

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.265 OF 2016

DISTRICT : AURANGABAD

Shivaji Harsingh Rathod.)
Age : 51 Years, Occu.: Service,)
R/o. N-12, D/4/10, Hudco, Aurangabad.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Higher & Technical Education,)
Mantralaya, Mumbai.)
2. The Principal Secretary.)
Finance Department, Mantralaya,)
Mumbai.)
3. The Director of (Training) Vocational)
Education & Training, Maharashtra)
State, Mumbai.)
4. The Joint Director.)
Vocational Education & Training,)
Regional Office, Bhatkal Gate,)
Aurangabad.)...**Respondents**

Mr. A.D. Sugdare, Advocate for the Applicant.

Mrs. R.S. Deshmukh, Presenting Officer for Respondents.

CORAM : SHRI B.P. PATIL (MEMBER-J)

Closed on : 18.04.2018

Pronounced on : 24.05.2018

J U D G M E N T

1. By filing the present Original Application (O.A.), the Applicant has challenged the communication dated 13th January, 2015 issued by the Respondent No.1, thereby denying to grant benefit under Assured Career Progression Scheme (ACP Scheme) in view of the G.R. dated 5th July, 2010 and the letter dated 4th November, 2015 issued by the Respondent No.3 and prayed to declare that he is entitled to get the said benefit in view of the G.R. dated 5th July, 2010.

2. The Applicant was appointed as Drawing Instructor on 02.09.1983 and working in I.T.I, Aurangabad under the control of Respondent No.3. After joining the post, he had undergone training in Trade Draftsman Mechanical. It is his contention that he is eligible for further promotion to the post of Group Instructor.

3. The Applicant was not considered for further promotion for the post of Group Instructor and for combined seniority of instructional staff. He, therefore, along with other employees filed O.A.No.51 of 2008 before the Maharashtra Administrative Tribunal, Bench at Aurangabad. The Tribunal dismissed the O.A. on 27.06.2012. The Applicant challenged

the said decision before the Hon'ble High Court of Judicature, Bombay Bench at Aurangabad in a Writ Petition No.738 of 2013. The Hon'ble High Court disposed of the said Writ Petition on 13th August, 2015 with a direction to the Respondents to consider his case for grant of benefit under ACP Scheme on its merits. The Applicant filed a representation before the Respondent No.3 dated 08.10.2015 in pursuance of the directions given by the Hon'ble High Court in Writ Petition. The Respondent No.3 had replied to him that, he is not entitled to get the benefit under ACP Scheme as the post held by him is not an isolated post. Thereafter, the Applicant again made representation dated 16.08.2016 and sought clarification to which the Respondent No.3 had replied by letter dated 22nd January, 2016 and informed that the post hold by him is not an isolated post and he is not eligible for grant of benefit for isolated post. It is contention of the Applicant that he is belonging to separate cadre and his seniority is maintained separately. The post of Instructor on which he is working is declared as 'non-promotion post' and no promotion is available to him. Therefore, he is seeking direction to the Respondents 1 and 2 to consider his claim for grant of benefit of Special Grade Pay under ACP Scheme in view of G.R. dated 05.07.2010. It is further contention of the Applicant that the National Commission for Teachers headed by Professor D.P. Chatopadhyay was appointed. On the basis of recommendation of National Commission for the Teachers headed by Chatopadhyay, higher pay scale to the School Teachers were recommended by the report dated 01.04.2010.

The said report was accepted by the Government of Maharashtra and was given effect from 1st January, 1986 for School Teachers. The object of National Committee for Teachers was to suggest the measures of fostering dynamism in the profession and attracting and retaining talented persons in the teaching profession and to recommend measures to enhance the role of teachers in facilitating motivating and inspiring students in acquisition of knowledge, skill and values and promoting them through the spread of the scientific temper, secular outlook, environmental consciousness and civic responsibility and also to make adequacy of arrangement of promotion of Teachers. The Respondent No.1 had not accepted the report of the Chatopadhyay Committee in *toto*. Therefore, all the benefits are not made applicable to the Applicant. Only pay scale is made applicable to the Applicant with effect from 1st January, 1986 by the Government Resolution dated 8th March, 1999.

