

(2025) 02 BOM CK 0756

In the Bombay High Court, Aurangabad Bench

Case No : Writ Petition No. 15184 Of 2017

Kailash Manasram More And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 13-02-2025

Acts Referred:

Citation : (2025) 02 BOM CK 0756

Hon'ble Judges : Mangesh S. Patil, J; Prafulla S. Khubalkar, J

Bench : Division Bench

Advocate : U.R. Awate, Talekar and Associates, V.N. Patil

Final Decision : Allowed

Judgement

Mangesh S. Patil, J

1. Heard. Rule. It is made returnable forthwith. Learned AGP waives service for the respondents. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioners who have been working as Instructors with the Government Primary School for Blind, Deaf and Mutes and Orthopedically Challenged, in Government Industrial Training Center for Physically Handicapped and Government Training Center cum Sheltered Workshop for Physically Handicapped / Deaf and Mutes, Adults, allege that pay parity has been disturbed and allege that they were being paid at par with the Special Teachers till then but have been discriminated against while fixing pay under V pay commission.

3. They are seeking writ of mandamus directing the state government to include 'Instructor and Tradesman' which have been excluded and treated differently while revising the pay of different categories of employees in the government resolution dated 26-04-2012 (Exhibit – I), which was passed pursuant to the directions of this Court in writ petition no. 8019 of 2009 (Smt. Kusum Shankarrao Bansode and others Vs. The State of Maharashtra and others) dated

08-06-2011. The relevant paras read as under :-

"2. By the present Petition, the petitioners who are presently employed in primary schools run by the Zilla Parishad for physically challenged children seek a direction against the respondents to implement the recommendations of the Fifth Pay Commission and to pay them the arrears.

3. The petitioners were initially working with the Government in its several schools run for the education and welfare of the blind, deaf, mute and orthopedically challenged children. They are all Special Teachers. Pay scales as recommended by the First to Fourth Pay Commissions were paid to the petitioners. It appears that till 1998, the pay scales of the teachers working in the Government schools, Zilla Parishad schools and private schools for the physically challenged were receiving the same pay scale. The educational qualifications for being employed in the schools were identical. The nature of the duties and responsibilities conferred on the teachers working in these schools for the physically challenged were the same.

...

...

8. It appears that the petitioners submitted a representation once again on 6.11.2007 to the State. Since that representation was not decided, Writ Petition no. 3156 of 2008 was filed by the petitioners. This Court directed respondent no.1 i.e. the State to decide the representation dated 6.11.2007 within six months from the date of communication of the order, which was passed on 5.6.2008. It appears that thereafter the representation of the petitioners went unheeded despite several reminders by the petitioners to the Principal Secretary, Social Justice Department. The petitioners then preferred Contempt Petition no. 50 of 2009 on account of the deliberate inaction on the part of the respondents to obey the directions issued by this Court. The petitioners were informed by a letter dated 1.2.2008 and 3.7.2008 that since the Central Government had already appointed Sixth Pay Commission, the question of deciding or considering representation of the petitioners submitted to the Commissioner did not arise. Hence, the present Petition.

...

...

...

11. In our opinion, there is no reason for not extending the benefits of the revised pay scale of Rs.4500-7000 to the Special Teachers working in Government schools. There is no dispute that these Special Teachers were extended the pay scales which were payable under the Pay Commission recommendations. The revision in the pay scales granted by the State Government for Special Teachers employed in Educational and Training

Institutions was extended to all such teachers except those employed in institutions run by the State. The reasons for refusing the pay revision, in our opinion, reveal arbitrariness and caprice on the part of the respondents. The first reason is that the petitioners ought to have approached the Pay Disparity/Anomalies Committee is without any substance. The petitioners had in fact approached this Committee but their representations were turned down. To suggest, that because the Committee is no longer in existence the petitioners are not entitled for the arrears of the pay revision, is untenable. The contention that the petitioners would no longer be entitled to these arrears, is unacceptable. The second ground for refusing the petitioners the revised pay scale is that they are not entitled to the arrears because the Sixth Pay Commission had been appointed. This contention is also without merit. Merely because a new Pay Commission is appointed, it would not mean that the arrears payable to the petitioners under the revised pay scale Rs.4,500-7000 would no longer be available to them. Significantly, the petitioners have been paid this revised scale after their services were allotted to the Zilla Parishad after the decision of the State to transfer the institutions run by the State for the visually challenged, hearing impaired, physically challenged and such other special students to the Zilla Parishad. Apart from this there is a tacit admission of the State that there was an anomaly in implementing the revised pay scale for special teachers working in institutes run by the Government.

12. Accordingly, the Circular issued on 5.3.2007 by the State, refusing the arrears payable to the Special Teachers under the Fifth Pay Commission recommendations is set aside. The petitioners are entitled to pay parity with Primary Teachers working in Zilla Parishad and private schools run for the visually challenged, hearing impaired, physically challenged and other special students for the period that they were employed in such special institutes run by the Government. Arrears payable to the petitioners shall be paid within six (6) months from today. Rule made absolute accordingly."

4. Though writ petition no. 8019 of 2009 was filed by and refers to Special Teachers, pertinently, even petitioner no. 1 in the present petition was petitioner no. 4 in that writ petition and was expressly described as Craft Teacher.

