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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4883/2009

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.
- 2 Shri Haribhau S/o Muktaji Bhagat,
Age.77 years, Occu.Retired Employee,
R/o. Babhulgaon, Post. Mulanagar,
Tq. Rahuri, Dist. Ahmednagar.
- 3 The State of Maharashtra.
...Respondents...

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WITH

WRIT PETITION NO.5373 OF 2009

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

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- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.
- 2 Sau. Sitabai Ramchandra Salve,
Age.71 years, Occu.Retired Employee,
R/o. Sade, Post. Sade,
Tq. Rahuri, Dist. Ahmednagar.
- 3 The State of Maharashtra.
...Respondents...

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**WITH
WRIT PETITION NO.5590 OF 2009**

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.
...Petitioner...

Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.
- 2 Shri Raghunath Hanumanta Pawar,
Age.69 years, Occu. Retired Employee,
R/o. Khandambe, Post. Khadambe,
Tq. Rahuri, Dist. Ahmednagar.
- 3 The State of Maharashtra.
...Respondents...

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**WITH
WRIT PETITION NO.5593 OF 2009**

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.
- 2 Shri Murlidhar S/o Daulat Vairagal,
Age.72 years, Occu.Retired Employee,
R/o. Sade, Post. Sade,
Tq. Rahuri, Dist. Ahmednagar.
- 3 The State of Maharashtra.
...Respondents...

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**WITH
WRIT PETITION NO.5594 OF 2009**

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.

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- 2 Shri Manjabapu Bhagaji Kasabe,
Age.66 years, Occu. Retired Employee,
R/o. Babhulgaon, Post. Mulanagar,
Tq. Rahuri, Dist. Ahmednagar.
- 3 The State of Maharashtra.
...Respondents...

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WITH
WRIT PETITION NO.5597 OF 2009

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.
...Petitioner...

Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.
- 2 Sau. Saraswati Asaram Chitalkar,
Age.76 years, Occu.Retired Employee,
R/o. Babhulgaon, Post. Mulanagar,
Tq. Rahuri, Dist. Ahmednagar.
- 3 The State of Maharashtra.
...Respondents...

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WITH
WRIT PETITION NO.5599 OF 2009

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.
- 2 Sau. Sharifa Abbas Shaikh,
Age.70 years, Occu.Retired Employee,
R/o. Pimpri Avaghad, Post. Pimpri
Avaghad, Tq. Rahuri, Dist. Ahmednagar.
- 3 The State of Maharashtra.

...Respondents...

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WITH
WRIT PETITION NO.5600 OF 2009

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.

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2 Sau. Shahabai Sarangadhar Tarwade,
Age.71 years, Occu.Retired Employee,
R/o. Khadambe, Post. Khadambe,
Tq. Rahuri, Dist. Ahmednagar.

3 The State of Maharashtra.

...Respondents...

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WITH

WRIT PETITION NO.5601 OF 2009

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.

2 Sau. Sarubai Sadashiv Umap,
Age.67 years, Occu.Retired Employee,
R/o. Pimpri Avaghad, Post. Pimpri
Avaghad, Tq. Rahuri, Dist. Ahmednagar.

3 The State of Maharashtra.

...Respondents...

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WITH

WRIT PETITION NO.5602 OF 2009

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

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Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.
- 2 Sau. Narmadabai Gangaram Waghmare,
Age.69 years, Occu.Retired Employee,
R/o. Babhulgaon, Post. Mulanagar,
Tq. Rahuri, Dist. Ahmednagar.
- 3 The State of Maharashtra.

...Respondents...

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WITH

WRIT PETITION NO.5603 OF 2009

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.
- 2 Sau. Kausalya Haribhau Khalekar,
Age.68 years, Occu.Retired Employee,
R/o. Khadambe, Post. Khadambe,
Tq. Rahuri, Dist. Ahmednagar.
- 3 The State of Maharashtra.

...Respondents...

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**WITH
WRIT PETITION NO.5604 OF 2009**

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.
- 2 Shri Bapu S/o. Ganpat Kachole,
Age.72 years, Occu.Retired Employee,
R/o. Khadambe, Post. Khadambe,
Tq. Rahuri, Dist. Ahmednagar.
- 3 The State of Maharashtra.

...Respondents...

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**WITH
WRIT PETITION NO.5605 OF 2009**

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.

