

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 7040 OF 2021**

**KANCHAN DASHRATHRAO DEVDE  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS**

Advocate for Petitioner : Mr. R.M. Deshmukh  
AGP for Respondent Nos. 1 to 5 : Mr. A.A. Jagatkar  
Advocate for Respondent No. 6 : Mr. Vikram Sarse  
h/f. Mr. V.S. Kadam

**CORAM \*\*\* : MANGESH S. PATIL &  
SHAILESH P. BRAHME, JJ.**

**Reserved on : 25 SEPTEMBER 2023  
Pronounced on : 04 OCTOBER 2023**

**PER COURT ( PER : SHAILESH P. BRAHME, J ) :**

1. Heard learned counsel for the respective sides finally with their consent at the admission stage.
2. The petitioner is seeking direction for reimbursement of tuition fees of Rs. 89,45,981/- with interest at the rate of 4% per annum from the date of application till the realization and further direction to issue mark statement of MD (Medicine). By the interim orders, the grievance of the petitioner seeking mark statement is ventilated. The petition survives only for the relief of reimbursement.
3. The petitioner was admitted in the respondent no. 7 – College for under graduation in the year 2011. She passed final examination of MBBS in Winter-2015. She was admitted in the respondent no. 6 – College for post graduation in the academic year

2018-2019. The post graduation was completed in the year 2021. From time to time, she paid the tuition fees. Her father somehow mustered the funds for tuition fees by securing hand loan.

4. The petitioner is daughter of Dashrathrao Abasaheb Devde who is in service as a Registrar of a private college at Partur. It is 100 % government aided college. Her father is working since 19.12.1989. The petitioner is claiming the benefit of Government Resolution dated 19.08.1995. The Government has provided free education from first standard to post graduation to wards of teaching and non-teaching members of the staff rendering services in aided and Private Higher Secondary Schools.

5. It is the case of the petitioner that her father submitted representations on 07.10.2020, to the respondent nos. 2, 3 and 6, respectively, seeking reimbursement of the tuition fees of the petitioner which was paid for MBBS and MD courses. The representations have not been answered. The petitioner appears to have approached Minister for Public Health and Social Welfare Department who recommended her claim on 04.02.2021. Her father persuaded the respondent nos. 4 and 6 for reimbursement. However, they refused to accept the application. There is correspondence from the respondent no. 2 with the respondent no. 3 on 28.05.2021. An inaction on the part of the respondents to reimburse the tuition fees to the petitioner, is a cause of action for filing present petition.

6. Learned counsel for the petitioner Mr. R.M. Deshmukh, has placed reliance upon the judgment and order dated 11.04.2018, passed in Writ Petition No. 969 of 2017 in the matter of Sarika Sanjay Gaikwad. In that matter also the implementation of G.R. dated 19.08.1995, was sought for by that petitioner who was also a medical student. That petitioner succeeded and the directions were issued to reimburse the entire tuition fees within a period of three months. Government Resolution dated 20.02.2020, was issued to disburse the tuition fees to that petitioner. Learned counsel submits that the petitioner is discriminated and she is illegally denied the benefits of G.R. dated 19.08.1995.

7. Learned counsel for the petitioner has invited our attention to the re-joinder. In another matter of similarly circumstanced student Miss. Khan Sana Tehdis, order was passed by High Court in Writ Petition No. 5846 of 2020, issuing similar directions on 19.10.2020. The text of judgment is placed on record. Few documents are placed on record to show that the tuition fees was paid by the petitioner. Thus, the petitioner has claimed an amount of Rs. 85,45,981/- with interest at the rate of 4 % per annum till the realization of the total amount.

8. The respondent nos. 1 and 2 have filed affidavit-in-reply to contest the claim of the petitioner. The respondent nos. 6 and 7 are served but no reply is filed.

9. It is stated by the respondent nos. 1 and 2 that the petitioner failed to comply with the provisions of G.R. dated 19.08.1995. She did not file application seeking reimbursement within period of 30 days from the date of admission. The time scheduled for making application under clause 6 and 7 of Annexure – A of the G.R. in question has not been followed. The application was submitted by the father of the petitioner in the month of October 2020, on the verge of completion of Post Graduation of the petitioner. Such belated applications were not entertainable.

10. It is further stated in the reply that a student is entitled to freeship provided the conditions stipulated in clause 5 of annexure 'A' of G.R. dated 19.08.1995 are satisfied. The respondents have also raised other pleas to oppose the petition. It is submitted by learned AGP that the ground of parity pressed into service by the petitioner is misplaced. It is stated that the State Government has filed review in the matter of Miss. Sana Khan. The proposal to challenge judgment in Sarika Gaikwad is under consideration. The applications produced by the petitioner on record at exhibit 'H' which were allegedly refused to be received by the respondents. There was no application in a proper format ever received by the respondent nos. 6 and 7 and forwarded to the answering respondents.

