

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4899 of 2016

- 01 Madhav Natha Mali,
age: 70 years, Occ: Retired,
R/o 11, Indira Colony,
Airport Road, Deopur,
Dhule, District Dhule.
- 02 Late Shivajirao Sawant,
(since deceased through
his L.R.)
Smt.Irawati Shivajirao Sawant,
age: 70 years, Occ: Household,
R/o 59, Shivgad, Satsang
Colony, Airport Road, Deopur,
Dhule, District Dhule.
- 03 Bansikumar Kanhaiyalal Chhaged,
age: 79 years, Occ: Retired,
R/o Arati, Saraswati Colony,
Vidyananagari, Deopur, Dhule,
District Dhule.
- 04 Dr.Ramchandra Vinayak Kulkarni,
age: 77 years, Occ: Retired,
R/o 404, "Anuja", Amrutkalash
Society, Galli No.9, Shahu Colony,
Karvenagar, Pune.
- 05 Dr.Savitri Jaiprakash Bhartiya,
age: 68 years, Occ: retired,
R/o 101, Mantri Lawns,
Beside Gaikwad Bungalow,
Anand Park, Aundh, Pune-7.
- 06 Dr.Gangadhar Ganpati Barche,
age: 69 years, Occ: Retired,
R/o 1, Atharva Apartment,
Satsangh Colony, Deopur,
Dhule, District Dhule.

- 07 Late Suresh Bhikanrao Patil,
(since deceased, through his
L.R.):
Smt.Shilpa Sureshrao Patil,
age: 65 years, Occ: Household,
R/o "Sushilp-Prabha", 43,
Jagannathnagar, Deopur,
Dhule, District Dhule.
- 08 Premsukh Kanhaiyalal Chajed,
age: major, Occ: Retired,
R/o "Prempushp", 40,
Saraswati Colony, Vidya Nagari,
Dhule, District Dhule.
- 09 Pandharinath Abhiman Patil,
age: 70 years, Occ: Retired,
R/o 56, Vidyanagari,
Deopur, Dhule,
District Dhule.
- 10 Dr.Jibhau Sitaram Deore,
age: 70 years, Occ: Retired,
R/o 5, Sambhaji Colony,
Deopur, Dhule, District Dhule.
- 11 Dr.Vijay Bandeo Chandra,
age: 70 years, Occ: Retired,
R/o 34, Madhuban Colony,
Deopur, Dhule, District Dhule.
- 12 Yashwant Namdeo Salunke,
age: 65 years, Occ: Retired,
R/o 6, Chhatrapati Nagar,
Vidyanagari, Dhule,
District Dhule.
- 13 Vitthal Kashiram Deore,
age: 67 years, Occ: Retired,
R/o "Mauli", 35,
Tulshiram Nagar, Deopur,
Dhule, District Dhule.

14 Digambar Bhagwan Khalane,
age: 70 years, Occ: Retired,
R/o 75, Indira Housing Society,
Vidyanagari, Dhule-5,
District Dhule.

15 Vijay Bhalchandra Bhadane,
age: 67 years, Occ: Retired,
R/o 5, Saikrupa Colony,
Airport Road, Deopur, Dhule,
District Dhule.

16 Dr.Bhimrao Shamrao Shishode,
age: 78 years, Occ: Retired,
R/o 149, Jai Hind Colony,
Deopur, Dhule, District Dhule.

17 Dattatraya Bhila Sonar,
age: 73 years, Occ: Retired,
R/o 51, Shahu Nagar, Dhule,
District Dhule.

18 Yashwant Ravji Mali,
age: 74 years, Occ: Retired,
R/o 12, Madhav Colony,
Near Natraj Cinema, Dhule,
District Dhule.

Petitioners

Versus

01 The State of Maharashtra,
through the Secretary for
Higher and Technical Education
Department, Government of
Maharashtra, Mantralaya,
Mumbai.

02 The Joint Director of Higher and
Technical Education, Jalgaon,
Region, Jalgaon.

03 The North Maharashtra University,
Umavinagar, Jalgaon,
District Jalgaon, through its

Registrar.

