

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 8133 OF 2016

Anuradha Deshmukh

...Petitioner

Vs.

1. Yashwantrao Chavan Maharashtra
Open University Through its
Registrar

2. State of Maharashtra

3. Joint Director, Higher Education,
Pune Region, Pune

4. Director of Higher Education,
State of Maharashtra, Pune

...Respondents

Mr.Atharva Dandekar a/w Ms.Ashmita Goradia and Ms.Kursheeda
Shaikh i/b. Ms.Yogita R. Singh, Advocates for Petitioner.

Mr.Mihir Govilkar a/w Ms.Sanika Kurlekar, Advocates for Respondent
No.1–University.

Ms.Kavita N. Solunke, Addl.G.P. a/w Smt.R.A.Salunkhe, AGP, for
Respondents–State.

CORAM : M. S. KARNIK AND
S. M. MODAK, JJ.

DATE : 06th AUGUST 2026

JUDGMENT (PER S. M. MODAK, J.) :-

1. The two issues involved in this petition. They are :-

- a) The right of the Petitioner to claim encashment of unutilized earned leave at the time of her retirement;
- b) A right of University to seek recovery of an amount of Rs. 4,05,222/- towards excess payment.

This amount is recovered from the Petitioner at the time of her superannuation and the Petitioner contends that she was forced to pay this amount to the University, because University was not ready to issue a No Due Certificate (NDC, for short). It is her case that if NDC is not issued, her retirement benefits could not have been released. There is dispute by Mr. Govilkar, learned counsel for the Respondent No. 1-University that in fact the Petitioner deposited an amount of Rs. 4,05,222/- voluntarily and in that sense, it cannot be treated as recovery. We are not impressed by these arguments. We will deal with this in later part of the judgment.

2. On this background, the petition is filed by the Petitioner seeking the relief of quashing and setting aside the Resolution dated 10.10.2015 passed by the Board of Management of Respondent No. 1 refusing to grant encashment of earned leave, and to direct Respondent No. 1-University to pay an amount of Rs. 9,33,560/- alongwith interest of 12% p.a. being her entitlement to encashment of unutilized

earned leave. The Petitioner also prays for directing the Respondent No. 1-University to refund an amount of Rs. 4,05,222/- recovered from her.

3. The petition is strongly opposed by the University by filing an affidavit-in-reply. There is also rejoinder filed on behalf of the Petitioner.

4. On this background, we have heard learned advocate Shri Dandekar for the Petitioner, learned Advocate Shri Govilkar for Respondent No. 1-University and Ms. Solunke, learned Addl. GP for Respondent-State.

5. The relevant facts need to be stated. They are as follows:-

- a) Petitioner resumed as a lecturer in Respondent No. 1-University in the year 1990.
- b) Respondent No. 1 is a non-agricultural open University and it does not receive any grants from the Government. It is self financed University.
- c) Petitioner worked on different posts right from Lecturer and retired as Professor. The Petitioner also received Senior pay scale, and this is disputed by the University at

the time of Superannuation by contending that the Petitioner is not entitled to receive Senior pay scale because she has not completed eight years of service on the post of Lecturer.

- d) From the post of Lecturer, the Petitioner was promoted to the post of Reader and thereafter, she was promoted to the post of Professor. She retired on 31.07.2014.
- e) When the proposal of the Petitioner for getting the benefit of Sixth pay commission was sent, the Joint Director Higher Education, Pune as per his letter dated 19.11.2012 has raised certain objections about improper granting of Senior pay scale because the Petitioner has not worked for eight years from 02.05.1990, secondly though the Petitioner was granted leave without salary from 01.01.1996 till 31.12.1997, how this period was considered while granting her annual increment. Thirdly, the Petitioner is working in a vacation department and as per Rules such employees are not entitled to earned leave, whereas in her service book, there is a remark that

she is granted earned leave in the proportion of 2:1, which is against the Rules.

f) On all these grounds, the Joint Director directed the Registrar of University to verify the proposal. All this happened at the time of granting 6th Pay Commission benefit.

g) On this background, the Board of Management of Respondent No. 1-Society in their Resolution dated 10.10.2015 has refused the request of the Petitioner for encashment of unutilized earned leave. And under protest the petitioner deposited Rs. 4,05,222/- on 11/11/2014.

6. On this background, the Petitioner has filed Writ Petition as narrated above. Learned Advocate Shri Govilkar has objected for grant of those reliefs on various grounds.

