

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4016 OF 2010

1) Shikshan Prasarak Sanstha
Sangamner, Tal : Sangamner,
Dist : Ahmednagar,
Through its Secretary.

2) Sangamner Nagar Palika Arts
D.J.Malpani Commerce and
B.N. Sarda Science College,
Sangamner, Tal : Sangamner,
Dist : Ahmednagar,
Through its Principal.

..Petitioners

VERSUS

1) The State of Maharashtra,
Through its Secretary,
Higher Education Department,
Mantralaya, Mumbai.

2) The Director of Higher
Education, Maharashtra
State, Pune.

3) Joint Director of Higher
Education. Pune Division,
Pune.

4) The University of Pune,
Through its Registrar.

5) Dr. Alimulla Khan Kalimulla
Khan Vakil, r/o. c/o. A.A. Vakil,
Naikwadpura, Chandwad,
Dist : Nashik.

..Respondents

WITH WRIT PETITION NO.3598/2010

The Bhaskar Pandurang Hiwale
Education Society, Ahmednagar
Station Road, Ahmednagar
Through its Secretary
Shri Philip Barnabas

.. Petitioner

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai
- 2) University of Pune
Ganesh Khind
Pune 411 007
Through its Registrar
- 3) Prof. Kalu Paraji Jadhav,
Age 67 years, Occ. Pensioner,
R/o. Prabodhan Housing Society,
Burudgaon Road, Ahmednagar
Dist. Ahmednagar

.. Respondents

WITH
WRIT PETITION NO.3599/2010
WITH CIVIL APPLICATION NO.8547/2014
IN WRIT PETITION NO.3599/2010

The Bhaskar Pandurang Hiwale
Education Society, Ahmednagar
Station Road, Ahmednagar
Through its Secretary
Shri Philip Barnabas

.. Petitioner

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai
- 2) University of Pune
Ganesh Khind
Pune 411 007
Through its Registrar
- 3) Prof. Raosaheb Vikramrao Palwe,
Age 61 years, Occ. Pensioner,
R/o. Prabodhan Housing Society,
Burudgaon Road, Ahmednagar
Dist. Ahmednagar

.. Respondents

WITH
WRIT PETITION NO.3600/2010

The Bhaskar Pandurang Hiwale
Education Society, Ahmednagar
Station Road, Ahmednagar
Through its Secretary
Shri Philip Barnabas

.. Petitioner

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai
- 2) University of Pune
Ganesh Khind
Pune 411 007
Through its Registrar
- 3) Prof. Ashok s/o Gulabrao Newaskar,
Age 66 years, Occ. Pensioner,
R/o. "Devendra", Plot No. D-4,
Ahilyanagari, Pipeline Road,
Ahmednagar, Dist. Ahmednagar

...Respondents

WITH
WRIT PETITION NO.3601/2010
WITH CIVIL APPLICATION NO.5231/2014
IN WRIT PETITION NO.3601/2010

The Bhaskar Pandurang Hiwale
Education Society, Ahmednagar
Station Road, Ahmednagar
Through its Secretary
Shri Philip Barnabas

.. Petitioner

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai
- 2) University of Pune
Ganesh Khind
Pune 411 007
Through its Registrar
- 3) Prof. Raman Muljibhai Merwana,
Age 63 years, Occ. Pensioner,

R/O A, 1-10, 1/10 Vishnu Vihar,
Kenjale Nagar, Biblewadi,
Kondwa Road, PUNE 411 037

.. Respondents

WITH
WRIT PETITION NO.3602/2010
WITH CIVIL APPLICATION NO.5230/2014
IN WRIT PETITION NO.3602/2010

The Bhaskar Pandurang Hiwale
Education Society, Ahmednagar
Station Road, Ahmednagar
Through its Secretary
Shri Philip Barnabas

.. Petitioner

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai
- 2) University of Pune
Ganesh Khind
Pune 411 007
Through its Registrar
- 3) Prof. Shaikh Mohd. Ali Amir Hamja,
Age 61 years, Occ. Pensioner,
R/o. Prabodhan Housing Society,
Burudgaon Road, Ahmednagar
Dist. Ahmednagar