04 Shri Shivaji Vidya Prasarak
Sanstha's Arts and Commerce
College, Dhule, through its
Principal.

05 Shri Shivaji Vidya Prasarak
Sanstha Dhule, District Dhule,
through its Secretary.

Respondents

Mr.V.D.Hon, Senior Counsel i/by Mr.A.V.Hon, advocate for
petitioners.

Mr.S.S.Dande, A.G.P. for Respondents No.1 & 2.

Mr.Yogesh Bolkar, advocate holding for Mr.A.B.Girase, advocate for
Respondent No.3.

Mr.Yogesh Deshmukh, advocate for Respondents No.4 & 5.

WITH
WRIT PETITION NO.4900 OF 2016

01 Dhanrj Vedu Rawandale,
age: 65 years, Occ: Retired,
R/o 23, Balla Colony,
Ashok Nagar, Dhule,
District Dhule.

02 Dr.Rajaram Daulat Patil,
age: 67 years, Occ: Retired,
R/o Plot No.37, Shahu Nagar,
Deopur, Dhule, District Dhule.

03 Dattatraya Dagajirao Bhadane,
age: 83 years, Occ: Retired,
R/o Mohite Township, A-3/10,
Anandnagar, Hingje Kd.,
Sinhgad Road, Pune 51.

04 Bansilal Onkar Jaiswal,
age: 73 years, Occ: Retired,
R/o 703, Sarsi Sankalp,
155/1-7, D.P.Road,
Aundh, Pune.

- 05 Late Shashikant K. Wani,
(since deceased, through L.R.:
Smt.Manisha S. Wani,
age: 76 years, Occ: Household,
R/o A Wing, Flat No.402,
Sector-7, Plot No.9,
Hemawati Co-op. Housing
Society, Near Hariyana Bhavan,
Kandivali, Mumbai.
- 06 Punjaram Nimba Ahire,
age: 70 years, Occ: Retired,
R/o 5, Ekvira Girni, Sharadnagar,
Collector Patta, Malegaon,
District Nashik.
- 07 Navnath Shamji Dandgavhal,
age: 70 years, Occ: Retired,
R/o D2/402, Lukad Queens
Land Society, Vimannagar,
Pune-14.
- 08 Dhansing Dhondu Patil,
age: 76 years, Occ: Retired,
R/o "25, Mayur Colony,
Bandhubhav, Deopur, Dhule,
District Dhule.
- 09 Prabhakar Baliram Karbhari,
age: 71 years, Occ: Retired,
R/o 6-B, Chandradeep Apartment,
Hingne Khurd, Pune.
- 10 Vinayak Onkar Patil,
age: 69 years, Occ: Retired,
R/o 46-B, Garud Colony,
Near Ganpati Bridge, Deopur,
Dhule, District Dhule.
- 11 Prabhakar Ramchandra Patil,
age: 71 years, Occ: Retired,
R/o 6, Ravindranath Tagore
Society, Deopur, Dhule,

District Dhule.

- 12 Sahebsingh Jalamsing Rajput,
age: 76 years, Occ: Retired,
R/o 38/B, Satyam Co-op. Housing
Society, Mula Road, Khadki,
Pune.
- 13 Dr.Mohandas Tryambakrao Bhadane,
age: 68 years, Occ: Retired,
R/o 154, Jai Hind Nagar, Deopur,
Dhule, District Dhule.
- 14 Ramesh Rajaram Tarware,
age: 72 years, Occ: Retired,
R/o 13, Tagore Colony,
Deopur, Dhule, District
Dhule.
- 15 Bhika Natthu Patil,
(since deceased through L.R)
Smt.Vithabai wd/o Bhika Patil,
age: 62 years, Occ: Household,
R/o Keshar, 16, Madhav Colony,
Near Natraj Talkies, Dhule,
District Dhule.
- 16 Dr.Yadunath Dullabh More,
age: 70 years, Occ: Retired,
R/o 8, Ravindranath Tagore
Colony, Deopur, Dhule,
District Dhule.
- 17 Dr.Tukaram Ramdas Choudhari,
age: 70 years, Occ: Retired,
R/o 8, Ravindranath Tagore
Colony, Deopur, Dhule.
- 18 Vijay Yashwant Patil,
age: 71 years, Occ: Retired,
R/o 44, Professor Colony,
Deopur, Dhule,
District Dhule.

