

(2019) 12 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 3494, 3962 Of 2016

Dhiraj And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Regulations Act, 1977 — Section 2(7), 4(1), 2(26), 16, 16(2)(a)

Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 — Rule 2(j), 2(k), 6, 7, 25

Citation : (2019) 12 BOM CK 0045

Hon'ble Judges : R.K.Deshpande, J;A.S.Chandurkar, J;Milind N. Jadhav, J

Bench : Full Bench

Advocate : B.G. Kulkarni, S.Y. Deopujari, A.R. Deshpande

Judgement

A.S.Chandurkar, J

1. The question that falls for consideration before the Full Bench is whether a Librarian engaged in a Secondary School/Junior College is entitled to pay-scale in accordance with his educational qualifications. In other words, whether a Librarian who is a graduate having a diploma/degree in Library Science is entitled to pay-scale of Rs.1400-2300 or to pay-scale of Rs.1400-2600, as admissible to a trained teacher ?

2. The manner in which the present reference was necessitated may be indicated by referring to the adjudication of the prayer made by various Librarians to the grant of appropriate pay-scale based on their qualifications. The first decision in point of time is in the case of Shobhu Shankar Chavan Vs. Head Master, Maharashtra Vidyalaya and Ors. in Writ Petition No. 5938/1998. Said Shobhu Shankar Chavan had acquired degree in Library Science in the year 1983 and he was a graduate. He was working as a Librarian since 16.11.1984. The original pay-scale for the post of Librarian was Rs.365-760. On the basis of Government Resolution dated 01.10.1988, he claimed entitlement to revised pay-scale of

Rs.1400-2300. By the judgment dated 17.12.1998 the Division Bench held that since the said petitioner had a degree of Library Science, he was entitled to the pay-scale of Rs.1400-2300 from 01.01.1986 onwards. The very same petitioner thereafter filed Writ Petition No.1622/2000 praying that he be granted further revised pay-scale on the post of Librarian from 01.01.1986 at Rs.1400-2600. On 19.07.2004 the Division Bench passed the following order:

"In view of judgment of this Court dated 17.12.1998, the petition is allowed."

Thus based on the earlier decision dated 17.12.1998, Shobhu Shankar Chavan was held entitled to revised pay-scale of Rs.1400-2600. It is seen that the State of Maharashtra had sought to challenge both the aforesaid decisions of this Court dated 17.12.1998 and 19.07.2004 before the Hon'ble Supreme Court. On 11.08.2006 the Special Leave Petition came to be dismissed on the ground that the delay in raising the challenge was not liable to be condoned.

3. Thereafter came Writ Petition No. 4423/2003 - Avinash Shivaji Gaikwad Vs. Education Officer (Secondary) Zilla Parishad, Solapur and others. It was the case of the petitioner that since he was holding a degree in Library Science and was appointed prior to 27.12.1979, he was entitled to higher pay-scale of Rs.365-760 (old) and Rs.1400-2300 as per the Fourth Pay Commission. The petitioner was denied higher pay-scale on the ground that he was not appointed prior to 27.12.1979. The Division Bench by its judgment dated 16.09.2003 observed that in view of the earlier adjudication of this Court in Shobhu Shankar Chavan (1), a Librarian holding a degree was entitled to be awarded higher pay-scale. Since the Court did not find any difference between the two cases, Avinash Shivaji Gaikwad (supra) was also granted higher pay-scale and thereafter Rs.4500-7000 as revised by the subsequent Pay Commission.

4. Then came the judgment in Writ Petition No. 177/2011(Sachin Shankar Divkar Vs. State of Maharashtra and ors.) with other Writ Petitions. In these writ petitions, the petitioners were appointed as Librarians on various dates but after 27.12.1979. On the basis of Government Resolution dated 01.10.1988 the petitioners claimed revised pay-scale but they were denied the same as they were appointed after 27.12.1979. The Division Bench noticed that the requirement of appointment prior to 27.12.1979 was applicable only in respect of Librarians who possessed a diploma and not a bachelors degree in Library Science. It was thus held that mere fact that the petitioners had been appointed after 27.12.1979 would make no difference. Taking into consideration, the order passed in Shobhu Shankar Chavan (1) and the fact that the Special Leave Petition preferred by the State of Maharashtra before the Hon'ble Supreme Court had been rejected, the writ petitions were allowed by granting revised pay-scale to each petitioner in accordance with the Government Resolution dated 01.10.1988. While considering the applications for modification of the common judgment dated 28.04.2011, it was clarified that the petitioners would be entitled for relief on the same basis as granted in cases of Avinash Shivaji Gaikwad (supra) and Shobhu Shankar Chavan (1). The State of Maharashtra had