4. It is contention of the Applicant that he collected information under Right to Information Act as to which category the post of Instructor in Mathematic and Drawing, Maths Instructor and Drawing Instructor falls and whether it falls in the category of isolated post and post for which promotion is not available and if the above posts are not considered for grant of additional grade pay, if so under which Government Resolution. The Applicant received the information by letter dated 15.09.2011 from the office of the Joint Director of Vocational Education and Training, Nagpur

stating that the post of Instructor in Mathematic and Drawing falls under the category of non-promotional post.

5. It is contention of the Applicant that the Government introduced ACP Scheme to the Government employees with the object that the employees of the State who for some or the other reason are not able to get promotion within a span of 12 years will be granted next higher pay scale then the one in which he was posted, provided his service record is free from any blemish during the prescribed period. The object of the Scheme is to give incentive to the employee to perform his duties with utmost dedication and not to feel frustration due to stagnation or lack of promotional avenues in carrier growth. The previous Scheme of Time Bound Promotion was superseded and Assured Career Progression Scheme, 2001 is made applicable. Thereafter, several modifications were made in the Scheme. The Government issued G.R. dated 01.04.2010 and thereafter also issued modified Resolution dated 05.07.2010 by which the Scheme was made applicable to the isolated posts.

6. It is contention of the Applicant that the Joint Director, Nashik informed the Respondent No.3 that similar benefits under the ACP Scheme have been extended to some of the employees and they are receiving the benefits. The Association has also made similar demand to the Respondent No.3 by making representation dated 06.10.2012. The Respondent No. 1 informed the Respondent No.3 vide letter

dated 13th January, 2015 that the Finance Department has turned down their proposal in view of the recommendation of Hakim Committee dated 27.09.2009 and thereby denied the benefits under ACP Scheme to the Applicant on the ground that in the recommendation of Hakim Committee, there is a mention that Teachers are not entitled to get the benefit under ACP Scheme and the said recommendation was accepted by the Government vide G.R. dated 27.03.2009. It is further contention of the Applicant that the employees working on isolated posts i.e. non-promotional post like Applicant had filed O.A.No.202 of 2015 in the name of R.B. Ahire and Ors. and O.A.No.569 of 2015 in the name of Sanjay Bassaya and Ors. before the Maharashtra Administrative Tribunal Bench at Aurangabad. It is contention of the Applicant that the Respondents had not applied mind while rejecting the claim of the Applicant to grant the benefit under ACP Scheme. It is his contention that the report of the Hakim Committee and ACP Scheme are two different Schemes, and therefore, the same cannot be combined. It is his contention that the revised pay scale after completion of 12 years of service benefits given is almost negligible while under ACP Scheme, the employees got next promotional scale with one increment benefit of promotional post. It is his contention that the pay scale recommended by Chatopadhyay Committee is Three Tier system and as per that Scheme, only 20% employees will get the benefit of higher pay scale after completion of 24 years' service while as per ACP Scheme, all the employees who rendered 24 years' service will get benefit accordingly. It is his

contention that the Respondents have not considered the said aspect while rejecting his claim, and therefore, he prayed to quash the impugned communication dated 13th January, 2015 issued by the Respondent No.2 and the communication dated 04.11.2015 issued by the Respondent No.3 in that regard and to direct the Respondents to extend the benefit under ACP Scheme to him as per G.R. dated 05.07.2010.

