



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2871 OF 2003

1. Dinesh Kumar Singh

JN-2/38-A-3, Sector 9,

Vashi, Navi Mumbai – 400 703.

2. Satya Prakash Singh

Ram Surat Jangbahadur Chawl,

S. K. Kapadia State, Parasi Wadi,

Ghatkopar (W), Mumbai – 400 086.

3. Raj Nath Singh

Akhtar Khan Chawl, Room No.5-A,

Jamil Nagar, Bhandup (W),

Mumbai – 400 078.

4. Mrs. C. P. Talwar

9A/15/NAV Shivneri, Vashi,

Navi Mumbai – 400 703.

5. Suresh C Singh

Room No.485, Sector 4,

Koperkhairane,

Navi Mumbai – 400 703.



6. Mrs. Shobha N. Kulkarni
JN-1/2/B-12, Sector 9, Vashi,
Navi Mumbai – 400 703.

7. Shri Prem Sagar Shukla
Working at Plot No.16/17,
Sector 10-A, Vashi,
Navi Mumbai – 400 703.

...Petitioners

Vs.

1. Sainath Education Trust,
through its Joint Secretary,
Plot No.16/17, Sector 10-A,
Vashi, Navi Mumbai – 400 703.

2. Sainath Hindi High School
through its Principal,
Plot No.16/17, Sector 10-A,
Vashi, Navi Mumbai – 400 703.

3. The State of Maharashtra
through its Secretary,
Department of Education &
Employment, Mantralaya,
Mumbai – 32.



4. The Director of Education,
Central Building,
Pune – 411 001.

5. Education Officer,
Zilla Parishad, Thane.

6. Navi Mumbai Mahanagar Palika
Navi Mumbai,
District Thane.

7. Smt. Manisha Gupta

8. Smt. Chitra Bhatnagar

9. Smt. Geeta Kamti

10. Sri. Vishwambhan Nath Tripathi

11. Smt. Vandana Sharma

12. Smt. C. K. Maheshwari

13. Sri. Santosh Singh

14. Sri. Niraj Singh

15. Smt. Krishna Singh

16. Smt. Shashi Singh

17. Sri. Mahendra Singh

Sainath Hindi High School,
Plot No.16/17, Sector 10-A, Vashi,
Navi Mumbai – 400 703

...Respondents



Mr. Mihir Desai, Sr. Counsel a/w. Mr. Mihir Joshi for petitioner.
Ms. Meena Doshi a/w. Ms. Usha Singh i/b. Vyas & Bhalwad for
Respondent No.1.

Ms. Uma Palsuledesai, AGP for Respondent-State.

Mr. Vishal Shirke a/w. Mr. Rupesh Dubey for Respondent No.6.

WITH
WRIT PETITION NO. 1860 OF 2005
[CIVIL APPELLATE JURISDICTION]

1. Patil Manoj Sakharam

Age 35 years, Occupation : Service,

Flat No.22, Vitthal Plaza Apartment,

Kasba, Baramati, District Pune - 413 102.

2. Shendge Ravindra Bhimrao

Age 35 years, Occupation : Service,

Flat No.9, Vitthal Plaza Apartment,

Kasba, Baramati, District Pune - 413 102.

3. Jaypatre Sampat Waman

Age 50 years, Occupation : Service,

Flat No.7, Amol Apartment,

Vivekanand Nagar, Baramati,

District Pune - 413 102.



4. Patil Mohan Madan

Age 46 years, Occupation : Service,

E-Type Quarter, A/p : Shivnagar,

Taluka Baramati, District Pune – 413 116.

5. Nanaware Shrirang Kedari

(Since deceased through LRs)

5(i) Smt. Ranjana Shrirang Nanaware

Widow of deceased, Age 52 years,

Occupation : Housewife,

5(ii) Shri. Vaibhav Shrirang Nanaware

Son of deceased, Age 36 years,

Occupation : Service,

5(iii) Mrs. Varsha Devdatt Navale

(Married daughter of deceased)

Age 32 years, Occupation : Housewife,

5(iv) Mrs. Vrushali Abhishek Bankar

(Married daughter of deceased)

Age 29 years, Occupation : Housewife,



6. Pandhari Anjali Arun

Age 45 years, Occupation : Service,
Flat No.A-1, Akalpiti Co-Op. Housing
Society, Behind M.E.S. High School,
Baramati, District Pune – 413 102.

7. Kulkarni Balasaheb Kumarrao

Age 35 years, Occupation : Service,
Quarter No.E-14-6, E-Type Quarter,
A/p. Shivnagar, Taluka : Baramati,
District Pune – 413 116.

...Petitioners

Vs.

1. The State of Maharashtra
through the Secretary,
Higher and Technical Education Dept.
Mantralaya, Mumbai – 400 032.

2. The Director of Technical Education
Maharashtra State,

3, Mahapalika Marg, Post
Box No.1967 Mumbai – 400 001.

3. Joint Director of Technical Education
(Pune Region), 412, E,
Bahirat Patil Chowk, Shivaji Nagar,
Pune – 411 016.



4. The Regional Officer and Member
Secretary, All India Council for Technical
Education (AICTE)
2nd Floor, Industrial Assurance Building,
Veer Nariman Marg, Churchgate,
Mumbai – 400 020.

5. The President and Chairman of
Governing Council,
Shivnagar Vidya Prasarak Mandal,
Bungalow No.1, Silver Cross Street,
Bholabhai Desai Marg, Mumbai-26.

6. The Principal,
Shivnagar Viday Prasarak Mandal's
Institute of Technology & Engineering,
A/p : Malegaon (Bk), Tal.: Baramati,
District : Pune – 413 115.

...Respondents.

**WITH
WRIT PETITION NO. 1473 OF 2014**

Jaya K. J.
Age 50 years, Having her address
at A-17, Landmark Co. Op. Housing
Society Ltd. Plot No.2-1, 2-8, Sector
14, Vashi, Navi Mumbai – 400 705.

...Petitioner



Vs.

1. ICL Education Society,
though its President,
Having its office at Nariman Point,
Mumbai.

2. Dr. Jyoti Marwah
Through its Incharge Principal
Motilal Jhunjhunwala College of
Arts, Science & Commerce, having
her office address at Sector 9-A,
Vashi, Navi Mumbai – 400 703.

3. State of Maharashtra
through the Secretary,
Department of Education
& Employment, Mantralaya
Annexe, Mumbai – 400 032.

...Respondents

Dr. Uday P. Warunjikar a/w. Aditya Kharkar for the Petitioner.
Mr. Mihir Desai, Sr. Counsel a/w. Mr.S.P.Sarnath for petitioner in
wp1473/2014.
Mr. Satbir Singh Saluja a/w. Mr. Inayat Ali Qureshi i/b. K.K.Associates
for Respondents 1 & 2.
Mr. A.V.Anturkar, Sr. Advocate a/w. Mr.Vaibhav Kulkarni a/w.
Harshvardhan Suryawanshi i/b. Sugandh Deshmukh for Respondent
Nos.5 and 6.
Mr. S.B.Kalel, AGP for the State.



WITH
WRIT PETITION NO. 2324 OF 2014
[CIVIL APPELLATE JURISDICTION]

1. Mr. Hanumant Mahadev Bhosale

Age 44 years, Occupation : Service,

Residing at G-3, Rambaug Building

No.2 CHS, A Wing, Near Eye Hospital,

Vasai Gaon – 401 201.

2. Mr. Chandrakumar Nagnath Vishwakarma

Age 41 years, Occupation : Service,

Residing at Flat No.621, A-2 Building,

Chitrawani CHS Ltd. Pimpri Pada,

Malad (East), Mumbai – 400 097.