challenged the aforesaid judgment dated 28.04.2011 in the case of Sachin Shankar Divkar. The Hon'ble Supreme Court by its order dated 24.01.2014 observed that the earlier judgment of the High Court in Avinash Shivaji Gaikwad (supra) was left undisturbed by the Hon'ble Supreme Court and therefore it was not inclined to take a different view of the matter. Accordingly the Special Leave Petition came to be dismissed. A further review petition filed by the State of Maharashtra was also dismissed on 26.02.2015.

5. In Writ Petition No.8568/2011 Gangadhar Nivrutti Korde Vs. Head Master, Maratha High School, Nashik and others a full time Librarian who was a graduate and was having a Bachelor's degree in Library Science was appointed as a full time Librarian on 03.02.1995. Since he was placed in the pay-scale of Rs.1200-2040 which was prescribed for Librarians having a certificate in Library Training, he claimed benefit of the pay-scale as per Government Resolution dated 01.10.1988 by which the pay-scale for Librarians was revised to Rs.1400-2300. In the light of the earlier adjudication in Avinash Shivaji Gaikwad (supra) and Sachin Shankar Divkar (supra), it was held that the petitioner was entitled to the revised pay-scale as per Government Resolution dated 01.10.1988. This decision is dated 30.07.2012. The said decision was thereafter followed in Writ Petition No.5811/2013 Mrunal Sanjay Pathak Vs. Head Master and others, that was decided on 21.08.2013 and it was disposed of in terms of the order passed in Gangadhar Nivrutti Korde (supra).

6. In Writ Petition No.7963/2012, the petitioner Sadanand Pandurang Mali was a graduate in Library Science and was entitled to receive salary in the pay-scale of Rs.365-760. He was however placed in the pay-scale of Rs.365-680. As he sought revision in his pay-scale, he filed Writ Petition No.7963/2012 (Sadanand P.Mali Vs. Dy.Director of Education and ors). The Division Bench on 23.12.2013 noted the submissions made on behalf of the petitioner that the issue involved was decided by various earlier orders. On behalf of the State of Maharashtra however it was submitted that the relevant material had not been taken into consideration while deciding those writ petitions. Reference was made to the affidavit in reply filed by the Director of Education in which a stand was taken that prior to 27.12.1979 secondary schools were permitted to appoint a Librarian either with Matric/SSC with a certificate in Library Science or a graduate either with Diploma or Degree in Library Science. Their pay-scales were based on their educational qualifications. In 1978 the State Government was of the opinion that for rendering services as Librarian in secondary schools, the qualifications of Matric/SSC with a certificate in Library Science were sufficient and there was no need to employ Librarians having graduation either with diploma or degree in Library Science and to pay them higher pay-scale. Hence a decision was taken that minimum qualification for being appointed as a Librarian in secondary schools would be Matric/SCC with a certificate in Library Science and that such Librarian would be entitled to the prescribed pay-scale on the basis of said qualifications. The State Government was of the view that a candidate having qualification like graduation along with diploma or degree in Library Science was

not necessary to render services as a Librarian in secondary schools and despite this if any institution appointed a Librarian possessing educational qualifications of graduation along with diploma or degree in Library Science, the State Government would pay salary on the basis that he was having minimum qualification for the post of Librarian which was Matric/SCC with certificate in Library Science. This stand of the State Government however was not accepted by the Division Bench. It was observed that a Librarian should be paid commensurate with his qualifications. Since the State Government had honoured such qualifications earlier, it was held that it was inclined to follow the earlier decisions rendered by various Division Benches. Accordingly, it was held that the petitioner was entitled to benefit of revised pay-scale. The aforesaid order in *Sadanand Pandurang Mali (supra)* has thereafter been followed by various Division Benches at the Principal Seat as well as by other Benches of this Court.

