

The Secretary All India Shri Shivaji ... vs The State Of Maharashtra on 1 April, 2025

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Bench: Sudhanshu Dhulia

REPORTABLE

2025 INSC 422

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). _____ OF 2025
[@ SPECIAL LEAVE PETITION (CIVIL) NO(S). 7058-7061 OF 2019]

THE SECRETARY, ALL INDIA SHRI SHIVAJI
MEMORIAL SOCIETY (AISSMS) AND ORS. ...APPELLANT(S)

Versus

THE STATE OF MAHARASHTRA AND ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). _____ OF 2025
[@ SPECIAL LEAVE PETITION (CIVIL) NO(S). 4787 OF 2025]

THE SECRETARY, ALL INDIA SHRI SHIVAJI
MEMORIAL SOCIETY (AISSMS) ...APPELLANT(S)

Versus

LAXMAN SHIVAJI GODSE & ORS. ...RESPONDENT(S)

JUDGMENT

SUDHANSHU DHULIA, J.

1. Leave granted.
2. By means of the Civil Appeals arising out of SLP (C) Nos.

7058-7061 of 2019, the appellant-Society seeks to challenge the order of the Division Bench of the Bombay High Court dated 17.07.2017 as well as the order dated 22.12.2018, passed in review later. The impugned orders of the High Court direct the appellant-Society to extend the benefit of revised pay scales under the 6 th Central Pay Commission to the Respondent-teachers, who were the original Writ Petitioners before the Bombay High Court. The Respondent-teachers are the ones who are presently teaching in engineering and technical institutes run and managed by the Appellant-Society, which is a private body and is not under the grant in aid of the Government.

3. Brief facts of the case are that the Respondent-teachers, who possess a Master's degree in their field, were appointed as Lecturers/Assistant Professors by the appellant-Society in the institutes between 1995 and 2009. Requisite approval for their appointment was taken from the concerned Universities to which the said institutes were affiliated. It is also an admitted fact that the Respondent-teachers, with the exception of one teacher, were not able to acquire Ph.D.'s within seven years of their appointment in service, as was required.

4. At this stage, we may need to refer to the prescribed qualification of teachers in an Engineering Institute, which is laid down by the All India Council for Technical Education (hereinafter referred to as 'AICTE'). AICTE is a body which was initially constituted in the year 1945 as an advisory body to the Government of India but was given a statutory status under the All India Council for Technical Education Act of 1987 (for short '1987 Act') and we now can trace its formation as a Statutory Body under Section 3 of the 1987 Act. Its powers and functions are given under Section 10 of the 1987 Act, which read as under:

“10. Functions of the Council.— (1) It shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may—

-----X-----X-----X-----

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;”

5. Thus, under the powers referred above, AICTE is mandated to provide qualifications for teachers that would include Lecturers, Assistant Professors, Associate Professors and Professors, of Engineering and Technical Colleges.

6. It is an admitted position by both the sides here that the crucial date when Ph.D. was prescribed for the first time as a qualification for Lecturers/Assistant Professors is 15.03.2000. Prior to 15.03.2000, Ph.D. was not an essential and mandatory qualification for Lecturers/Assistant Professors. Out of the nine private respondents before us, who were also petitioners before the High Court, four were appointed prior to 15.03.2000 and the remaining five were appointed post 15.03.2000, when the notification dated 15.03.2000 had come into effect.

7. The subject matter of the notification dated 15.03.2000 reads as under:

“AICTE NOTIFICATION ON REVISION OF PAY-SCALES AND ASSOCIATED TERMS AND CONDITIONS OF SERVICE OF TEACHERS, LIBRARIANS AND PHYSICAL EDUCATION PERSONNEL FOR DEGREE LEVEL TECHNICAL INSTITUTIONS.” The above notification of AICTE prescribed minimum qualification for various teaching posts in degree level technical institutes and further prescribed qualifications for Assistant Professor as follows:

Appendix-E Table E-1 MINIMUM QUALIFICATION AND EXPERIENCE PRESCRIBED FOR TEACHING POST IN DEGREE LEVEL TECHNICAL INSTITUTIONS ENGINEERING AND TECHNOLOGY DISCIPLINES SI. No. CADR QUALIFICATION EXPERIENCE QUALIFICATION AND E EXPERIENCE FOR CANDIDATES FROM INDUSTRY & PROFESSION 2 Assista PhD degree with the 3 years experience in Candidates from nt first class Degree at Teaching/Industry/Rese Industry/Profession Profess Bachelor’s or Master’s arch at the level of with First Class or level in appropriate Lecturer or equivalent Bachelor’s Degree in branch of the appropriate branch Engineering/Technolog of y Engineering/Technolog y or First Class Master’s Degree in the appropriate branch of Engineering/Technolog y And Professional work which is significant and can be recognized as equivalent to Ph.D. degree and with 5 years experience would also be eligible.

Under the “CAREER ADVANCEMENT” heading of the notification dated 15.03.2000, Clause 7 (b) was as follows:

(b) For movement into grades of Assistant Professor and above, the minimum eligibility criterion would be Ph.D. Those teachers without Ph.D. can go upto the level of lecturer (Selection grade).

8. Then comes AICTE notification of 2005 issued on 28.11.2005, which again prescribes the following minimum qualification for various teaching posts in degree-level technical institutes and further prescribed qualifications for Assistant Professor as follows:

SL. NO.	CADRE	PRESCRIBED QUALIFICATIONS AND EXPERIENCE
2.	ASSISTANT PROFESSOR QUALIFICATION & EXPERIENCE FOR CANDIDATES FROM TEACHING	Ph.D degree with the first class at Bachelor’s or Master’s level in the appropriate branch of Engineering/Technology with 2 years experience in Teaching / Industry / Research at the level of Lecturer or equivalent. OR

First Class at Master's level in the appropriate branch of Engineering / Technology with 5 years experience in teaching / industry /Research at the level of lecturer or equivalent. Such candidates will be required to obtain Ph.D degree within a period of 7 years from the date of appointment as Assistant

Professor. In the case of Universities / University departments and the institutions offering PG programmes / Research, Ph.D is a must. For candidates from Industry, professional experience in R&D and patents would be desirable requirement failing which the increments will be stopped until Ph.D is earned.

Thus, there can be no doubt that a candidate could be appointed as an Assistant Professor after 15.03.2000, only if he/she had a Ph.D. degree with a first class at Bachelor's or Master's level in their appropriate branch of Engineering and two years of teaching experience. A candidate could also be appointed Assistant Professor if he/she had a first class at Master's level in their appropriate branch of Engineering and five years of teaching experience but such a candidate will be required to obtain a Ph.D. within a period of seven years from the date of appointment as Assistant Professor.

9. We are presently concerned with such teachers amongst the respondents who were neither Ph.D. at the time of their appointment nor have they acquired Ph.D. within seven years.

10. After the two notifications referred above comes the AICTE notification of 05.03.2010. This notification again prescribes qualification for teachers in technical institutes and reiterates the same qualification. In addition, the notification also prescribes "the pay structure for different categories of teachers and equivalent positions". With this notification, the designation of lecturers was changed to Assistant Professors, and consequent to this notification there would now be only three categories of teachers in universities and colleges (including technical institutions) i.e. Assistant Professor, Associate Professor, and Professor, which becomes clear from a perusal of the following portion of the notification:

"General

(i) There shall be only three designations in respect of teachers in universities and colleges, namely, Assistant Professors, Associate Professors and Professors.....”

11. Further, the pay structure and re-designation of Assistant Professors is prescribed in the 2010 AICTE notification and the provision with which we are presently concerned is as below:

“Revised Pay Scales, Service conditions and Career Advancement Scheme for teachers and equivalent positions:

The pay structure for different categories of teachers and equivalent positions shall be as indicated below:

(a) Assistant Professor/Associate Professor/ Professors in Technical Institutions

(i) ...

(ii)

(ix) Incumbent Assistant Professor and Incumbent Lecturers (Selection Grade) who have completed 3 years in the pre-revised pay scale of Rs.12000-18300 on 01.01.2006 shall be placed in Pay Band of Rs.37400-

67000 with AGP Pay of Rs.9000 and shall be re-designated as Associate Professor.”