Encashment of earned leave

7. Learned Advocate Mr. Dandekar has invited our attention to two letters written by his client. One is dated 04.07.2014 and the second is dated 19.03.2015 which is addressed to the Hon'ble Vice Chancellor.

8. According to Mr. Govilkar, the Circulars issued by the Government are binding on the University and its employees. He invited our attention to :-

(a) the letter issued by the Directorate of Education to Registrar of all non-agricultural Universities in the Month of October 2008. Registrars were directed to amend the provisions in the Statute for deletion of grant of earned leave within a period of one month from the receipt of the letter, and if the amendment is not carried out and if amount is required to be paid, then that amount would be deducted from the grant given to the University.

(b) Similar is the order issued by the Section Officer of the Department of Higher and Technical Education dated 07.10.2008. The said order was issued on the basis of the directions issued by Aurangabad bench in case of ***Ramdas Bhilla Patil and Others Vs. The State of Maharashtra*** in Writ Petition No. 2671 of 2006. The provisions of North Maharashtra University Statute No. 424(C). The letter records that the Lecturers working in the University are

working in the vacation department and as such they are not entitled for earned leave. The direction was given to amend it from the retrospective effect.

Learned Advocate Shri Govilkar has invited our attention to the provisions of the Section 29 and Section 30 of the Yashwantrao Chawan Maharashtra Open University Act, 1989. Section 29 deals with financial control of State Government. Whereas Section 30 deals with the procedure for appointment of a employee and it shall be by way of written contract. Mr. Govilkar also invited our attention to the provisions of Section 31 which talks about referring the dispute to the Tribunal of Arbitration.

9. Now the issue is whether this contract of service provides for earned leave and its encashment. Our attention is not invited to any contract executed in between the Petitioner and University. So the issue is whether the Petitioner is entitled to Earned Leave, under what provisions and whether she is entitled for encashment.

10. It is true Respondent No. 1 is constituted as per the provisions of Yashwantrao Chavan Maharashtra University Act, 1989. It is true this University is different from other Universities established under

different Acts. It has introduced distance education system. It is true if University has to create new post of any staff, they need approval of the Government. Even they require approval of the Government for revising pay allowances. There is limited control of Government over activities of the University.

11. It is very well true Section 21 of University Act lays down certain subjects over which the Board of Management can frame statute. Relevant clause (d) is as follows :-

- (d) the manner of appointment of teachers and other employees of the University, their emoluments, qualifications, code of conduct and other conditions of service including the manner of termination of service and other disciplinary action.

Whereas Section 22(1) prescribes first statutes as per second schedule are applicable and as per sub-Section (2), Board of Management may make new statutes. When we have read the statutes laid down in second schedule except manner of appointment of teachers and conditions of service, there are no provisions for entitlement for leave. Even Section 30 of the said Act provides manner of appointment of teachers. It is by way of written contract. It is true prior to filing of

petition, the Petitioner has made a lot of correspondence with the University regarding wrongful refusal of encashment of earned leave and wrongful recovery of excess amount, but University has not paid heed to those demands. We do not think that Section 31 of the said Act will come in the way of the Petitioner thereby challenging the action on the part of University.

12. Admittedly, the University has not framed any statute about grant of earned leave and its encashment. This is not disputed. Our attention is invited by Mr. Dandekar to the circular dated 10.02.1996 by which the University has adopted Maharashtra Civil Service Rules. According to him, as per latest resolution dated 15.01.2001 issued by the Government of Maharashtra, Finance Department, the earned leave which can be encashed is 300. This Circular is modified by the University by issuing a fresh Circular dated 19.09.1997. Learned Advocate Mr. Govilkar is right.

13. Mr. Dandekar has made alternate submission on the basis of the said Circular dated 19.09.1997. Clause No. 2 is relevant. It provides:-

- a) During the vacation period the concerned Head has got authority to recall the employee based on exigency of

work.

b) An employee who is recalled for work during his vacation will be allowed to avail Earned leave as per his convenience in the proportion of 2:1 of the number of days worked.

c) With the introduction of Vacation Leave for academic staff from their entitlement for Earned leave stands cancelled.

14. According to learned Advocate Mr. Dandekar, in fact till 2013 the Petitioner was only regular faculty member in her department and she was incapacitated from availing any vacation till 2013. According to him, the earned leave standing to her credit at the time of superannuation comes to 219 days. He invited our attention to the copy of the service book of the Petitioner.