7. In Writ petition No.5254/2015 with connected writ petitions (*Prakash Uddhaora Taksande Vs. State of Maharashtra and others*) the petitioners prayed for grant of revised pay-scale of Rs.1400-2600 from 01.01.1986. Circular dated 14.06.2016 by which the pay-scale of Librarian was fixed at Rs.1400-2300 as per recommendations of Fourth Pay Commission from 01.01.1986 was also challenged. The Division Bench at Nagpur therefore considered the question whether a Librarian would be entitled to the pay-scale of Rs.1400-2300 or Rs.1400-2600 from 01.01.1986. All earlier decisions were placed before the Division Bench on behalf of the petitioners for seeking similar relief. The State Government however submitted that the precise issue as to the pay-scale to which a Librarian would be entitled had not been determined in the earlier writ petitions. It was stated that there was no pay band in the scale of Rs.1400-2600 for the post of Librarian as per recommendations of the Fourth Pay Commission and the Government Resolution dated 05.12.2006 issued in view of the decision in the case of *Shobhu Shankar Chavan (2)* was not according to pay fixation norms and earlier Government Resolutions. The Division Bench thus observed that while deciding the case of *Shobhu Shankar Chavan (2)*, the Court did not consider as to whether pay-scale of a Librarian would be Rs. 1400-2300 from 01.01.1986 or Rs. 1400-2600. The order was complied with by the State Government in view of the contempt petition as filed. It was held that said question was not decided in any of the earlier writ petitions as decided. It was then held that as per the Fourth Pay Commission the pay-scale of Rs.1400-2300 had been recommended for the post of Librarian and there was no provision in any Act, Rules, Regulations, Government Resolutions or Circulars providing pay-scale of Rs.1400-2600 for the post of Librarian from 01.01.1986. It was therefore held that there was no material brought on record by the petitioners to indicate that a Librarian could be granted pay-scale of Rs.1400-2600 from 01.01.1986. In view thereof the Division Bench did not accept the challenge to the Circular dated 14.06.2016 and dismissed all the writ petitions. Thus, the petitioners were not granted relief of revised pay-scale of Rs.1400-2600 from 01.01.1986. While doing so, it was noticed by the Division Bench that except in

the case of Sadanand Pandurang Mali (supra) wherein the petitioner was granted pay-scale of Rs.1400-2600, that pay-scale had not been granted in other decided cases other than Shobhu Shankar Chavan (2).

8. Writ Petition No. 3494/2016 (Dhiraj Manohar Chore and others Vs. State of Maharashtra and others) thereafter came up for consideration before another Division Bench at Nagpur. On behalf of the petitioners a prayer was made for grant of revised pay-scale of Rs.1400-2600 for trained Librarians while the State of Maharashtra relied upon the earlier decision in Prakash Uddhaorao Taksande (supra) to contend that such relief could not be granted. The Division Bench observed that the question to be considered was whether the relief granted by a single line judgment in Shobhu Shankar Chavan (2) had been rightly construed by the Division Bench in Prakash Uddhaorao Taksande (supra). It was prima facie observed that the impact of the one line judgment in Shobhu Shankar Chavan (2) appeared not to have been appropriately looked into while deciding Prakash Uddhaorao Taksande (supra). In the light of a different view having been taken in Prakash Uddhaorao Taksande (supra), the Division Bench was of the view that the said issue to be placed before the Larger Bench. It is in this manner that these writ petitions have been placed before the Full Bench.

9. Shri B.G.Kulkarni and Shri A.R.Deshpande, learned counsel for the petitioners in support of their contentions that the Librarians who had necessary professional qualifications were entitled to the pay-scale of Rs.1400-2600 with effect from 01.01.1986 submitted that though this pay-scale was granted to trained graduate teachers, the same was not applied to trained graduate Librarians and they were placed in the lower pay-scale of Rs.1400-2300. The learned counsel pointed out the manner in which pay-scales were applied to the post of Librarian from 01.01.1976 and thereafter. Initially a Librarian with matriculation and a certificate in Library Science was placed in the pay-scale of Rs.335-680 while a Librarian with graduation and degree in Library Science was placed in the pay-scale of Rs.365-760. It was submitted that in Shobhu Shankar Chavan (1) this Court rightly granted pay-scale of Rs.365-760 to the said petitioner in view of the fact that he was holding a bachelor's degree as well as degree in Library Science. A reference was then made to Government Resolutions dated 21.08.1978 and 01.01.1983 to indicate the distinct pay-scales for a Librarian who was matriculate with certificate in Library Science and a Librarian who had graduate qualification along with a degree or diploma in Library Science. It was sought to be urged that even a trained Assistant Teacher with a degree coupled with qualifications of D.Ed/B.Ed was placed in the pay-scale of Rs.365-760 and as per the Fourth Pay Commission it was equivalent to Rs.1400-2600. However though similar pay-scale was granted to Librarians who were degree holders with diploma / degree in Library Science, they were placed in the pay-scale of Rs.1400-2300 in the Fourth Pay Commission. That disparity continued even under the recommendations of Fifth Pay Commission. The trained teachers were placed in the revised pay-scale of Rs.5500-9000 while such Librarians who initially placed in the pay-scale of Rs.365-760 were placed in the revised pay-scale of Rs.