5. Again, as can be seen from paragraph no. 8 of the order in writ petition no. 8019 of 2019 (supra), a reference was made to the earlier writ petition bearing no. 3156 of 2008, wherein it was noted that this Court had directed to consider the representations of the petitioners therein. The order passed in writ petition no. 3156 of 2008 on 05-06-2008 reads as under :-

"2. The petitioners who are Special Teachers / Craft Teachers / Art Teachers / Occupational Teachers / Instructors in the Government Primary Schools for Blind, Deaf and Mutes, Orthopaedically Handicapped and Mixed Group Complex for Physically Handicapped in Government Industrial Training Centre for Physically Handicapped are getting less salary as compared to the teachers working in the institutions / schools aided by the State Government and there is a disparity

between them. The petitioners therefore, have addressed a representation to respondent No.1, dated 6.11.2007 (Exhibit "T" to the petition). The petitioners have approached this Court seeking Writ of Mandamus against respondent No.1 for consideration of this representation Exhibit "T".

As can be gathered, the petitioners in that writ petition included even the 'Instructors'.

6. Admittedly, pursuant to the directions in writ petitions no. 3156 of 2008 and 8019 of 2009, and specifically observing that there was an anomaly in implementing the revised pay scale for Special Teachers, that the government resolution was passed on 28-09-2012. However, as has been mentioned in the affidavit in reply and as is the stand of the respondents, the revision was undertaken only in respect of Special Teachers and not in respect of the Instructors / Tradesman. Time has been sought time and again under one pretext or other on the ground that the government has been considering the plight of such Instructors / Tradesman, who have been expressly excluded from the government resolution dated 26-04-2012.

7. Even now, the learned AGP tenders across the bar a communication dated 16-01-2025 received by him from the Deputy Secretary of Persons with Disabilities Welfare Department of the state government. It is being informed that for inclusion of the Instructors and extending them a similar benefit at par with the Special Teachers under the government resolution dated 26-04-2012, the matter has been taken up with the Finance department and the proposal is forwarded to it on 08-07-2024. It has also been mentioned that the Finance department is examining financial implication and further concluding that the decision would be taken in accordance with the approval to be granted by the Finance department.

8. The above sequence of events would clearly demonstrate that in spite of the directions contained in writ petition no. 8019 of 2009, the post of Instructor was excluded while passing the government resolution dated 26-04-2012.

9. Obviously, since the post of Instructor is not included in government resolution dated 26-04-2012, no objection can be taken to the query raised by respondent no. 5 i.e. the Accounting Officer of the Salary Verification Unit, as has been sought to be substantiated in the affidavit in reply filed by him.

10. The affidavit in reply filed on behalf of respondents no. 1 to 4 through one Jyoti Namdeo Rathod, District Social Welfare Officer, Zilla Parishad, Aurangabad does not specifically deal with the claim of the petitioners – Instructors / Tradesman. By way of an evasive reply, it has been merely mentioned in paragraph no. 5 that the nature of duties and responsibilities being different, non-inclusion of the post of Instructor / Tradesman in government resolution dated 26-04-2012 was justified. The justification should have been with a specific and objective material.

11. While granting continuation to the individual posts, vide government resolution dated 04-03-2020 in respect of the posts with the office of the Commissionerate for Persons With Disabilities, the post of Instructor is shown having grade pay of Rs.2800/-, But it is an obvious mistake, as has been mentioned in the separate affidavit filed on behalf of respondent no. 3 – District Social Welfare Officer on 15-02-2023. If it was merely a matter of grant of extension, obviously, mentioning a grade pay inconsistent with the government resolution, occupying the field, dated 26-04-2012, was a mistake and the petitioners cannot take advantage thereof.

12. However, the fact remains that when admittedly, till implementation of the fifth pay commission, the persons holding the post of Instructor were drawing salary at par with the Special Teachers, in the light of the directions contained in writ petition no. 8019 of 2009, the respondents ought to have submitted the affidavit in reply, expressly demonstrating as to why the post of Instructor was excluded while passing the government resolution dated 26-04-2012. Nothing has been averred in all the affidavits in reply much less giving all the particulars. One even does not know and make out any reason from these affidavits in reply whether exclusion of Instructors from government resolution dated 26-04-2012 was done deliberately for some reasons and with objective scrutiny.

13. In the light of above, in the absence of any material and concrete stand of the respondents to demonstrate deliberate exclusion of Instructors while passing the government resolution dated 26-04-2012, in our considered view, the petition deserves to be allowed.

14. However, following the decision in Union of India and another Vs. Tarsem Singh; (2008) 8 SCC 648, the direction for payment of arrears will have to be restricted to only three years prior to the writ petition.

15. The writ petition is allowed.

16. Respondent no. 1 is directed to include the post of Instructor / Tradesman in the government resolution dated 26-04-2012 and shall pay to the petitioners at par with the Special Teachers working in Zilla Parishad primary schools.

17. The respondents shall thereafter undertake pay fixation and disburse the arrears to them. However, the arrears shall be paid only for a period of three (3) years next before filing of the petition on 07-10-2017.

18. Rule is made absolute in above terms.