



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

WRIT PETITION NO.11188 OF 2024

Atul s/o Vasantrya Warangule
Age 43 years, Occu. Service,
R/o Mitra Nagar, KSK College Road,
Beed, Taluka & District Beed

... **PETITIONER**

VERSUS

- 1) Marathwada Shikshan Prasarak
Mandal, through its Administrative
Officer, Devgiri college Campus,
Railway Station Road, Aurangabad,
Tal. & Dist. Aurangabad
- 2) Yashwantrao Chavan Institute of
Polytechnic, Beed, Near Law College,
Vidhya Nagari, Barshi Road,
Beed, Tq. & Dist. Beed,
Through its Principal
- 3) All India Council for Technical Education,
JNU Campus, Nelson Mandela Marg,
Vasant Kunj, New Delhi – 110 070
- 4) Director of Technical Education,
Maharashtra State, Mumbai
- 5) Maharashtra State Board of Technical
Education, Mumbai.

... **RESPONDENTS**

.....

Mr. Subodh P. Shah, Advocate holding for
Mr. D.A. Madke, Advocate for petitioner
Mr. N.B. Khandare, Senior Counsel with

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Mr. D.J. Choudhari, Advocate for R.No.1 and 2
Mr. C.V. Dharurkar, Advocate for R.No.3.
Mr. S.R. Yadav Lonikar, A.G.P. for R.No.4.
Mr. S.S. Jadhavar, Advocate for R.No.5

.....

WITH

WRIT PETITION NO.11176 OF 2024

Nitin s/o Meghraj Gaikwad
Age 38 years, occ. Service,
R/o champavati Nagar, Barshi Road,
Beed, Tal. & Dist. Beed

... **PETITIONER**

VERSUS

- 1) Marathwada Shikshan Prasarak
Mandal, through its Administrative
Officer, Devgiri college Campus,
Railway Station Road, Aurangabad,
Tal. & Dist. Aurangabad
- 2) Yashwantrao Chavan Institute of
Polytechnic, Beed, Near Law College,
Vidhya Nagari, Barshi Road,
Beed, Tq. & Dist. Beed,
Through its Principal
- 3) All India Council for Technical Education,
JNU Campus, Nelson Mandela Marg,
Vasant Kunj, New Delhi – 110 070
- 4) Director of Technical Education,
Maharashtra State, Mumbai
- 5) Maharashtra State Board of Technical
Education, Mumbai.

... **RESPONDENTS**

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Mr. Subodh P. Shah, Advocate holding for
Mr. D.A. Madke, Advocate for petitioner
Mr. N.B. Khandare, Senior Counsel with
Mr. D.J. Choudhari, Advocate for R.No.1 and 2
Mr. C.V. Dharurkar, Advocate for R.No.3.
Mr. S.R. Yadav Lonikar, A.G.P. for R.No.4.
Mr. S.S. Jadhavar, Advocate for R.No.5
.....

WITH

WRIT PETITION NO.8640 OF 2024

Marathwada Shikshan Prasarak Mandal
Through Administrative Officer,
Deogiri College Campus,
Railway Station Road,
Chhatrapati Sambhajnagar

... **PETITIONER**

VERSUS

- 1) Atul s/o Vasantrao Warangule
Age 43 years, Occu. Service,
R/o Mitra Nagar, KSK College Road,
Beed, Tq. & Dist. Beed
- 2) The Director of Technical Education,
Maharashtra State, Mumbai
- 3) The Joint Director,
Technical Education, Regional Office,
Chhatrapati Sambhajnagar, Tq. &
Dist. Chhatrapati Sambhajnagar
- 4) The Deputy Secretary and
Appellate Authority,
Maharashtra State Board of Technical

Education, Regional Office,
Chhatrapati Sambhajnagar, Tq. &
Dist. Chhatrapati Sambhajnagar ... **RESPONDENTS**

.....
Mr. N.B. Khandare, Senior Counsel with
Mr. D.J. Choudhari, Advocate for petitioner
Mr. Subodh P. Shah, Advocate holding for
Mr. D.A. Madke, Advocate for R.No.1.
Mr. S.R. Yadav Lonikar, A.G.P. for R.No.2 & 3.
Mr. S.S. Jadhavar, Advocate for R.No.4
.....