4500-7000. Realizing this fact, this Court rightly allowed the writ petition that was filed by Shobhu Shankar Chavan (2). The State Government accepted that adjudication and issued Government Resolution dated 05.12.2006. Though this Government Resolution was made applicable only to Shobhu S.Chavan, it was clear that all similarly placed Librarians were also entitled to get benefit of the revised pay-scale of Rs.1400-2600. It was pointed out that the subsequent decisions of the Division Bench in Avinash Shivaji Gaikwad and Sachin Shankar Divkar (supra) further substantiated the stand of the petitioners. The Special Leave Petition preferred by the State of Maharashtra was dismissed as a result of which earlier orders granting revised pay-scale became final. The learned counsel then relied on the decision in Sadanand Pandurang Mali (supra) and the fact that a specific stand taken by the State Government that there could not be any difference in the pay-scale of a Librarian who was a graduate along with diploma/degree in Library Science and a Librarian who was matriculate with certificate in Library Science. Though this specific stand was taken by the State Government, the same was not accepted by this Court by giving valid reasons and therefore it was not now open for the Authorities to again rely upon such stand. It was held by the Division Bench that the State Government had understood the earlier decisions of this Court to mean that there was no prohibition in applying a pay-scale commensurate with the educational qualification of a Librarian. Since these orders have thereafter been consistently followed and applied by various other Division Benches and the State Government by granting benefit of such revised pay-scale of Rs.1400-2600 to various Librarians in the State, it was not open for the State Authorities to seek to again re-open the questions which were already adjudicated and to urge that the Librarians irrespective of their qualifications would be entitled to only to the pay-scale of Rs.1400-2300.

It was then submitted that there was no reason for the Division Bench in the case of Prakash Uddhaorao Taksande (supra) to take a different view of the matter and observe that the question whether Librarians would be entitled to pay-scale of Rs.1400-2600 had not been adjudicated in any of the earlier decisions. The earlier decisions of co-ordinate Benches were binding on the Division Bench that decided Prakash Uddhaorao Taksande (supra). Further the State Government was not justified in issuing Circular dated 14.06.2016 which itself was contrary to the earlier decisions of this Court as well as various orders issued by the State Authorities applying pay-scale of Rs.1400-2600 to a number of Librarians. Applying the pay-scale of Rs.1400-2300 to Librarians now would result in unsettling matters which stood settled for long. It was thus submitted that on a proper reading of the earlier decisions rendered by this Court and keeping in view the qualifications of Librarians who were graduates with diploma/degree in Library Science, it ought to be held that they were entitled to pay-scale of Rs.1400-2600 in distinction with such Librarians who were matriculate having certificate in Library Science and who were entitled only to pay-scale of Rs.1400-2300.

10. On the other hand Shri S.Y.Deopujari, learned Government Pleader for the

respondents submitted that Librarians who were initially placed in the scale of Rs.365-760 were entitled only to revised pay-scale of Rs.1400-2300 from 01.01.1986. The pay-scale of Rs.1400-2600 was made admissible in the Fourth Pay Commission only to trained teachers. Librarians who were graduates along with diploma/degree in Library Science could not be equated with trained teachers. In none of the recommendations after Fourth Pay Commission were Librarians placed in the same revised pay-scale in which trained teachers were placed. This fundamental difference had not been noticed earlier as a result of which in Shobhu Shankar Chavan (2) pay-scale of Rs.1400-2600 came to be granted. Infact that order in Writ Petition No.1622/2000 was a one line order not containing any reasons. It was under the sword of contempt that the State Authorities were required to comply with that order by issuing Government Resolution dated 05.12.2006. That Government Resolution was made applicable only to Shobhu Shankar Chavan. It was further submitted that the State Authorities had taken a specific stand that additional or higher qualification of a Librarian than the basic qualification as prescribed would not entitle such better qualified Librarian to claim a pay-scale that was made admissible only to trained teachers. He referred to such stand being taken as reproduced in para 7 of the decision in Sadanand Pandurang Mali (supra). He however did not dispute the fact that the challenges raised to some of the orders passed by this Court before the Hon'ble Supreme Court were unsuccessful. It was however submitted that on a proper consideration of the provisions of the Act of 1977 and the Rules of 1981, it was clear that Librarians could not be equated with trained teachers and a Librarian who was a graduate with diploma/degree in Library Science was entitled to be placed in the pay-scale of Rs.1400-2300. The Division Bench in Prakash Uddhaorao Taksande (supra) has rightly noticed that in the earlier judgment of this Court the question as to legal entitlement of Librarians to claim pay-scale equivalent to that granted to trained teachers had not been gone into. He also referred to the Government Resolution dated 14.06.2016 and according to him, the position was clarified by the State Government that Librarians such as the petitioners were entitled to be placed in the pay-scale of Rs.1400-2300. It was submitted that the legal position be clarified on that basis.