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2 Shri Kisan S/o Rangnath Khedekar,
Age.72 years, Occu.Retired Employee,
R/o. Dhamori, Post. Dhamori,
Tq. Rahuri, Dist. Ahmednagar.

3 The State of Maharashtra.

...Respondents...

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WITH

WRIT PETITION NO.5607 OF 2009

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.

2 Sau. Taibai Parsharam Waghmare,,
Age.67 years, Occu.Retired Employee,
R/o. Babhulgaon, Post. Mulanagar,
Tq. Rahuri, Dist. Ahmednagar.

3 The State of Maharashtra.

...Respondents...

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WITH

WRIT PETITION NO.5608 OF 2009

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

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Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.
- 2 Sau. Draupadabai Nemaji Gaike,
Age.68 years, Occu.Retired Employee,
R/o. Khadambe, Post. Khadambe,
Tq. Rahuri, Dist. Ahmednagar.
- 3 The State of Maharashtra.

...Respondents...

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WITH

WRIT PETITION NO.5609 OF 2009

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.
- 2 Shri Uttam S/o Jairam Pawar,
Age.68 years, Occu.Retired Employee,
R/o. Khadambe, Post. Khadambe,
Tq. Rahuri, Dist. Ahmednagar.
- 3 The State of Maharashtra.

...Respondents...

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WITH
WRIT PETITION NO.5611 OF 2009

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.
- 2 Sau. Kausalyabai Sahadu Jagdhane,
Age.67 years, Occu.Retired Employee,
R/o. Pimpri Avaghad, Post. Pimpri
Avaghad, Tq. Rahuri, Dist. Ahmednagar.
- 3 The State of Maharashtra.
...Respondents...

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WITH
WRIT PETITION NO.5612 OF 2009

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

- 1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.

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2 Sau. Janabai Jagannath Pawar,
Age.68 years, Occu.Retired Employee,
R/o. Khadambe, Post. Khadambe,
Tq. Rahuri, Dist. Ahmednagar.

3 The State of Maharashtra.

...Respondents...

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WITH

WRIT PETITION NO.5614 OF 2009

Mahatma Phule Krishi Vidyapeeth
Rahuri, Through its Registrar,
Shri. Jagannath S/o. Vishnu Patil,
Age. 51 years, Occu. Service,
R/o. University Campus, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

...Petitioner...

Versus

1 Ahmednagar Zilla Shet Mazoor Union,
Trade Union Centre,
Tahesil Kacheri Road, Ward No.1,
Shrirampur, Ahmednagar.
Through its General Secretary.

2 Shri Savleram S/o Laxman Gadhe,
Age.68 years, Occu.Retired Employee,
R/o. Babhulgaon, Post. Mulanagar.
Tq. Rahuri, Dist. Ahmednagar.

3 The State of Maharashtra.

...Respondents...

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Shri P.L. Shahane, Advocate for petitioners.
Shri S.T. Shelke, Advocate for respondent Nos.1 & 2.
Shri D.R. Korde, AGP for respondent no.3.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 25.02.2016

ORAL JUDGMENT :

1] All the above petitions have been admitted by this Court on 8.3.2011.

2] The order passed by this Court on 8.3.2011 reads as under:-

“1. Heard learned Counsel for the parties. Learned Counsel for the petitioner submits that the respondent Union has no authority to file the complaint on behalf of retired employees. He further submits that there is no relationship of employee and employer as such between the retired employees and the petitioner herein. He further submits that the complaint was filed in 2004 making grievance about the pension which according to the complainant was due to be paid in 1996. Therefore, the Counsel for the petitioner would submit that the complaint filed by the respondent Union was beyond the period of limitation. Therefore, the Counsel would submit that these writ petitions, relying on the pleadings in the petitions and grounds raised therein, may be allowed.

2. On the other hand, the learned Counsel appearing for the respondents invited my attention to the relevant rules and in particular Rule 129B of the Maharashtra Civil

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Services (Pension) Rules, 1982 and submits that once the petitioners have granted pension and taken decision to pay pension, in that case interest should necessarily follow though members of the respondent Union were entitled to receive pension in the year 1996. However, the pension is paid in 2006 with retrospective effect. However, the interest for the relevant period has not been paid. Therefore, the Counsel would submit that these petitions may not be allowed.