**CORAM : R.G. AVACHAT AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 25th MARCH, 2025

ORAL JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, heard finally.

2. This group of three Writ Petitions, under Article 226 of the Constitution of India, is being decided by this common judgment, since common questions of facts and law arise therein. Two of the three petitions (No.11188/2024 and 11176/2024) have been preferred by the employees of the respondent management, which has preferred the third Writ Petition (No.8640/2024).

3. The petitioners/ employees seek the following main reliefs :--

- A) The Hon'ble High Court may be pleased to issue an appropriate writ, order or direction in the nature of writ and thereby direct the respondent Nos.1 and 2 :
- i) Let the petitioner resume his duties at the respondent No.2 Institute at Beed and
 - ii) To pay his salary according to the recommendations made by the 7th Central Pay Commission and
 - iii) Also pay the arrears of difference in salary actually paid to him and the salary to which the petitioner was entitled along with interest @ 12% p.a.

4. The petitioners/ employees had preferred two independent Writ Petitions, (No.9346 and 9345/2023). This Court, passed following order therein on 10/11/2023:

“2. The petitioners who were serving with the respondent no. 8 college run by the respondent no.6– management are aggrieved by the fact that, they were served with back dated relieving orders dated 30-06-2023. They seem to have submitted applications with the respondent no. 8 who is the principal of the college and chairman of the

grievance redressal committee, putting up a grievance, however, till date no action has been taken to redress their grievances.

3. Keeping open all the issues, we direct the respondent no. 9 who is president of the grievance redressal committee at the institutional level to convene meeting and pass appropriate orders on the petitioners' grievances as expeditiously as possible and in any case within four weeks."

5. As such, the grievance was taken up first by the Local Grievance Redressal Committee (GRC). The petitioners/ employees having been unsuccessful before the said Committee, preferred the appeals before the Grievance Redressal Appellate Committee (GRAC for short). After hearing the parties, the GRAC passed the following order :

“विभागीय स्तरावरील तक्रार निवारण अपिलीय समितीचे निरीक्षण

०१. प्रतिवादी यांच्या से मधील माहितीचे अवलोकन केले असता श्री. वारंगुळे यांची अधिव्याख्याता इंग्रजी या पदावर करण्यात आलेली नियुक्ती ही निवड समितीकडून झालेली नसून तात्पुरत्या स्वरूपात व ठोस वेतनावर केलेली असल्याचे म्हटले आहे. त्यामुळे त्यांनी वेतना बाबतच्या केलेल्या मागण्या मान्य करता येणार नाही असे नमूद केले आहे. तसेच संस्था स्तरावरील तक्रार निवारण समितीने श्री. वारंगुळे यांच्या मागण्या फेटाळून लावल्याचे दिसून येते. परंतु त्यापृष्ठ्यर्थ त्यांना ठोस

वेतन अदा केल्याचे बँक स्टेटमेंट अथवा इतर कागदपत्रे पुरावा म्हणून सादर केले नसल्याचे दिसून येते.

०२. अपिलकार यांनी मांडलेले म्हणणे व सादर केलेल्या कागदपत्राचे अवलोकन केले असता त्यांना व्यवस्थापनाने त्यांचे कार्यालयीन आदेश क्रमांक ६१६, दि. ०८.०९.२००९ अन्वये नियुक्ती आदेश दिलेले असून त्यामध्ये वेतनश्रेणीचा उल्लेख असल्याचे दिसून येते. तसेच श्री. वारंगुळे यांनी सादर केलेल्या त्यांच्या बँक खात्याच्या स्टेटमेंटनुसार त्यांच्या खात्यावर संस्थेने सहाव्या वेतन आयोगाच्या वेतनश्रेणी नुसार सप्टेंबर २००९ पासून वेतन दिल्याचे कागदपत्रावरून दिसून येते.