- 19 Bhanudas Vyankatrao Patil,
age: 68 years, Occ: Retired,
R/o 26, Sushant Colony,
Wadi Bhokar Road, Deopur,
Dhule, District Dhule.
- 20 Shantaram Yadneshwar Mahajan,
age: 66 years, Occ: Retired,
R/o 24-B, Balappa Colony,
Jamnagiri Road, Near L.I.C.
Colony, Dhule, District Dhule.
- 21 Vasant Vishnu Koranne,
age: 77 years, Occ: Retired,
R/o 6, Ashok Nagar,
Near L.I.C. Colony, Dhule,
District Dhule.
- 22 Sunil Madhavrao Nimbalkar,
age: 69 years, Occ: Retired,
R/o 16, Runanubandh,
Indira Colony, Opp: Datta Mandir,
Vidyanagari, Dhule, District
Dhule.
- 23 Aba Natthu Patkari,
age: 75 years, Occ: Retired,
R/o 6, Chhatrapati Nagar, near
Navtej Bazar, Vidyanagari,
Dhule, District Dhule.
- 24 Ratnakar Waman Sathye,
age: 75 years, Occ: Retired,
R/o Blot No.6, Vishwakumud
Society, 525, Narayan Peth,
Pune.
- 25 Namdeo Rajaram Wagh,
age: 74 years, Occ: Retired,
R/o 78, Rajdhenu, Adarsha
Colony, Nakane Road, Deopur,
Deopur, Dhule, District
Dhule.

26 Anansingh Bhatesingh Girase,
age: 72 years, Occ: Retired,
R/o 31, Ashok Nagar,
Near Watar Tank, Dhule,
District Dhule.

27 Chandrakant Motiram Bhavsar,
age: 69 years, Occ: Retired,
R/o C-106, Binawat, Township
Kale, Padal Road, Hadapsar,
Near Ganesh Mandir, Pune.

28 Ramrao Natthu Patil,
age: 66 years, Occ: Retired,
R/o 21, Parijat Colony, Deopur,
Dhule, District Dhule.

Petitioners

Versus

01 The State of Maharashtra,
through the Secretary for
Higher and Technical Education
Department, Government of
Maharashtra, Mantralaya,
Mumbai.

02 The Joint Director of Higher and
Technical Education, Jalgaon,
Region, Jalgaon.

03 The North Maharashtra University,
Umavinagar, Jalgaon,
District Jalgaon, through its
Registrar.

04 Shri Shivaji Vidya Prasarak
Sanstha's Dr.P.R.Ghogle Science
College, District Dhule, through its
Principal.

05 Shri Shivaji Vidya Prasarak
Sanstha, Dhule, District Dhule,
through its Secretary.

Respondents

Mr.V.D.Hon, Senior Counsel i/by Mr.A.V.Hon, advocate for petitioners.

Mr.S.Y.Mahajan, A.G.P. for Respondents No.1 & 2.

Mr.Yogesh Bolkar, advocate holding for Mr.A.B.Girase, advocate for Respondent No.3.

Mr.Yogesh Deshmukh, advocate for Respondents No.4 & 5.

WITH
WRIT PETITION NO.4901 OF 2016

Dinkar Anantrao Patil,
age: 71 years, Occ: Retired,
R/o Plot No.77, Badgujar
Colony, Vidyanagari, Deopur,
Dhule, District Dhule.

Petitioners

Versus

01 The State of Maharashtra,
through the Secretary for
Higher and Technical Education
Department, Government of
Maharashtra, Mantralaya,
Mumbai.

02 The Joint Director of Higher and
Technical Education, Jalgaon,
Region, District Jalgaon.

03 The North Maharashtra University,
Umavinagar, Jalgaon,
District Jalgaon, through its
Registrar.

04 Shri Shivaji Vidya Prasarak
Sanstha's Kai. S.D.Patil @ Baburao Dada
Arts and Commerce
College, Shindkheda, District Dhule,
through its Principal.

05 Shri Shivaji Vidya Prasarak
Sanstha Dhule, District Dhule,

through its Secretary.