11. For determining the appropriate pay-scale to which a Librarian would be entitled, it would be necessary to consider the relevant statutory provisions. The provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 (for short, 'the Act of 1977') have come into force from 15th July 1981. Section 2(7) of the Act of 1977 defines the term 'employee' to mean any member of the teaching and non-teaching staff of a recognised school. Section 2(26) defines 'teacher' to be a member of the teaching staff and includes the Head of a school. Section 4 (1) empowers the State Government to make rules providing for the minimum qualifications for recruitment as well as with regard to pay and allowances amongst other benefits. Section 16(2)(a) permits rules to be made to prescribe the minimum qualifications for recruitment of employees of private schools and sub-clause (b) provides for rules with regard to

their scale of pay and allowances. In the light of the power granted by Section 16 of the Act of 1977, the State Government has framed the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, 'the Rules of 1981'). Rule 2(j) defines a 'trained graduate' to mean a person possessing the qualifications mentioned in sub-clauses (i) to (vi) of Clause (1) of item II in Schedule B. Rule 2 (k) defines 'trained teacher' to mean a teacher who has secured a professional certificate, a diploma or a degree recognised by the Department which qualifies him for a teaching post in a school. Rule 6 prescribes minimum qualifications of teachers to be those as specified in Schedule B. Rule 7 thereafter provides for scales of pay and allowances to be those as specified in Schedule C. Rule 25 requires an employee other than the Head to obtain previous permission of the Head if such employee intends to obtain higher or additional qualifications by joining courses for which regular attendance is necessary. In respect of the Head, he has to obtain previous permission of the Management. Various Schedules are appended to the Rules of 1981. Schedule B prescribes qualifications for primary teachers, trained teachers in secondary schools and junior colleges. It also prescribes qualifications for teachers in junior colleges. Part IV thereof prescribes qualifications for non-teaching posts in schools. At serial number 5, the qualifications for Librarian has been prescribed to be a person who has passed Matriculation or Secondary School Certificate Examination and possesses a certificate in Library Training awarded by the Directorate of Libraries or a certificate in Library Management awarded by a University recognised by the Government. Thereafter Schedule C prescribes various pay-scales. Part-VIII prescribes scale of pay for non-teaching staff in schools. Insofar as the pay-scale of Librarian is concerned the same is as under:

Sr.No.

Category

Pay-scales

3

Librarian :- (i) Matric or S.S.C. with Certificate in Library Training awarded by the Directorate of Libraries.

Rs.1200-2040

(ii) Graduate with the Diploma or Degree in Library Science appointed before 27.12.1979 (including persons who are graduate with the Certificate in Library Training and are appointed on or before 21.08.1978).

Rs.1400-2300

Schedule F prescribes the manner in which seniority of employees has to be determined. Insofar as a Librarian is concerned, those guidelines are at serial number 3 relating to non-teaching staff. Where the Management runs only one school, it is not necessary to maintain a seniority list of Librarian as the post is

an isolated post. Where the Management runs more than one school, a seniority list of Librarians has to be maintained on the basis of the date of appointment. However a Librarian is not eligible for promotion to any other post.

