

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.16 OF 2014

DISTRICT : MUMBAI

- 1] Shri Shrikant Bhimrao Borade,)
- 2] Shri Manoj Shrikant Tripathi,)
- 3] Shri Pradip Tukaram Rathod,)
- 4] Shri Jeetendra Kantilal Thamke,)
- 5] Shri Ajit Shivram Shinde,)
- 6] Shri Shrikrishna Tukaram Kumavat,))
- 7] Mrs. Alka Amit Khedekar,)
- 8] Mrs. Archana Anand Thakare,)
- 9] Mrs. Sujata Atmaram Manjrekar)
- 10] Mrs. Asmita Arun Keroji,)
- 11] Miss Priyanka P. Ghodeswar,)
- 12] Shri Satishkumar C. Dangre,)
- 13] Shri Shoib Aaquil Zulfi,)
- 14] Shri Saquibullah Khan B. Patel,)
- 15] Shri Milind Vasantrao Dabrase)
- 16] Shri Amol Dharmaji Fule,)
- 17] Shri Chandrakumar N. Patil,)
- 18] Smt. Sunita Jayant Rikhe [Pandit],)
- 19] Smt. Sunita Ramesh Kannake,)
- 20] Shri Keshav R. Suslade,)

All are working as Dental)
Hygienists in the different offices)
at Mumbai, etc. under the)
administrative control of the)
below named Respondent,)
Having Office at Mumbai.)

- 21] Shri Ramakant Ashok Kadam)



Working as Dental Hygienist)
 at Government Dental College)
 Mumbai -01.)

Address of Service of Notice :)

Shri A.V. Bandiwadekar, Advocate,)
 Having Office at 9, "Ram-Krishna",)
 Lt. Dilip Gupte Marg, Mahim,)
 Mumbai 400 016.)

)...Applicants

VERSUS

1. The State of Maharashtra.)
 Through Principal Secretary,)
 Medical Education and Drugs)
 Department, Having Office at)
 Mantralaya, Mumbai - 400 032.)

2. The Director of Medical Education)
 and Research, [M.S.], Mumbai,)
 Having Office at Government)
 Dental College and Hospital)
 Building, 4th Floor,)
 St. George's Hospital)
 Compound, Mumbai - 01.)

3. The State of Maharashtra,)
 Through Principal Secretary,)
 Finance Department,)
 Having Office at Mantralaya,)
 Mumbai - 400 032.)

4. The Pay Anomaly Removal)



Committee, set up by the)
 Finance Department of the)
 State of Maharashtra, Having)
 Office at Mantralaya,)
 Mumbai - 400 032.)....**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicants.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
 R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 08.09.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) moved by as many as 21 Dental Hygienists under the State of Maharashtra in effect seek parity in the matter of pay and allowances with their counterparts in the Central Government.

2. The Applicants hold Diploma in Dental Hygiene. Under the Dentists Act, 1948, the Dental Hygienist means a person not being a Dentist or Medical Practitioner, who scales, cleans or polishes teeth or gives instructions in dental hygiene (see Section 2(1)(b) of the said Act). The Applicants are registered as Hygienists with Maharashtra



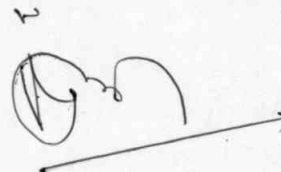
State Dental Council. They have been serving the State Government as Dentists for varying duration of time from 1980-2008. At present, there are 35 sanctioned posts of Dental Hygienists in Maharashtra. At Page 60 of the Paper Book (P.B), there is a copy of the Rules called "Dental Hygienists (Recruitment) Rules, 1989. They are framed under the proviso to Article 309 of the Constitution of India. As already mentioned above, they lay down that the appointments to the said post would be only by nomination from amongst the candidates whose qualifications have been laid down therein, one of which is that they should have passed Dental Hygienists Examination. At Page 63 of the P.B, there is a Notification issued by the Dental Council of India. The 5th Clause thereof *inter-alia* lays down that for the purpose of establishment of uniformity in Dental Education throughout India, it was necessary that the course of instructions be pursued in all the institutions in a standardized manner.