०३. श्री. अतुल वसंतराव वारंगुळे यांची नियुक्ती संस्था क्रमांक ११५८— Yashwantrao Chavan Institute Of Polytechnic, Beed या पदविका अभ्यासक्रमातील अधिव्याख्याता इंग्रजी या पदावर केलेली असून सदर पदाची शैक्षणिक अर्हता त्यांच्याकडे आहे. परंतु त्यांची बदली देवगिरी इन्स्टिट्यूट ऑफ इंजिनिअरींग अँड मॅनेजमेंट स्टडीज, औरंगाबाद या पदवी अभ्यासक्रमातील अधिव्याख्याता इंग्रजी पदावर केली आहे. सदरील पदाकरीता आवश्यक असलेली अर्हता त्यांच्याकडे नसल्याचे त्यांनी सांगितले आहे. पदविका अभ्यासक्रमातील अधिव्याख्याता इंग्रजी या पदाची शैक्षणिक अर्हता व पदवी अभ्यासक्रमातील अधिव्याख्याता इंग्रजी या पदाची शैक्षणिक अर्हता यामध्ये भिन्नता असल्याचे दिसून येते.

०४. श्री. वारंगुळे यांची बदली दि. ३०.०६.२०२४ रोजी करण्यात आली आहे परंतु सदरील बदली बदली आदेश हे संबंधितास दिनांक १९.०७.२०२४ रोजी ईमेलद्वारे प्राप्त झाल्याचे कागदपत्रावरून दिसून येते.

०५. पदविका अभ्यासक्रमातील अधिव्याख्याता इंग्रजी या पदाची शैक्षणिक अर्हता व पदवी अभ्यासक्रमातील अधिव्याख्याता इंग्रजी या पदाची अर्हता वेगवेगळी असल्याने पदविका संस्थेतून पदवी संस्थेत बदली करणे नियमास धरून नसल्याचे समितीची धारणा आहे.

०६. श्री. वारंगुळे यांनी संस्थेकडे AICTE च्या नियमाप्रमाणे वेतन व वेतनातील फरक देण्याबाबतची मागणी संस्थेकडे GRC अर्जापुर्वी केल्याचे दिसून येत नाही. परंतु संस्था स्तरावरील समितीकडे सादर केलेल्या दि. २०.७.२०२३ च्या तक्रारीत मागणी केल्याचे दिसून येते.

०७. संस्था क्रमांक ११५८/Yashwantrao Chavan

Institute Of Polytechnic, Beed या संस्थेने महाराष्ट्र राज्य तंत्रशिक्षण मंडळाच्या नियमानुसार शिक्षकीय पदास मंडळाची मान्यता घेणे आवश्यक आहे. परंतु सदरील संस्थेने शिक्षकीय पदावरील शिक्षकास महाराष्ट्र राज्य तंत्रशिक्षण मंडळाची मान्यता (Staff Approval) घेतली नसल्याचे दिसून येते.

अपिलकार तसेच प्रतिवादी यांचे म्हणणे विचारात घेऊन गठीत अपिल समिती खालील प्रमाणे निर्णय देत आहे.

श्री. अतुल वसंतराव वारंगुळे यांची संस्था क्रमांक ११५८/Yashwantrao Chavan Institute Of Polytechnic, Beed या संस्थेत अधिव्याख्याता इंग्रजी या पदावर संस्थेने कार्यालयीन आदेश देऊन वेतनश्रेणी प्रमाणे नियुक्ती दिल्याचे दिसून येते, तसेच संस्थेने अदा केलेल्या वेतनाच्या विवरणपत्रानुसार त्यांना सहाव्या वेतन आयोगाच्या वेतनश्रेणी प्रमाणे वेतन अदा केल्याचे तसेच श्री. वारंगुळे यांनी सादर केलेल्या बँक स्टेटमेंटवरून दिसून येते. परंतु त्यांना देण्यात आलेले वेतन हे नियमाप्रमाणे नसल्याने थकीत वेतनातील फरक देण्यास पात्र आहेत.

तसेच त्यांची बदली ही पदविका अभ्यासक्रम संस्थेतून पदवी अभ्यासक्रम संस्थेत केल्याचे दिसून येत असून पदविका अभ्यासक्रम व पदवी अभ्यासक्रमातील अधिव्याख्याता इंग्रजी या पदावर नियुक्तीच्या शैक्षणिक अर्हतेमध्ये फरक असल्याने सदर बदली नियमास धरून नसल्याचे दिसून येते.”