Respondents

Mr.V.D.Hon, Senior Counsel i/by Mr.A.V.Hon, advocate for petitioners.

Mr.K.S.Patil, A.G.P. for Respondents No.1 & 2.

Mr.Yogesh Bolkar, advocate holding for Mr.A.B.Girase, advocate for Respondent No.3.

Mr.Yogesh Deshmukh, advocate for Respondents No.4 & 5.

WITH
WRIT PETITION NO.4902 OF 2016

- 01 Dinkar Fakira Wani,
age: 65 years, Occ: Retired,
R/o 46, Shriram Colony,
Wadi Bhokar Road, Deopur,
Dhule, District Dhule.
- 02 Dr.Kumar Bhujangrao Kadam,
age: 66 years, Occ: Retired,
R/o 4, Dhashree Apartment,
46, Janki Nagar, Wadi Bhokar
Road, Deopur, Dhule,
District Dhule.
- 03 Sau. Usha Abhimanyu Patil,
age: 66 years, Occ: Retired,
R/o 129, Ninad, Adarsha Colony,
Deopur, Dhule, District Dhule.
- 04 Dr.Ratnaprabha Suresh Patil,
age: 67 years, Occ: Retired,
R/o 43/B, Suyog Nagar,
Wadi Bhokar Road, Deopur,
Dhule, District Dhule.
- 05 Dr.Shashikala Babanrao Pawar,
age: 68 years, Occ: Retired,
R/o 16, Adarsha Colony,
Deopur, Dhule, District Dhule.
- 06 Hari Anna Patil,
age: 77 years, Occ: Retired,

R/o 4, Anand Gita Nagar,
Deopur, Dhule, District Dhule.

07 Dr.Pradeep Madhav Vyavhare,
age: 64 years, Occ: Retired,
R/o 7, Professor Colony,
Deopur, Dhule, District Dhule.

08 Late Bhaskar Vitthal More,
(since deceased through his
L.R.):
Smt.Kalpana Bhaskar More,
age: 70 years, Occ: Household,
R/o "Sneh", 9/B, S.T.Colony,
Deopur, Dhule, District Dhule.

09 Dr.Lilawati Tulshiram Deore,
age: 66 years, Occ: Retired,
R/o 115, Rama, Netaji
Subhashchandra Bose Co-op.
Housing Society, Deopur,
Dhule, District Dhule.

Petitioners

Versus

01 The State of Maharashtra,
through the Secretary for
Higher and Technical Education
Department, Government of
Maharashtra, Mantralaya,
Mumbai.

02 The Joint Director of Higher and
Technical Education, Jalgaon
Region, Jalgaon.

03 The North Maharashtra University,
Umavinagar, Jalgaon,
District Jalgaon, through its
Registrar.

04 Jai Hind Educational Trust's
Zulal Bhilajirao Patil,
Arts and Commerce

College, Dhule, District Dhule,
through its Principal.

05 Jai Hind Education Trust
Z. P. Patil Marg, Deopur,
Dhule, District Dhule,
through its Secretary.

Respondents

Mr.V.D.Hon, Senior Counsel i/by Mr.A.V.Hon, advocate for
petitioners.

Mr.S.Y.Mahajan, A.G.P. for Respondents No.1 & 2.

Mr.Yogesh Bolkar, advocate holding for Mr.A.B.Girase, advocate for
Respondent No.3.

Mr.S.P.Shah, advocate advocate for Respondents No.4 & 5.

WITH
WRIT PETITION NO.4678 OF 2016

Dr.Murlidhar Daulat Patil,
age: 70 years, Occ: Retired,
R/o 50, Subhash Colony,
Shirpur, Tq. Shirpur,
District Dhule.

Petitioner

Versus

01 The State of Maharashtra,
through the Secretary for
Higher and Technical Education
Department, Government of
Maharashtra, Mantralaya,
Mumbai.

02 The Joint Director of Higher and
Technical Education, Jalgaon,
Region, Jalgaon.

03 The North Maharashtra University,
Umavinagar, Jalgaon,
District Jalgaon, through its
Registrar.

04 Kisan Vidya Prasarak

Sanstha's Smt.Parvatibai
Dalpan Mali, Shri Bandu Bhagwan
and Smt.Hirabai Dalal Commerce
and Shirpur Merchants Association
Science College, Shirpur, District
Dhule, through its Principal.

