

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9610 OF 2015

- 1] Ravindra Dattatray Kusurkar
- 2] Vilas Tulsiram Thakur
- 3] Shankar Gangaram Sudam
- 4] Santosh Prabhakar Gutte
- 5] Ravinda Niyanand Khule
- 6] Bhagwat Nivruti Raut
- 7] Pradip Badrinath Gujrathi
- 8] Uddhav Sampatrao Chonde
- 9] Bhagwat Narayan Muthal
- 10] Dr.Jagmohan Reddy
- 11] Sau.Sadhana Baburao Borude
- 12] Gangadhar Madhavrao Togar
- 13] Gangadhar Janbaji More

Age Major (all),
Occu.Service as Lecturers
in Shri Shivaji College Kandhar,
Tal.Kandhar, Dist. Nanded,
All R/o. Kandhar, Dist. Nanded

- 14] Nivrutti Hanmantrao Kausalye,
Age: Major, Occ:Service as
Principal College,
At:Balapur Akhada,
Tal & Dist. Hingoli

PETITIONERS

VERSUS

- 1] The State of Maharashtra,

Through the Secretary [Higher Education]
Department, Mantralaya, Mumbai

- 2] The Accountant General-II,
Maharashtra State, Nagpur
- 3] The Joint Director, Higher Education,
Nanded Region, Nanded
- 4] Shri Swami Ramanand Teerth Marathwada
University, Vishnupuri, Nanded
Notice to be served on its Registrar
- 5] The Principal, Shri Shivaji College,
Kandhar, Dist. Nanded

RESPONDENTS

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Mr.R.R.Mantri, Advocate for the petitioners
Mr.S.G.Karlekar,AGP for respondent Nos.1 to 3
Mr.Y.V.Kakde, Advocate for respondent No.4.

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**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL,JJ.**

Reserved on : 12.04.2016
Pronounced on : 02.05.2016

JUDGMENT: [Per S.S.Shinde, J.]:

Heard.

2] Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

3] This Petition is filed with the following prayer:

B] Issue a writ of Mandamus and/or any other appropriate writ, or order, or direction, and call for the record and proceedings of the respondents in respect of the communication dt 12/6/2014 issued by the respondent, the proforma-I and Form No.V suggesting the amount of Rs.2,77,101 as inadmissible in the grants on account of excess casual leave and the communication dt 8/8/2015, issued by the respondent Principal and on perusal of the same or otherwise, quash and set aside all these communications, decisions and directives.

4] It is the case of the petitioners that the petitioners are the Lecturers in Shri Shivaji College at Kandhar, District Nanded. The said institution is receiving grant-in-aid from the State Government. The services and service conditions, including

grant of casual leave of the teaching staff / Lecturers are governed by the provisions of the Maharashtra Universities Act and various Statutes. On 11th May, 2009, the Government of Maharashtra issued a Circular that the casual leave would be 8 days in a year. However, it is the case of the petitioners that the said Circular was not given wide publicity and the same was not brought to the notice of the petitioners.

5] On 8th May, 2010, Shri Swami Ramanand Teerth Marathwada University [for short 'SRTM University'] informed all the Principals of Colleges affiliated to it that as per Statute 49-A, the teaching staff is entitled to get 15 days casual leave in a year from 2009-2010. On 9th November, 2012, the said University reiterated the communication dated 8th May, 2010, and clarified that the said communication still holds the field about entitlement of University employees to enjoy

15 days casual leave in a year. In view of the said information received from the SRTM University, the College Principal granted leave in excess of 8 days to the petitioners in the year 2012-2013. On 12th June, 2014, the CAG, during audit, raised an objection that the excess casual leave was granted to the teaching staff and directed deduction of the amount in respect of excess days of casual leave. As a result of the said audit report, the Joint Director [Higher Education] directed deduction from the grants and the Colleges issued notices of deduction to the petitioners on 08.08.2015. The petitioners replied the College that it was not their fault to enjoy casual leave exceeding 8 days. However, the College Authorities were bent upon to recover the amounts from the petitioner. Hence this Writ Petition.

6] The learned counsel appearing for the petitioners submits that the petitioners

have acted *bona fide* relying upon the sanction of casual leave by respondent nos. 4 and 5. The respondent Principal, who is the Competent Authority to grant casual leave, was justified in view of the University Directives dated 8th May, 2010 reiterated on 9th November, 2012 that the casual leave upto 15 days was admissible in a year. Thus, because of the *bona fide* mistake of the University and the Principal of the College, the petitioners cannot be punished and penalized by directing deduction from their pay the amount equal to pay and allowances of the days in excess of the casual leave enjoyed in the year 2012. It has been always the policy and settled principle of law that a person committing *bona fide* mistake is not liable to be punished or penalized. Thus, the recovery order by the respondents from the salary of the petitioners is arbitrary, illegal, unconstitutional and untenable.

Therefore, the communication dated 12th June, 2014 by the CAG, the communication issued by the office of Joint Director, making amount of Rs.2,77,201/- inadmissible and the communication issued by the respondent Principal directing recovery of the amount of excess casual leave enjoyed by the respective petitioners is, thus, being null and void is required to be declared accordingly. The representations made by the petitioners have fallen on the deaf ears of the respondents.

7] It is further submitted that under the provisions of the Maharashtra Universities Act, the Statutes issued by the University and the Directives given by it, have over-riding effect. The exercise of the powers under Section 8 [4] of the Universities Act by the respondent State and its Authorities is thus null and void. The retrospective recovery orders by the respondents cannot be sustained. Such drastic

action may affect the other avenues and the career of the concerned employees. No contingency as provided for by Section 8 of the Universities Act, and more particularly, sub-section (4) of the same has arisen. Apart from it, there does not appear to be any adherence and compliance to the provisions of sub-section (4) of Section 8 of the Universities Act. At any rate, the above provisions do not confer any power unto the State Government to take action retrospectively, that too, against the teaching staff who acted *bona fide* and had no reason to know that the casual leave admissible has been reduced. In the facts and circumstances of the present case, the petitioners are entitled to the reliefs as prayed.