So far as regards petitioner Nitin Gaikwad is concerned, the GRAC upheld the order of his transfer.

6. This is how the Writ Petitioners have now been before us and the petition by the management assailing the order of the GRAC.

7. So as to avoid the repetitions, we do not propose to

advert to the submissions of the learned Advocates appearing for the petitioners/ employees since those would be our reasons in support of the judgment and order.

8. Learned Senior Advocate for the management would submit that, the appointment of the petitioners was not in accordance with law. No advertisement was published in the daily, inviting applications. The appointment of the petitioners/ employees was on temporary and contractual basis without adopting selection process. The selection committee required to be constituted, was in fact not constituted to conduct recruitment process. Their appointments have not been approved by the Maharashtra State Board for Technical Education (MSBTE), competent authority. The appointment was on consolidated and fixed payment of salary. He adverted our attention to AICTE Regulations to be followed by each educational institute for recruitment of its staff (teaching and non-teaching staff). He would further submit that, the petitioners are not governed by AICTE (All India Council for Technical Education). Had their appointments been lawful, they would at the most be governed

by the rules and regulations of MSBTE, M.S., Mumbai, but since their appointments are illegal since its inception and non est, they are not entitled to any kind of monetary reliefs such as salary in terms of Pay Commission recommendations.

9. Certain documents were brought to our notice. He would further submit that, one of the petitioners/ employee appears to have relied on forged appointment order. The Appellate Committee relied on it without there being original. He would further submit that, the Appellate Committee did not at all consider the case of the management. According to him, the petitioners indulged in misbehaviour. As against the petitioner Shri Atul Warangule, a complaint was received from a girl student. Her parents did not wish to take the matter to logical end. The management, however, conducted a discreet enquiry and Shri Warangule was found to have indulged in misbehaviour. Both the petitioners, in spite of having been transferred, did not join the transferred place. This itself amounts to misconduct on their part. They indulged in manipulating bio-metric attendance procedure. The learned Senior Advocate concedes to the position that if the petitioners/

employees were found to have been duly appointed in terms of Rules and Regulations approved by MSBTE, they would be entitled for the pay in terms of 5th, 6th and 7th Pay Commission recommendations.

10. The learned Senior Advocate would further submit that, one of the petitioners in fact was appointed in the year 2012. He brought to our notice the Bank statement of the petitioner Shri Warangule to point out that, in the year 2009, he received salary to the tune of Rs.4000/- from some other educational institute. On the question of transfer, he would submit that, the petitioners have been indulged in misbehaviour and hence, are not entitled to the relief. The learned Senior Advocate would submit that the petition filed by the management is a complete reply to the case of the petitioners/ employees. He took us through all the documents relied on in chronological order. He would submit that, a mischief was played by the respondents/ employees and certain documents which were uploaded on the website of the management/ institute have been obtained by them.

According to him, one of the Clerks in the office might have joined hands with these petitioners/ employees and, therefore, those documents indicating them to have been given notices to attend certain functions at the College premises, were there. He would submit that, when the petitioners were in fact relieved on 30 June itself, they were expected/ supposed to join their transferred place and thereafter they should have approached the Court of law to raise their grievance. He would further submit that, the Principals of the Colleges to which these petitioners were transferred, had made a request that there was shortage of teaching staff of concerned subjects and, therefore, services of both of them were required. He would submit that the transfer order was plain and simple, and, therefore, no reasons have been given therein. No malafides could be attributed to the management in regard to their transfers. These petitioners were not on duty for little over two and half years. They would, therefore, not be entitled to any monetary claim for the said period. While they approached this Court by filing writ Petitions No.9345/2023 and 9346/2023, this Court did not

grant any interim relief. He would further submit that, the management had called upon the petitioners to furnish certain documents. He relied on the requisition dated 18/4/2024. In response thereto, the petitioner Shri Warangule only submitted three documents. He did not place before the management any order of his appointment. He would further submit that, unless the petitioners establish to have been duly appointed to the post, then and then only they would be entitled to the benefits attached to the very post. He would further submit that, the transfer is an incident of appointment/ service and judicial review thereagainst should not be made readily unless lack of bonafides are shown.