12. The respondent-teachers claim the benefits of the above provision. The Assistant Professors i.e., the respondents who had completed three years of service in pre-revised pay scale of Rs.12000-18300 on 01.01.2006 wanted to be placed in the Pay Band of Rs.37400-67000 with AGP of Rs.9000 and to be designated as Associate Professor. This was denied to them by the appellant-Society for the reason that they did not possess a Ph.D. degree which was a mandatory requirement to be an Assistant Professor. The respondents had filed a Writ Petition before the High Court, as they were being denied this by the present Appellant.

This is the precise dispute in the present case, and the question to be decided by this Court is whether the respondents who have admittedly completed three years of service in the pre-revised pay scale of Rs.12000-18300 (on 01.01.2006) are now entitled for pay band of Rs.37400- 67000 and AGP of Rs.9000 and also whether they are liable to be redesignated as Associate Professors.

13. Relying upon the decision of the co-ordinate Bench of the Bombay High Court at Aurangabad in Sanjay Shrirangrao Surwase and Ors v. State of Maharashtra and Ors (WP No. 6001 of 2013), same relief was given in favour of the respondents herein as well by the Bombay High Court in the impugned order dated 17.07.2017, and they were to be re-designated as Associate Professor and be given a higher pay scale as per the 6th Pay Commission. When the present appellant had challenged the impugned order dated 17.07.2017 (of the Bombay High Court) before this Court, the question which had come up before this court was whether the teachers were qualified enough to be given the

benefit as they had sought for. The appellant before this Court had argued that the decision of the Aurangabad Bench of the Bombay High Court in the earlier petition cannot be applicable in the case of present respondents as it has been made applicable in the impugned order dated 17.07.2017 for the reason that whereas the petitioners before the Aurangabad Bench were qualified, the respondents in the present case lack the requisite qualifications. The obvious indication of the Appellant was on the Ph.D. degree. The petition was, therefore, disposed of by this Court in Special Leave Petition (Civil) Nos. 27975-27976 of 2017 by granting liberty to the appellant to file a Review Petition before the Bombay High Court. The following order was passed:

“Mr. Ravindra Shrivastava, learned senior counsel appearing for the petitioners submits that the present case is not covered in terms of the decision in Sanjay Shrirangrao Surwase & Ors. v. State of Maharashtra & Ors. rendered in Writ Petition No. 6001/2013 on the file of the Division Bench of the High Court of Bombay at Aurangabad. One main distinction pointed out is that, it was a case of qualified teachers whereas in this case the teachers are not qualified as per A.I.C.T.E. and not entitled to the benefit of designation and consequent benefit of Sixth Pay Commission.

We do not find that this aspect has been addressed before the High Court and nor has the High Court dealt with it. In the event of filing such a review within thirty days from today the same may not be dismissed on the ground of delay.

The special leave petitions are, accordingly, disposed of.

We make it clear that we have not considered the matter on merits.” (Emphasis provided)

14. In terms of the liberty granted by this Court vide the above-

quoted order, the Appellant-Society then filed Review Petitions before the Bombay High Court. The High Court, while dismissing the review petitions took note of the fact that the issue of the earlier Bombay High Court (Aurangabad Bench) judgment in Sanjay Shrirangrao Surwase being distinguishable on facts was not raised by the Appellant-Society earlier. The High Court took note of the submissions on behalf of the Respondent-teachers to the effect that the teachers who were petitioners in the Sanjay Shrirangrao Surwase also did not have a Ph.D., and a specific averment in that regard was made in the Reply Affidavit before the High Court. The High Court dismissed the review petitions filed by the Appellant, as there was no difference between the two batch of petitioners regarding their qualifications.

15. Be that as it may, these are the two orders (dated 17.07.2017 and 22.12.2018) which are presently under challenge before this Court. Since the decision of this Court dated 03.11.2017 wherein liberty was given to the appellant to file a review clearly states that this Court had not expressed anything on the merit of the case, we have heard the matter in its entirety on every aspect of the matter argued from both the sides.