3. Upon hearing the Counsel for the petitioner and the respondents and upon perusal of the impugned judgment and order passed by the Court below and more particularly the discussion in para 12 of the impugned judgment, I am not inclined to grant any interim relief. The relevant rule has been considered by the Court in para 12 of the impugned judgment. Considering Rule 129B of the Maharashtra Civil Services (Pension) Rules, 1982, I am not persuaded to take different view. However, some arguable questions have been raised by the Counsel for the petitioner that after retirement whether relationship of employee and employer exists between the petitioner and members of the respondents Union and also filing of the complaint in 2004 making grievance of nonpayment of pension from the date of retirement i.e. in 1996.

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4. Rule. Mr. Shelke & A.G.P. Mr. Kale, waive service of notice for the respective respondents.

5. Interim relief refused."

3] Since a common issue is involved in all these matters and considering that the petitioner – Mahatma Phule Krishi Vidyapeeth is common in all these petitions, these matters have been taken up together for final hearing by the consent of the parties.

4] The petitioner – University is aggrieved by the judgment and order dated 7.11.2008 and similar judgments delivered by the Industrial Court by which interest at the rate of 10% on the pension amount has been granted.

5] Shri Shahane, learned Advocate for the petitioner – University has strenuously criticized the impugned judgments.

6] Shri Shahane contends that firstly there was no deliberate delay caused by the petitioner – University. The University has been engaged in litigation on various issues for a long time. Since the Maharashtra Civil Services Rules are applicable, the respondent – employees could not have approached the Industrial Court invoking the Maharashtra Recognition of Trade Unions and

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Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as 'the 1971 Act').

7] He further submits that the University can neither create posts nor can the University grant pension to any employee. It is the State Government, which exercises its powers under the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'the 1982 Rules'). The ultimate responsibility to pay the pension rests on the shoulders of the State, which has been impleaded as a respondent in these petitions under the orders of this Court dated 2.12.2009.

8] Shri Shahane further submits that the issue was as to whether the respondent – employees, who are the original complainants alongwith the Union were eligible for pension or not. This was a matter of litigation. Whether these employees could be termed as being permanent employees was also a disputed issue and that was also subject matter of litigation.

9] He submits that about 182 employees preferred Complaint (ULP) No.36/1977 before the Industrial Court. By judgment dated 23.7.1984, the Industrial Court concluded that those daily wagers who had completed 1000

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days of continuous employment, would be entitled for permanency / regularization and all benefits incidental and consequential thereto. The Industrial Court, therefore, granted these benefits to 107 workers from 1.1.1979. About 44 workers had already retired prior to the delivering of the judgment dated 23.7.1984.

10] Shri Shahane further submits that the University did not have sanctioned posts. Supernumerary posts were created by the State in order to avoid disobedience of the directions of the Industrial Court. No delay was caused, much less deliberately either by the University or the State.

11] He further submits that these respondents had filed Complaint (ULP) No.37/2004 claiming pensionary benefits and interest thereon. All of them have retired in between 1991 to 1993. This complaint was filed before the Industrial Court on 3.3.2004. By the impugned judgment dated 7.11.2008 and similar judgments, it was concluded by the Industrial Court that interest on pension would be payable to the respondent – employees. He, therefore, submits that the employees themselves had slept over their rights. Their complaints were untenable

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since they had approached the Industrial Court after a span of about 10 to 12 years post retirement.

12] He further submits that another objection raised before the Industrial Court was as to whether retired employees can form a Union and file an unfair labour practice complaint. Similarly, the University had raised an issue that as the complainants had retired, there was no employer – employee relationship between the employees and the University and hence the complaint was untenable.

13] Shri Shahane further contends that a declaration of unfair labour practice made by the Industrial Court against the University is equally unsustainable since the University had no role to play in the denial of pension or interest thereon. He, therefore, submits that these petitions be allowed and the impugned judgment of the Industrial Court be quashed and set aside.

14] Shri Shahane relies upon the judgments of the Hon'ble Supreme Court and the High Courts as follows :-

[1] *Air India Cabin Crew Association v. Yeshawinee Merchant & others* (2003 III CLR 1)

[2] *Dharam Chand & others v. Haryana Agricultural University & others* (2004 (100) FLR 8 (SC))

[3] *General Workers Union v. Sangli Municipal Council, Sangli & others* (1984 (48) FLR 411 (Bombay High Court)

[4] *Hindustan Lever Ltd. v. Ivth Industrial Tribunal & others* (2007 (113) FLR 1090) (Calcutta High Court)

15] Shri Shelke, learned Advocate appearing on behalf of the employees has supported the impugned judgment.