05 Kisan Vidya Prasarak Sanstha
Shirpur, Tq. Shirpur, District
Dhule, through its Secretary.

Respondents

Mr.V.D.Hon, Senior Counsel i/by Mr.A.V.Hon, advocate for
petitioners.

Mr.S.J.Salgare, A.G.P. for Respondents No.1 & 2.

Mr.Yogesh Bolkar, advocate holding for Mr.A.B.Girase, advocate for
Respondent No.3.

Mr.S.P.Shah, advocate for Respondents No.4 & 5.

WITH
WRIT PETITION NO.4680 OF 2016

Girdhar Govindrao Desle,
age: 72 years, Occ: Retired,
R/o Plot No.25, Arunodaya
Nagar, Goliar Tekdi Road,
Dhule, District Dhule.

Petitioners

Versus

01 The State of Maharashtra,
through the Secretary for
Higher and Technical Education
Department, Government of
Maharashtra, Mantralaya,
Mumbai.

02 The Joint Director of Higher and
Technical Education, Jalgaon,
Region, Jalgaon.

03 The North Maharashtra University,
Umavinagar, Jalgaon,
District Jalgaon, through its

Registrar.

04 Vidya Vardhini Sabha's
Arts, Commerce and Science
College, Sakri Road, Dhule,
District Dhule, through its
Principal.

05 Vidya Vardhini Sabha Trust,
Sakri Road, Dhule, District
Dhule, through its Chairman
Dr.Deelip Ratan Patil.

Respondents

Mr.V.D.Hon, Senior Counsel i/by Mr.A.V.Hon, advocate for
petitioners.

Mr.S.Y.Mahajan, A.G.P. for Respondents No.1 & 2.

Mr.Yogesh Bolkar, advocate holding for Mr.A.B.Girase, advocate for
Respondent No.3.

Mr.A.G.Talhar, advocate for Respondents No.4 & 5.

CORAM : R.M.BORDE AND

K.K.SONAWANE, JJ.

Reserved on : 07th April, 2017.

Pronounced on: 06th June, 2017.

ORAL JUDGMENT (Per R.M.Borde, J.):

1 Heard. Rule. Rule made returnable forthwith and
heard finally by consent of learned Counsel for respective parties.

2 Petitioners, in this group of petitions are either retired
college teachers or legal representatives of deceased teachers.
Petitioners are claiming directions to the Respondent - Colleges
and the Institutions to pay them the amount payable towards
encashment of earned leave standing to their credit on the date of
their superannuation with interest, in accordance with rules, as
expeditiously as possible, preferably within a period of three

months. A direction is also sought for against the respective Colleges and the Institutions to comply with the directives issued by the University in respect of payment of the amount towards earned leave standing to their credit together with interest payable on the date of their retirement.

3 Petitioners are the retired employees and were in service of the respective colleges as lecturers/teachers. In view of provisions of Statute 424 (3) and 424 {c} of the North Maharashtra University, they are entitled to claim the amount of earned leave standing to their credit on the date of their retirement on superannuation. Petitioners raised claim for payment of amount towards encashment of earned leave to the respective colleges and the Institutions, however, their claims were not considered. As such, petitioners were compelled to approach Respondent No.3-University for redressal of their grievance. The Grievance Cell of the University, on consideration of respective claims of the petitioners, tendered a report to the University holding entitlement of the petitioners to claim the amount of encashment of earned leave. The University also adopted a resolution in the meeting of the Academic Council and issued a communication to the College to verify the amount and pay the same to the respective petitioners. In spite of communication by the University and the resolution adopted by the Academic Council, which binds the respondent-college, no steps were taken. As such, petitioners are compelled to approach this Court.

4 The grievance raised by the petitioners, in these petitions, is no more *res integra* and in number of identical

matters, directions have already been issued by this Court favouring the employees. In Writ Petition No.6640/2004, decided by the Division Bench at Mumbai on 22.11.2004, Writ Petition No.4936 of 2006, decided by the Division Bench at Mumbai on 22.01.2007, Writ Petition No.5177 of 2006, decided by the Division Bench at Mumbai on 09.02.2007, Writ Petition No.4166 of 2000 as well as Writ Petition No.1647 of 2003, decided on 21.06.2001 and 04.06.2003, respectively, identical directions have been issued.