3. Anant Gunwantrao Thakare

Age 44 years, Occupation : Service,

Residing at A/202, Chheda Complex,

ST Stand Road, Nalasopara (West) 401 203. ...Petitioners

Vs.

1. All India Council for Technical Education

New Delhi, through its Chairman,

Having office for the purpose of

Service of Summons at Bombay.



2. Director of Technical Education

Elphinstone Technical College Building,
Mahapalika Marg, Fort, Mumbai.

3. Maharashtra State Board of Technical

Education, 4th Floor, Government
Polytechnic Building, 49 Kherwadi,
Mumbai – 400 051.

4. Principal

Vidyavardhini's Bhausahab Vartak
Polytechnic at Vasai,
Vasai Road (West),
District Thane – 401 202.

5. The Trustee

Vidyavardhini, Vasai Road (West),
District Thane – 401 202.
A Society registered under the
provisions of Bombay Public Trust Act.

6. Secretary,

Ministry of Higher & Technical Education,
Government of Maharashtra

...Respondents



Dr. Uday P. Warunjikar a/w. Aditya Kharkar for the Petitioner.
Mr. Shaikh Nasir Masih, Advocate & Advocate Choudhari
Moinuddin for Respondents 4 and 5.
Mr. R.V.Govilkar a/w. Ms. Shaba N. Khan for Respondent No.3.
Mrs. S. S. Bhende, AGP for the State.

**CORAM : S. B. SHUKRE AND
G. A. SANAP, JJ.**

**DATE OF RESERVING JUDGMENT : 31/03/2022
DATE OF PRONOUNCING JUDGMENT : 14/06/2022**

JUDGMENT (Per G. A. Sanap, J.)

. We have heard the learned Advocates appearing for the parties. The learned Advocates for the parties advanced their argument on the issue as to whether the questions involved, in view of the rival pleadings of the parties, are required to be referred to the larger Bench for authoritative pronouncement, in view of divergent views of the Coordinate Benches of this Court in more than one case. In order to understand the limited issue argued at these stage, it would be necessary to narrate the facts of the petitions.

Facts of Writ Petition No.2871/2003

2. In this petition, the petitioner Nos.1 to 7 are the teachers employed with respondent No.2 – High School. They have



prayed for direction to quash and set aside the order of the Deputy Director of Education Nashik dated 5 June 2003 rejecting approval to their appointment as a secondary section teachers. They have prayed for direction to the respondent Nos.1 and 2 to pay the arrears, salary, allowances and other post retirement benefits as per prescribed scale and 5th Pay Commission for secondary section. It is their case that they were appointed by following due procedure and therefore, they are entitled to get the reliefs.

3. The Principal of the respondent No.2 – High School and Junior College has filed the affidavit. Apart from opposing the petition on merits, the Principal has raised a preliminary legal objection. It is contended that as per Section 2(17) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as ‘MEPS Act’), ‘prescribed’ means prescribed by rules. Section 2(23) of the MEPS Act provides that the ‘rules’ means the rules made by the State Government under this Act. Section 4 of the MEPS Act prescribes the terms and conditions of the service of employees of the private school. Section 4(1) empowers the State Government to make rules and Section 4(3) prescribes the scales of pay and allowances, post retirement and other benefits of the employees of any private school. Section 16 of the MEPS Act provides that all the rules made under this act are subject to the conditions of a



previous publication. Section 16(4) provides that every rule made under this Act shall be laid, as soon as may be, after it is made before each House of State Government Legislature. The State Government shall notify such decisions in the Official Gazette and the rules shall be applicable from the date of publication of such notification subject to modification. It is submitted that in order to grant the benefit of the pay scales prescribed by the 5th Pay Commission, the procedure prescribed above has not been followed. There is no amendment to Schedule 'C' of the MEPS Act. It is submitted that the revision of pay made by the 5th Pay Commission cannot be made applicable on the basis of the Government Resolution.

Facts of Writ Petition No. 1860/2005

4. The petitioners are the teachers and non-teaching staff members of the respondent No.5 and 6 namely Shivnagar Vidya Prasarak Mandal's Institute of Technology and Engineering. The petitioners were appointed against the vacant and sanctioned post. It is the case of the petitioners that the respondent Nos.1 to 4 have failed to implement the government pay scales and allowances applicable to the petitioners from time to time. According to them, their service conditions are governed by the Provisions of MEPS Act and the MEPS Rules as well as the norms laid down by All India Council for Technical Education



(for short 'AICTE'). The norms laid down by the AICTE have been followed by the State Government and the directions have been issued to the Management by the respondent No.4 under Section 4(3) of the MEPS Act. The petitioners have submitted that they have not been paid the salary and the allowances as per the pay revision prescribed by the 5th and 6th Pay Commissions. The AICTE from time to time has implemented the pay scales to the teachers of the Government aided and unaided Polytechnic and the Pharmacy Institutes. The petitioners have therefore prayed that the directions be issued to the respondent Nos.5 and 6 to pay them their salary as prescribed under the 5th and 6th Pay Commission.

5. The Principal of the respondent No.5 has filed an affidavit and opposed the petition. The objection similar to the one set out hereinabove have been raised by the respondent Nos.5 and 6.

6. The respondent No.3 has filed the reply and contended that vide Resolution dated 18 December 1999, the Government of Maharashtra has issued directions to all the Government, aided and non-aided institutes to implement the revised 5th Pay Commission recommendations. It is the responsibility of the respondent Nos.5 and 6 to comply the said Government Resolutions.



Facts of Writ Petition No.1473/2014

7. The sole petitioner was appointed as a Full Time Lecturer to teach Economics and Sociology in the respondent No.1 – Institute. On 29 June 1994, her pay scale was fixed as Rs.1400-2600 plus Rs.125/- Grade Pay. After 1994, from year to year the appointment order was issued to the petitioner. The petitioner was terminated from service. The petitioner had challenged her termination by filing the appeal. On 6 February 2003, the School Tribunal dismissed the appeal. The petitioner filed Writ Petition bearing No.1386/2003 in this Court against the order of School Tribunal. During the pendency of the proceedings before School Tribunal as well as before this Court, the stay was granted to her termination. The petitioner therefore continued to work. The petitioner was entitled to get the scales of pay and allowances but it was denied. The petitioner therefore prayed for direction to the respondent Nos. 1 and 2 to grant the scale of pay on the basis of the 5th Pay Commission recommendation with effect from 1 January 1996 and on the basis of the recommendation of the 6th Pay Commission with effect from 1 January 2006 with arrears and difference of salary.

8. The Principal has filed the affidavit for and on behalf of the respondent Nos.1 and 2 and opposed the petition. It is contended that the appointment of the petitioner was not by



following the mandatory procedure prescribed by the MEPS Act and MEPS Rules. She was appointed to a post meant for reserved category candidate. Her appointment was therefore on temporary basis. She is not entitled to get the benefit of either 5th Pay Commission or 6th Pay Commission. Though, the approval to the appointment was granted by the Deputy Director of Education Mumbai, for the academic year 1996-1997, the respondent Nos.1 and 2 were not liable to pay the arrears to the petitioner. According to the respondent Nos.1 and 2, due to oversight the excess salary amount of Rs.86,872/- for the academic year 1998-1999 has been paid to the petitioner. The respondent Nos.1 and 2 were entitled to recover the excess payment made to the petitioner.

Facts of Writ Petition No. 2324/2014

9. In this petition, the petitioners are seeking directions to the respondent Nos.4 and 5 to comply with the orders passed by the respondent No.2 dated 14 August 2013 and 3 February 2014 and implement the Pay Band – 4 as per the 6th Pay Commission recommendation with effect from 1 January 2006 and the arrears of the salary and other allowances. The petitioners are holding the posts of Executor in the respondent No.4 - College Vidyavardhini's Bhausahab Vartak Polytechnic at Vasai Road, Thane, managed by respondent No.5 – Society.



