

(2026) 01 BOM CK 1351

In the Bombay High Court, Aurangabad Bench

Case No : Writ Petition No.8565 Of 2016

Vijay

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 19-01-2026

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 39(d), 226

Citation : (2026) 01 BOM CK 1351

Hon'ble Judges : Sushil M. Ghodeswar, J;Kishore C. Sant, J

Bench : Division Bench

Advocate : R.J. Godbole, B.V. Virdhe, M.S. Karad

Final Decision : Allowed

Judgement

Sushil M. Ghodeswar, J

1. Heard.

2. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to the respondents to step up the petitioner equivalent to his junior associate professor from the date of revision of pay/salary of junior associate professor w.e.f. 01.09.2008 as per Government Resolution dated 12.08.2009. He is also seeking direction to pay arrears of salary and other consequential benefits.

4. It is the case of the petitioner that he is working as Professor with respondent No.4 college. Another Associate Professor, namely, Dr.A.S. Nathrekar, who is junior to the petitioner and who has obtained Ph.D. degree subsequent to the petitioner, is getting higher salary w.e.f. 01.09.2008. In order to show disparity in pay scale of the petitioner and the said associate professor Dr.Nathrekar, the petitioner has relied upon the following chart:-

5. The aforesaid chart discloses that as on 01.07.2002, the petitioner was working as Reader, whereas the said Dr.Nathrekar was working as Lecturer in selection grade without Ph.D. and at the relevant time, both were getting equal salary as per 5th Pay Commission. This position was continued upto 01.01.2006 when in pursuance of the 6th Pay Commission, both were placed in pay scale of Rs.38530 plus Annual Grade Pay Rs. 9000 equal to 47530. Even thereafter, both were getting same salary. However, in the meantime, Dr.Nathrekar was awarded with Ph.D. on 4.04.2007. It is also clear that both were associate professors on 1.01.2006. Insofar as the petitioner is concerned, the petitioner has acquired Ph.D. degree on 13.12.2000. The petitioner was awarded as Reader on 01.07.2002 and designated as Senior Associate Professor on 01.01.2006 whereas, Dr.Nathrekar was awarded as Reader on 4.04.2007 and designated as Associate Professor on 04.04.2010. The petitioner was given Professor Selection Grade on 15.02.2013 in scale of Rs.37400-67000 GP 10000/- and Dr.Nathrekar was granted Professor Selection Grade w.e.f. 18.11.2019. However, as per the 7th Pay Revised Pay w.e.f. 01.01.2016, the petitioner is placed in pay scale of Rs.162300/- whereas, Dr.Nathrekar is placed in pay scale of Rs.1,81,800/-.

6. According to the petitioner, the aforesaid disparity is due to wrong assessment of his pay scale and he ought to have been given same benefit, which was extended to Dr.Nathrekar, who has acquired Ph.D. qualification subsequent to him. The petitioner had approached the authorities by preferring representations dated 20.04.2016, 27.04.2016 and 06.05.2016 requesting to remove anomalies in salaries. However, no decision is taken on the said representations, therefore, the petitioner has filed this petition. The petitioner has placed reliance upon Note-5 and Note-6 in Appendix-I of the Government Resolution dated 12.08.2009 issued by the Government of Maharashtra. The said Notes 5 and 6 read as under:-

"Note 5 - Where in the fixation of pay under sub rule 2(A), the pay of a teacher, who, in the existing scale was drawing immediately before the 1st January, 2006 more pay than the other teacher junior to him in the same cadre, gets fixed in the revised pay band at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised pay band as that of the junior.

Note 6 - In case where a senior teacher promoted to a higher post before the 1st day of January, 2006 draws less pay in the revised pay structure than his junior who is promoted to the higher post on or after the 1st day of January, 2006, the pay in the pay band of such senior teacher should be stepped up to an amount equal to the pay in pay band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior teacher subject to the fulfillment of the following conditions."