7. Respondent Nos.1 to 3 have filed their Affidavit-in-reply and resisted the contention of the Applicant. It is contended by them that the post of Drawing Instructor is different cadre and separate Recruitment Rules for that post have been made. Each cadre has their own roster, seniority list and in the Recruitment Rules for the post of Drawing Instructor, there is no provision of promotional channel. They have admitted the fact that the Hon'ble High Court Bombay Bench at Aurangabad in Writ Petition No.738/2013 directed them to consider the case of the Applicant afresh. It is their contention that, as per the directions given by the Hon'ble High Court, they considered the case of the Applicant and communicated their decision to the Applicant vide letter dated 04.11.2015 and informed him that he is Drawing Instructor, and therefore, recommendation of Chatopadhyay Committee are applicable to him. The post held by him i.e the post of Drawing Instructor is not an isolated post, and therefore, the benefits of the G.R. dated 05.07.2010 cannot be extended to him. They have also informed the Applicant that as per the 6th Pay Commission, selection grade was made applicable to

Drawing Instructor and there was limit to grant selection grade to 20% of the employees according to their seniority. Three Tier pay scale was granted to him. It is their contention that, by office letter dated 08.06.2016, they sanctioned Three Tier scale to the Applicant with effect from 02.08.2007 as per Rules.

8. It is contention of the Respondents that previously, there was Education Department in Government of Maharashtra. In the year 1983, the said Department was divided in two different Departments viz. School Education & Higher and Technical Education Department. Chatopadhyay Committee was appointed to solve the issues of Teachers appointed by Central Government. The recommendation of the said Committee relating to the pay scales of Teachers has been accepted by School Education Department first and on the same basis, the Higher and Technical Department accepted the recommendation. At present, the Directorate of Vocational Education & Training Branch has been attached to Skill Development and Entrepreneurship Department vide G.R. dated 02.09.2015. It is their contention that, some of the employees have received benefit under ACP Scheme, and therefore, the Joint Director, Nashik by letter dated 13.09.2012 sought guidelines from Directorate as regards the applicability of ACP Scheme to the teaching staff. The Ministry of Higher and Technical Education, Mumbai refused the proposal of special grade pay vide letter dated 13.01.2015 on the ground that the Hakim Committee made provision in

that regard and it was accepted by the Government by G.R. dated 27.02.2009 and accordingly, it has been decided that the employees working under same cadre cannot take benefit of two schemes. It is their contention that the post hold by the Applicant is not isolated post. Non-promotional post in teaching profession is availing benefits of Two-Three Tier pay scale as per recommendation of Chattopadhyay Commission, whereas Assured Career Progressive Scheme is applicable to Government servants excluding the teaching staff. But the Applicant is availing the benefit of Two/Three Tier pay scale as per the recommendation of the Chatopadhyay Committee as the said post is non-promotional in teaching profession. It is their contention that, as per the recommendation of the Hakim Committee, the benefit of ACP Scheme is not applicable to Teacher cadre, and therefore, they have rightly rejected the claim of the Applicant and communicated to him accordingly. It is their contention that, there is no illegality in the communication sent by them to the Applicant, and therefore, they prayed to dismiss the O.A.

9. I have heard Shri A.D. Sugdare, learned Advocate for the Applicant and Smt. R.S. Deshmukh, learned Presenting Officer (P.O.) for the Respondents and perused the documents produced on record by the parties.

10. Admittedly, the Applicant was appointed as Drawing Instructor on 02.09.1983 in ITI, Aurangabad and under the control of Respondent No.3. He had undergone training in