12. From the aforesaid statutory provisions it becomes clear that the post of Librarian is treated to be a non-teaching post and a Librarian is treated as a member of the non-teaching staff. The definition of teacher in Section 2(26) does not include a Librarian nor do the provisions of Rule 2(k) of the Rules 1981 which define 'trained teacher' include a Librarian. The qualifications for the post of Librarian are prescribed along with the qualifications of various non-teaching posts and where the Management employs more than two librarians, a separate seniority list of Librarians has to be maintained. A Librarian is not held eligible to any promotion. This placement of the post of Librarian as part of non-teaching staff as distinct from the teaching staff would be material since one of the considerations which has weighed with the Court in *Sadanand Pandurang Mali* (supra) while granting pay-scale of Rs.1400-2600 is acquisition of higher qualifications which has relevance insofar as teaching staff is concerned.

13. It is not in dispute that the conditions of service of employees of private schools in the State of Maharashtra are governed by the aforesaid statutory provisions. The Rules of 1981 and the Schedules appended thereto prescribe the minimum qualifications required for the post in question and the applicable pay-scales are also prescribed. Insofar as the post of Librarian is concerned, it is placed in the category of employees who constitute the non-teaching staff. The pay-scale prescribed in Part-VIII of Schedule C is the scale of Rs.1200-2040 for a Librarian who is matriculate or holds a secondary school certificate with a certificate in Library Science awarded by the Directorate of Libraries. If a Librarian is a graduate with diploma or degree in Library Science appointed before 27.12.1979, he is placed in the pay-scale of Rs.1400-2300. These are the only two pay-scales prescribed by Schedule C of the Rules 1981. It cannot be disputed that the entitlement to a particular pay-scale would be only in the manner as prescribed by Schedule C. For the post of Librarian there is no pay band of Rs.1400-2600 even if such Librarian is a graduate and has obtained higher qualifications besides the minimum qualification prescribed of diploma or degree in Library Science. This specific stand was taken by the State in the case of *Sadanand Pandurang Mali* (supra) emphasizing the aspect that there was no requirement of a Librarian who was a graduate along with diploma or degree in Library Science in a secondary school and despite this if any institution appointed a Librarian possessing such higher qualification than that prescribed, such Librarian would be entitled to be paid salary on the basis that he was having the minimum qualification as prescribed for the post of Librarian which was Matric/SSC with a certificate in Library Science. The Division Bench however was of the view that since the State Government had honoured higher qualifications and had also issued a Government Resolution after the decision in *Shobhu Shankar Chavan* (2), there was no prohibition in granting a scale commensurate with the educational qualification. The State could not compel a Librarian who was a

graduate in Library Science to work on a lower pay-scale. Based on this line of reasoning it was vehemently urged on behalf of the petitioners that since the State of Maharashtra interpreted and implemented the order passed in Shobhu Shankar Chavan (2) and subsequent orders passed by the Court to mean that a Librarian with graduation would be entitled to revised pay-scale of Rs.1400-2600, that interpretation should be accepted and applied uniformly to all similarly situated Librarians. That contention however cannot be accepted. Interpretation made by any statutory Authority can be accepted provided it is found to be in accordance with the provisions of the statute. In *Laxminarayan R. Bhattad and others Vs. State of Maharashtra and another* (2003) 5 SCC 413 it has been held that the manner in which a statutory Authority has understood the application of a statute would not confer a legal right upon a party unless such interpretation finds favour with a Court of law dealing with the matter. In other words, the Court is required to consider whether such interpretation as applied by the Authority is supported by any statutory provisions or not.

14. A stand has been taken by the State Government that there has been no adjudication of the question as regards the entitlement of a Librarian who has necessary training qualifications to the pay-scale of Rs.1400-2600. It is the contention that merely on the basis of the one line order passed in Shobhu Shankar Chavan (2), this Court in its subsequent orders has followed the same. This stand also requires consideration.

As noted above, in Shobhu Shankar Chavan (1), the petitioner was granted revised pay-scale of Rs.1400-2300 by observing that he possessed a degree in Library Science. On the basis of the Government Resolution dated 01.10.1988, he was granted that revised scale. The order passed in Shobhu Shankar Chavan (2) is a one line order observing that in view of the judgment dated 17.12.1998 [Shobhu Shankar Chavan (1)] the writ petition was allowed. As a result of this order the petitioner was held entitled to the pay-scale of Rs.1400-2600. It hardly needs any debate that this one line order as passed does not indicate the basis on which it has been concluded that the petitioner was entitled to pay-scale of Rs.1400-2600. In the earlier judgment dated 17.12.1998, the pay-scale was revised to 1400-2300 and therefore merely on the basis of that judgment without there being any further adjudication, the basis for granting pay-scale of Rs.1400-2600 is not indicated in the order. In absence of any adjudication in that regard therefore that order would not have any binding force. In various subsequent judgments/orders the decision in Shobhu Shankar Chavan (1) along with Government Resolution dated 01.10.1988 has been followed and applied. As a result, the said Librarians were held entitled to pay-scale of Rs.1400-2300. These decisions include the decisions in Avinash Shivaji Gaikwad, Sachin Shankar Divkar, Gangadhar Nivrutti Korde and Mrunal Sanjay Pathak (supra).