10. It is stated that the pay scale introduced by the respondent No.1 (AICTE) initially was Rs.700-1300, an old pay scale, and Rs.2200-75-2800-100-4000 was the new pay scale. The same was made applicable to the petitioners by Government Resolution dated 26 May 1992. On 18 December 1999, the Government of Maharashtra with effect from 1 January 1996 made the 5th Pay Commission recommendation applicable to the employees. Similarly the recommendations made in the pay revision by the 6th Pay Commission were accepted and made applicable with effect from 1 January 2006. The directions were issued to the respondent Nos.4 and 5 to do the needful in the matter. However, the respondent Nos.4 and 5 did not pay the salary and other allowances as recommended. The petitioners have made representation on 12 February 2014. The respondents have not taken any decision on the representation.

11. The respondent Nos.4 and 5 have filed the reply and opposed the petition. They have not raised the legal objection as set out hereinabove. The respondent Nos.4 and 5 for the reasons stated in the reply have expressed their inability due to financial constraints to pay the salary and arrears.

12. The respondent Nos.2 and 6 have filed the affidavit. It is contended that it is the liability of the respondent Nos.4 and 5 to



pay the arrears. Directions have been issued to the respondent Nos.4 and 5. The respondent Nos.4 and 5 without any reason have failed to comply the directions issued from time to time.

Submissions :-

13. We have heard the learned advocates for the petitioners and respondents on the limited point. We have gone through the Record and Proceedings and the judgments relied upon by the learned advocates for the parties to substantiate their respective contentions.

14. In support of prayer to make reference to the Full Bench, the argument has been advanced by the learned Senior Advocate Shri. Anturkar. The Advocates appearing for the respondents in the remaining matters have adopted the argument advanced by the learned Senior Advocate Shri. Anturkar. The learned Senior Advocate Shri. Mihir Desai advanced the argument on behalf of the petitioners and opposed the prayer. The learned Advocate Shri. Bandiwadekar and learned Advocate Shri. Warunjikar, besides adopting the argument advanced by the learned Senior Advocate Shri. Desai, advanced the oral arguments.

15. The learned Senior Advocate Shri. Anturkar took us through the relevant provisions of the Maharashtra Employees of



Private Schools (Condition of Service) Regulation Act, 1977 and the Maharashtra Employees of Private Schools (Condition of Service), Rules, 1981 (for short 'MEPS Act' and 'MEPS Rules') and submitted that as long as the service conditions and the pay scales of the employees of the Polytechnic College are governed by the provisions of MEPS Act, Pay scales, revision of pay scales and applicability of the pay scales must be strictly in compliance with the provisions of the MEPS Act and MEPS Rules.

16. The learned Senior Advocate submitted that as long as the field is occupied by the substantive law including the subordinate legislation such as rules framed under the statute, the Government Resolution cannot be issued under Article 162 of the Constitution of India to fill or encroach upon the said field. The learned Senior Advocate submitted that if the mother statute like Act and/or the subordinate legislation like Rules contemplates that a particular thing should be done in a particular manner then it has to be done in that manner only and not in other manner at all. The learned Senior Advocate submitted that the field relating to providing the pay scale payable to the teachers and non teaching staff in the school and more particularly the Engineering / Polytechnic institution is the field occupied by the provisions of Section 16 of the MEPS Act and the subordinate legislation, namely **Rule 7(1) and Schedule 'C' of** the MEPS Rules. The learned Senior Advocate submitted



that under Section 16 (1), the State Government is empowered by notification in the Official Gazette to make rules for carrying out the purposes of this Act. The subjects for which the rule can be made have been set out in sub Section 2 of Section 16. The procedure in the matter of publication and giving finality to the rules has been provided under sub Section 3 and 4 of Section 16 of the MEPS Act. The learned Senior Advocate submitted that in the matter of publication of Rules, the provisions of Section 24 of the Maharashtra General Clauses Act are required to be followed. The learned Senior Advocate submitted that the provisions of Section 16 & 4 & Rule 7 and Schedule 'C' have been considered by Division Bench of this Court in the case of *Mahadeo Pandurang More & Ors. Vs. State of Maharashtra & Ors.*¹ where it is held that unless and until scales of pay sought for by the employees find their birth in schedule (C) appended to 1981 rules, a direction to extend the same cannot be issued on the basis of the Government Resolution. In the submission of learned Senior Advocate, this judgment lays down the correct law and therefore the judgment is required to be followed. The learned Senior Advocate pointed out that the judgment in the case of *Mahadeo More (supra)* was cited before the Division Bench in the case of *Amrutraj Pratapji Vyas & Ors. Vs. Hind Seva Mandal, Bhusawal and Ors.*² The learned Senior Advocate submitted that the Division Bench in the case of *Amrutraj Pratapji Vyas (supra)*

¹2014(5) Mh.L.J. 877

²2018(2) Mh.L.J. 615



has simply observed that it is not applicable to the facts of the case. The learned Senior Advocate submitted that the decision in the case of *Mahadeo More (supra)* was a binding precedent and therefore the same ought to have been followed or if the subsequent Bench was not convinced with the correctness of the view taken in the judgment then the issue ought to have been referred to the larger Bench. The learned Senior Advocate took us through the judgment in the case of *Mahadeo More and Amrutraj Pratapji Vyas (supra)* and submitted that while deciding the case of Amrutraj Pratapji Vyas (supra) Division Bench has not said that the judgment in *Mahadeo More* case is per incuriam on the ground that the earlier judgment in the case of *Teachers Association Vs. Hindi Sewa Mandal* ³ was not cited before the Division Bench in the case of *Mahadeo More (supra)*.

17. The learned Senior Advocate submitted that another Division Bench at Aurangabad in the case of *Anil Govindrao Kale & Ors. Vs. Maharashtra Academy of Engineering & Education Research Pune & Ors.* ⁴ has considered the decision in the case of *Mahadeo More (supra)*. However, in the case of *Anil Kale (supra)*, nothing has been said about the judgment in the case of *Mahadeo More (supra)*.

³in Writ Petition No.364/1999 decided on 3/7/2001

⁴(2017) SCC Online Bombay 324



18. The learned Senior Advocate Shri. Anturkar submitted that even after the amendment to Schedule 'C' of the MEPS Rules in the year 2016 no provision has been made prescribing the pay scales of the employees of Engineering and Polytechnic institutes. The learned Senior Advocate submitted that in the absence of amendment to Schedule 'C' by following the procedure and incorporating the categories of the employees of Engineering and Polytechnic institutes with their respective pay scales, on the basis of the Government Resolution, the implementation of the revision of pay scale either by 5th or 6th Pay Commission would be illegal. The learned Senior Advocate relied upon the Full Bench judgment of this Court in the case of *Anil Dattatray Ade Vs. Presiding Officer, School Tribunal Amravati Region Amravati and Ors.*⁵ wherein it is held that the Polytechnic institution is the school within the meaning of Section 2(24) of the MEPS Act.

19. Learned Senior Advocate relying upon the decision in the case of *Anil Ade* submitted that even after enactment of the All India Council for Technical Education Act, 1987 (AICTE Act) and the regulations made thereunder, there is no repugnancy between the provisions of MEPS Act and MEPS Rules on one hand and the AICTE Act and the regulations made thereunder on the other hand on the subject agitated before this Court. In the submission of learned Senior Advocate as long as the service conditions and pay scales of the employees of the technical and

⁵2003(2) Mh.L.J. 316



vocational institutions are governed by the MEPS Act and MEPS Rules, the application and implementation of the revision of the pay scales by 5th or 6th Pay Commission must be strictly according to the provisions of the MEPS Act.