5 The decision of this Court in the matter of **Arjun Hari Narkhede & others Vs. Khandesh College Education Society, Jalgaon & another**, (decided by Division Bench at Aurangabad on 09.06.2008 in Writ Petitions No.2881 of 2007 and 1401 of 2008) was a matter of challenge before the Supreme Court. The Hon'ble Supreme Court dismissed the Special Leave Petitions presented by the Institution and the College on 05.07.2011. While deciding the matter in the case of **Khandesh College Education Society, Jalgaon & another Vs. Arjun Hari Narkhede & others**, reported in 2011 (7) SCC 172, the Hon'ble Supreme Court has observed in paragraphs no.12 to 18, as quoted below:

"12 Rule 54 of the Maharashtra Civil Services (Leave) Rules, 1981 on which the learned counsel for the petitioners has placed reliance is quoted hereinbelow :

"54. Earned leave for persons serving in
Vacation Departments -

(1) A government servant serving in a
Vacation Department shall not be entitled to
any earned leave in respect of duty performed
in any year in which he avails himself of the
full vacation.

(2) (a) In respect of any year in which a

government servant avails himself of a portion of the vacation, he shall be entitled to earned leave in such proportion of 30 days, as the number of days of vacation not taken bears to the full vacation:

Provided that no such leave shall be admissible to a government servant not in permanent employ in respect of the first year of his service.

(b) If, in any year, the government servant does not avail himself of any vacation, earned leave shall be admissible to him in respect of that year under Rule 50.

Explanation - For the purposes of this rule, the term "year" shall be construed as meaning not calendar year but twelve months actual duty in a Vacation Department.

Note 1 - A government servant entitled to vacation shall be considered to have availed himself of a vacation or a portion of a vacation unless he has been required by general or special order of a higher authority to forgo such vacation or portion of a vacation; provided that if he has been prevented by such order from enjoying more than fifteen days of the vacation, he shall be considered to have availed himself of no portion of the vacation.

Note 2 - When a government servant serving in a Vacation Department proceeds on leave before completing a full year of duty, the earned leave admissible to him shall be calculated not with reference to the vacations which fall during the period of actual duty rendered before proceeding on leave but with reference to the vacations that fall during the year commencing from the date on which he completed the previous year of duty.

(3) Vacation may be taken in combination with or in continuation of any kind of leave under these rules :

Provided that the total duration of vacation and earned leave taken in conjunction, whether the earned leave is taken in combination with or in continuation

of other leave or not, shall not exceed the amount of earned leave due and admissible to the government servant at a time under rule 50:

Provided that the total duration of vacation, earned leave and commuted leave taken in conjunction shall not exceed 240 days."

13 From the very language of different provisions of Rule 54 of the Maharashtra Civil Services (Leave) Rules, 1981 it is clear that it applies only to "a government servant". Respondents 1 to 14 are not government servants and, therefore, cannot be denied earned leave on the basis of provisions made in Rule 54 of the Maharashtra Civil Services (Leave) Rules, 1981.

14 On the other hand, Section 115 of the Act while repealing the different Acts applicable to different universities in the State of Maharashtra provides in sub-section (2)(xii) that all Statutes made under the repealed Acts in respect of any existing university shall, insofar as they are not inconsistent with the provisions of the Act, continue in force and be deemed to have been made under the Act in respect of the corresponding university until they are superseded or modified by the Statutes made under the Act. Hence, Statutes 424(3) and 424(C) of University of Pune, which were applicable to the University, continue to be in force and are deemed to be made under the Act if they are not inconsistent with any provision of the Act or are not superseded, modified by Statutes made under the Act.