Trade Draftsman Mechanical after joining the post. It is not in dispute that the Applicant has claimed promotion to the post of Group Instructor and for maintaining combined seniority of instructional staff by filing O.A.No.51 of 2008 before this Tribunal, Bench at Aurangabad, but the said O.A. came to be dismissed on 27.06.2012. The Applicant challenged the said decision by filing the Writ Petition No.738 of 2013 before Hon'ble High Court of Judicature, Bombay Bench of Aurangabad. It was disposed of on 13.08.2015 and the Judgment of this Tribunal has been upheld by the Hon'ble High Court. The Hon'ble High Court directed the Respondents to consider the case of the Applicant to grant the benefit under ACP Scheme on merit as per G.R. dated 05.07.2010. Accordingly, the Applicant filed representation on 08.10.2015 before the Respondent No.3. The Respondent No.3 considered his application on merit and decided the representation on 04.11.2015 and informed the Applicant about its decision on 04.11.2015 that the Applicant is not entitled to get the benefit under ACP Scheme, as the post hold by him is not an isolated post. Thereafter, the Applicant made another representation dated 16.01.2016 to the Respondent No.3 and sought clarification. The Respondent No.3 by a communication dated 22nd January, 2016 informed that the post held by him is not an isolated post, and therefore, he is not entitled to claim benefit for isolated post. It is not much disputed that the similarly situated persons filed the O.A.No.202/2015 with O.A.Nos.401 & 402/2016 before this Tribunal and the matters

have been decided by the Division Bench of this Tribunal on 19.01.2017 and all the O.As have been dismissed.

11. Admittedly, Chatopadhyay Committee has been appointed for considering the pay scales and service conditions of the teaching staff. Its recommendation has been accepted on the basis of recommendation made by Hakim Committee by the Government and those were made applicable to the Applicant and others. Admittedly, 2/3 Tier pay scale has been made applicable to the teaching staff including the Applicant. As per the said Scheme, the employee who completes 12 years of service will get the next higher pay and after completion of 24 years, he will get the selection grade. The selection grade will be awarded to 20% employees only. Admittedly, during the pendency of the Scheme, the Respondent No.3 passed the order granting selection grade to the Applicant with effect from 02.08.2007 and communicated the decision to the Applicant vide letter dated 08.06.2016.

12. Learned Advocate for the Applicant has submitted that the Respondents have not considered the name of the Applicant in view of the G.R. dated 05.07.2010. He has submitted that the post held by the Applicant has no promotional avenues, and therefore, it is an isolated post, and therefore, the provisions of G.R. dated 05.07.2010 are attracted in this case. He has submitted that as per the recommendation of Chatopadhyay Committee, 2/3 Tier pay

scale has been made applicable to the teaching staff and on that basis, they will get the benefit of higher pay scale after completion of 24 years. He has submitted that the benefit of pay scale of selection grade will be available to only 20% employees after completion of 24 years' service, and therefore, each and every employee will not get the benefit of the said Scheme, and therefore, the Applicant who was served on such post is covered by the G.R. dated 05.07.2010. He has submitted that this aspect has not been considered by the Respondents, and therefore, they wrongly held that the Applicant is not entitled to claim benefit under the G.R. dated 05.07.2010. He has submitted that some of the employees working on the said post at Nashik Division received the benefit of the G.R. dated 05.07.2010 and benefit under ACP Scheme has been extended to them. But the Respondent Nos. 1 and 3 had not considered the said aspect and rejected the claim of the Applicant, and therefore, he prayed to quash the impugned communication dated 13.01.2015 and 04.11.2015 issued by the Respondent Nos.1 and 3 respectively.

13. Learned P.O. has submitted that the Applicant is working in the teaching staff. The Central Government appointed a Committee under the leadership of Professor Dr. D.P. Chattopadhyay and the said Committee had to enquire into various aspects, problems of the teaching staff and they made representation regarding revision of the pay scales of the teaching staff. She has submitted that the recommendation of the said Committee related to pay scales of the teacher was

firstly accepted by School Education Department and thereafter, the said recommendation had been accepted by the Higher and Technical Education Department, State of Maharashtra. She has submitted that as per the recommendation of the Hakim Committee, the post held by the Applicant is not an isolated post, and therefore, the Applicant is not entitled to claim benefit under G.R. dated 05.07.2010. She has further submitted that the Applicant is getting 2/3 Tier pay scale in view of the recommendation of the Chatopadhyay Committee, and therefore, he cannot claim again benefit under ACP Scheme. She has argued that the said issue has already been decided by the Division Bench of this Tribunal in O.A.No.202/2015 with O.A.Nos.410 & 402/2016 on 19.01.2017 in cases of similarly situated persons and it has been held that, no such benefit can be extended to the Instructors working in Mathematic and Drawing in ITI. The said decision of the Division Bench is squarely applicable to the present case, and therefore, the Applicant is not entitled to claim benefit, and therefore, she prayed to reject the O.A.