In the case of Sadanand Pandurang Mali (supra) the pay-scale of Rs.1400-2600 was claimed. The stand of the State Government that educational qualifications of a Librarian higher than what was prescribed were not relevant for determining

the pay-scale was not accepted and pay-scale of Rs.1400-2600 came to be granted. A direction was issued to fix the pay of the said petitioner in the scale of Rs.5500-9000 which was the revised pay-scale of Rs.1400-2600. It is thus seen that this adjudication in *Sadanand Pandurang Mali (supra)* is based on the premise that there was no prohibition in granting pay-scale commensurate with the educational qualification required for the post of Librarian.

15. As regards issuance of Government Resolution dated 05.12.2006 pursuant to the decision in *Shobhu Shankar Chavan (supra)* is concerned, in terms of the order passed in Writ Petition No. 1622/2000 and Contempt Petition No.244/2005 the pay-scale of Rs.1400-2600 with effect from 01.01.1986 came to be granted to the said petitioner. On reading that Government Resolution it becomes clear that the same has been issued in view of the Contempt Petition filed by *Shobhu Shankar Chavan* and the pay-scale granted under the said Government Resolution was made applicable only to the said petitioner. Issuance of this Government Resolution therefore is not of much assistance to hold that by granting pay-scale of Rs.1400-2600 to *Shobhu Shankar Chavan* the State Government had taken a conscious decision of applying that pay-scale to all Librarians with graduate qualification. The said Government Resolution was issued under threat of action of contempt initiated by the said petitioner.

The acquisition of higher qualifications could be relevant insofar as a teacher under the Act of 1977 and the Rules 1981 is concerned. The provisions of Schedule C do provide higher pay-scales for higher qualified teachers. However as stated above, the post of Librarian has been placed in the category of employees who constitute the non-teaching staff. A teacher is placed in the teaching staff. There is no equivalence provided either in the Act of 1977 or in the Rules 1981 which could be the basis to hold that a Librarian with graduation and having a degree/diploma in Library Science should be treated at par with a trained teacher who is placed in the pay-scale of Rs.1400-2600. It may be noted that the pay-scale of Rs.1400-2600 has been specifically made applicable to trained teachers as mentioned in Schedule C and at the same time only those Librarians having graduation with diploma/degree in Library Science appointed before 27.12.1979 have been placed in the pay-scale of Rs.1400-2300. Schedule C also does not give any indication of any equivalence between a trained teacher and a Librarian having higher qualifications.

16. Though it is true that the State of Maharashtra had sought to challenge the decision in *Shobhu Shankar Chavan* (1) and (2) by filing a Special Leave Petition along with an application for condonation of delay, this Special Leave Petition was dismissed on 11.08.2006 on the ground of delay. Similarly the State of Maharashtra had also sought to challenge the decision in *Sachin Shankar Divkar (supra)* before the Hon'ble Supreme Court but this Special Leave Petition was dismissed on 24.01.2014 by observing that the adjudication in Writ Petition No.4424/2003 had been left undisturbed by the Hon'ble Supreme Court earlier. It is however to be noted that all the aforesaid Special Leave Petitions were

dismissed in limine without granting any leave. In the light of the recent decision in *Khoday Distilleries Limited (now known as Khoday India Limited) and others Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal* (2019) 4 SCC 376, it is clear that the doctrine of merger would not be applicable in these cases since the Special Leave Petitions were dismissed in limine without granting any leave. Even if special leave to appeal is refused by a speaking order, it would not attract the doctrine of merger. The contention therefore as raised on behalf of the petitioners that since the State of Maharashtra had challenged various earlier orders before the Hon'ble Supreme Court but it was unsuccessful in that challenge would not be of much assistance to them. It is thus permissible for this Court to examine whether there is any statutory basis to grant the pay-scale of Rs.1400-2600 to a Librarian having higher qualifications.