... Respondents

WITH
WRIT PETITION NO.3603/2010
WITH CIVIL APPLICATION NO.5229/2014
IN WRIT PETITION NO.3603/2010

The Bhaskar Pandurang Hiwale
Education Society, Ahmednagar
Station Road, Ahmednagar
Through its Secretary
Shri Philip Barnabas

.. Petitioner

Versus

- 1) The State of Maharashtra,
Through the Secretary,

Higher and Technical Education
Department, Mantralaya, Mumbai

- 2) University of Pune
Ganesh Khind
Pune 411 007
Through its Registrar
- 3) Prof. Manohar Augustin Lokhande,
Age 62 years, Occ. Pensioner,
R/o. 49/A, Kusum Smruti,
Prakashpur Colony,
Miskin Road, Ahmednagar
District Ahmednagar 414 003

..Respondents

WITH
WRIT PETITION NO.3604/2010
WITH CIVIL APPLICATION NO.5194/2014
IN WRIT PETITION NO.3604/2010

- 1) Ahmednagar Zilla Maratha Vidya
Prasarak Samaj,
Laltaki Road, Ahmednagar
Through its Secretary
Shri Genuji s/o Dagdoji Khandeshe,
Age 65 years, Occ. Business,
R/p. Agarkar Mala, Station Road,
Ahmednagar, District Ahmednagar
- 2) New Arts, Commerce and Science
College, Ahmednagar
District Ahmednagar
Through its Principal

..Petitioners

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai
- 2) University of Pune
Ganesh Khind
Pune 411 007
Through its Registrar
- 3) Prof. Ramrao Vishwanath Sherkar,
Age 63 years, Occ. Pensioner,

R/O. "Vidyavihar", Trimurti Colony,
Ramadevi Mandir Road,
Ahmednagar, Dist. Ahmednagar

..Respondents

WITH
WRIT PETITION NO.6001/2010

The Bhaskar Pandurang Hiwale
Education Society, Ahmednagar
Station Road, Ahmednagar
Through its Secretary
Shri Philip Barnabas

..Petitioner

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai
- 2) University of Pune
Ganesh Khind
Pune 411 007
Through its Registrar
- 3) Prof. Dr. Abdul Ajij Ambekar,
Age 68 years, Occ. Pensioner,
R/O. 716, Kali Masjid, Zendi Gate,
Ahmednagar
District Ahmednagar 414 001

..Respondents

WITH
CONTEMPT PETITION NO.218/2013
IN CIVIL APPLICATION NO.18055/2010

Dr. Alimulla Khan Kalimulla Khan Vakil
Age : 63 years, Occ : Nil,
R/O A. A Vakil, Naikwadpura, Chandwad,
Tq. Chandwad, Dist. Nashik

..Petitioner

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
i.e. J.H. Saharia, Age 55 years,
Occ. Service, Higher Education Department,
Mantralaya, Mumbai - 32.
(Copy to be served on G.P.
High Court of Bombay,

Bench at Aurangabad.)

- 2) Shri J.H. Saharia
Age : 55 years, Occ : Service,
The Secretary,
Technical and Higher Education Department,
Mantralaya, Annexe Building Mumbai - 32.
- 3) Dr. P.R. Gaikwad
Age : 55 years, Occ : Service,
The Director of Higher Education,
Maharashtra State, Pune,
17, Dr. Ambedkar Road, Pune Division,
Pune - 1.
- 4) Dr. N. M. Kadu.
Age 54 years, Occ : Service,
The Joint Director of Higher Education,
Maharashtra State, Pune,
17, Dr. Ambedkar Road, Pune Division,
Pune - 1.
- 5) Shri. Anil Rathi.
Age 50 years, Occ : Business
Shikshan Prasarak Sanstha,
R/o : Sangamner, Tq. Sangamner,
Dist. Ahmednagar, through its Secretary,
- 6) Shri. K.K. Deshmukh.
Age - Major Occ : Service,
R/o. Sangamner Nagarpalika Arts, D.J. Malpani,
Commerce and B.N. Sarada Science College,
Sangamner, Tq. Sangamner, Dist. Ahmednagar.
Through its Principal.