11. The learned Senior Advocate relied on the following authorities to buttress his submissions.

- (1) Writ Petition No.14395/2019 (Bhartiya Kamgar Sena & anr. Vs. State of Maharashtra & ors. with companion petitions, decided on 3/3/2025)
- (2) State of Manipur & ors. Vs. Y. Token Singh & ors. (2007) 5 SCC 65
- (3) State of Orissa & anr. Vs. Mamata Mohanty (2011) 3 SCC 436

- (4) Kusheshwar Prasad Singh Vs. State of Bihar & ors.
(2007) 11 SCC 447
- (5) Talat Shikshan Mandal & anr. Vs. Aqueela Bano
Mohammad Moosa & ors. [2009 SCC OnLine Bom 1131]

12. We have considered the submissions advanced. Perused all the documents relied on. This Court is not sitting in appeal against the order passed by the GRAC. The petitions being under Article 226 of the Constitution of India, even we are not in agreement with some of the observations in operative order passed by the Appellate Committee, the petitioners would still be granted relief if they are found to be entitled thereto.

13. Both these petitioners/ employees have been serving with the respondent/ management since 2009 and 2011 respectively. An attempt was made to point out from the Bank Account statement of the petitioner Shri Warangule that he received salary from two different educational institutes. The fact is, however, that, both the said institutes were the sister concerns working under the very management. The learned Senior Advocate, on instructions, came around to

concede the said position. As such, we have no hesitation to observe that both these petitioners/ employees have been serving with the management – petitioner institute (Writ Petition No.8640/2024) since then respectively. The learned Senior Advocate was candid enough to concede that if the petitioners/ employees were duly appointed by following the process of law, then they would be entitled for the salary benefits in terms of the Pay Commission recommendations. This submission curtails our reasons.

14. So far as regards both the petitioners are concerned, we do not have their original appointment orders. As regards other petitioner namely Shri Nitin Gaikwad is concerned, learned Advocate for him placed on record copy of the advertisement indicating the applications were invited for the teaching and non-teaching staff, which were to be submitted on or before 23/6/2011. When we called upon the representative of the management to explain about this document, no counter thereto was submitted in that regard.

15. There are host of documents to indicate the

management has represented before the Government and other authorities that they have appointed these petitioners by following due process of law. They were shown to have been paid salary in terms of 5th Pay Commission recommendations. The documents at Page Nos.38 to 41 of Writ Petition No.11188/2024 are the documents submitted to the Fees Regulatory Authorities (FRA) for the year 2016-2017 to 2021. Then comes another document at Page 42, indicating these petitioners/ employees to have been regularly appointed and their appointment has been approved. According to us, by representing such status before the concerned authority would nothing short of mischief (so to say committed by the management, if they want to say that the petitioners/ employees have not been duly appointed by following the prescribed procedure). One another document was brought to our notice indicating the management had directed the Bank in the year 2011 to credit the amount in the Bank Account of these employees/ petitioners salary in terms of 6th Pay Commission recommendations. This makes all the difference. If at all the appointments of these petitioners have not been

made by following due procedure, the management shall blame to itself. These petitioners have been admittedly serving with the management since 2009 and 2011. After a gap of 16-17 years, we are not inclined to unsettle the position. It is true that in the case of Y. Token (supra), the Apex Court has observed :

16. The offers of appointment issued in favour of the respondents herein were cancelled inter alia on the premise that the same had been done without the knowledge of the Revenue Department of the State. No records therefor were available with the State. As noticed hereinbefore, an inquiry had been made wherein the said Shri Tayeng, the then Commissioner of Revenue stated that no such appointment had been made to his knowledge. The State proceeded on the said basis. The offers of appointment were cancelled not on the ground that some irregularities had been committed in the process of recruitment but on the ground that they had been non-est in the eye of law. The purported appointment letters were fake ones. They were not issued by any authority competent therefor.