16] He submits that this is a classic example of a University as well as the State Government attempting to tire out their own employees and making them suffer grave hardships in their old age post retirement. These employees have virtually spent their entire life time working with the petitioner and litigating against the petitioner. Even for permanency, they were compelled to file Complaint (ULP) No.36/1977, which was decided in their favour on 23.7.1984 by the Industrial Court. The said judgment has attained finality after the litigation concluded. They were granted benefits of permanency from 1.1.1979.

17] He further submits that Rule 129-B of the 1982 Rules is squarely applicable to this case. Delay in payment of pension for whatever reasons beyond six months

attracts interest of 10%.

18] He vehemently denies the contentions of Shri Shahane that these employees were sleeping over their rights and were negligent. After they retired in 1991 and thereafter they were not paid pension by the State. The University had not properly dealt with their cases and had not forwarded proper instructions and papers to enable them to earn their pension in their retirement. The employees agitated on the said issue for a long time and finally preferred Writ Petition No.4195/2002 before this Court. The said petition was disposed of by this Court by order dated 21.4.2003 and the employees were permitted to approach the Industrial Court.

19] Shri Shelke takes a strong exception to the submission of Shri Shahane as regards formation of a Union and maintainability of a complaint. He submits that after this Court by its order dated 21.4.2003 permitted the employees to approach the Industrial Court, they had approached the Hon'ble Supreme Court, which dismissed their Special Leave Petition and upheld the order of this Court permitting the employees to approach the Industrial Court.

20] He submitted that in these two rounds of litigation before this Court and the Hon'ble Supreme Court, the University had not pressed its submission that these employees cannot agitate against the employer since there was no employer – employee relationship or that a complaint of unfair labour practice was not maintainable or that the retired employees could not have formed a Union. This Court had disposed of the writ petition of the employees on the ground that they can approach the Industrial Court. Now the University contends that they could not have approached the Industrial Court. This is yet another sign of the University attempting to tire out its employees.

21] He relies upon Rule 129-B to contend that no element of discretion is available while granting interest on pension. If interest is payable, it has to be at the rate of 10%. He, therefore, prays for the dismissal of these petitions.

22] Shri Shelke relies upon the judgment of the Hon'ble Supreme Court in the matter of *Dr.Uma Agrawal v. State of U.P. & another* (**AIR 1999 SC 1212**).

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23] The learned AGP appearing on behalf of the State relies upon the affidavit in reply commonly filed on 20.9.2010 in Writ Petition No.5373/2009.

24] He relies upon the Government resolution dated 8.3.2006 and submits that indeed the 182 workers were constantly in litigation in claiming several rights while in service and post service. They had also filed Writ Petition No.7198/2004 before this Court claiming pension and benefits incidental thereto. By communication dated 21.4.2005, the proposal for grant of pension was taken up by the State for a decision. Eventually, by the Government resolution dated 8.3.2006, the State sanctioned the funds for payment of pension to the respondent – employees.

25] The learned AGP, therefore, submits that neither has the State acted unfairly, nor has it deliberately delayed the payment of pension to these employees. He supports the contentions of Shri Shahane for the petitioner and prays that these petitions be allowed.

26] I have considered the submissions of the learned Advocates as have been recorded hereinabove and I have gone through the petition paper books as well as the

judgments cited with their assistance.

27] I find it appropriate to deal with the objections of Shri Shahane at the very outset. Under the 1971 Act, which is applicable within the State of Maharashtra, Schedules II, III and IV define various unfair labour practices being committed by the employer and by the Union / employees. By the judgment of the Hon'ble Supreme Court in the matter of *Vividh Kamgar Sabha v. Kalyani Steels Ltd. & another* (2001) 2 SCC 381 and in the matter of *Cipla Ltd. v. Maharashtra General Kamgar Union* (2001) 3 SCC 101), it has been concluded that a complaint of unfair labour practice will not be maintained before the Labour Court or the Industrial Court if the disputed issue as to who is the actual employer is to be gone into. In the instant case, no such issue is involved.

28] It is trite law that when certain benefits statutorily available to employees and which are in connection with their terms and conditions of service, are not paid to the employees after severing of employer – employee relationship or after retirement, there shall be a notional extension of employer – employee

relationship between the parties if the workers make a claim for payment of such outstanding benefits invoking Item 9 of Schedule IV of the 1971 Act.