14. I have gone through the documents on record and on going through the same, it reveals that a separate Committee headed by Dr. Professor Chatopadhyay has been appointed and the Chatopadhyay Committee proposed a separate pay scale for the Teachers. The said Scheme was made applicable to the Teachers working in Central Government as well as State Government including the

teaching staff. Two Tier pay scale envisaging financial upgradation of the senior scale and selection grade after 12 and 24 years of service has been made applicable. The State Government has accepted the recommendation of the Hakim Committee. Hakim Committee has recommended that the employees holding the posts like Applicant are not entitled to get the benefit of ACP Scheme, as they are availing the benefit under the Chatopadhyay Committee. The Applicant has received the benefit of Selection Grade in view of 2/3 Tier pay structure granted to the Teachers in view of the recommendation of Chatopadhyay Committee with effect from 02.08.2007 in view of the order dated 08.06.2016 produced by the Respondents. Therefore, the apprehension of the Applicant that he will not get the benefit of Selection Grade because the said benefit is available to limited employees to the extent of 20% of the cadre is unfounded and unreasonable. The Applicant is availing the benefit under the Chatopadhyay Committee but again, he is intending to take benefit of the ACP Scheme in view of the G.R. dated 05.07.2010 which is available to the isolated post. The Division Bench of this Tribunal has already held in O.A.No.202/2015 with O.A.Nos.410 & 402/2016 decided on 19.01.2017 that when a parallel Scheme is already applicable to the Applicants, there is no need to give benefit under another Scheme which is applicable to the other set of employees and consequently, the Division Bench of this Tribunal dismissed the claim of the similarly situated

Applicants in those matters. The Division Bench has observed as follows :

“6. We find that the Applicants are already covered by a separate Scheme for teachers, which is applicable to the teaching staff of I.T.Is also. This two-tier pay structure envisages financial upgradation to Senior Scale and Selection Grade after 12/24 years of service for isolated posts for which no chain of promotion is available. This scheme is parallel to the Assured Career Progression Scheme applicable to other State Government employees. The claim of the Applicants that total number of Selection Grade posts is limited to 20% of the cadre strength, which has caused prejudice to them is unfounded. No instances of denial of selection grade to any Instructors in Mathematics or Drawing has been cited. The Applicants in effect, are seeking modification of the recommendations of Hakim Committee. There have been several decision of Hon’ble Supreme Court that the work of fixation of pay scales for various posts is the job of expert bodies like Pay Commission / Pay Equalization Committee. When a parallel scheme is already applicable to Instructors like the Applicants, we are not inclined to interfere and order that another Scheme applicable to other sets of employees should be made applicable to them.”

15. The principle laid down in the above said decision is appropriately applicable in the instant case. The present case is also covered by the above said decision rendered by the Division Bench of this Tribunal. Therefore, I am bound by the view expressed by the Division Bench. In view of this, the Applicant is not entitled to get the benefit under ACP Scheme in view of the G.R. dated 05.07.2010. Therefore, I find no

substance in the contention raised by the Applicant in that regard. The Respondents have rightly rejected the claim of the Applicant and communicated their decision to the Applicant vide letter dated 13.01.2015 and 04.11.2015. There is no illegality in the communication dated 13.01.2015 and 04.11.2015. Therefore, no interference is called for in the impugned order. There is no merit in the O.A. Consequently, it deserves to be dismissed.

16. In view of the discussion in the foregoing paragraphs, the Original Application is dismissed with no order as to costs.

**Sd/-
(B.P. Patil)
Member-J
24.05.2018**

Mumbai
Date : 24.05.2018
Dictation taken by :
S.K. Wamanse.