IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5178 OF 2015

Narendra s/o. Sheshrao Patil,
Age 51 years, Occu. Service,
r/o. Plot No.2, Gut No.79/2,
Devramnagar, Jalgaon
and 8 others ..Petitioners

versus

The State of Maharashtra,
through Secretary, Higher and
Technical Education Department,
Mantralaya, Mumbai 32
and others ..Respondents

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Mr.B.S.Deshmukh, Advocate for petitioners

Mr.V.S.Badakh, AGP for respondent nos.1 to 3

Mr.S.V.Adwant, Advocate for respondent no.4

Mr.K.B.Choudhary, Advocate for respondent no.5

Mr.V.R.Dhorde, Advocate for respondent nos.6 and 7

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CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.
RESERVED ON : APRIL 26, 2016
PRONOUNCED ON : MAY 05, 2016

JUDGMENT (Per Sangitrao S. Patil, J.) :

Heard.

2] Rule. Rule, made returnable forthwith. By consent of the parties, the petition is heard finally.

3] The petitioners, who are working as Lecturers with respondent no.7 namely, Shree Sant Muktabai Institute of Technology, Bhikamchand Jain Nagar, Pimprala Road, Jalgaon, have filed this Writ Petition under Articles 226 and 227 of the Constitution of India, seeking the relief against respondent nos.6 and 7 for releasing their monthly salaries and allowances from July, 2014 onwards. They have further claimed directions for taking necessary action against respondent nos.5 and 7 for withholding their salary from July, 2014 onwards and also for non-payment of contribution of provident fund, even after deducting the same from their respective salaries.

4] It is the contention of the petitioners that respondent no.6 – Institution is running respondent no.7 – Polytechnic and Pharmacy Diploma College since 1983. The petitioners are working as Lecturers in different departments e.g. Polytechnic and Pharmacy of respondent no.7. Respondent nos.6 and 7 withheld the salaries of the petitioners working in Polytechnic from June, 2014 and that of Pharmacy department from July, 2014, without assigning any reasons, which is in contravention of A.I.C.T.E. Regulations. It is further stated that respondent nos.6 and 7 deducted provident fund contributions from the salaries of the petitioners during the year 2013-2014, however, the same have not been remitted to the office of respondent no.5 i.e. the Provident Fund Commissioner, Nashik. By not depositing the contributions of provident fund with respondent no.5, respondent nos.6 and 7 have invited penal action under the provisions of the Employees'

Provident Fund and Miscellaneous Provisions Act, 1952 (for short "**the Act**")

5] Though the petitioners made several representations to respondent nos.6 and 7 for disbursing the amount of their respective salaries and also to deposit the contributions of their provident fund with the office of respondent no.5, respondent nos.6 and 7 did not pay any heed and withheld such payments on the ground that respondent no.7 is being run on non-grant basis and respondent no.6 is short of funds. It is the case of petitioners that respondent nos.6 and 7 are having sufficient funds to pay the salaries as well as contributions of provident fund of the petitioners, however, the payments have been withheld with a view to take revenge of the petitioners because they had filed Writ Petition No.2608 of 2006 for grant of pay and perks at par with the Government Polytechnic and Pharmacy

Institutions. On these grounds, this Writ Petition has been filed by the petitioners for the above-stated reliefs.

6] Respondent no.5 filed reply (page 25) and stated that considering the allegations made against respondent nos.6 and 7, directions have been given to the Area Enforcement Officer to visit the establishments of respondent nos.6 and 7, to verify the records and if any irregularity was noticed, to file prosecution for non-compliance of any of the provisions of the Act.

7] Respondent nos.6 and 7 filed reply dated 28.09.2015 (page 27A) and tried to justify non-payment of the salaries to the petitioners on the ground that respondent no.6 - Institution is running respondent no.7 on non-grant basis. It has to depend on the fees collected from the students for paying salaries and meet other expenses. Respondent no.7 did not get sufficient number of students for the First, Second and Third year courses in 2014-2015. Due to drought situation, the students, most of whom belong to the families of agriculturists, could not pay the fees either partly or fully. The Government also did not release the scholarship of the students to the tune of Rupees Eighteen Lakhs. The income of respondent no.6 is considerably less than the expenditure thereof. It is stated that the salaries of the petitioners were not withheld by respondent nos.6 and 7 deliberately or with a view to take revenge against the petitioners. It is further stated that the salaries of petitioner nos.1 to 3, 5 to 7 and 9 have been paid upto November, 2014 and that of petitioner nos.4 and 8 upto December, 2014. It is stated that steps are being taken to generate funds to pay the salaries of the petitioners. It is further stated that the provident fund contributions have been regularly deposited by respondent nos.6 and 7 with respondent no.5. On these grounds, it is prayed that the Writ Petition may be dismissed.

8] The petitioners filed rejoinder dated 27.10.2015 (page 85) and denied the contentions of respondent nos.6 and 7 taken in their reply. They reiterated their case against respondent nos.6 and 7 as has been summarised above.

9] Respondent nos.6 and 7 filed affidavit-in-reply to the rejoinder of the petitioners (page 122) stating therein that one month salary of the petitioners has been paid on 21.12.2015. It is stated that the properties of respondent no.6 have been put to sell to meet the administrative expenditure of respondent no.6 including payment of salaries of the petitioners. Respondent nos.6 and 7 reiterated the grounds for non-payment of salaries of the petitioners, which were taken by them in their reply at page 27A.