29] In the instant case, apparently, the issue is with regard to the services performed by the employees with the employer. Having failed to grant the service benefits post retirement, these workers approached this Court in Writ Petition No.4195/2002. By order dated 21.4.2003, this Court permitted the employees to approach the Industrial Court. This order was sustained by the Hon'ble Supreme Court in the Special Leave Petition preferred by the employees. In these peculiar facts of the case, the contention of Shri Shahane that the complaints were untenable, deserves to be rejected.

30] The next issue is as regards whether interest is payable on pension and in what circumstances. Rule 129-B of the 1982 Rules reads as under:-

"129-B. Interest on delayed payment of pension -

(1) If the payment of pension has been authorised after six months from the date when its payment became due and it is clearly established that the delay in payment was attributable to administrative lapse, interest at the rate 10 per cent per annum in respect of the period beyond six

months shall be paid on the amount of pension :

Provided that, no interest shall be payable if the delay in payment of pension was attributable to the failure on the part of the Government servant to comply with the procedure laid down in this Chapter :

Provided further that, no interest shall be payable for the period for which a provisional pension is sanctioned. In case of Government servant to whom provisional pension is sanctioned an interest as provided shall be paid after a period of six months from the cessation of provisional pension till the final pension is authorised.

(2) On an application made by the pensioner the concerned Administrative Department in Mantralaya shall consider the request for payment of interest and where the Department is satisfied that the delay in the payment of pension was caused on account of administrative lapse, that Department shall make a recommendation to the Finance Department for the payment of interest.

(3) If the recommendation of the Department made under sub-rule (2), is accepted by the Finance Department, the Department concerned shall issue Government sanction for the payment of interest.

(4) In all cases where the payment of interest has been authorised with the concurrence of the Finance Department, the Department concerned shall

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fix the responsibility and take disciplinary action against the Government servant or servants concerned who are found responsible for the delay in the payment of pension and recover the amount of interest required to be paid from the Government servant, or servants concerned, including the concerned officer, who are found responsible for the delay in the payment of pension.

(5) If as a result of Government's decision taken subsequent to the retirement of a Government servant, the amount of pension already paid on his retirement is enhanced on account; or

(a) grant of pay higher than the pay on which pension, already paid was determined: or

(b) liberalisation in the provisions of these rules from the date prior to the date of retirement of the Government servant concerned, no interest on the arrears of pension shall be paid."

31] Due to the amendment dated 5.5.1990 with effect from 1.8.1986 and the amendment dated 1.11.2008 with effect from 24.4.1995, Rule 129-B (having undergone a change) post amendment reads as under:-

"129-B. Interest on delayed payment of pension -

(1) Where the payment of pension of family pension authorised after six months from the date when its payment became due, an interest at the

rate applicable to General Provident Fund deposits shall be paid on the amount of pension, in respect of the period beyond six months;

Provided that, no interest shall be payable if the delay in payment of pension was attributable to the failure on the part of the Government servant to comply with the procedure laid down in this Chapter :

Provided further that no interest shall be payable for the period for which a provisional pension is paid. In case of Government servant to whom provisional pension is sanctioned an interest as provided shall be paid after a period of six months from the cessation of provisional pension till the final pension is authorised.

(2) Every case of delayed pension or family pension, as the case may be, shall *suo motu*, be considered by the concerned administrative Department, and where the Department is satisfied that the delay in the payment of such pension was caused on account of administrative lapse, that Department shall sanction payment of interest after obtaining the admissibility report in this behalf from the Accountant General (Accounts and Entitlement), Maharashtra, Mumbai or Nagpur, as the case may be. The approval of the Finance Department for the payment of such interest shall not be necessary.

(3) In all cases, where interest has been authorized on pension or family pension, as the case may be, due to administrative lapse, the

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concerned Administrative Department shall fix the responsibility and take disciplinary action against the Government servant or servants concerned, including the concerned officer, who are found responsible for the delay in the payment of such pension and recover the amount of interest required to be paid from the Government servant or servants concerned including the concerned officer who are found responsible for the delay in the payment of such pension.

(4) If as a result of Government's decision taken subsequent to the retirement of a Government servant, the amount of pension already paid on his retirement is enhanced on account of-

(a) grant of pay higher than the pay on which pension, already paid was determined: or

(b) liberalisation in the provisions of these rules from the date prior to the date of retirement of the Government servant concerned, no interest on the arrears of pension shall be paid."