18. Moreover, it was for the respondents who had filed the writ petitions to prove existence of legal right in their favour. They had inter alia prayed for issuance of a writ of or in the nature of mandamus. It was, thus, for them to establish existence of a legal right in their favour and a corresponding legal duty in the respondents to continue to be employed. With a view to establish their legal rights to enable the High Court to issue a writ of mandamus, the respondents were obligated to establish that the appointments had been made upon following the constitutional mandate adumbrated in Articles 14 and 16 of the Constitution of India. They have not been able to show that any advertisement had been issued

inviting applications from eligible candidates to fill up the said posts. It has also not been shown that the vacancies had been notified to the employment exchange.

21. The appointing authority, in absence of any delegation of power having been made in that behalf, was the State Government. The Government Order dated 12.01.1998 did not delegate the power of appointment to the Commissioner. He, therefore, was wholly incompetent to issue the appointment letters.

23. We, as noticed hereinbefore, do not know as to under what circumstances the orders of appointments were issued.

25. In *Shrilekha Vidyarthi (supra)*, this Court was dealing with a question in regard to continuance of the Law Officers. The question which arose herein was not raised. It was held:

"34. In our opinion, the wide sweep of Article 14 undoubtedly takes within its fold the impugned circular issued by the State of U.P. in exercise of its executive power, irrespective of the precise nature of appointment of the Government Counsel in the districts and the other rights, contractual or statutory, which the appointees may have. It is for this reason that we base our decision on the ground that independent of any statutory right, available to the appointees, and assuming for the purpose of this case that the rights flow only from the contract of appointment, the impugned circular, issued in exercise of the executive power of the State, must satisfy Article 14 of the Constitution and if it is shown to be arbitrary, it must be struck down. However, we have referred to certain provisions relating to initial appointment, termination or renewal of tenure to indicate that the action is controlled at least by settled guidelines, followed by the State of U.P., for a long time. This too is relevant for deciding the question of arbitrariness alleged in the present

case.

35. It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind."

31. In Kendriya Vidyalaya Sangathan_(supra), it was held:

"It is clear that if after the termination of services of the said Dr. K.C. Rakesh, the orders of appointment are issued, such orders are not valid. If such appointment orders are a nullity, the question of observance of principles of natural justice would not arise"

16. While in case of Mamata Mohanty (supra), the Apex Court observed :-

35. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto

should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide: Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & Ors. AIR 1992 SC 789; State of Haryana & Ors. v. Piara Singh & Ors., AIR 1992 SC 2130; Excise Superintendent Malkapatnam, Krishna District, A.P. V. K.B.N. Visweshwara Rao & Ors., (1996) 6 SCC 216; Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors., AIR 1998 SC 331; Binod Kumar Gupta & Ors. v. Ram Ashray Mahoto & Ors., AIR 2005 SC 2103; National Fertilizers Ltd. & Ors. v. Somvir Singh, AIR 2006 SC 2319; Telecom District Manager & Ors. v. Keshab Deb, (2008) 8 SCC 402; State of Bihar v. Upendra Narayan Singh & Ors., (2009) 5 SCC 65; and State of Madhya Pradesh & Anr. v. Mohd. Ibrahim, (2009) 15 SCC 214).

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.

37. It is a settled legal proposition that if an order is bad in

its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (vide: Upen Chandra Gogoi v. State of Assam & Ors., AIR 1998 SC 1289;

17. It needs no mention that, the observations or findings recorded by the Apex Court are to be read in the setting of the facts of the respective case. The facts in case of Y. Token (supra) indicate that the appointment letters were fake and those were non est in the eye of law. The contention of the management in that case was upheld by the Apex Court. When the appointment was on the basis of fake appointment order, such appointment would necessarily be non est in the eye of law. So is not the case in hand. The petitioners/ employees have worked with the institute admittedly for little over 15 years. As was rightly submitted by the learned Advocate for the petitioners/ employees that it would not lie in their mouth to turn around and now to say that the

appointments were not in accordance with law, the management, for such illegalities, if any, is liable for penal consequences.

