

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

WRIT PETITION NO.12539 OF 2023

Eknath S/o Mhatardeo Bangar,
Aged: 59 years, Occu: Service as
Cook at Shri Gadge Maharaj
Primary Ashram School, Valan,
Taluka Rahuri, District Ahmednagar

... PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through its Secretary to the
Government of Maharashtra in
Tribal Development Department,
Mantralaya, Mumbai -32
- 2] The Commissioner,
Tribal Development Department,
Maharashtra State, Nashik
- 3] The Additional Commissioner
Tribal Development Department,
Nashik Division, Nashik,
Old Mumbai – Agra Road,
Gadkari Chowk, Nashik
- 4] The Project Officer
Integrated Tribal Development
Project, Rajur,
Taluka Akole, District Ahmednagar

... RESPONDENTS

....
Mr. S. R. Shirsat Advocate for Petitioner
Mr. S. G. Karlekar, AGP for Respondents – State
....

**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 12.10.2023

ORAL JUDGMENT (PER Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner has put forth prayer clause “B” as under:-

“B. The respondents may please be directed to forthwith grant Higher Pay Scale and/or benefits of Assured Career Progress Scheme (A.C.P.S.) to the petitioner from the date, on which he has completed & rendered 12 years qualifying as Non-Teaching Staff alongwith all consequential benefits, by issuing writ of mandamus or any other appropriate writ, order or direction in the nature of writ of mandamus.”

3. The issue raised in this Petition is no longer *res-integra* in view of the judgment dated 21.9.2013, delivered by this Court at the Principal Seat in Writ Petition No. 2358 of 2013 (Kiran Namdeo Shinde and others vs. The State of Maharashtra and others) and companion matters. Paragraph Nos. 17 to 19 of the said judgment, read as under:-

“17. The Assured Career Progress Scheme is a welfare scheme which is basically brought about to remove stagnation as very few promotion avenues are available to Group ‘C’ and ‘D’ employees. The ACPS enables the eligible employees to be placed in higher pay scale. The eligible non-teaching staff of aided Secondary Schools in Group ‘C’ and ‘D’ category gets the benefit of ACPS. But the similar category of employees in the aided private Ashram Schools who perform identical duties have been denied the benefit of ACPS which infringes their fundamental rights under Articles 14 and 16 of the Constitution of India. The action of denial of benefits to the similarly placed employees discharging similar duties is arbitrary and violative of Article 14 of the Constitution of India.

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.”

4. In view of the above, this **Writ Petition is partly allowed.**
5. We permit the Respondents authorities to carry out the verification exercise and to confirm that the Petitioner satisfies the criteria for claiming benefits of ACPS upon completion of 12 years' service, by taking into account his date of joining in the light of the Government Resolution dated 30.4.1998. Needless to state, if the Petitioner is entitled, the monetary benefits would be extended to him. Let such verification exercise be completed, within 150 days and if eligible, let the monetary benefits be paid to the Petitioner, within 60 days thereafter.
6. **Rule is made partly absolute** in the above terms.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

SMS