32] The phraseology used in Rule 129-B prior to the amendment reproduced as above indicates that if pension is paid after six months from the date when it became payable and due and if it is established that the delay in payment was attributable to administrative lapses, the interest at the rate of 10% p.a. in respect of the period beyond six months is to be paid. No such interest will

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be payable if the delay is attributable to the conduct of the employee.

33] Considering the facts and circumstances, as recorded above, I have no doubt that there is no delay caused by the employees with regard to their claim of pension. The petitioner was aware that Complaint (ULP) No.36/1977 having been allowed on 23.7.1984 and the judgment of the Industrial Court having attained finality, these employees were eligible for permanency benefits from 1.1.1979. As such, they had fulfilled the criteria of qualifying service for pension. The State Government should have acted in promptitude in releasing their pensionary benefits. Same were not made available and that led to a struggle by the respondents. They finally reached this Court, which permitted them to approach the Industrial Court. Therefore, they filed Complaint (ULP) No.37/2004 before the Industrial Court.

34] During the pendency of the complaint, the State came out with a Government resolution dated 8.3.2006, which has been referred to by the learned AGP in his submissions. By the said Government resolution, the employees were granted their pension and the State made

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the necessary funds available. This indicates that the State had in fact gone slow on the rights of the employees and only after they resorted to litigation after some agitation that the State Government woke up to grant the funds for their pension.

35] The learned AGP has also pointed out the Government resolution dated 21.1.2000 by which the issue of these 182 employees was considered and posts were created. Needless to state that despite the judgment of the Industrial Court dated 23.7.1984, the Government brought out a Government resolution as late as on 21.1.2000 for sanctioning posts as per the judgment of the Court so as to ensure that these employees are absorbed.

36] In the light of the above and considering that Shri Shelke, learned Advocate has criticized the State Government saying that this is a classic example of a model employer acting in a manner unbecoming of such employer, I find that had the State Government acted with promptitude, this situation could have been averted and the issue of payment of interest would not have cropped up.

37] Considering the facts of this case, Rule 129-B as it stood before its amendment, would be applicable. Rule 129-B leaves no room for exercising discretion by any authority. The Industrial Court was, therefore, left with no scope for interpreting Rule 129-B as to whether 10% interest was the maximum that could be granted or whether anything less than 10% could also be granted. The Industrial Court has, therefore, followed the rule in the book and has granted 10% interest.

38] Considering the above, I do not find that the Industrial Court has committed any error so as to term the impugned judgments as being perverse or erroneous or causing grave injustice to the petitioner. No interference in these judgments is called for to this extent.

39] Notwithstanding the above, I find some force in the submissions of Shri Shahane that a declaration of unfair labour practice could not have been made against the University for two reasons. Firstly, that despite the judgment of the Industrial Court referred to above dated 20.3.1984, the State Government introduced the Government resolution dated 21.1.2000 for creation of

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posts. After the retirement of the respondent – employees in and around 1991, the State Government introduced the Government resolution dated 8.3.2006 for grant of pensionary benefits. The University had no role to play in this area.

40] I, therefore, find that the petitioner is right in contending that the Industrial Court in these peculiar circumstances, could not have held that the petitioner – University is guilty of unfair labour practice under Item 9 of Schedule IV notwithstanding the fact that reliefs can be granted to the complainants only after such a declaration is arrived at. It is in these peculiar circumstances that the Industrial Court could not have made this declaration against the petitioner. Ideally, the complainants should have arrayed the State Government as the respondent in its complaints, which direction was finally issued by this Court on 2.12.2009 and thereafter the State Government was added as a respondent to this litigation.

41] As such, the impugned judgment of the Industrial Court to the extent of declaration of unfair labour practice against the petitioner is set aside. Rest of

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the judgment of the Industrial Court is sustained.

42] Needless to state that since the State Government is being burdened with interest and which is being paid from the tax payers' money, it is expected that the State Government will make necessary arrangement for the payment of the interest as granted by the Industrial Court as expeditiously as possible and preferably within a period of four months from today.

43] These petitions are, therefore, partly allowed only to the extent of setting aside the declaration of unfair labour practice. Rule is made partly absolute accordingly. No order as to costs.

(RAVINDRA V. GHUGE, J.)