20. Learned Senior Advocate submitted that the view taken by the Division Benches of this Court in the cases of *Amrutraj Prajapati Vyas and Teachers Association (supra)* is contrary to the view taken by the Division Bench in the case of *Mahadeo More (supra)*. Learned Senior Advocate submitted that in order to give finality to the issue and to have a consistency in the decision making process, it would be necessary to refer the question to the larger Bench.

21. Learned Senior Advocate Shri. Mihir Desai opposed the submission advanced by the learned Senior Advocate Shri. Anturkar and submitted that there is no conflict in the views as sought to be made out. Learned Senior Advocate Shri. Mihir Desai submitted that issue of applicability of identical pay scales to the teachers in aided and unaided schools under the MEPS Act was first considered in *Raskar Vidya Damodar Vs. Maharashtra Arogyamandal*⁶ and it was categorically held that the employees of unaided schools are entitled to the pay scales as applicable to employees of aided and Government schools. The learned Senior Advocate Shri. Desai further submitted that the issue of

⁶2000 SCC Online Bom 339



applicability of Government Resolution seeking to revise the pay of teachers in private unaided school was considered by this Court in the case of *Sunanda Pandharinath Adhav Vs. State of Maharashtra*⁷. In this case, the Division Bench of this Court while emphasizing on the principle of “Equal pay for equal work” held that the Government Resolution seeking to implement 5th Pay Revision for the teachers of unaided private schools was valid and unaided private schools would be obliged to pay the revised pay scales as per Government Resolution. The learned Senior Advocate submitted that the decision in the case of *Sunanda Adhav* case was challenged before the Supreme Court of India and the ratio decendi of the said judgment came to be upheld in the matter of *Shivaji Shikshan Prasarak Mandal Vs. State of Maharashtra*⁸. Learned Senior Advocate Shri. Mihir Desai submitted that in the case of *Mahadeo More (supra)*, this Court has held that unless and until scales of pay sought for by the petitioners, find their birth in Schedule ‘C’ appended to MEPS Rules, the direction to extend the same cannot be issued. The learned Senior Advocate submitted that decision in the case of *Mahadeo More (supra)* is per incuriam as the same fails to consider the judgment of this Court in *Sunanda Pandharinath Adhav’s* case. It is submitted that the judgment in *Sunanda Adhav’s* case still holds the field and in the light of same, there is no need to refer issue to the larger Bench as submitted by the

⁷2000 SCC Online Bom 745

⁸(2005) 13 SCC 407



respondents. The learned Senior Advocate further submitted that the rights of the teachers in unaided private institutes under Article 14 of the Constitution of India and reflected in the principle of “Equal pay for equal work” have been held to be available to teachers by the Hon’ble Supreme Court of India in the matter of *State of Punjab Vs. Jagjit Singh*⁹ and have been further found to prevail over any statutory rule.

22. The learned Senior Advocate in the alternative submitted that if this Court is inclined to refer the matter to the larger Bench for a more definitive pronouncement of law, then the questions formulated by the learned Advocate also be referred to the larger Bench.

23. Learned Advocate Shri. Bandiwadekar submitted that there is no conflict between the decisions in the cases of *Mahadeo More and Amrutraj Vyas (supra)*. The learned Advocate submitted that both the judgments operate in different spheres and deal with separate and independent controversy. The learned Advocate submitted that the decision in *Mahadeo More* case would be applicable to the employees of general schools, whereas the judgment in the case of *Amrutraj Vyas (supra)* would be applicable to the employees working in the Polytechnic institutes and not in the general school. The learned Advocate submitted that since the AICTE is required to make a provision for the pay

⁹(2017) 1 SCC 148



scales of the employees covered under the AICTE Act, it was not necessary to amend Schedule 'C' of the MEPS Rules. There is no conflict in views on the point of law and therefore there is no need to make a reference.

24. The learned Advocate Dr. Warunjikar submitted that the decision in the case of *Amrutraj Pratapji Vyas (supra)* being latest in the point of time, would prevail and needs to be followed. The learned Advocate Dr. Warunjikar submitted that this Court can consider the divergent views expressed by the different Benches and apply the same to the facts. In the submission of learned Advocate there is no need to refer the issue to the larger Bench as submitted. The learned Advocate submitted that the management is trying to reopen all the issues which have been put to rest in last 10 years.

Consideration of Issues :-

25. In order to appreciate the rival submissions, we have perused the Record and Proceeding and the judgments relied upon by the learned Advocates for the parties. The main issue is whether there is difference of opinion in the decisions relied upon by the Advocates in support of their respective submissions and whether reference to the larger Bench is warranted.



26. In the case of *Babu Verghese and Anr. Vs. Bar Council of Kerala and Others*¹⁰, the Apex Court has held that if the Statute prescribes the doing of an act in a particular manner, the act cannot be considered to have been done unless it was done in the prescribed manner. This judgment has been relied upon by the learned Senior Advocate Shri. Anturkar to contend that without amending Schedule 'C' as provided under Section 16 of the MEPS Act and Rule 7 of the MEPS Rules, the administrative instructions issued in the form of Government Resolution cannot take the place of the Statute or subordinate legislation. The applicability has to be considered depending upon the conclusions emerging on dealing with rival contentions, on the issue.

27. At this stage, we may refer to the Full Bench decision of this Court in the case of *Anil Ade (Supra)*. The Full Bench has held that employees of the Pharmacy Institutes are governed by the MEPS Act. The Full Bench has also held that the amendment by Maharashtra Act 32 of 1990 introduced on 6 December 1990 to the provisions of the MEPS Act is declaratory in nature so as to have retrospective operation.

28. On the point of repugnancy in the law enacted by the Parliament and by State Legislature, in the context of the dispute involved before us, para Nos.62, 63, 64, 65, 66, 67 and 68 would

¹⁰(1999) 3 SCC 422



be relevant. The same needs to be reproduced. The same are reads as under.

62. *We must frankly admit that we are unable to uphold the contentions of the management. It is well established that the question of repugnancy between a law enacted by Parliament and by a State Legislature would arise only if both the legislations occupy the same field and operate simultaneously. [Article 254\(1\)](#) of the Constitution has no application if in pith and substance, the law enacted by a competent Legislature does not encroach upon the exclusive field occupied by the other.*

63. *Whereas Entries 63 to 66 of List I provide for scientific and technical education and Entry 66 in particular deals with co-ordination and determination of standards for higher education or research, Entry 23 of List III relates to employment and unemployment. They, therefore, operate in different fields altogether and there is no repugnancy.*

64. *[In Deepchand v. State of U.P.](#), the Supreme Court indicated that the repugnancy between two statutes can be ascertained on three principles;*

Whether there is direct conflict between the two provisions;



Whether Parliament intended to lay down an exhaustive Code in respect of the subject matter replacing the Act of the State Legislature; and Whether the law made by Parliament and the law made by the State Legislature occupied the same field.

Only in the above cases, a question of repugnancy or inconsistency would arise.

65. In the instant case, in our opinion, [Pharmacy Act, 1948](#) makes no provision for employment and unemployment of persons working in technical institutions. It is only the State Act which provides for such eventualities. The field is thus not occupied by an Act of Parliament and provisions of [Article 254](#) has no application.

66. [In M. Karunanidhi v. Union of India](#), , the Supreme Court summarised the tests of repugnancy by formulating the following propositions.

In order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions so that they cannot stand together or operate in the same field;



There can be no repeal by implication unless the inconsistency appears on the face of the two statutes;

Where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results;

Where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

67. The principles laid down in [Thirumuruga v. State of Tamil Nadu](#), [P. Kasilingam v. P.S.G. College of Technology](#), and [State of Tamil Nadu v.](#)

Adhiyamm Education & Research Institute, have no application to the present case as in those cases, State Legislatures had enacted laws encroaching upon the field occupied by and reserved for Parliament. None of them related to "employment and unemployment" in technical institutions as in the present case.