16. As we have already indicated above, there are two different categories of teachers before us as respondents. We have one set who were appointed prior to 15.03.2000 when Ph.D. was made a minimum qualification for the first time; and then the other class of teachers who were appointed after 15.03.2000, when Ph.D. was an essential qualification.

17. As far as such teachers are concerned who were appointed prior to 15.03.2000, we do not see any reason to disturb the findings of the High Court regarding their entitlements under the 6th Pay Commission, etc. All the same, the other half of respondents, who were appointed post the AICTE notification dated 15.03.2000 had come into force, they fall in a different category altogether. These are the teachers who were appointed after 15.03.2000 and were not having Ph.D. qualification though it was mandatory and moreover had also failed to acquire a Ph.D. within seven years as stipulated in the AICTE notification of 2005 as well as their appointment order. At this juncture, we would like to record the submission made at the Bar that one of these respondents i.e., Dr. Madhavi Ajay Pradhan who though was appointed as Assistant Professor on 14.06.2004 (i.e. after 2000 AICTE Notification) has gone ahead and completed her Ph.D. She also cannot be denied the benefit of the Bombay High Court decision presently under challenge before this Court.

18. The learned Counsel for the private respondents Sri Abhay Atul Anturkar would, however, argue that the powers vested with AICTE were statutory in nature under Section 23 of the 1987 Act, which reads as follows:

23. Power to make regulations.—(1) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act, and the rules generally to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

- (a) regulating the meetings of the Council and the procedure for conducting business thereat;
- (b) the terms and conditions of service of the officers and employees of the Council;
- (c) regulating the meetings of the Executive Committee and the procedure for conducting business thereat;
- (d) the area of concern, the constitution, and powers and functions of the Board of Studies;
- (e) the region for which the Regional Committee be established and the constitution and functions of such Committee.

19. Learned Counsel for the private respondents would further argue that notification which is clarificatory in nature had come out on 4th January, 2016, issued by the AICTE in exercise of powers under the above-quoted Section 23 of the 1987 Act. The notification dated 04.01.2016 was to clarify “on certain issues / anomalies pertaining to qualifications, pay scales, service conditions,

career advancement schemes (CAS) etc. for teachers and other academic staff of technical institutions (degree /diploma)” The clarification with which we are presently concerned, and it is in the form of a questionnaire is as follows:

S.No.	Issue	Clarification
53	Whether Asst. Professor (Re-designated as	Such candidates will be required to

Associate Professor w.e.f. complete Ph.D. within 1-1-2006), who are not 7 years from the date able to complete the Ph.D. of Joining, failing in seven years from the which increments date of Joining shall be stopped until (Direct/CAS) will be Ph.D. is earned.

reverted back.

20. The learned Counsel for the respondents then relies upon the judgment of this Court in Christy James Jose and Ors v. State of Kerala and Ors 2016 SCC OnLine SC 1817 and would argue that the AICTE clarification of 04.01.2016 has a statutory status, and in terms of the same, the only consequence of non-completion of Ph.D. within seven years would be the stoppage of increments. We have gone through the above decision. The above case does not hold that the 2016 clarification has statutory status. In fact, while interpreting Clause 53 of the 2016 clarification (on which the respondents also rely), the decision only says that the failure to acquire a Ph.D. within seven years can result in stoppage of increments but cannot result in termination of services. The above decision is silent on the aspect of movement to a higher pay scale, which is the primary issue in the present case.

21. In any case, the interpretation of the 2016 clarification has been settled by a subsequent three-judge bench decision of this Court in Gelus Ram Sahu v. Surendra Kumar Singh (2020) 4 SCC 484, which has been placed before us by Sri Ravindra Shrivastava, the learned Senior Counsel appearing for the Appellant. He would argue that the clarificatory notification of 2016 is of no relevance as it only reiterates the position regarding qualification, re- designation, and pay scales of Assistant Professors and Associate Professors which were already provided in the AICTE notification of 2010. The learned Senior Counsel for the appellant also argues that the 2016 notification does not have statutory status, as is being projected by the respondents. As stated above, he relies upon the later three-judge Bench decision of this Court in Gelus Ram Sahu (supra) where it was observed that:

“24. “Clarificatory” legislations are an exception to the general rule of presuming prospective application of laws, unless given retrospective effect either expressly or by necessary implication. In order to attract this exception, mere mention in the title or in any provision that the legislation is “clarificatory” would not suffice. Instead, it must substantively be proved that the law was in fact “clarificatory”.....

