

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

41 WRIT PETITION NO. 11236 OF 2015

SYED WASEEM SYED SAHAB
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Thombre S.S.
AGP for Respondents: B.A. Shinde
Advocate for Respondents : Dhage Vivek J.
Advocate for Respondents : Malte Uday S. For R/4

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**CORAM : S.V.GANGAPURWALA &
P.R. BORA, JJ.
DATED : 10.10.2016.**

P.C. :-

1. Mr. Thombre, the learned counsel for the petitioner states that, the petitioner was appointed as an Assistant Professor in Urdu subject with the respondent-college, after following due procedure of law and after undergoing the selection process. The respondent nos. 1 to 4 have not yet granted approval and the affiliation to the post of Urdu subject from general category. The learned counsel submits that, the petitioner from the date of his appointment is regularly performing and officiating his duties. The petitioner is also not paid salary. The learned counsel relies on the staffing pattern approved by the Joint Director of

Higher Education and contend that, the post of Urdu is sanctioned on grant-in-aid. The learned counsel states that, even the university has submitted representation to the Higher and Technical Education Department as to whether the affiliation can be considered from the year 1998-1999 in respect of various subjects including Urdu subject, however, no cognizance is taken of the said communication from the university. The record prepared by respondent college is illegal, no amount has been paid to the petitioner.

2. The learned counsel submits that, the petitioner cannot be made to suffer for the mistakes of the respondents.

3. Mr. Dhage, the learned counsel for the respondent nos. 5 and 6 submits that, in the staffing pattern the post of Urdu was shown on partially grant-in-aid basis, the petitioner was appointed, the petitioner is paid the salary as is detailed in the affidavit in reply. The learned counsel submits that, the Urdu subject was started in the respondent college since 1999 at that time there was no policy to grant sanction on permanent non-grant-in-aid basis.

4. Mr. Malte, learned counsel for the university submits that, the university is only concerned with grant of affiliation, the letters are

written by the university to the Secretary of the Technical and Higher Education with regard to the facts as existing.

5. The learned A.G.P. states that, the permission has been granted to the respondent college to start Urdu subject on permanent non-grant-in-aid as per permission dated 20.07.2002, there was a mistake committed at the hands of Joint Director Higher Education in stating that the said subject is on partial grant-in-aid while sanctioning the staffing pattern.

6. We have considered the submissions, we can understand that, the petitioner cannot be at fault in the dispute that has arisen about the post being on grant-in-aid or non-grant in aid. The permission letter dated 28.07.2002 issued by the Technical and Higher Education department is on record, which states that various subjects including Urdu subject as detailed in the said order is granted on permanent non-grant in aid basis. Even the University vide its letter dated 28.08.2002 issued to the respondent college has also stated that the permission is granted by the state government for Urdu subject on permanent non-grant-in-aid basis and for that the University has granted approval also.

7. The staffing pattern issued to the respondent-college shows

various subjects on partial grant-in-aid, the same according to the Joint Director of Higher Education is a mistake committed by him. Be that as it may, the university under its letter dated 02.04.2014 and 12.01.2015 has apprised the Secretary, Technical and Higher Education that, the respondent college has started the said course from the academic year 1999-2000 and also enquired whether the same can be granted affiliation from 1998-1999. It appears that, no decision has been taken upon the same by the state government as yet. The respondent-state i.e. the Technical and Higher Education shall take appropriate decision upon the same expeditiously preferably within eight months.

8. As far as the payment of salary is concerned there are rival contentions, according to the petitioner, the salary is not paid, however, according to the respondent nos. 5 and 6 the said salary is paid. The petitioner, as well as, respondent nos. 5 and 6 have filed affidavit in reply depicting contrary stand, wherein, both the parties agree that the said record be even referred to hand writing expert.

9. In writ jurisdiction under Article 226 of the Constitution of India this court would not embark upon the investigation of the factual dispute. Considering the fact it is the question with regard to the

payment of salary and contradictory claims are made by respondent nos. 5 and 6, it would be appropriate for the parties to approach the Joint Director of Higher Education, Nanded Division, Nanded.

10. The petitioner may approach the Joint Director of Technical Education on 24.10.2016 and place its grievance with regard to non-payment of salary as claimed by him by a detailed application /representation. The respondent nos. 5 and 6 may also appear before the Joint Director of Education on the said date and may place on record the relevant documents on which it relies.

11. Upon receipt of the record as may be filed by the petitioner and or the respondent nos. 5 and 6, the Joint Director may hear the parties, peruse the record and take decision with regard to the salary of being paid/not paid to the petitioner expeditiously on its own merits preferably within four months. Writ petition accordingly disposed of. No costs.

[P.R.BORA, J.]

[S.V. GANGAPURWALA, J.]