



(1)

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

904 WRIT PETITION NO. 10333 OF 2019

**DR. KALPANA ASHOK AGRAWAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

....
Mr Shambhuraje V. Deshmukh, Advocate for Petitioner;
Mr P. K. Lakhotiya, A.G.P. for Respondent Nos.1 & 2

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

DATE : 18th January, 2024

PER COURT:

1. The first notice, as well as, the notice for final disposal, have been served upon Respondent No.3. Despite service, Respondent No.3 has chosen to avoid an appearance in this matter.

2. The Petitioner has put forth prayer clause (B), which reads as under :-

“(B) This Hon’ble Court by issuing writ of mandamus or any other writ, order or directions in the like nature to the Respondent No. 1 and 2 to step up her pay so as to be at par with pay of her junior Dr. Sharad Kailas Agrawal and her other juniors who were drawing more salary than the Petitioner at the time of her retirement and to pay consequential retirement benefits with arrears a/w with interest within period of three months.”

(2)

3. For easy understanding, we are reproducing the chart placed on record at Page No.12 of the petition (verbatim), hereunder :-

Junior Lecturer Dr. Sharad Kailas Agrawal		Senior Lecturer Dr. Kalpana Ashok Agrawal	
Date of Appointment 20.06.1990 (In the Pay Scale 2200-4000)	2200	Date of Appointment 02.09.1985 Pay fixed on 1.1.86 (In the pay Scale 2200-4000)	2200
Date of Senior Scale 20.06.98 In the Pay Scale 10000-325-15200	10000	Date of Senior Scale 01.01.96 in the Pay Scale 10000-325-15200	10325
Date of Selection Grade – 20.06.2001 12000-420-18300	12000	Date of Selection Grade (With Ph.D. Two Increment) 27.07.98 12000-420-18300	12840
1.6.2002	12420	1.9.98	13260
1.6.2003	12840	1.9.99	13680
1.6.2004	13260	1.9.2000	14100
1.6.2005	13680	1.9.2001	14520
1.6.2006	14100	1.9.2002	14940
1.6.2007	14520	1.9.2003	15360
Ph.D. Two Increment on 14.03.2008	15360	1.9.2004	15780
1.6.2008	15780	1.9.2005	16200
..	..		
Fixation as per 6 th Pay as on 1.1.2006 in the (Pay Band - 37400-67000)	37400	Fixation as per 6 th Pay as on 1.1.2006 in the (Pay Band - 37400-67000)	39690
1.7.2006	38800	1.7.2006	41150
1.7.2007	40240	1.7.2007	42660
1.7.2008	41720	1.7.2008	44210
Ph.D.Three Advance increment on 1.9.2008	46310	1.7.2009	45810
1.7.2009	47970	1.7.10	47460
1.7.2010	49680	1.7.11	49160
1.7.2011	51440	1.7.12	50910
1.7.2012	53260	1.7.13	52710
1.7.2013	55130	Date of Resignation 31.7.14	54570

(3)

1.7.2014	57060		
1.7.2015	59050		
1.7.2016	61100		
1.7.2017	63210		
1.7.2018	65380		

4. The learned A.G.P. has vehemently opposed the submissions of the learned Advocate for the Petitioner and has made a valliant attempt to justify, as to why Dr. Sharad Kailas Agrawal would be entitled for higher pay-scale than the Petitioner. Though the prayer of the Petitioner for parity in the pay-scale is accepted in this case, Dr. Sharad Agrawal does not have to be deprived of any benefits, and even if this Petition is allowed, Dr. Sharad Agrawal would not be affected in any way.

5. The whole issue turns upon the in-service candidates acquiring Ph.D. being eligible for two additional increment as an incentive. The Petitioner was appointed on 02/09/1985. She acquired Ph.D. in 1997. With effect from 27/07/1998, on account of having acquired such Ph.D., two increments were granted as per the recommendation of the 5th Pay Commission. With effect from 01/01/2006, the 6th Pay Commission recommendation were made applicable. Under the 6th Pay Commission, an in-service candidate who acquired Ph.D., was entitled for three advance

(4)

increments as compared to two advance increments, which were extended under the 5th Pay Commission recommendations. Dr. Sharad Agrawal acquired Ph.D. in 2008 and received three advance increments under the 6th Pay Commission, thereby taking a leap of one increment above the Petitioner. Hence, though being junior to the Petitioner, and though his salary/pay-scale having been consistently lesser than the Petitioner for a period of 18 years, he overtook the Petitioner under fortuitous circumstances by virtue of the third increment introduced by the 6th Pay Commission.

6. The above anomaly was considered by this Court in similar circumstances, vide the judgment dated 21/11/2013 delivered in Writ Petition No.10283/2012 (Sudamrao Keshawrao Aher and others Vs. State of Maharashtra and others) with Writ Petition No.888/2013 (Tukaram Manikrao Varat and others Vs. State of Maharashtra and others).

7. The learned A.G.P. frankly submits that, he cannot canvass submissions which would be in opposition to the law laid down by this Court in Sudamrao Keshawrao Aher (supra).