25. The present case is one where except for the title, nothing contained therein indicates that the 2016 AICTE Notification was clarificatory in nature. The said Notification is framed in a question-answer style and merely restates what has already been made explicit in the 2010 AICTE Regulations. There seems to be no intent to alter the position of law but instead only to simplify what the AICTE had resolved through its original regulation. The 2016 AICTE Notification is a response to the doubts put forth to AICTE by the public. This is evident from the stand put forth by AICTE before us in its reply as well as during the course of hearing, namely, that there is no retrospective alteration in the qualification prescribed for the post of Principal.

26. Even if the 2016 AICTE Notification was clarificatory, it must be demonstrated that there was an ambiguity in the criteria for appointment to the posts of Principal, which needed to be remedied. Clarificatory notifications are distinct from amendatory notifications, and the former ought not to be a surreptitious tool of achieving the ends of the latter. If there exists no ambiguity, there arises no question of making use of a clarificatory notification. Hence, in the absence of any omission in the 2010 AICTE Regulations, the 2016 AICTE Notification despite being generally clarificatory must be held to have reiterated the existing position of law.

22. We must note that this Court in the above case has not given its findings in general terms between clarificatory notifications as distinct from statutory amendments, what it was actually comparing were the precise two notifications with which we are presently concerned i.e., notification dated 05.03.2010 and clarificatory notification dated 04.01.2016. It was in that context that it was held that a clarificatory notification cannot be a surreptitious tool for achieving the ends of an amending notification. “If there exists no ambiguity, there arises no question of making use of a clarificatory notification. Hence, in the absence of any omission in the 2010 AICTE Regulations, the 2016 AICTE Notification despite being generally clarificatory must be held to have reiterated the existing position of law”.

23. Moreover, the provision on which the private respondents are relying upon clearly stipulates that such assistant professors who are not having Ph.D. qualification shall acquire the same within seven years failing which they will not be given their increment. Now when the provision even in its clarificatory notification denies an increment, then by logic such teachers cannot be given the higher pay scale. In any case, the notifications of 2005 and 2010 leaves nothing in doubt that such teachers will not be given the higher pay scale.

24. To clarify, the phrase “incumbent Assistant Professors and incumbent Lecturers” given in Clause (ix) of 2010 Notification of AICTE would mean such Assistant Professors and Lecturers who have the essential qualifications including Ph.D. or those who were appointed prior to 15.03.2000 without Ph.D. This is the only meaningful manner in which the above provision can be read. AICTE which is an expert body mandated by law, inter alia, to prescribe essential qualifications for a teaching post, and hence we cannot question the logic and wisdom of this expert body which prescribes the essential qualifications for these posts. No one has challenged such a qualification,

which is Ph.D. in the present case, on the ground that it should not have been made an essential qualification. Further in the present case, the law not only prescribes qualifications but also gives the consequences of not having these qualifications. We find nothing arbitrary in such prescriptions.

25. This Court time and again has reiterated that the responsibility, of fixing qualifications for purposes of appointment, promotion etc. of staff or qualifications for admissions, is that of expert bodies (in the present case, the AICTE), and so long as qualifications prescribed are not shown to be arbitrary or perverse, the Courts will not interfere. In *All India Council for Technical Education v. Surinder Kumar Dhawan & Ors.* (2009) 11 SCC 726, this Court while dealing with the question regarding decision taken by AICTE whether a bridge course should be permitted to make diploma-holders eligible for engineering course, observed as under:

“15. ... AICTE consists of professional and technical experts in the field of education qualified and equipped to decide on those issues. In fact, a statutory duty is cast on them to decide these matters.

16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education...