3. It is not much in dispute that till the time 5th Pay Commission was brought into force, the Pay Scales of the Dental Hygienists under the State and the Central were the same viz. Rs.4000-6000. However, the Government of India while Exh. 'K' (Page 69 of the P.B.) issued an order on



11th/17th November, 2005 upgrading the scale of pay of the said post under the Central Government Hospital to Rs.5000-8000 w.e.f. 4th October, 2005. At Exh. 'X' (Page 131 of the P.B.), the Central Government provided pay parity to others in the field of Dental Hygiene with Dental Hygienists working under the Central Government.

4. As a matter of fact, Exh. 'K' above discussed in fact became the cause in the ultimate analysis for this OA to be brought. The Applicants are aggrieved by the fact that although they perform the same duties as do their counterparts in the Central Government, but there is a pay disparity. This according to them offends the principle of "equal pay for equal work" and in turn it offends the constitutional guarantee and the provision against hostile discrimination. There are copies of several representations made by the Applicants in their personal capacity and also one by their Association. Two such representations are dated 6.12.2006 and 18.1.2007. In Para 8 of the OA, it is pleaded *inter-alia* that the 3rd Respondent - State of Maharashtra in Finance Department issued a certain G.R. dated 27.2.2009 (Exh. 'N') whereby they accepted the recommendation of State Pay Revision Committee, 2008. According to the Applicants, in fact this Committee had expressed sympathy with the Applicants and recommended

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changes. However, the said 3rd Respondent issued Maharashtra Civil Services (Revised) Pay Rules, 2009 (Exh. 'O'), the relevant entry being at Serial No.207 whereunder the grade pay of Rs.2000-2400 came to be granted to Dental Hygienists with the corresponding pay band of 5200-20000 as against the earlier pay scale of Rs.4000-6000. The 1st Respondent is the State of Maharashtra in Medical Education and Drugs Department, the 2nd Respondent is the Director of Medical Education and Research and the 4th Respondent is the Pay Anomaly Removal Committee.

5. It is further pleaded in the OA that after the above referred Notification, the Pay Anomaly Removal Committee came to be constituted to remove the anomaly. Representations, as already mentioned above, came to be made by the Applicants, but ultimately, the demands of the Applicants were not accepted.

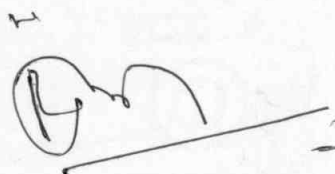
6. In Clause 3.4.5, the Pay Anomaly Committee dealt with the case of the Applicants and regardless of the ultimate outcome hereof, they were apparently in agreement that a case for sympathetic consideration of the case of the Applicants was made out. At Exh. 'R' (Page 109 of the P.B.) there is an order issued by the Directorate of



Medical Education and Research wherein the pay scales have been mentioned and ultimately the pay scale of Rs.9300-34800 with grade pay of 4200 came to be recommended. The above discussion must have made it clear that this demand and recommendation was not approved and accepted by the Government.

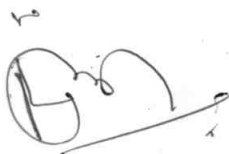
7. We have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicants and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

8. The Affidavit-in-reply on behalf of the 1st two Respondents came to be filed by Dr. Mansingh G. Pawar, Joint Director, Dental and the Sur-rejoinder was filed by Shri S.M. Walkekar, Chief Administrative Officer. The sum and substance of their case is that it was only after deep thought and consideration that the pay scale for the said post for the State Government Dental Hygienists came to be finalized. The Pay Anomaly Committee went into every aspect of the matter and ultimately, made its recommendations. It is not as if in all circumstances, the pay scales of the Central Government can be mechanically made applicable to the State Government employees. There are several distinguishing features according to them