15. Though learned Advocate Mr. Govilkar has also relied upon same Circular to the effect, the teaching faculty who gets vacation leave is not entitled to get earned leave, but in respect of the averment in para no. 7 of the petition, he fairly admits that there is no denial to those averments.

16. It is true the Government has instructed all the Universities to amend the Rules about earned leave to the teachers working in

vacation department. As they are entitled for vacation, they cannot be granted earned leave. It is true the University has issued the Circular dated 19.09.1997 but at the same time, it is true earned leave is made admissible to the teachers who are called during vacation. If the record relied upon by the Petitioner is perused, one fact is clear that she has worked during vacation and this fact is not controverted by the university. If it is so her claim for encashment of earned leave ought not to have been rejected.

17. We have gone through the observations in case of *State of Maharashtra and Others Vs. Nowrosjee Wadia College and Others*¹.

We have perused this judgment. No doubt it is true we observed that 1981 Rules relating to earned leave are not applicable to University teachers and teachers of affiliated college, because they are not Government servants (para no. 23). This observation is not applicable to the facts of this case, because facts are different. In case of *State of Maharashtra and Others Vs. Nowrosjee Wadia College and Others* (supra) the issue was reimbursement of the amount to the college (which is paid to the teacher towards encashment of earned leave) from

1 (2013) 11 Supreme Court Cases 762

the State Government. It is observed the College can reimburse the amount from the Government provided the teacher must be entitled to encashment of unutilized earned leave. In the said judgment, the provisions of statutes framed by University of Pune were in question and relevant statutes are 424 and 424-C. In case before us admittedly there are no statutes and Maharashtra Civil Service Rules are adopted by the University as per Circular dated 10.02.1996. No doubt this is modified on 19.09.1997 still the Petitioner is entitled for encashment as she has worked during vacation and it is undisputed. So the ratio is not applicable to the facts before us.

18. From the above discussion, what is gathered is the teaching faculty is working in vacation department and as such they are not entitled for earned leave. At the same time, this Petitioner has not availed of vacation till 2013 and it is undisputed. If that is so then Board of Management was not justified in refusing the prayer for encashment of the earned leave.

19. The communication of the said decision vide letter dated 04.12.2015 is not on the basis of the decision taken by considering the existing circulars.

20. The amount claimed is Rs. 9,33,560/- with 12% interest. We can only say that the Petitioner is entitled for encashment of the earned leave for the period as per the Rules. We are not granting interest of 12%, but we are granting it 6% from the date of retirement till its payment.

Refund of excess amount

21. Mr. Govilkar, learned advocate in order to support unjustified payment, invited our attention to the following documents :-

- a) note dated 17.07.2014 given by Finance Officer of the University thereby forwarding modified statement of difference in salary.
- b) Certificate dated 11.11.2014 issued by Finance Officer acknowledging payments of Rs. 4,05,222/- paid by Petitioner towards excess payment of salary received by her.
- c) Communication dated 21.12.2015 sent by Registrar to the Petitioner informing her that decision on 103 cases of employees will be communicated to her.
- d) Letter dated 19.11.2012 addressed by Joint Director, Higher Education addressed to Registrar of Respondent No.1- University asking him to reverify file of the Petitioner before granting 6th pay benefit.

22. Mr. Govilkar, learned advocate emphasized that Petitioner has not served continuously for 8 years on the post of Lecturer prior to getting benefit of higher scale. In fact record suggests, placement committee of the University has recommended her name on 24.05.1193 and Board of Management has approved it. He has invited our attention to the various averments from his affidavit. We have perused it. They only deal with appointment of Petitioner on various posts, non entitlement to earned leave and the University not receiving any grant from the Government.

23. Mr. Dandekar, learned Advocate has invited our attention to the following documents:-

- a) Representation dated 30.06.2015 made by the Petitioner to the Hon'ble Vice Chancellor praying for reimbursement of recover and encashment of Earned leave.
- b) Representation dated 27.10.2014 addressed by the Petitioner to the Registrar of Respondent No. 1- University protesting for recovery of Rs. 4,05,222/-.
- c) Letter dated 09.02.2016 sent by the Petitioner addressed to the Registrar of Respondent No. 1-University requesting to again consider her request or else she will resort to legal remedies.