..Respondents

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Advocates for Petitioners : Shri V.D.Hon, Sr. Advocate
and Shri A.S.Bajaj

AGP for Respondents 1 & 2 : Smt. Kshirsagar Y.M.

Advocate for Respondent 3 : Shri Rakh A.V. h/f Shri Mundhe S.V.

Advocate for Respondent 4 : Shri Joshi A.R.

Advocate for Respondent 5 : Shri Shinde S.K.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 03, 2015

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ORAL JUDGMENT :-

1. On 7.11.2014, this Court had passed the following order:-

“1. On 26.9.2014, this Court had passed the following order:-

“ 1. It is submitted that this matter can be heard finally in light of the judgments of the Apex Court in the matter of Khandesh College Education Society, Jalgaon and another s. Arjun Hari Narkhede and others reported at AIR 2011 SC and in the matter of State of Maharashtra and others Vs. Nowrosjee Wadia College and others (2013) 11 SCC 762. However, it needs to be verified whether the statute framed u/s 51 and transmitted to the office of the Chancellor u/s 52(4) has received an assent from the Chancellor.

2. Learned A.G.P. submits that respondent No.1 Department of Higher Education, Mantralaya, shall collect the information from the office of the Chancellor and she would be in a position to make a statement on the next date.

3. As such, stand over to 09/10/2014. Authenticated copy by provided to the learned A.G.P. at her request.”

2. On 9.10.2014, the submissions of the learned AGP were recorded and the learned AGP was directed to ensure that appropriate information is collected from the office of the Chancellor. It is informed today that the proposal sent by the University of Pune with regard to the statute framed under Section 51 of the Maharashtra Universities Act, 1994 ("the said Act") is pending in the office of the Chancellor, for assent, under Section 52(4) of the said Act.

3. *The learned Advocate for the petitioners submits that these petitions are pending since the decision from the office of the Chancellor is awaited.*

4. *The Secretary to the Government of Maharashtra, Higher Education Department, Mantralaya, Mumbai shall convey to the office of the Chancellor that this petition is pending hearing since the office of the Chancellor is yet to take a decision under Section 52(4) of the said Act. It shall also be communicated that an early decision by the office of the Chancellor and preferably within a period of three months from today, would be appreciable since it would enable this Court to hear this Writ Petition expeditiously.*

5. *It is clarified that if the decision under Section 52(4) of the said Act has already been taken or is so taken in near future by the office of the Chancellor, the same shall be placed on record in these petitions by the learned AGP along with an affidavit.*

6. *S.O. to 16.2.2015.”*

2. Pursuant thereto, the Honourable Governor/Chancellor of the respondent - University had given his assent to repeal Clause (c) of Statute 424, with effect from 3.2.2015.

3. In the light of this development, which was conveyed to the Court by the learned Advocates appearing for the respondents, this Court had passed the following order dated 29.6.2015.

“1 *Mr.Shinde along with learned Advocates appearing for the*

Respondents have placed on record the communication dated 12.02.2015 issued by the Joint Director, Higher Education, Pune along with the communication dated 12.02.2015 issued by the Desk Officer, State of Maharashtra and the communication dated 04.02.2015 issued by the Deputy Secretary to the Honourable Governor addressed to the Vice Chancellor of Savitribai Phule Pune University.

2 It is stated that in the light of these communications, statute 424(C) pertaining to amendment to statute 424 relating to encashment of unutilized earned leave to the teachers of the University and its affiliated colleges, has been repealed. As such, clause (C) to statute 424 has been repealed w.e.f. 03.02.2015 in the light of the assent given by the Honourable Chancellor.