11. Learned AGP has placed reliance upon judgment pronounced on 08 December 2022, by this Court in the matter of

Prathmesh Mahesh Kulkarni and another Versus State of Maharashtra and others in Writ Petition No. 9164 of 2021. The learned counsel for the petitioner seeks to rely on judgment of Full Bench passed in matter of *Yash Pramesh Rana and others Versus State of Maharashtra and another*, 2020 (3) Mh.L.J. 772.

12. We have considered rival submissions of the learned counsels appearing for the respective parties. The petitioner is a ward of an employee of aided and private Higher Secondary School. The fact has not been disputed. She completed graduation and post graduation from respondent nos. 4 and 5 – Colleges. The policy of the government stipulated in G.R. dated 19.08.1995 and its annexure 'A' is also undisputed. It is informed during the course of hearing that State Government has not filed Special Leave Petition challenging the orders passed in the matters referred to by the petitioner nor any Review Application is filed in the matter of Miss. Sana Khan.

13. In order to get benefit of G.R. dated 19.08.1995, the procedure and modalities have been prescribed by annexure 'A'. The procedure for submitting application is provided by clause 6 of the G.R. The relevant extracts of clause nos. 6 and 7 of the G.R. dated 19.08.1995, are reproduced herein below :

“६) या सवलतीसाठी अर्ज करण्याची कार्यपद्धती —

१) या सवलतीसाठी माध्यमिक शिक्षक / शिक्षकेतर कर्मचारी यांनी दरवर्षी ज्या शैक्षणिक संस्थेत त्यांचा पाल्य शिकत असेल (किंवा ज्या

संस्थेत प्रवेश घेण्यासाठी अर्ज केला असेल) त्या शैक्षणिक संस्थेच्या प्रमुखांस अर्ज केला पाहिजे. विहित नमुन्यातील अर्ज ज्या शैक्षणिक संस्थेत पाल्य/विद्यार्थी शिकत असेल किंवा शिक्षण घेण्याचा विचार असेल त्या शैक्षणिक संस्थेत मिळेल. नियम १० प्रमाणे विहित नमुन्यात सेवेत प्रमाणपत्र अर्जासोबत न चुकता जोडणे.

२) असे अर्ज पाल्याने अगोदरचा शैक्षणिक संस्थेत प्रवेश घेतला असल्यास शैक्षणिक वर्ष सुरू झाल्यापासून ३० दिवसांत आणि ज्यांना नव्याने प्रवेश घेतला असेल त्यांनी प्रवेश घेतलेल्या दिनांकापासून ३० दिवसांच्या आत सादर करणे आवश्यक आहे.

३) शैक्षणिक संस्थेच्या प्रमुखाने अर्ज संबंधीत शिक्षणाधिकारी माध्यमिक, जिल्हा परिषद किंवा शिक्षण निरीक्षक, बृहन्मुंबई यांच्या कडे नियम १० खाली नमुद केल्याप्रमाणे प्रमाणपत्राची प्राप्तीनंतर सादर करावेत.

#### ७) उशिरा आलेले अर्ज किंवा अपूर्ण अर्ज नाकारण्यात येतील —

अ) नियम ६ खाली विहित केलेला कालावधी संपल्यानंतर प्राप्त झालेले अर्ज किंवा विशिष्ट माहिती नसलेले अपूर्ण अर्ज किंवा नमुन्यात नोकरीचे प्रमाणपत्र सोबत नसलेले सर्व अर्ज तडकाफडकी फेटाळण्यात येतील.

ब) शैक्षणिक संस्थेच्या प्रमुखाने सर्व अर्ज त्यावर्षी ३१ ऑगस्टा किंवा त्यापुर्वी शिक्षणाधिकारी (माध्यमिक), जिल्हा परिषद, शिक्षण निरीक्षक, बृहन्मुंबई यांच्याकडे सादर करावेत. शिक्षणाधिकारी, जिल्हा परिषद, किंवा शिक्षण निरीक्षक, बृहन्मुंबई हे सदर सवलत करण्यास जबाबदार असून ते त्यांचा निर्णय शक्य तितक्या लवकर परंतु कोणत्याही परिस्थितीत १ ऑक्टोबर पुर्वी कळवतील.”