18. In the facts and circumstances, we find the petitioner Shri Nitin Gaikwad was duly appointed. The management did not place on record any document, which must be in its possession, indicating what procedure was followed for appointing the petitioner Shri Warangale. Even we accept the case of the management that the appointment was without following due process of law and was on a consolidated pay, with the passage of time i.e. after the petitioners to have continued to serve the management, unabated, the management now cannot resile from granting them the benefits of the pay-scale as recommended by the 5th, 6th and 7th Pay Commission recommendations. More so when the measurement informed in writing the FRA the petitioners to have been appointed by due process of law and mere paid salary in terms of Pay Commission recommendations. It is made clear that, in the facts and circumstances of this case only we are observing so. So far as regards monetary benefits

to be paid to the petitioners as they have claimed in the petition, we restrict their claim for a period of three years next before they first made complaint before the Grievance Committee, which was mandatory for them to first raise the grievance as regards their service conditions.

19. Since, in any case, the petitioners are entitled to receive salary in terms of the Pay Commission recommendations, we did not dwell at length on the issue as to whether they were governed by the Rules and Regulations approved by AICTE or MSBTE. We, however, prima facie find them to have been governed by the Rules and Regulations approved by AICTE. We did not accept the contention of the learned Senior Advocate that for technical education, language was not the subject. The record contrary to the submissions made by learned Advocate was pointed out to our notice. Be that as it may, since the petitioners/ employees are held to be entitled for pay-scale in terms of Pay Commission recommendations, and the last one being the recommendations made by 7th Pay Commission, being in vogue, we direct the management to pay the petitioners/

employees salary/ difference of salary in terms of the 7th Pay Commission recommendations with effect from the period of three years next before their presenting the complaint to GRC i.e. from 12/7/2023.

20. Needless to mention, the right to receive interest on delayed payment has been recognised as a constitutional right. A reference in that regard can be made to the Apex Court judgment in case of **S.K. Dua Vs. State of Haryana & anr. (2008) 3 SCC 44**. We, therefore, direct the respondent-management to pay the arrears of salary to the petitioners with interest thereon at the rate of 6% p.a. from the date of the petitions to the date of actual payment. The management shall continue to pay each month's salary to the petitioners as well.

21. So far as regards question of transfer of both the petitioners/ employees are concerned, we are conscious of the fact that Court should not readily interfere with the same. Although the submission was that there was a discreet enquiry. The petitioner Shri Warangale was found to have misbehaved, it appears that, the report of the Discreet Committee has not

seen the light of the day. No tangible proof of having conducted the discreet enquiry was placed on record. It is true that there are documents to indicate that after transfer order was passed, these employees/ petitioners were informed to join their respective place of transfer. They did not join there. During this period, they did not report on duty. They appear to have reported on duty at their earlier station only. There is no record to indicate that they were on duty during this period. It is but natural that while the management was not allowing them to join and they were transferred, they cannot and they were not expected to be working at the station at which they were working before the transfer orders were issued. It is also true that this Court did not pass any interim order in Writ Petitions No.9346 and 9345/2023.

22. The record indicates that the petitioners have raised grievance about having not been paid the salary in terms of the Pay Commission recommendations and they have raised number of grievances with the management and thereafter only the transfer orders have been issued. The transfer orders are silent to state any reason for their transfer.

Although the same are said to be plain and simple, we find those orders lack bonafides. We are, therefore, inclined to interfere with the transfer orders as well and set aside the same.

23. It is reiterated that, both the petitioners/ employees were agitating their grievance and, therefore, the management transferred them. The reason that there was shortage of English Teacher was only on paper but nothing to that effect was shown indicating necessity and shortage of staff serving at the College at Aurangabad, whereat Shri Warangale has been transferred. This is one of the reasons for us to set aside his transfer.

24. For all the aforesaid reasons, the Writ Petition No.8640/2024 fails. It is dismissed. Rule discharged.

25. Writ Petitions No.11188/2024 and 11176/2024 are allowed. Transfer of both the petitioners/ employees are hereby set aside. The respondent- management shall allow them to resume duties on the post they held before their transfer. The management shall pay the petitioners/

employees salary in terms of 7th Pay Commission recommendations from the period from 12/7/2023 till date and shall continue to pay the same. The respondent- management shall pay interest at the rate of 6% p.a. on the quantum of arrears of salary from the date of petition to the date of actual payment. Rule made absolute in above terms.

(SANDIPKUMAR C. MORE, J.)

(R.G. AVACHAT, J.)

fmp/-