68. Since there is no repugnancy or inconsistency between the [Pharmacy Act, 1948](#) (Act of



Parliament) and the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Act of State Legislature), the State Act, cannot be held void or inoperative.

29. The decision in the case of *Anil Ade (supra)* would be required to be considered in the light of the dispute involved before us. The service conditions of the employees of the "schools" as defined in Section 2(24) are governed by the MEPS Act and MEPS rules. Similarly, after coming into force of AICTE Act in 1987, the AICTE is authorised to make regulation providing for the staffing pattern and the pay scales of the employees. The AICTE Act as can be seen from the provisions does not encroach upon the provisions of the MEPS Act and MEPS Rules. The AICTE Act is applicable through out India. The State Governments have their different Acts and Rules for the employees of the technical and pharmaceuticals Institutions. The State Government as can be seen from the scheme of AICTE Act is empowered to implement the regulations and the notifications of the AICTE prescribing the pay scales and also the applicability of the pay scales on revision by the Pay Commission. The question is about the mode and manner of implementation. The question is whether the regulations and the notifications issued by the AICTE on the subject from time to time can be implemented by the State Government by simply issuing the



circular without effecting the necessary amendment in the Statute and the rules made thereunder governing the service conditions of the employees. In the light of the above, it is necessary to understand the scheme of both the AICTE Act and the MEPS Act and MEPS Rules. On consideration of the same, if the Court comes to the conclusion that even after regulations and notifications of the AICTE, the State Government would be required to follow the procedure prescribed under the State law, then this Court would be required to find out conflict of views in the judgments relied upon by the learned Advocates in support of their submissions.

30. Before proceeding to appreciate the submissions advanced by learned Advocate for the parties it would be necessary to state that the case of *Teachers Association vs. Hindi Seva Mandal (supra)* was decided on 3/7/2001. The Division Bench of this Court considered the applicability of the provisions of MEPS Act and MEPS Rules to the employees of polytechnic institutions. The case of *Mahadeo More (supra)* was decided on 27/6/2004 by the Division Bench of this Court at Nagpur Bench. The decision in the case of *Teachers Association (supra)* was not brought to the notice of the Division Bench. The Division Bench in the case of *Mahadeo More (supra)* considered the applicability of the provisions of MEPS Act and MEPS Rules in respect of teaching and non-teaching staff to the schools other than the technical institutions. Before another Division Bench at the



Aurangabad in the case of *Amrutraj Pratapji Vyas (supra)* dealing with the case of the teaching and non teaching employees of the polytechnic institutes, the decisions in the case of *Mahadeo More (supra)* and *Teachers Association (supra)* were cited. The Division Bench in the case of *Amrutraj Pratapji Vyas (supra)* followed the decision in the case of *Teachers Association Vs. Hindi Sewa Mandal (supra)*. The Division Bench held that the proposition of law laid down in the case of *Mahadeo More (supra)* was not applicable to the facts of the case because the Division Bench in the case of *Mahadeo More (supra)* has not considered the applicability of the law to the employees of Polytechnic institutes in as much as their service conditions and pay scales are prescribed as per the provisions of AICTE Act.

31. We have already reproduced the relevant paragraphs from the decision of Full Bench in the case of *Anil Dattatray Ade (supra)*. It is held that even before amendment to the definition of the "School" in 1990, institutions imparting vocational and technical education were governed by MEPS Act and MEPS Rules. This aspect needs to be borne in mind while considering the decision in the case of *Teachers Association Vs. Hindi Sewa Mandal (supra)*, particularly observation made in paragraph 17. In paragraph No.17 it is held that till 1990 employees of Polytechnic institutes were not within ambit of MEPS Act and therefore the Government did not think it appropriate to amend Schedule "C" of MEPS Act.



32. It is undisputed that the service conditions of the employees of the "School" as defined under Section 2(24) are governed by the provisions of MEPS Act and MEPS Rules. In the year 1987 the parliament enacted AICTE Act and as per Section 10 of AICTE Act the Council is empowered to grant permission to technical colleges. AICTE is also responsible for specifying norms and standards prescribing the pay scales and service conditions of teaching and non-teaching staff, to ensure qualitative education all over India. AICTE is empowered to make recommendations in the matter of revised qualifications as well as pay scales for teachers of the technical institutions including polytechnic. Remaining service conditions of the teaching and non-teaching employees of the technical institutions are governed by the State legislation of different States all over India. It is to be noted that save and except the qualifications and the pay scales of the employees of the technical institutions, remaining service conditions and mode and manner of the implementation are governed by the law applicable to the employees of the respective States all over India. It is therefore apparent that in the State of Maharashtra, MEPS Act and MEPS Rules are governing rest of the service conditions of the employees of the technical institutions including polytechnic institutes. It is necessary to mention that the mechanism as to the mode and manner of implementation of the pay scales recommended by AICTE and approved by the Central



Government has not been provided under the AICTE Act or the Regulations. It would therefore be necessary for the State Government to make the said pay scales applicable by taking recourse to the State legislation and particularly the mode and manner provided therein.

33. In order to appreciate the submissions we have perused AICTE notification dated 30/12/1999. There is no dispute that notifications issued by AICTE for the similar purpose for the earlier years were similar and identical to this notification. By this notification the Principal Secretary, AICTE informed the Secretary dealing with technical education of the State Government and the Union Territory that AICTE has formulated revision of pay scales and service conditions at diploma level in the country. The notification contains 16 clauses. A chart specifying qualifications, experience and scales of pay of the employees in diploma level technical education has been attached to the notification. We have already observed that the State Government has been given the task to implement revised scales of pay. We have also observed that the mechanism or the formula has not been devised while implementing revised scales of pay. In our view clause 16(1) of the notification would be required to be reproduced. It reads thus:

"16.1 General

a) *The implementation of the revised scales will be subject to the acceptance of all conditions mentioned*



in the scheme including revised qualifications and recruitment proceed procedures as well as of the other terms and conditions issued by the AICTE in this behalf.

b) The State Government/Institutions are required to amend their Statutes, Memorandum of Association, Rules/ Schemes, Regulations, Bye-Laws, as the case may be in line with the Scheme forthwith.

c) Anomalies, if any, in the implementation of the scheme may be brought to the notice of Directorate of Technical Education of respective State Government for clarification.

A Standing Committee will be constituted by Directorate of Technical Education of respective State Governments for dealing with anomalies which may arise from time to time during implementation of the Scheme of Revision of pay Scales.

d) The State Government, after taking local conditions into consideration, may also decide in their discretion, to introduces scales of pay different from those mentioned in the scheme, and may give effect to the revised scales of pay from January 1, 1996 or a later date. In such cases, the details of the modification proposed either to the scales of pay or the date from



which the scheme is to be implemented, should be furnished to the AICTE."

(Emphasis is supplied by us)

Clause 16(1) (b) would show that it is an instruction to the State Government to amend their statutes, memorandum of association, Rules, Schemes, Regulations, Bye laws as the case may be in line with the scheme forthwith. Clause 16(1)(d) provides for the power of the State Government to decide and introduce the scales of pay different from those mentioned in the scheme, after taking local conditions into consideration. Thus the provisions/instructions would show that AICTE was aware that while implementing revised scales of pay, the State Governments would be required to adhere to and take into consideration the applicable laws as well as subordinate legislation. This provision seems to have been made to empower the State Governments to carry out corresponding amendments in the State laws and subordinate legislation to implement the recommendations of AICTE approved by the Central Government in the matter of qualification and scales of pay of the employees of the technical institutions. In our view this fact would be required to be borne in mind while appreciating the submissions made by the learned Advocate on the limited point whether reference is required to be made to Full Bench or not.