8. We find that the Judgment in Sudamrao Keshawrao Aher (supra) is squarely applicable to the case of the Petitioner. The said Judgment has attained finality. The discussion of this Court in paragraph Nos.13 to 17, read as under :-

“13. Comparative chart of Petitioner S.K. Aher and S.S. Nighut makes it clear that while everything was equal between the senior and junior to the extent that both of them had acquired Ph.D. Degrees, due to the only difference that the junior had acquired Ph.D. Degree recently, he has been given incentive under implementation of 6th Pay Commission in such a manner that he marches over the senior to get much more in salary by what has been stated to be an incentive for acquiring Ph.D. Degree. No doubt incentives are required to be given but all things given to be the same, if while implementing the incentive to the junior disparity arises in the pay, it would be necessary to step up the pay of the senior so as to be at par with junior. If this is not accepted, it would create serious disparities as is appearing from the present record. After all giving of the incentive under the Pay Commission is also part of the implementation of Pay Commission and there is no reason why disparity arising due to implementation should not be corrected and pay of the senior should not be stepped up.

14. Learned counsel for the Petitioners relied on the case of Gurcharan Singh Grewal and another vs. Punjab State Electricity Board and others, reported in (2009) 3 Supreme Court Cases 94. That was also the matter where anomaly arose due to difference of incremental benefits. The learned counsel for Respondents, Mr. Chhabra, in that matter, tried to justify the disparity before the Hon'ble Supreme Court by claiming that the disparity between the pay of Shri. Shori (in that matter) and Appellant 1 before the Hon'ble Supreme

(6)

Court was because the Appellant 1 had been granted promotional scale with effect from 1st January 1996, where the benefits of increments in the scale were lower and on the other hand Shri. Shori who joined the services of the Board in 1974 was granted promotional scale on 17th May 2006 with effect from 1st September 2011 when the increments in the pay-scale were higher. The Hon'ble Supreme Court observed in Para 17 and 18 of the Judgment as under:-

"17. Something may be said with regard to Mr Chhabra's submissions about the difference in increment in the scales in which Appellant 1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid a lesser salary than his junior. In such circumstances, even if there was a difference in the incremental benefits in the scale given to Appellant 1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of Appellant 1 was also stepped up to that of Shri Shori, as appears to have been done in the case of Appellant 2.

18. We are unable to accept the reasoning of the High Court in this regard or the submissions made in support thereof by Mr. Chhabra, since the very object to be achieved is to bring the pay scale of Appellant 1 on a par with that of his junior. We are clearly of the opinion that the reasoning of the High Court was erroneous and Appellant 1 was also entitled to the same benefits of pay parity with Shri Shori as has been granted to Appellant 2."

. Thus, the Hon'ble Supreme Court rectified the situation when incremental benefits given at different times were different so that the settled principle of law that

(7)

"senior cannot be paid a lesser salary than his junior" is maintained.

15. *In present matter, according to us, the incentives while implementing 6th Pay Commission for Ph.D. cannot be so given so as to give a junior teacher more pay than the senior who is otherwise equally qualified. Rather he has more experience and is senior even in the acquisition of the Ph.D. Degree. All things given to be the same at a given point of time, junior teacher could not be getting more salary than the senior only because the junior has just acquired the Ph.D. Degree. The Constitution has goal under Article 39(d) that there should be equal pay for equal work. If the arguments as raised on behalf of the Respondents are accepted, the same would amount to discriminating to teachers only on the basis of junior teacher having acquired Ph.D. Degree recently under new Pay Commission. This would be violative of the principles as enunciated in Article 16 of the Constitution and such position cannot be allowed to be maintained. It is different when one person is having qualifications. However, it would be discriminatory when both are having similar qualifications and a person not only senior in service but also equally qualified is so discriminated so as to be put in disadvantageous position as if it was a fault to have acquired Ph.D. Degree earlier. It is not a case of keeping the incentive separate and not part of pay. If pay fixation of Petitioner No.1 (as at Page 60-61 in Paper Book) is seen, on 1st July 2008, his basic pay is shown as Rs.57260/- while that of Shri. S. S. Nighut (See Page 107) was Rs.55870/-. Then in the proforma of Pay Fixation, entry on 22nd September 2008 for Shri. S.S. Nighut shows his basic pay as "55870+5030-60900". Thus the increments were merged in the basic. This would be discriminative between Senior Teacher and Junior Teacher. Note 5 below Appendix I of the G.R. needs to be so applied that such discrimination is removed.*

(8)

16. For the above reasons both the Petitions to be allowed with directions that Respondents shall take necessary action to step up the pay of the Petitioners in both the Petitions so as to be at par with juniors where all the things given are same and shall not discriminate only because the junior teacher has acquired Ph.D. Degree in the course of 6th Pay Commission. The salaries of the Petitioners in both the Petitions may be re-fixed and arrears be paid within a period of THREE MONTHS. For Petitioners who have already retired, the pension shall be re-fixed accordingly.

17. Both the Writ Petitions are allowed as above.”

9. The learned A.G.P. vehemently opposed the issue of granting of interest on the amount to be paid to the Petitioner.

10. In view of the above, **this Writ Petition is allowed** in terms of prayer clause (B). Akin to the directions issued in Sudamrao Keshawrao Aher (supra), the Petitioner shall be brought at par with the salary structure/pay-scale paid to Dr. Sharad Agrawal, w.e.f. 01/09/2008, till the date of her voluntary retirement on 31/7/2014.

11. Since we find that the anomaly occurred on account of the recommendations of the 5th and the 6th Pay Commissions and since the disparity crept-in due to one additional increment (over 2 increments) under the recommendations of the 6th Pay

(9)

Commission, and keeping in view that the Petitioner kept silent for four years, we are granting a nominal interest @ 3% p.a. for a period of only three years preceding the date of the filing of the Petition on the condition that the arrears would be paid to the Petitioner within 90 days from today, failing which, the interest would be 7 % p.a..

12. Consequential retiral benefits shall be recalculated by the Competent Authority insofar as the pension and gratuity is concerned and the same shall also be paid expeditiously.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

sjk