

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1134 OF 2015

SHALINI SATISH NARKHEDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for petitioner : Mr. A. R. Syed h/f Mr. S. P. Brahme
AGP for respondent Nos. 1 and 2 : Mr. S. S. Tope
Advocate for respondent No. 3 : Mr. Y. B. Bolkar h/f Mr. A. B. Girase
Advocate for respondent Nos. 4 and 5 : Mr. A. V. Hon

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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 28th JULY, 2015

P.C. :-

1. Mr. Syed, learned counsel for the petitioner submits that the petitioner is the ex-employee of respondent No. 4 Educational Institution. She is rendering services as teacher with respondent No. 5 College. Respondent No. 5 College is aided college and is affiliated to respondent No. 3 University. The Pune University statute No. 424(3) and 424(C) provides for the payment of Unutilized Earned Leave to the superannuating teacher. The Pune University statute is adopted by respondent No. 3 University. The Management is under an obligation to pay the said amount. The learned counsel further submits that the institution is an aided institution. As such, it is also the responsibility of the State to pay the said amount. The learned counsel relies on various decisions of this Court and that of the Apex

Court in the matter of **Khandesh College Education Society Vs. Arjun Hari Narkhede**, reported in **2011 (7) SCC 172**.

2. Mr. Hon, learned counsel for respondent Nos. 4 and 5 submits that the institution is 100% aided one. As such, the institution is entitled to be reimbursed by the Government as it gets the salary and non-salary grants. The learned counsel further submits that the financial position of respondent Nos. 4 and 5 is precarious and it would not be possible to pay such amount to the petitioner.

3. Learned AGP submits that in view of the judgment of the Apex Court in case of *State of Maharashtra and others Vs. Nowrosjee Wadia College and others*, in Civil Appeal Nos. 531-532 of 2013, it has been held by the Apex Court that the State is not required to reimburse the amount payable by the institution in respect of leave encashment.

4. Mr. Bolkar, learned counsel for respondent No. 3 University accepts that the Pune University Statutes have been adopted by respondent No. 3 University.

5. The matter in issue involved in the present writ petition is no longer *res-integra*. The entitlement of the petitioner for the Earned Leave Encashment of the Unutilized leave payable at the time of

superannuation, is an accepted fact. Even the Statutes provide for payment of Unutilized Earned Leave to the superannuating teacher.

6. It is the primary responsibility of the Management / Institution where the petitioner is working to pay the said amount. In view of the judgment of the Apex Court in the case of *State of Maharashtra and others Vs. Nowrosjee Wadia College and others (supra)*, the State is not bound to reimburse the said amount to the institution.

7. In light of the above, we pass the following order :

- I. The respondent Nos. 4 and 5 shall determine the amount payable to the petitioner with regard to the benefit of Encashment of Unutilized Earned Leave, expeditiously and preferably within a period of three (3) months from today.
- II Upon determination of the amount, the respondent Nos. 4 and 5 shall pay the said amount to the petitioner within a period of three (3) months thereafter alongwith interest at the rate of 9% per annum simple interest from the date of her entitlement till the payment.
- III. The writ petition accordingly disposed of with aforesaid observations and directions. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)