34. We may now consider the law laid down by Division Bench in the case of *Mahadeo More (supra)*. In the judgment relevant provisions of MEPS Act and MEPS Rules have been considered in great detail. For the purpose of understanding the factual controversy and the law laid down it would be necessary to reproduce paragraph Nos.36 to 41 of this judgment. The same reads as under:

36. Here, it will be proper to consider the relevant provisions, both of SS Code and of 1977 Act. SS Code, in chapter I, Rule 1 defines School to mean a secondary or higher secondary school. Rule 4 defines High School to mean a School which prepares students for Secondary School Certificate WP No.1949/2012 exam conducted at the end of Xth standard. Such school may also impart instructions from standard Vth onwards. For present purposes, it is sufficient to note that it does not include a primary school. Pay scales of teaching and non-teaching staff are regulated by Rule 68.5 of its Chapter III, Section II which states that the same have to be as laid down by the State Government from time to time. As per this rule, pay scales applicable to all categories of teachers with effect from 01.04.1976 are given in Appendix Fifteen. Thus, this appendix does not point out pay-scales for non- teaching staff. Thus, SS



Code does not emanate from state legislature as a legislation and does not deal with the primary schools or staff thereof. As against this 1977 Act or Act III of 1978, in Section 2(19) defines primary school to mean a school in which primary education is imparted. Section 2(18) defines primary education to mean education imparted in such subjects and upto such standards as may be determined by the State Government from time to time, located either in a primary or secondary school. Section 2 (16) defines Pre-school center to mean an institution by whatever name called providing education to children between three to six years. Section 2 (20) defines private school to mean a recognized school established by a management other than a local authority or the Government. Section 2(21) defines recognized to mean recognized by the Director, the Divisional Board or the State Board, or by any officer authorised by him or any such board. Section 2 (24) defines School to mean primary school, secondary school, higher secondary school, junior college or any other institution by whatever name called. Section 2(17) explains "prescribe" to mean as prescribed by rules while Section 2 (23) defines "Rules" to mean rules as made by the State



Government under 1977 Act.

Section 3(1) is the important provision through which the State Legislature pronounces that provisions of 1977 Act apply to all Schools within the State whether receiving grant in aid from State or not. Section 3 (2) specifically stipulates that notwithstanding anything in said sub-section (1), the provisions of 1977 Act do not apply to recruitment of the Head of a minority school and any other person not exceeding three, who are employed in such school and whose names are notified by the management to the Director or the Deputy Director for said purpose. Thus limited exemption given to minority is expressly stated by the Legislature itself implying thereby that the other provisions of 1977 Act or 1981 Rules do apply to even un-aided minority schools. Section 2(13) defines minority school to mean a school established and administered by the minority having right to do so under Art. 30 (1) of the Constitution of India. Respondent no.7 in which petitioners are working happens to be such a minority school is the fact not in dispute. It is also not in dispute that neither the 1977 Act nor 1981 Rules framed thereunder contain any provision or procedure for granting permission



to open the school or for recognising / de-recognising it, for sanctioning and regulating the government aid or grants to such school and for approving the appointments made or services of teaching/non-teaching staff for their admissibility to receipt of wages through salary grants from the State Government. Section 4 of 1977 Act deals with terms and conditions of service of employees of private schools.

37. Relevant part of said Section 4 of 1977 Act reads as under :--

"4(1) : Subject to the provisions of this Section, the State Government may make Rules providing for the minimum qualification for recruitment (including its procedure), duties, pay, allowances, post retirement of other benefits and other conditions of service of employees of Private Schools and for reservation of adequate number of posts for Members of the Backward Classes :

Provided that, neither the pay nor the rights in respect of leave of absence, age of retirement and post retirement benefits and other monetary benefits of an employee in the employment of an existing Private School on the appointed date shall be varied



to the disadvantage of such employee by any such Rules."

Sub-section (3) contemplates a situation in which the existing pay scales and allowances or other benefits of the employees of a private school are less favourable than as provided in 1981 Rules. The Director, in such an eventuality, can call upon the management to bring it to the level as prescribed in Rules. He can specify time-limit within which compliance is to be made and extend it also. Failure to comply "may" lead to withdrawal of recognition to the School in manner as provided in sub-section (4). This "recognition" to be withdrawn is under SS Code only.

38. Section 16 of 1977 Act is the Rule making power of the State Government. It reads :--

"S.16. Rules : (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :



(a) the minimum qualifications for recruitment of employees of private schools (including its procedure);

(b) their scales of pay and allowances;

(c) their post-retirement and other benefits;

(d) the other conditions of service of such employees including leave, superannuation, re-employment and promotion;

(e) the duties of such employees and Code of Conduct and disciplinary matters;

(f) the manner of conducting inquiries;

(g) any other matter which is required to be or may be prescribed.

(2A) The power to make rules under clauses (a) to

(d) conferred by sub-section (2) shall include the power to give retrospective effect to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interest of any person to whom such rule may be applicable.

(3) All rules made under this Act shall be subject to the condition of previous publication."



Sub-section (4) of Section 16 mandates that every such rule shall be laid , as soon as may be, after it is made , before each house of State Legislature for a total period of thirty days while it is in session. Both houses have the power to either agree to modify or annul the Rules so made. We are not concerned with the niceties or further details of this sub-section. What is important to note is the power with representative of people to let the "Rule" operate as framed or to modify it or then to annul it. Implication flowing from the words "the condition of previous publication." shall be considered little later.

39. At this stage, the relevant rule is rule 7 of 1981 Rules needs to be perused. Said Rule is as under :--

"7. Scales of pay and allowances --

(i) The scales of pay for full time as well as part time Heads, Assistant Heads, Supervisors, Teachers and the non-teaching staff in the primary schools, secondary schools including high schools, Junior College and Junior College of Education shall be as specified in Schedule "C".



(ii) The allowances such as dearness allowance, compensatory local allowance and house rent allowance admissible from time to time at place of duty to the full time employee of a school, shall be payable at the rates and according to such rules as are sanctioned by the Government specifically to the employee of private schools.

(iii) The rate of dearness allowance applicable to part time teaching and non-teaching staff in schools including night schools be such as may from time to time be determined by the Government by general or special order. "

Thus, Rule 7 accords different treatment to pay-scales and allowances. By virtue of its sub-rule (i) above dealing with only "scales of pay", Schedule "C" which specifies only pay-scales for various cadres and not allowances, becomes part of 1981 Rules itself. Legislative scheme allowing an alteration or change in rate of "allowances" like dearness allowance, compensatory local allowance and house rent allowance as per sub-rule (ii) and (iii) above, is not apparently attracted when it comes to scales of pay laid down in Schedule "C". Thus Schedule "C" with pay scales therein forms part of 1981 Rules and



new or increased scales of pay can not become part of said schedule or Rule, unless the 1981 Rules are amended by following the procedure of "previous publication".

40. Condition of previous publication in Rule 16(3) above obliges adherence procedure stipulated in Section 24 of the Bombay General Clauses Act. We find it convenient to draw support from 1978 Mh.L.J. 502 - 1977 (1) LJSOFT 142- (Dharamsi Morarji Chemical Co. Ltd., Bombay Vs. Ambernath Nagarpalika Parishad Ambernath and another), where the Division Bench of this Court explains steps to be taken to comply with "previous publication" as under :--

"20. It is not possible for us -----

----- all rules have to be notified. The rules must be such as they are consistent with the Act and they carry out the WP No.1949/2012 purposes of the Act. [See sub-section (2)]. Under subsection (3) the rules made under the Act are subject to the condition of previous publication.