17. We find from a reading of the decision in *Prakash Uddhaorao Taksande* (supra) that the Division Bench was justified in observing that in none of the earlier orders was there any adjudication as to the entitlement of a higher qualified Librarian to the pay-scale of Rs.1400-2600 from 01.01.1986. It can be noticed that the decision in *Shobhu Shankar Chavan* (2) which was a one line order and which thereafter led to issuance of Government Resolution dated 05.12.2006 was thereafter accepted by the subsequent Division Benches to grant the pay-scale of Rs.1400-2300 to such higher qualified Librarians. The State of Maharashtra by issuing Government Resolution dated 14.06.2016 has now clarified that the pay-scale of a Librarian having a degree in Library Science and is also a graduate was Rs.365-760 under the pay-scale prescribed by Bhole Commission. This pay-scale was revised on the recommendations of Fourth Pay Commission of Rs.1400-2300 and thereafter to Rs.4500-7000 as per the recommendations of Fifth Pay Commission. Under the Sixth Pay Commission that pay-scale now stands revised to Rs.5200-20200 with Grade Pay of Rs.2800/-. It has also been clarified that even those librarians who had a degree in Library Science were entitled to this pay-scale and that it was not necessary that such appointment should have been made before 1979. Thus in effect the pay-scale of Rs.1400-2300 as prescribed in Part-VIII of Schedule C has been made applicable to all Librarians irrespective of any higher qualifications than the minimum prescribed being acquired by them.

18. It was also submitted on behalf of the petitioners that the State Government had been granting the pay-scale of Rs.1400-2600 to various Librarians in the State by passing orders in that regard. However that pay-scale was not being uniformly applied to all similarly placed Librarians. Therefore if this Court finds that the appropriate pay-scale to which a Librarian is entitled would be Rs.1400-2300 the same would result in unsettling matters that stood settled for long period of time. As stated above, a long standing practice if followed by the State cannot be applied on uniform basis without examining whether such practice has any statutory and legal support. If there is absence of any such statutory support to claim the pay-scale of Rs.1400-2600 it will have to be held that the appropriate pay-scale would be that which is prescribed by Schedule C

of the Rules 1981. What would be a effect of such adjudication is not a question referred to us. It would therefore not be necessary to go into that aspect and the only question to be answered in this reference is the appropriate pay-scale to which a Librarian having minimum qualification as well as having qualifications higher than that prescribed is entitled to.

19. Reference was also made to the Notification dated 01.10.1988 issued by the State of Maharashtra under the Maharashtra Civil Service (Revised Pay) Rules, 1988. Those rules are applicable to government servants of the State of Maharashtra. As regards the posts under Directorate of Education, the pay-scale of a Librarian is prescribed at Rs.365-760 and the revised pay-scale is shown as Rs.1400-2300. It is thus clear that even under the aforesaid Notification dated 01.10.1988 the revised pay-scale for a Librarian under the Directorate of Education is not Rs.1400-2600 but Rs. 1400-2300. The various earlier orders passed by the Division Benches of making the provisions of the Notification dated 01.10.1988 applicable to Librarians would therefore indicate that the revised pay-scale of Rs.1400-2300 alone was made admissible.

20. It is thus found that under Schedule C of the Rules 1981 the pay-scale prescribed for the post of Librarian who is either a graduate and has a diploma/degree in Library Science is Rs.1400-2300. The pay band of Rs.1400-2600 is not prescribed for the post of Librarian under Part-VIII of Schedule C to the Rules, 1981. The adjudication in Shobhu Shankar Chavan (2) is merely a one line order which does not constitute a binding precedent as there are no reasons assigned for holding that a trained Librarian would be entitled to the pay-scale of Rs.1400-2600. Since the pay-scale of a Librarian having higher qualifications than the minimum prescribed by Schedule B of the Rules 1981 is not shown to be Rs.1400-2600, the decisions in Shobhu Shankar Chavan (2) and Sadanand Pandurang Mali (supra) holding otherwise thus stand overruled. The question as framed is answered by holding that a Librarian even if he is having higher qualifications than the minimum prescribed by Schedule B of the Rules of 1981 would not be entitled to the pay-scale of Rs.1400-2600. Librarians irrespective of holding higher qualifications than the minimum qualifications prescribed by Schedule B of the Rules of 1981 would be entitled to the pay-scale of Rs.1400-2300 as prescribed in Schedule C of the Rules of 1981. The reference stands answered accordingly.

The writ petitions be now placed before the appropriate Division Bench for further consideration.