8] On the other hand, the learned AGP appearing for the respondent – State relying

upon the affidavit-in-reply filed on behalf of respondent nos. 1 to 3 submits that the petitioners are the Assistant Professors in the various Colleges and they availed of 15 days casual leave in a calendar year. So far casual leave is concerned, the State has framed a policy by issuing Government Resolution No.Sankirn/2008/08-A/Vishi-Arth dated 11th May, 2009, wherein it is mentioned that there would be casual leave for 8 days only in a year. The petitioners are liable to pay for the casual leave period enjoyed by them in excess of 8 days in 2012. Therefore, the Petition may be rejected.

9] Respondent no. 4 has also filed affidavit-in-reply. The learned counsel appearing for respondent no. 4 relying upon the averments in the said affidavit-in-reply submits that as per the Government Circular dated 11th May, 2009, issued by the Department

of Higher Education, it has been stated that as per the provisions of Section 8 (4) of the Maharashtra Universities Act, 1994, maximum casual leave available would be for 8 days only in one year. The said Circular has been circulated and forwarded to all the Colleges, Departments and Directors of the Education Institute. After the said communication, the said subject was placed before the Senate on letter dated 24th February, 2010. The Senate forwarded the said proposal to the Management Council. The Management Council by its Resolution dated 4th May, 2010, resolved that, as per the Statute, 15 days casual leave for the teachers of the affiliated Institute can be granted. The said Resolution has been communicated to respondent no. 4 by letter dated 7th May, 2010.

10] The learned counsel for respondent no. 4 further submits that on 5th June, 2012, the teachers relating to Universities and

other Senior Colleges approached the Vice Chancellor. The subject of casual leave was put up before the Management Council. The meeting of the Management Council was held on 25th July, 2012, and it has been decided by the Management Council that by collecting information from other Universities, and opinion from the Director of Higher Education, the further decision would be taken. Respondent no. 4, by writing letters, approached the various Universities in the State thereby seeking information in respect of casual leave. As per the information received from the Pune, Amravati, Solapur, Kolhapur, S.N.D.T. Mumbai, BAMU Universities, it was communicated to the Colleges that, 15 days casual leave is admissible in the said Universities. But, in Nagpur and Mumbai Universities, only 8 days casual leave has been granted to the employees in a year in the past. Also the North Maharashtra

University has communicated that, employees are entitled for 12 days casual leave. The opinion of the Director of Education is also sought by respondent no.4 by writing letter stating therein that the Joint Director, Higher Education, Nanded has communicated that only 8 days casual leave is sanctioned but the employees are demanding 15 casual leave, therefore, the Accountant General, Nagpur objected for availing of 15 days casual leave, and therefore, the confusion has been created.

11] It is submitted by the learned counsel for respondent no.4 that the issue in respect of casual leave is subjudice before the Statute Committee and in response to the earlier communication dated 4th October, 2012, to Director of Higher Education, he has not given any opinion.

12] We have given careful consideration

to the submissions of the learned counsel appearing for the parties. With their able assistance, perused the pleadings and grounds taken in the petition, annexures thereto, replies filed by the respondents and annexures thereto. It is true that, the Government Resolution dated 11th May, 2009, issued by the Department of Higher and Technical Education, Government of Maharashtra, provides for 8 days casual leave for the Lecturers and Officers working in the Universities and Colleges affiliated to the said Universities. However, it appears that, the issue about the entitlement of casual leave of the Lecturers and other employees working in the Universities and affiliated Colleges came up for discussion before the Senate of the University on 24th February, 2010 and in the said meeting, it was resolved that, the Lecturers and the other employees working in the University should be given 15

days casual leave. The Senate forwarded the said proposal for approval to the Management Council. The Management Council, by its Resolution dated 4th May, 2010, held that the Lecturers working in the University and the affiliated Institutes are entitled for 15 days casual leave and accordingly, the said decision was communicated to all the concerned. It appears from the copies of the documents placed on record that the concerned College wherein the petitioners are rendering the services was communicated that the petitioners are entitled for 15 days casual leave. Therefore, the concerned Institution relying upon the said communication extended benefit of 15 casual leave to the petitioners. It is true that there appears to be conflict between the decision taken by the University to grant 15 days casual leave and the provision made in the aforesaid Government Resolution prescribing maximum 8

days casual leave in a year. In the peculiar facts and circumstances of this case, we are of the opinion that, the petitioners were not at fault in availing of casual leave for 15 days in 2012. They were under a *bona fide* impression that the University has communicated them through the college that they are entitled for 15 days casual leave during the academic year 2012-2013, and therefore, they availed of 15 days casual leave.

13] In our opinion, *bona fide* mistake has been committed by the University to communicate the Colleges and the Lecturers that they are entitled for 15 days casual leave and on the basis of the said information, the petitioners have availed of casual leave. The University is the Apex Body for the colleges wherein the petitioners are working, and therefore, in the peculiar facts and circumstances of this case, we are

inclined to allow the Petition in terms of prayer clause-B, referred to above in para 3.

14] Rule made absolute on the above terms. The petition is allowed and disposed of accordingly.

Sd/-
[**SANGITRAO S.PATIL**]
JUDGE

Sd/-
[**S.S.SHINDE**]
JUDGE

DDC