When it is provided that the rules under the Act are subject to previous publication, the procedure which is required to be adopted in such a case is prescribed under section 24 of the Bombay General Clauses Act, 1904.

In brief the procedure is that a draft of the proposed rules is to be published for the information of persons likely to be affected thereby and when the draft is published, along with the draft a notice specifying the date after which the draft will be taken into consideration has to be published and the authority having the power to make the rules is duty bound to consider any objection or suggestions which may be received by it with respect to the draft before the date so specified. Therefore, before any rule could be made as contemplated by the proviso, objections have to be invited to the rules and those objections have to be considered. Then under subsection (4) the rules have to be placed before each House of the State Legislature and the Legislature has the power to make any modification in the rules. Elaborate procedure is, therefore, prescribed for making the appropriate rules."



41. We have already seen above the legislative design in Rule 7 of 1981 Rules. State Government has been denied power to vary scales of pay in Schedule "C" through executive fiat. Thus schedule "C" itself being part of 1981 Rules, unless and until the rules are amended by following the process stated in Section 16(3), new pay scales can not be read into and become part of that schedule. So long as private aided schools are concerned, the enhancement of pay does not result in any loss or prejudice to them and as such enhanced wages are paid directly by the State to employees, no cause of action accrues to such schools. Opportunity of raising the objection may be availed only by unaided schools whose budget may be adversely affected by such rise. As the schedule "C" is not amended after 1989, scales of pay prescribed by Vth or VIth wage-revision reports for State Government employees are not part of 1981 Rules and coercive measures stipulated in Rule 6 are not open."

35. It is categorically held that pay scales sought for by the employees of the "school" as defined under section 2(24), must find their birth in Schedule "C" appended to MEPS Rules. It is held that compliance of the provisions of Section 16 of MEPS Act and Rule 7 of MEPS Rules is necessary to give finality



to the amendment to schedule "C". The decision therefore proceeds on the footing that the teaching and non-teaching employees of the "school" as defined under section 2(24) would be entitled to get higher pay scale, provided there is an amendment in the schedule "C" to the MEPS Rules by following the provisions of Section 16 of MEPS Act and Rule 7 of MEPS Rules. In our opinion since technical institutions are covered under the definition of school as provided under section 2(24) of the MEPS Act, the law laid down in this case would be applicable to the employees of the schools as defined under section 2(24) of the MEPS Act. It is to be noted that the decision in the case of *Teachers Association (supra)* was not cited before the Division Bench in the case of *Mahadeo More (supra)*.

36. There is one more judgment of the Division Bench of High Court of Bombay at Aurangabad in the case of *Anil Govindrao Kale (supra)*. The decision in the case of *Mahadeo More (supra)* was cited before the Bench at Aurangabad. Perusal of the judgment of the Division Bench would show that there is no candid observation as to the applicability or non-applicability of the proposition of law in the case of *Mahadeo More (supra)*. Similarly, there is no discussion in the judgment on the points which have been elaborately dealt with and considered in the case of *Mahadeo More (supra)*. Perusal of the judgment in the case of *Anil Govindrao Kale (supra)* would show that without



distinguishing the judgment or recording disagreement with the view taken in the case of *Mahadeo More (supra)*, the Division Bench in the case of *Anil Govindrao Kale (supra)* has held that the provision of Section 16(4) of MEPS Act is directory and not mandatory. This seems to be the only exception carved out to the law laid down in the case of *Mahadeo More (supra)*. In our view therefore this decision if considered in proper perspective would show that on this point it is contrary to the law laid down in the case of *Mahadeo More (supra)*.

37. The decisions in the case of *Raskar Vidya Damodar and Sunanda Pandharinath Adhav (supra)* were cited before the Division Bench while deciding the case of *Teachers Association vs. Hindi Seva Mandal (supra)*. These two decisions have been cited to substantiate the contention that the same are earlier in the point of time and, therefore, would hold the field. It is sought to be contended relying upon these two decisions that the Division Bench in the case of *Mahadeo More (supra)* has not taken these decisions into consideration. We have minutely perused the decisions. The question involved in the cases of *Raskar Vidya Damodar (supra) and Sunanda Adhav (supra)* was different from the one in the case of *Mahadeo More*. In the case of *Raskar Vidya Damodar*, Division Bench has held that a private unaided institution cannot be allowed to contend that it is not liable to pay salaries to its teachers as per the pay scales under the



M.E.P.S Rules, 1981. In the case of *Sunanda Adhav* (supra), it is held that parity in the pay scale of teachers in aided and unaided is to be maintained. It is further held that in this context the principle "equal pay for equal work" would be applicable to teachers employed in unaided schools. It is, therefore, apparent that issues considered and dealt with in these decisions are different from the one dealt with in the case of *Mahadeo More*. The issue of interpretation of the provisions of section 16 and 4 of M.E.P.S Act and Rule 7 and the consequences of not effecting the amendment in schedule "C" to incorporate the scales of pay of the teachers have been considered and dealt with in case of *Mahadeo More*.

38. In the context of the question involved, it would be necessary to consider the Division Bench decision in the case of *Teachers Association Vs. Hindi Seva Mandal* (supra). It is undisputed that in case of employees of technical institutions, the directions have been issued by the Director of Technical Education by taking recourse to the provisions of section-4, sub section 3 of the M.E.P.S Act. Director of Technical Education is vested with the authority to issue directions to the Management of all private schools to bring the pay scales, allowances, post retirement and other benefits of the employees on par with the rates prescribed. It is held that since AICTE had already prescribed the pay scales of the employees of Polytechnic institutes etc, the Director of Technical Education has authority



to issue directions to implement the pay scales prescribed by AICTE. The Division Bench has considered the provisions of sub section- (1) of Section - 4 as well. The Division Bench has held that the Director of Technical Education derives the authority and power from section - 4 sub- section 3 of the M.E.P.S Act. A perusal of section 4, sub section-1 would show that the State Government is empowered to make rules, providing for the minimum qualifications, dues, pay, allowances, post-retirement and other benefits etc. It specifically provides that such exercise has to be undertaken by making rules. Section- 4, sub-section-3 provides that Director shall have a power to direct the management of the Schools to bring pay scales up to the level provided by the rules, if the same are less favourable than those provided by the rules made under sub-section-1. A plain reading of sub-section-3 would show that powers of the Director flow from the rules. In other words, if there are no rules providing for pay scales, allowances etc then in that event, the Director would not be in position to issue the directions by taking recourse to the provisions of section-4, sub-section-3. In this context, perusal of the Division Bench decision in the case of *Mahadeo v. State of Maharashtra* (supra) would show that all these aspects have been dealt with in great detail. In our opinion, on interpretation of section-4, sub-section-3, there appears a conflict in the views in the decisions of *Teachers Association Vs. Hindi Seva Mandal* (supra) and *Amrutraj Prajapati Vyas* (supra)



on one hand and *Mahadeo Vs. State of Maharashtra* (supra) on the other hand. In our opinion, section - 4 has to be read with section-16 of the M.E.P.S Act. The conjoint reading of section-16 and section-4 would show that in order to exercise the power under section-4, sub-section-3 by the Director, the rules must be framed by following the procedure prescribed under section 16 of the M.E.P.S Act and the rules must provide for the pay scales etc.