3 The said communications (five pages) are taken on record and marked as "Exhibit X" for identification.

4 Relevant portions of statutes 424(3) and 424(C) of the Statutes applicable to the Pune University read as under:

"Statute 424(3) Leave :

(a)

(b)

(c) Earned Leave.

(a) The confirmed non-vacation teacher shall be entitled to earned leave at the rate of one eleventh of the period spent on duty subject to his accumulating maximum of 180 days of leave.

(b) The teacher other than the one included in (a) above shall be entitled to one twenty seventh of the period spent on duty and the period of earned leave is provided in the proviso to Section 423 subject to his accumulation of maximum of 180 days. For this purpose the period of working days only shall be considered.”

“Statute 424(C) : Encashment of unutilized Earned Leave on superannuation: The teacher shall be entitled to encash earned leave in balance to his credit on the date of his superannuation subject to a maximum of 180 days. In case the teacher is required to serve till the end of academic session beyond the date of his superannuation, he shall be entitled to encash the balance of earned leave to his credit on the date of his actual retirement from service.”

5 *Learned Advocates appearing for the Respondents, therefore, submit that their entitlement for encashment of unutilized earned leave, stands accepted in view of the judgments of the Apex Court in the case of Khandesh College Education Society, Jalgaon v/s Arjun Hari Narkhede reported in AIR 2011 SC 3226 and the State of Maharashtra v/s Nowrosjee Wadia College reported in (2013) 11 SCC 762.*

6 *Mr.Bajaj, learned Advocate for the Petitioner/ Educational Institution, seeks a short accommodation in order to make a statement.*

7 *Stand over to 03.07.2015 for enabling Mr.Bajaj to make a statement. To be listed for “passing orders.”*

4. Shri Hon, learned Sr. Advocate and Shri Bajaj, learned Advocate appearing on behalf of the petitioners have stated as under:-

(a) The ratio laid down by the Apex Court in the cases of Khandesh College and Nawrosji Wadia College (supra) is applicable.

(b) The calculations for making the payment as earned leave encashment needs to be left with the employer.

(c) The ceiling of 180 days on such earned leave encashment is required to be observed.

(d) Some of the employees have exhausted portions of their earned leaves and some of them have already encashed portion of the earned leave which needs to be taken into account while computing the exact payment to be made.

5. Learned Advocates for the respondents do not have any quarrel with the request of the petitioners that the calculations of earned leave encashments have to be in accordance with the Rules and Statutes applicable and in the light of the accumulated earned leaves. After the employer takes a decision and makes the payment of leave encashment, the respondents shall thereafter consider whether the said has been done in accordance with their rights. In the event of any infringement of their rights, they may opt for redressal of their grievances.

6. In the light of the above, these Writ Petitions are disposed off in terms of the conclusions of the Apex Court in the cases of Khandesh College

and Wadia College (supra). The employers in all these cases, shall calculate the unutilized earned leave encashments in accordance with the Rules and statutes applicable. Such payments shall be made within a period of 12 weeks from today and every beneficiary shall be given a statistical break up of the calculations, so as to appraise him / her of the calculations made. Thereafter, if the beneficiaries have any grievances, they shall be at liberty to seek redressal in accordance with the provisions of the Maharashtra Universities Act, 1994.

8. A request is made by the learned Advocates for the petitioners that liberty be granted to request the State Government / University to reimburse the leave encashments paid by the institutions to the beneficiaries. Needless to state, since this is the matter between the educational institutions and the State Government / University, I express no opinion on this issue and leave it to the petitioners to approach the State Government / University, in the event the Rules / Regulations permit such reimbursement. The State Government / University is at liberty to decide the representations of such educational institutions in accordance with law and in view of the ratio laid down by the Apex Court in the Khandesh College and Wadia College (supra) judgments.

9. In the light of the disposal of the above Writ Petitions, learned Advocates for the petitioners in the Contempt Petition pray for its disposal. Accordingly, the Contempt Petitions are also disposed off.

10. All pending Civil Applications do not survive and are also disposed off.

(RAVINDRA V. GHUGE, J.)

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akl/d