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including the sweep and ambit of the Central Government institutions spread all over India. There is apparently also a reference to the fact that the Central Government employees are required to look after their families from distance. It was according to them, fully considered by the Pay Anomaly Committee as to what pay scales should be given to the Applicants. Now, perusal of Page 169 of the P.B. would show that in the Affidavit-in-rejoinder, in Para 12 and other Paras as well, the Applicants have assailed the opinion of the Pay Anomaly Committee for the reasons stated by them. The matter of moment and significance is that the Applicants have also carefully perused the recommendation of the said Committee and have assailed the same.

9. In the backdrop of the above discussion, the point is as to whether this Tribunal exercising the powers of judicial review of administrative action in the matters relating to pay scales, etc. can just for the asking intervene and/or interfere and do something which might tantamount to mere substitution or our point of view for the point of view of the Committee and other authorities endowed with specialized knowledge and training in that field. In our opinion, the matter of moment would be to make sure that in the matter of service conditions of pay



scales, etc., the Applicants were treated in a just, fair and proper manner and if the record shows which it does, that by way of the deliberation in the Committee, they were treated as well under the principles of natural justice, then it will not just for the asking that the Tribunal will intervene in the nitigrity of the matter of pay scales, etc. It is no doubt true that there is an apparent disparity relating to the pay scale of the said post under the State Government employees and those under the Central Government. It is, however, nobody's case that the State Government has discriminated against two sets of its own employees for inexplicable reasons. We are not prepared to accept that in all circumstances, there cannot be any disparity whatever between the Central Government and the State Government employees. In fact, the Applicants have broadly mentioned that they are being discriminated against vis-à-vis the employees of other States, but no data and details have been furnished.

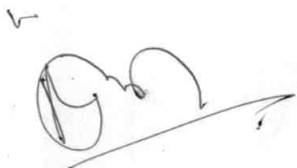
10. In so far as the issue of jurisdiction is concerned, Mr. A.V. Bandiwadekar, the learned Advocate for the Applicants relied on **Union of India Vs. Dineshan K.K. (2008) 1 SCC (L & S) 248** in which Their Lordships were pleased to refer to a few other Judgment of the Hon'ble Supreme Court including **Randhir Singh Vs. Union of**



India, AIR 1992 SC 879. Reading of Paras 12 and 13 of **Dineshan** (supra) would make it very clear that if one were to trace the evolution of law from earlier days including **Randhir Singh**, it would become clear that initially these matters were considered to be falling within Chapter IV of the Constitution of India (Directive principles of State policy), but as the law evolved, it became almost like a fundamental right, but still there was no principle that there should be mathematical accuracy in all matters involving such issues.

11. We were also referred to **Union of India & ors. Vs. Rajesh Kumar Gond, (2014) 13 SCC 588** and **K. Jagannathan & ors. Girija Vaidyanathan & Anr. 2013 (2) SCC (L & S) 728.**

12. Apart from what we have mentioned above, it would become quite clear that the factual set of circumstances in the above referred case law were not exactly like the present one. Therein the employer was the same, and therefore, the issue of discrimination arose in a more pressing manner than here. No doubt, the Applicants have assailed the case of the Respondents when they distinguished the Central Government and the State Government in the matter of grant of pay scales to the said



post, but then, presiding over this judicial forum what we have to examine is as to whether there were reasons to make such a distinction and as to whether the Applicants were treated well within the principles of natural justice. Here, we must reiterate that the Applicants were well treated on that anvil and the experts have examined every aspect of the matter in close details. If, therefore, the principles enunciated in the above case law are applied hereto, a finding for the Applicants cannot be entered.

13. The upshot is that we find no reason to interfere with the pay scales granted by the Government to the Applicants after thoughtful consideration at various levels and stages. The Original Application is, therefore, dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
08.09.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
08.09.2016

Mumbai

Date : 08.09.2016

Dictation taken by :

S.K. Wamanse.

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