15 Section 5(60), 8 and 14(5) of the Act confer power on the State Government to exercise control over the University in some matters and also empower the State Government to issue directives to the University and cast a duty on the Vice-Chancellor to ensure compliance with such directives, but these provisions in the Act do not prohibit grant of earned leave to a teacher or Lecturer of any affiliated college who can avail a vacation from being entitled to earned leave or from being entitled to encashment of accumulative earned leave at the time of retirement. In other words, Statutes 424(3) and 424(C) of University of Pune are not in any way inconsistent with the provisions of the Act. The learned counsel for the petitioners and the State Government have also not brought to our notice any statute of the University modifying or superseding Statute 424(3) or Statute

424(C) of University of Pune which were applicable to the University.

16 Statutes 424(3) and 424(C) of University of Pune are extracted hereinbelow :

"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 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 as 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."

* * *

"424(C). Encashment of unutilised 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."

17 A reading of Statute 424(3) extracted above would show that clause (a) applies to confirmed non-vacation teachers and clause (b) applies to teachers other than non-vacation teachers and clause (b) clearly states that teachers other than non-vacation teachers shall be entitled to earned leave subject to their accumulation of maximum 180 days. Statute 424(C),

quoted above, further provides that teachers shall be entitled to encash earned leave in balance to their credit on the date of his superannuation subject to a maximum of 180 days.

18 It , however, appears that the State Government has issued directives from time to time to the universities to amend the Statutes so as to ensure that Lecturers or teachers working in Vacation Departments are not entitled to earned leave and encashment of earned leave, but the fact remains that Statutes 424(3) and 424(C) of University of Pune have not been modified or superseded. There are also no provisions in the Act to the effect that the Statutes of a university which are inconsistent with the directives of the State Government will be invalid. Section 115(2)(xii) rather states that statutes which are not inconsistent with the provisions of the Act and which have not been modified or superseded shall continue to be in force. Hence, Respondents 1 to 14 were entitled to earned leave and encashment of earned leave as per the provisions of Statutes 424(3) and 424(C) of University of Pune.

6 In view of the decision rendered by the Hon'ble Supreme Court in the matter of **Khandesh College Education Society** (*supra*) as well as the decision in other petitions, referred to above, instant petitions also deserve to be allowed.

7 Learned Counsel appearing for the respondents-colleges/institutions have strenuously urged that the belated claim raised by the petitioners is not liable to be accepted. Placing reliance on the judgment in the matter of **State of U.P. & others vs. Arvind Kuman Srivastav & others**, reported in 2015 (1) SCC 347, as well as in the matter of **State of M.P. & another vs. Bhailal Bhai**, reported in AIR 1964 (SC) 1006, it is urged that the belated claim raised by the petitioners is not liable to be

considered and the petitions deserve to be dismissed on the ground of delay and latches. It is also contended that Writ Petition No.5545 of 2012 raising an identical issue, is pending consideration and as such, instant petitions deserve to be dismissed.

8 The judgments cited by the respondents do not have any relevance to the instant matters, in view of the decision of the Supreme Court in the matter of **Khandesh College Education Society** (*supra*), which deals with the same issue, which has been raised in the instant matter. Apart from this, it is the responsibility of the college to extend the benefit of encashment of earned leave to the employees and pay the amount at the time of their retirement on superannuation. In fact, the statutory responsibility cast on the college has not been performed by the concerned respondents and as such, it would not be permissible for the respondents to raise defence of delay and latches. Even otherwise, since entitlement of the employees on the identical circumstances has been upheld by the Supreme Court in the matter of **Khandesh College of Education Society** (*supra*), on interpretation of the statute of the University, the employees of the College, who are in the cadre of teacher/lecturer, are entitled to claim the benefit of encashment of earned leave and the benefit is receivable by the employees as a class. Since entitlement of the class of employees has been upheld by the Hon'ble Supreme Court, the petitioners, in the instant petitions, cannot be denied the same benefit.

9 In view of the reasons recorded above, instant writ

petitions deserve to be allowed and same are accordingly allowed. Respondent-Institution and the College are directed to pay the monetary benefits towards encashment of earned leave standing at the credit of petitioners under statute 424(3) read with 424{c} of the North Maharashtra University, as expeditiously as possible, preferably within a period of three months from the date of the order.

10 Rule is accordingly made absolute. There shall be no order as to costs.

K.K.SONAWANE
JUDGE

adb/wp489916

R.M.BORDE
JUDGE