7. The learned advocate for the petitioner Dr.Godbole has submitted that this issue has already been settled by the Hon'ble Supreme Court as well as this Court in various judgments wherein, Notes 5 and 6 of the Government Resolution dated 12.08.2009 have been properly interpreted. One such judgment of this

Court is in case of Sudamrao Keshavrao Aher and others vs. The State of Maharashtra and others, 2014 (1) All M.R. 697. The learned advocate further submitted that the issue involved in this petition is no longer res integra and he has relied upon the judgments of the Hon'ble Supreme Court in State of Uttar Pradesh vs. Arvind Kumar Shrivastava, 2015 (1) SCC 347 and Tukaram Kanha Joshi vs. Maharashtra Industrial Development Corporation, 2013 (1) SCC 353.

8. On the other hand, the learned AGP appearing on behalf of respondent Nos.1 to 3/ State authorities, by relying upon the affidavit in reply dated 20.01.2022, submitted that the petitioner has suppressed that Dr.Nathrekar was appointed on 01.09.1983 and the petitioner was appointed on 01.07.1991 and, therefore, Dr.Nathrekar is not junior to the petitioner. The learned AGP has relied upon the chart in paragraph 5 of the affidavit in reply and submitted that as per 4th revised pay scale i.e. after completion of eight years, Dr.Nathrekar was granted Senior Scale of Rs.3000-5000 w.e.f. 01.09.1991 whereas, the petitioner got Senior Scale i.e. Rs.3000-5000 (unrevised) as per the 5th revised pay scale i.e. Rs.10000-15200 w.e.f. 27.01.1998. Dr.Nathrekar was granted Selection Grade i.e. Rs.12000-18300/-w.e.f. 27.07.1998 whereas, the petitioner was granted selection grade w.e.f. 13.12.2000 under the 5th revised pay scale with two increments on account of Ph.D.. Dr.Nathrekar acquired Ph.D. degree on 04.04.2007 and, therefore, by adding three increments as per the 6th pay scale w.e.f. 01.09.2008 her basic salary/scale came to Rs.47,630/-, whereas, the petitioner's basic salary/scale came to Rs.42950/-. Though the petitioner acquired Ph.D. degree on 13.12.2000, however, basic pay admissible to him w.e.f. 01.09.2008 was Rs.42950/-. Therefore, according to the learned AGP, the petitioner is misleading this Court that he was promoted as Reader on 13.12.2000 and also suppressing that he got increment in the year 2000 itself.

9. Another contention which the learned AGP has raised is that the post of Reader is designated post and the petitioner as well as Dr.Nathrekar have been designated as Readers under the Career Advancement Scheme (CAS). Therefore, other service benefits are not made applicable to the post of Reader since it is designated post. The learned AGP, therefore, prayed for dismissal of the instant petition.

10. The learned advocate for respondent No.4 college has submitted that he cannot go against the service record available. He, therefore, prayed for passing appropriate order.

11. The short question which arises for consideration is whether, the petitioner is entitled to stepping up of pay under Notes 5 and 6 of the Government Resolution dated 12.08.2009, merely because his junior acquired Ph.D. qualification after implementation of the 6th Pay Commission.

12. After hearing the learned advocates for the respective sides at length, it is clear that the petitioner through this petition is praying for equivalent step up of salary at par with junior associate professor w.e.f. 01.09.2008 as per the

Government Resolution dated 12.08.2009. According to the petitioner, Dr.Nathrekar is holding the same post and, therefore, as per Notes 5 and 6 of appendix to the Government Resolution dated 12.08.2009, the petitioner is entitled for equal salary. A bare perusal of Notes 5 and 6, reproduced above, would make it clear that if, while fixing pay under sub-rule 2(A), a senior teacher was drawing more pay than his junior in the old pay scale before 01.01.2006, but after revision his pay is fixed at a lower level than that of the junior, then the senior teacher's pay must be increased (stepped up) to the same level as that of the junior in the revised pay band. Further, Note 6 makes it clear that if a senior teacher was promoted to a higher post before 01.01.2006 and after pay revision, he gets less pay than his junior, who was promoted to the same higher post on or after 01.01.2006, then the senior teacher's pay in the revised pay band must be increased to match the pay fixed for the junior in that higher post. This increase shall take effect from the date on which the junior teacher was promoted, provided the required conditions are satisfied.