14. An employee rendering services in the school has to make an application addressing the Education Institution, wherein, the ward has been admitted or about to be admitted. Such application has to be made within 30 days from the date of admission. The Head of the Educational Institution has to forward such application to the Education Officer. The applications which would be filed belatedly would be rejected. The applications received after the stipulated period provided in clause 6 are liable to be rejected. The applications have to be received by the Education Officer by 31<sup>st</sup> of August of the year and those are to be decided prior to 01<sup>st</sup> October.

15. Learned AGP has taken a plea that the petitioner did not file application within stipulated period and the applications which are annexed to the petition have not been received, besides those are not in prescribed format. It is not a case of the petitioner that when she was admitted to MBBS any application for reimbursement of the tuition fees was made by her or her father. No such application is shown to have been made immediately after commencement of post graduation. The first ever application which is sought to be relied upon by the petitioner is of 07.10.2020. Thereafter, consecutively few applications are made.

16. The first application is made on 07.10.2020, which is far beyond time prescribed by clause 6. Learned counsel for the petitioner is unable to point out the compliance of clause 6 (1), (2) and (3). It is obvious that consequences stipulated in clause 7 will follow. The

application of the petitioner is grossly beyond time. Learned AGP has rightly submitted that it was not entertainable.

17. The applications which are sought to be relied upon by the petitioner which are produced at exhibit 'H' have not been received by the Competent Authority. There is no acknowledgment of having received such applications. Learned counsel for the petitioner has tried to explain the delay by referring to para no. 4 of the re-joinder. It is submitted that father of the petitioner approached the respondent nos. 6 and 7 but the application was refused to be accepted. It is stated that father was persuading Office of Zilla Parishad, for submitting the application but that Office also refused to accept the application.

18. The petitioner has not placed on record any material to demonstrate that immediately after admission of the petitioner to MBBS course or her admission to MD course, attempts were made to submit applications but those were refused. The petitioner or her father could have sent the applications to the Competent Authority by post or any other valid mode of transmission. However, it is not the case of the petitioner that any such attempt was ever made. If the petitioner wanted to seek the benefit of G.R. dated 19.08.1995, it was mandatory to comply clause 6 and 7 of its annexure 'A'. Unfortunately, we find that there is total inaction on the part of the petitioner or her father for inordinate period after taking admission to the under graduation and post

graduation. We find force in the plea raised by the respondent nos. 1 and 2, to discard the claim of the petitioner.

19. Learned AGP has drawn our attention that an incumbent seeking benefit of G.R. dated 19.08.1995, has to apply in time and equally has to satisfy conditions stated in clause 5. Unless there is timely application, it is not possible to determine the conditions stipulated in clause no. 5 are satisfied or not. The eligibility criteria cannot be examined after an incumbent completes the course. We are inclined to accept the submissions of learned AGP. There is unexplained and inordinate delay to seek the benefit of policy in question on the part of the petitioner that has rendered her claim unentertainable.

20. Learned counsel for the petitioner has relied upon judgments rendered by High Court in the matter of Sarika Gaikwad and Miss. Sana Khan. In both the matters the timely applications were made by those petitioners. There was no occasion to raise plea of delay or laches. Hence, facts are distinguishable and those judgments will not enure to the benefit of the petitioner.

21. The learned counsel seeks to rely on Judgment of Full Bench of Bombay High Court rendered in case of *Yash Pramesh Rana and others* (supra). He refers to para nos. 144 to 159 of the judgment. In para no. 158 of the judgment, the issues to be answered are framed. Ultimately, the discrimination of the students taken admission through

non CAP (Centralized Admission Process) round for depriving them of reimbursement of fees was held to be invalid. The issues addressed in the judgment cannot enure to the benefit of petitioner. In the matter in hand, the petitioner is denied benefit due to her belated claim and not on ground of any discrimination. This judgment is of no help to her.

22. Learned AGP has cited judgment rendered in Prathmesh Mahesh Kulkarni and another Versus State of Maharashtra. The petitioner in that matter was a student of MBA course and a ward of full time Librarian. In that matter also the application seeking reimbursement was submitted almost on the verge of completion of post graduation. The claim was contested by the authorities on the ground of delay. The plea was accepted and decision of refusing the claim of the petitioner was held to be justified as recorded in paragraph no. 8 of the judgment. We also propose to adopt the same course.

23. For the reasons stated above, we are constrained to hold that the petitioner is not entitled to the benefits of G.R. dated 19.08.1995. Hence, the petition is dismissed. There shall be no order as to costs.

**[ SHAILESH P. BRAHME, J. ]**

**[ MANGESH S. PATIL, J. ]**