39. Before we proceed to find out conflict of views from the decision in the cases of *Teachers Association (supra)* and *Amrutraj Pratapji Vyas (supra)* with the proposition in the case of *Mahadeo More (supra)* it would be necessary to state that in all the decisions there is no conflict of views on the point that the provisions of MEPS Act and MEPS Rules would be applicable to the teaching and non-teaching employees of the schools as defined under section 2 (24) of MEPS Act. It is undisputed that the case of *Teachers Association (supra)* was not brought to the notice of Division Bench in the case of *Mahadeo More (supra)*. The decision in the case of *Mahadeo More (supra)* was cited before the Division Bench in the case of *Amrutraj Pratapji Vyas (supra)*. The Division Bench in the case of *Amrutraj Pratapji Vyas (supra)* made relevant observation in paragraph Nos.50, 55, 56 and 57 of the judgment. These paragraphs read thus:

"50. In the said Judgment, this Court has held that the said A.I.C.T.E. being a body created under the



said Act, is is required to carry out statutory functions and it is a model agency so far as the technical education in India is concerned. The said A.I.C.T.E. is thus, responsible to issue directions/instructions to the Management whether aided or unaided in view of the provisions of section 4(3) of the M.E.P.S. Act, read with section 3(1) of the said M.E.P.S. Act. This Court also took into consideration the affidavit-in-reply filed by the respondent No.1 in the said writ petition. It was the case of the respondent Nos.1 and 2 itself that the actual control in academic as well as in administration of the college of technical institutions, vest with All India Council for Technical Education, which is established under the provisions of the said A.I.C.T.E. Act. The norms and standards of the Technical Education, institution are set out by this Council. It is admitted by the respondent No.1 that according to the said standards, norms and standards of the technical institutions, are set up by the said Council. According to the said standards, the technical institution running diploma courses in various Engineering branches has to follow the norms in running the Polytechnic.



55. *The respondent No.2 Polytechnic was not only bound to comply with the directions issued under the provisions of M.E.P.S. Act and the M.E.P.S. Rules framed thereunder, but, were also bound to comply with the directions issued by the respondent No.4 under the provisions of A.I.C.T.E. Act including the directions issued for payment of pay scale and other service conditions prescribed in respect of the staff in a Polytechnic college or schools in respect of the vacant posts under the provisions of the said M.E.P.S. Act. In our view, the submissions advanced before this Court by the learned counsel for the respondent Nos. 1 and 2 are contrary to the law laid down by this Court in the said Judgment dated 3rd July, 2001 and the said writ petition No.364 of 1999 which has attained finality and is binding on the respondents.*

56. *In so far as the reliance placed by learned counsel for the respondent No. 1 and 2 on the Judgment of Division Bench of this Court in case of Mahadev S/o.Pandurang More and Ors. Vs. State of Maharashtra and Ors. 2014 (5) Mh.LJ.J.877, in support of his submissions that such circular dated 29th September, 1995, could not have been issued*



by the respondent No.4 without carrying out appropriate amendment to the Schedule-"C" is concerned, a perusal of the said Judgment clearly indicates that the Judgment of this Court in case of Teachers Association for non-aided Polytechnics and others Vs. Hind Seva Mandal and others to which the respondent Nos. 1 and 2 were parties was not brought to the notice of their Division Bench of this Court while dealing with the case of Mahadev Pandurang More (supra). The Division Bench of this Court in the said Judgment held that the Government Resolution or any other similar decision or similar circular or decision regarding pay scales not taken in the mode and manner prescribed by 1977 Act or 1981 Rules, cannot be treated as valid and binding on the Management.

57. This Court has not considered the provisions of the said A.I.C.T.E. Act in the said Judgment and also the undertaking given by the and 2 were admittedly parties to the said earlier Judgment dated 3rd July, 2001 in the writ petition No.364 of 1999 are bound by the said Judgment holding that the respondent No.4 were authorized to issue such circular which were issued under the provisions of section 4(3) read with section 16 of the A.I.C.T.E.



Act. In our view, the Judgment of Division Bench of case in Mahadev Pandurang More, thus, would not assist the case of respondent Nos. 1 and 2 in these circumstances."

40. The Division Bench has observed that the decision in the case of *Mahadeo More (supra)* would not assist the case of Respondent Nos.1 and 2. The Division Bench in the case of *Amrutraj Pratapji Vyas (supra)* has relied upon the decision in the case of *Teachers Association (supra)*. In our opinion the Division Bench in the case of *Amrutraj Pratapji Vyas (supra)* on being confronted with the decision in the case of *Mahadeo More (supra)* was required to deal with the same according to law. If in the opinion of the Division Bench the law laid down in *Mahadeo More (supra)* was not correct, the Division Bench was required to record such a finding. The Division Bench has also not held that the decision in the case of *Mahadeo More (supra)* is *per incuriam* for one reason or the other. It is held that though provisions of MEPS Act and MEPS Rules are applicable to the employees of the technical institutions up to diploma level, the Government of Maharashtra was right in making revision of pay after recommendation of the pay commission applicable to the employees of polytechnic by circular/resolution. In our view there is an anomaly in the sense that the provisions of MEPS Act are made partly applicable without complying with the mandate of the provisions as held in the case of *Mahadeo More (supra)*.



The decision in the case of *Amrutraj Pratapji Vyas (supra)* has not at all disagreed with the interpretation of the provisions of MEPS Act and MEPS Rules. In this case in our opinion the Division Bench on being confronted with the legal position settled in the case of *Mahadeo More (supra)* was required to either refer the issue to a large bench or to hold that the decision in the case of *Mahadeo More (supra)* is *per incuriam* being rendered without considering the Division Bench's decision in the case of *Teachers Association (supra)*. In our opinion there **are conflicting views** as to the interpretation of the provisions of Section 16 & 4 of the MEPS Act and Rule 7 of MEPS Rules. On going through the AICTE notification dated 30/12/1999 and the issue involved in the matters we are of the opinion that the law laid down in the case of *Mahadeo More (supra)* is consistent with the interpretation of the provisions of MEPS Act and MEPS Rules.

41. It is true that AICTE is empowered to prescribe the scales of pay of the employees of the technical institutions. However power is given to the State Governments to implement the same. A mechanism or the manner in the matter of implementation has not been provided under the AICTE Act. However implementation of the recommendation has been left to the State Governments and a window has been provided for the State Governments to amend the Statutes, Rules, Regulations or Bye laws in line with the Notification. In this view of the matter,



in our opinion the field is already covered by the statutory provisions or by subordinate legislation and, therefore, the Government Resolution/ Administrative instructions cannot be issued to encroach upon the said field. In our opinion for the purpose of authoritative pronouncement on the subject it would be advisable to refer the issue to a larger bench. The issue in our opinion needs to be resolved once and for all by the authoritative pronouncement. The same is possible only by referring the matter to a larger Bench. We accordingly frame the following questions for being referred to a larger bench.

1. *Whether the Division Bench decision in the case of Mahadeo More (supra) is applicable to the teaching and non-teaching employees of all the categories of the institutions covered under the definition of "School" provided under Section 2(24) of the MEPS Act ?*
2. *Whether it could be said that the view in the case of Mahadeo More (supra) is not a correct view ? and if yes, could it be said that the decision in the case of Teachers Association (supra) expresses a correct view ?*
3. *Whether in the light of observations made by the Division Bench at Aurangabad in the case of Amrutraj Pratapji Vyas (supra) can it be said that the judgment of the Division Bench at Nagpur in*



Mahadeo More (supra) is no longer a good law ?

4. *Whether there is a repugnancy in the provisions of AICTE Act and the provisions of MEPS Act and MEPS Rules on the subject ? If not, then whether strict compliance of the provisions of Section 16 & 4 of the MEPS Act and Rule 7 of MEPS Rules and the amendment to Schedule "C" is necessary for making the pay scales recommended by the AICTE applicable to the employees governed by MEPS Act and MEPS Rules ?*

42. The papers be placed before the Hon'ble The Chief Justice to consider referring the aforesaid questions to a Larger Bench. Order accordingly.

(G. A. SANAP, J.)

(S. B. SHUKRE, J.)