24. Mr. Dandekar, learned Advocate justified all the benefits granted to his client during service and he submitted higher scale was granted after completing formalities of checking service record and interview. His contention is University after gap of almost 20 years recommendation on 24.05.1993 and recovery in the year 2014 is not justified in recovering the amount. His contention is the Petitioner cannot be blamed for granting Senior scale and it is the concerned authorities of University who are responsible for granting higher scale. According to him, they ought to have verified the service record of his client from the perspective of 'performing continuous service of 8 years on the same post of Lecturer'. According to him, if they have not performed their duties properly they cannot take the shelter of objection raised by Joint Registrar, Higher Education. To buttress his submission, he relied upon the observations in case of *State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc.* in Civil Appeal No. 11527 of 2014, dated 15.12.2014. He contend that the case of the Petitioner is governed as per category (ii) and (iii) of para no. 12 of the said judgment.

25. According to learned Advocate Mr. Govilkar, the ratio in said

judgment is not applicable because in this case, amount deposited by the Petitioner is not by way of recovery, but it is deposited voluntarily. Mr. Dandekar, invited our attention to the averments in rejoinder. She has averred the circumstances which compelled her to deposit the amount of Rs. 4,05,222/-.

26. We have gone through the pleadings, documents and gone through the ratio. We feel that recovery of the Rs. 4,05,222/- cannot be justified. We do not accept the submissions of learned advocate Mr. Govilkar that “the deposit by the Petitioner cannot be considered as recovery”.

27. In ordinary parlance what is meant by the word ‘recovery’. It means “*one person owes some amount to another and it is paid by the person who owes it*”. It may be recovered by adopting certain measures. In this case, Joint Director Higher Education as per his letter dated 19.11.2012 has brought it to the notice of Registrar of Respondent No. 1-University to verify higher pay scale granted to the Petitioner and other aspects. It was processed by the authorities of University and statement of excess payment of salary was also prepared. The Petitioner retired on 31.07.2014. The Petitioner is entitled to get other retirement

dues. She has explained the circumstances which compelled her to deposit Rs. 4,05,222/- and she did deposit the amount on 11.11.2014. These circumstances are sufficient to indicate that she has deposited this amount unwillingly. So certainly it falls within purview of recovery. We understand this objection was taken by learned Advocate Mr. Govilkar because he wants to protect the University from financial responsibility which will be saddled on his client due to any adverse order passed against them. But we do not find any merit in the submission.

28. The Hon'ble Supreme Court decided bunch of petition in ***State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc.*** (supra), held balanced employers right to recover unjustified payment to an employee on one hand and hardship caused to an employee in paying the amount on another hand. The Hon'ble Supreme Court also considered the factor '*who is weaker party amongst the two without causing serious detriment to other.*'. The Hon'ble Supreme Court also considered the doctrine of equality as found in the Constitution. Earlier judgments wherein recovery initiated after long period of time was set aside. After considering all the factors, five guidelines were laid

down wherein recoveries are unjustified. Amongst them guideline No.

(ii) and (iii) is relevant. It is reproduced below:-

(i)

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

29. The case of the Petitioner fulfills both the criteria. Admittedly the amount of Rs. 4,05,222/- is recovered within one year earlier to retirement. So also more than five years have elapsed from the date of grant of higher scale. As such recovery initiated cannot be justified and need to be set aside. The Petitioner is entitled to refund of this amount. We have decided the issue of recovery only on the touchstone of time-barred recovery as laid down in *State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc.* (supra) judgment and there is no occasion to go into the issue of entitlement of higher scale to the Petitioner and other objections. But this objection, we are considering while not accepting claim for interest on this amount. We have also considered the fact that Respondent No. 1-University is not getting the

grant from the Government atleast at the relevant time. Hence, we pass the following order:-

ORDER

- i) Writ Petition is allowed.
- ii) Petitioner is entitled for encashment of the pending earned leave as per the Rules at the rate of 6% from the date of retirement till its payment within a period of twelve weeks from the date of communication of this order.
- iii) The recovery of Rs. 4,05,222/- done by Respondent No. 1-University from the Petitioner is set aside.
- iv) The Respondent No. 1-University is directed to refund the amount of Rs. 4,05,222/- to the Petitioner within the period of twelve weeks from the date of communication of this order.
- v) The Petitioner to communicate this order to Respondent No. 1-University.

30. With the above observations, the present Writ Petition is disposed of. Rule is made partly absolute.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)