10] Respondent nos.6 and 7 filed additional affidavit-in-reply (page 212) on 20.04.2016 and stated that with a view to provide succor to the petitioners, by 30.07.2016, it would be possible to pay the salaries of petitioner nos.1 to 3, 5 to 7 and 9 for the months of May, 2015 and June, 2015 as well as salaries of respondent nos.4 and 8 for the month of June, 2015. It is further stated that the salaries of the petitioners from July, 2015 to April, 2016, would be tried to be paid at the earliest, depending upon the financial condition of respondent nos.6 and 7.

11] From the above pleadings of the petitioners on one hand and that of respondent nos.6 and 7 on the other, it is crystal clear that the appointments of the petitioners as Lecturers by respondent nos.6 and 7 in Polytechnic and Pharmacy departments are not in dispute. The petitioners are working as such, with respondent nos.6 and 7. Respondent nos.6 and 7 have not denied their liability to pay the salaries to the petitioners.

12] The learned counsel for respondent nos.6 and 7 points out to the Balance Sheet (page 37) of respondent nos.6 and 7 and also the other papers annexed to the reply of respondent nos.6 and 7, in order to show that the expenditures of respondent nos.6 and 7 is more than their income. He submits that the payment of salaries of the petitioners has not been withheld by respondent nos.6 and 7 deliberately. He further points out to the documents showing that the contributions of provident fund of the petitioners have been regularly deposited by respondent nos.6 and 7 with respondent no.5. He, therefore, submits that the petitioners are not liable to get any reliefs as prayed for and prays that the Writ Petition may be dismissed.

13] As against this, the learned counsel for the petitioners, relying on the judgment in the case of **Teachers Association for Non-Aided Polytechnics, registered Association of Teachers of Non-Aided Polytechnics, through its Bhusawal Unit President, A.V. Anilkumar and ors. Vs. Hindi Seva Mandal, Bhusawal, through its President and ors, 2003(Supp)Bom.C.R.846,** contends that the financial incapacity of respondent nos.6 and 7 cannot be taken as an excuse for non-payment of salaries of the petitioners. In that case, petitioner no.1 was an association of the teachers of non-aided polytechnics, whereas petitioner nos.2 to 31 were the members of teaching and non-teaching staff of Shri Sant Gadge Baba Polytechnic, Bhusawal, which was run by Hindi Seva Mandal, Bhusawal. The Directorate of Technical Education, Government of Maharashtra had issued a communication dated 29.09.1995 addressed to all the Principals of the private technical un-aided colleges/polytechnic institutes calling upon them to pay salaries and allowances, pension, provident fund, gratuity, medical facilities, leave benefits etc. to the employees. Respondent no.1 – Institution refused to pay the salaries and other perks of the petitioners on various grounds and one of the grounds was the financial incapacity of the Institution. After considering the fact that due to implementation of the Fifth Pay Commission recommendations, the financial burden of un-aided private management had drastically hiked and that the Government of Maharashtra had revised the fees payable to such colleges for the academic years 2001 onwards, this Court held that the Management cannot take shelter of financial incapacity to pay the salaries and other allowances to its employees.

14] When respondent nos.6 and 7 took a conscious decision to run Polytechnic and Pharmacy college, it follows that they must have shown their sound financial position while seeking recognition to their College. If that be so, it is needless to state that they owe the responsibility to pay the salaries and other allowances to the Lecturers engaged by them. It is absolutely unacceptable that respondent nos.6 and 7 would engage the petitioners to render their services as Lecturers and would raise their hands when the question of payment of their salaries and allowances would crop up, on the untenable ground of financial incapacity. One can imagine the plight of the petitioners who are made to work by respondent nos.6 and 7 by withholding their salaries and allowances for considerably long a period. It would be difficult for the petitioners and their family members to survive without salaries and allowances. The petitioners have a legitimate right to receive salaries and other allowances as admissible to them regularly. In the circumstances, in view of the above cited decision, we are not at all inclined to accept the explanation of respondent nos.6 and 7 that for want of sufficient funds, they could not pay the salaries to the petitioners in time.

15] Respondent nos.6 and 7 have given an offer to pay the salaries and allowances of the petitioners for the months of May, 2015 and June, 2015 by 31.07.2016 and try to pay their salaries from July, 2015 to April, 2016 at the earliest, depending upon financial condition of respondent nos.6 and 7. This offer is ex-facie ridiculous. Such an offer does not at all appeal to the reason. In the circumstances, we are not inclined to show indulgence to respondent nos.6 and 7 to pay the salaries and allowances of the petitioners, so belatedly.

16] Respondent nos.6 and 7 have produced certain Challans whereunder, they have deposited the contributions of the provident fund of the petitioners in the office of respondent no.5. The learned counsel for the petitioners could not show that any amount, that has been deducted by respondent nos.6 and 7 from the salaries of the petitioners, has not been deposited with respondent no.5. Therefore, the relief claimed by the petitioners on the allegations of non-payment of contributions of provident fund by respondent nos.6 and 7 cannot be granted.

17] So far as arrears of salaries and allowances of the petitioners till the month of April, 2016 are concerned, to meet the ends of justice, we think fit to extend the time of three months to respondent nos.6 and 7 to clear the same. However, respondent nos.6 and 7 shall pay the salaries and allowances to the petitioners from the month of May, 2016 regularly, on or before the Tenth day of each succeeding month.

18] With the above directions, Rule is made absolute to that extent. The Writ Petition stands disposed of accordingly. No costs.

[SANGITRAO S. PATIL, J.] **[S.S. SHINDE, J.]**

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