to the

Petitioners, Respondent-Institution is liable to pay interest @ 6% per annum from the date same were due and payable to the Petitioners. Needless to clarify that Petitioner No.2 who is already dismissed from service is entitled for benefits only up to the period of 31st July, 2019 as he was dismissed on 01/08/2019.

10] Petition is accordingly allowed and disposed of in the aforesaid terms.

[SHARMILA U. DESHMUKH, J.]

[NITIN W. SAMBRE, J.]