17. The role of statutory expert bodies on education and the role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, the courts will step in...” In other words, normally, courts should not interfere with the decisions taken by expert statutory bodies regarding academic matter: may it relate to qualification for admission of students or qualification required by teachers for appointment, salary, promotion, entitlement to a higher pay scale etc. However, this does not mean that Courts are deprived of their powers of judicial review. It only means that courts must be slow in interfering with the opinion of experts in regard to academic standards and powers of judicial review should only be exercised in cases where prescribed qualification or condition is against the law, arbitrary or involves interpretation of any principle of law [Also see: *Medical Council of India v.*

Sarang & Ors. (2001) 8 SCC 427]. Consequently, where a candidate does not possess the minimum qualifications, prescribed by an expert body, for appointment or promotion to a particular post in an educational institution, such a candidate will not be entitled to get appointed or will be deprived of certain benefits, which is the case we have in hand.

26. We also have to take into account the fact that in the present situation the law itself creates two different classes, an Assistant Professor with Ph.D. and another Assistant Professor without Ph.D. If the salary, designation, etc. would remain unchanged for the two irrespective of whether one has

Ph.D. or not, as the private respondents would like us to accept then it may have a negative fallout in the quality of teaching. Our focus is as much with the quality of teaching as with the equity in service conditions.

27. Under the circumstances, and in terms of what we have held above, the respondents who were appointed after 15.03.2000, who were non-Ph.D. and had also failed to acquire the same within seven years of appointment as was required, cannot be given the benefit of 2010 notification inasmuch as they cannot be given a higher pay scale or re-designated as an Associate Professor. The phrase 'incumbent Assistant Professor' in the 2010 notification, to our mind, would only include such Assistant Professors working on the post who had a Ph.D. qualification at the time of their appointment or who though did not have a Ph.D. qualification at the time of their appointment but subsequently in terms of the notification dated 15.03.2000 read with subsequent notification dated 28.11.2005 acquired Ph.D. within seven years of their appointment or those appointed prior to 15.03.2000; when Ph.D. was not an essential qualification, continued uninterruptedly. Those teachers who were appointed after 15.03.2000 and had failed to acquire Ph.D. qualification even thereafter will not be entitled to the benefits of the 2010 notification given in Clause (ix).

28. The appellant shall release the higher pay scale to those respondents who are appointed prior to 15.03.2000 with an interest of 7.5% per annum on the arrears within a period of four weeks from today failing which the interest shall be calculated at the rate of 15% per annum. These are Mr. Pandurang Abhimanyu Patil, Mrs. Mangal Hemant Dhend, Mr. Diwakar Haribhau Joshi, Mr. Shivanandgouda Kallanagouda Biradar. Since we have been apprised at the Bar that one of the respondents (Dr. Madhavi Ajay Pradhan), though appointed after the AICTE notification of 2000, has acquired Ph.D., the above direction is also applicable in her case and appellant shall release benefits in her favour subject to proper verification of her Ph.D. degree by the appellant. The rest of the private respondents since they have failed to acquire Ph.D. within seven years as required, cannot be designated as Associate Professors or be entitled for the higher pay scale.

29. As and when, these teachers acquire a Ph.D. they would be at liberty to move an application before their respective institutions and AICTE for grant of higher pay scale and designation of Associate Professor, which shall be considered by them in accordance with law.

30. Consequently, the Civil Appeal arising out of SLP(C) No.7058-7061 of 2019 is partly allowed in the above terms.

31. Insofar as Civil Appeal arising out of SLP (C) No.4787 of 2025 is concerned, the amount of Rs.30 lakhs deposited by appellant before the High Court shall not be disbursed till the final disposal of review petitions pending before the High Court which shall now be decided in the light of this judgment as expeditiously as possible. The impugned order of the High Court is modified to that extent and the appeal is disposed of in the above terms.

32. Interim order(s), if any, stand(s) vacated.

33. Pending application(s), if any, stand(s) disposed of.

....., J.

[SUDHANSHU DHULIA], J.

[K. VINOD CHANDRAN] NEW DELHI, APRIL 01, 2025.