13. In this case, it is nowhere in dispute that Dr.Nathrekar is getting more salary than the present petitioner. The petitioner has not arrayed Dr.Nathrekar as necessary party to this petition as there is no question as regards incorrect assessment of her salary. Even the State Authorities are also not disputing that Dr.Nathrekar is being paid excessively or incorrectly. Now, the question of seniority, if at all is required to be considered, in any event both Notes 5 and 6 take care of the situation that even if a junior or senior is getting more salary than a teacher, then such teacher should be paid equal salary if both teachers are working in the same cadre. Note-5 takes care of cases of pay anomaly arising upon revision, whereas Note-6 applies to anomalies arising due to promotion before and after 01.01.2006. The fact remains that the Government Resolution dated 12.08.2009 considers the policy of 'equal pay for equal work'.

14. Even otherwise on merits, the petitioner is right in submitting that though he had been designated as Reader in 2002, still Dr.Nathrekar, who was designated as reader in 2007 is getting more salary than the petitioner. The respondents authorities claim that Dr.Nathrekar is getting more salary as on 01.09.2008 because of her Ph.D. acquirement, however, the fact remains that the petitioner has also acquired Ph.D. degree on 13.12.2000 i.e. much before Dr.Nathrekar, however, he is getting less salary than that of Dr.Nathrekar. Though the petitioner has submitted representations to the authorities for removing disparity in salary, however, the said representations have not been decided by the respondents. The allegation of suppression raised by the State does not hold merit, as the material facts regarding appointment, qualifications, and pay fixation are borne out from the official records produced before this Court.

15. It is settled position of law that where all things are equal i.e. where all relevant considerations are same, then the persons holding identical posts may not be treated differently in the matter of pay. It is also well settled that there can be different grades in service with varying qualifications for entry into a

particular grade and the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of 'equal pay for equal work' would be an abstract doctrine not attracting Article 14 of the Constitution of India if sought to be applied to them. Admittedly, the principle of 'equal pay for equal work' is not expressly declared by the Constitution to be a fundamental right, but it is certainly a constitutional goal. Article 39(d) of the Constitution proclaims 'equal pay for equal work' for both men and women as a directive principle of the State Policy. Directive principles will have to be read into the fundamental rights as a matter of interpretation. Article 14 envisages that the State should not deny any person equality before the law or the equal protection of law and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone.

16. In the present case, if the arguments raised by the learned AGP are accepted, same would certainly amount to discriminate two teachers only on the basis that one teacher having acquired Ph.D. degree subsequently after implementation of the 6th pay commission. It is different when one teacher is having higher qualification. 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 him in disadvantageous position as it was a fault to have acquired Ph.D. qualification earlier to other teacher and more importantly, prior to implementation of the new pay commission. Acquiring Ph.D. qualification at different times has caused this disparity in salary.

17. In *Sudamrao Keshavrao Aher* (supra), this Court, while allowing the petition was pleased to direct the respondents to step up the pay of the petitioners therein 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. qualification after implementation of the 06th pay commission. Similar issue came up before this Court in Writ Petition No.8565/2016 (*Prof. Vijay Ratanlal Nagori vs. The State of Maharashtra*) decided on 18.11.2016 wherein, this Court has allowed the said writ petition and directed the respondent authorities to refix pay of the petitioner therein. Relying upon the judgment in *Sudamrao Keshavrao Aher* (supra), this Court allowed Writ Petition No.11129/2015 (*Dr.Sudhakar Murlidhar Lawande and others vs. The State of Maharashtra and others*) vide judgment dated 22.01.2016 and accordingly stepped up the wages of the petitioners therein to equate them with the wages being paid to their juniors after 01.01.2006.

18. In view of the above, the Writ Petition is allowed with the following directions:-

(a) The respondents shall step up the pay of the petitioner w.e.f. 01.09.2008 so as to bring it at par with that of Dr.Nathrekar where all relevant service conditions are identical. They shall not discriminate the petitioner only because Dr.Nathrekar has acquired Ph.D. degree in the course of 06th pay commission.

(b) The respondents shall re-fix the salary of the petitioner and calculate and pay the arrears accordingly to the petitioner within a period of three months from today.

(c) If the pay is not refixed and the arrears are not paid within the stipulated period, the same shall carry interest at the rate of 8% per annum and such interest would then be recovered from the respondents.

(d) If the petitioner has already retired, his pension be re-fixed and continued to be paid, accordingly.

19. Rule is made absolute in the above terms.