

((1))

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

WRIT PETITION NO.5889 OF 2006

Dr. Suryaprakash Dhaneria
Age 49 years, Occu. Service,
R/o 49, Kumawat Pura, Main Road,
Juni Indore, Indore (M.P.) ... PETITIONER

VERSUS

1. The State of Maharashtra
(through its Secretary,
Medical Education & Drugs
Department, Mantralaya,
Mumbai – 400 032
(Copy to be served on Govt.
Pleader, High Court of Judicature
at Bombay, Bench at Aurangabad)
2. The Vice Chancellor,
Maharashtra University of
Health Sciences, Nasik
3. The Principal,
Jawahar Medical Foundation's
Annasaheb Chudaman Patil Memorial
Medical College, Dhule,
Hutatma Shirishkumar Nagar,
Opp. Jawahar Soot Girni,
Sakri Road, Dhule
4. The Chairman,
Jawahar Medical Foundation's
Annasaheb Chudaman Patil Memorial
Medical College, Dhule,
Hutatma Shirishkumar Nagar,
Opp. Jawahar Soot Girni,
Sakri Road, Dhule ... RESPONDENTS

.....

((2))

Shri A.S. Barlota, Advocate holding for
Shri S.K. Barlota, Advocate for petitioner
Mrs. M.A. Deshpande, Addl. G.P. for respondent No.1
Shri M.S. Kulkarni, Advocate for respondent No.4

.....

CORAM: RAVINDRA .V. GHUGE AND
 SUNIL K. KOTWAL, JJ.

DATED : 9th NOVEMBER, 2017.

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.):

1. The petitioner, by this petition, has put forth his prayers in para No.21(B) and 21(C) as under :

B) By issuing appropriate writ, order or directions, the respondent No.3 College and its management be directed to pay the arrears of Vth Pay scale and revised non-practicing allowance (N.P.A.) in favour of the petitioner as per the scale prescribed in Government Resolution dated 27.01.2000 and 18.03.2000 with retrospective effect as mentioned in the said Government Resolution along with interest thereon.

C) By issuing appropriate writ, order or directions, the respondent No.1 and 2 be directed to take appropriate action against the respondent No.3 College and its management for not implementing the Government Resolutions dated 27.01.2000 and 18.03.2000 with retrospective effect as mentioned in the said Government Resolution.

2. We have considered the strenuous submissions of

the learned Advocate for the petitioner, learned Advocate for respondent Nos.3 and 4, and the learned A.G.P. on behalf of respondent No.1. Though respondent No.2 Maharashtra University of Health Sciences has been served, no appearance has been entered.

3. The petitioner before us is the former Professor in respondent No.3 and 4 institution. He joined the Medical College as an Associate Professor of Pharmacology on 20.4.1993 and by order dated 17.2.1995, he was promoted as Professor of Pharmacology. He has resigned from employment by resignation letter dated 8.9.2000, which has been accepted and he has been relieved. There is no dispute as regards this aspect.

4. The issue raised before us is with regard to the benefits of the Vth Central Pay Commission recommendations, which have been accepted by the State of Maharashtra. As the benefits of the said Pay Commission were not extended to the petitioner, he has preferred this petition.

5. The employer of the petitioner, which is the respondent No.4 Medical College is affiliated to the respondent No.2 University.

6. The issue as to whether a private educational institution would be covered by the Pay Commission recommendations and whether such recommendations would be applicable and binding upon grant-in-aid and non-grant-in-aid colleges, is no longer res integra. In the matter of *Bhartiya Kamgar Sena & others Vs. The State of Maharashtra & others*, the petitioner Union had sought the benefits of the Vth Pay Commission recommendations, which were denied to its members by the Mahatma Gandhi Mission Engineering College. The said educational institution is undisputedly a private educational institution and affiliated to the University as per the requirement of law. The ground taken by the management was that, since it is a private establishment, the Government Resolution introduced by the State of Maharashtra accepting the Vth Pay Commission recommendations w.e.f. 1.1.1996, would not be applicable to the employees of the colleges and institutions conducted by the said educational trust.

7. This Court, in its judgment delivered on 10.2.2012 in the matter of **Bhartiya Kamgar Sena & ors. Vs. State of Maharashtra & ors. (2012 (3) Mh.L.J. 872**, has concluded that it is inconsequential whether the educational institution is

conducted by a private Trust. The Vth Pay Commission recommendations accepted by the State, and made applicable to such educational institutions, would make it an obligation for such institutions to make the payment as per the recommendations. Though the Writ Petitions were partly allowed by this Court, the delay caused in approaching the Court to some extent was not condoned, and the benefits were extended to a limited period.

8. After the matter reached the Hon'ble Apex Court in **Secretary, Mahatma Gandhi Mission & anr. Vs. Bhartiya Kamgar Sena & ors.** reported in **(2017) 4 SCC 449**, the Hon'ble Apex Court recorded the facts of the case in para No.2. Upon considering the contentions of the parties, it was observed in para Nos.15 to 19 as under :

15. By the impugned judgment, the Bombay High Court (Aurangabad Bench) disposed of four writ petitions viz. Writ Petition Nos.11091, 8780 of 2010, 2035 of 2011 and 4443 of 2009. We are only concerned with the impugned judgment insofar as it dealt with Writ Petition Nos.11091, 8780 of 2010 and 2035 of 2011 because these appeals before us are directed only against those writ petitions.
16. There are numerous prayers in each of the writ petitions. It may not be necessary to extract all

the prayers. But from the impugned judgment the main reliefs claimed in these three writ petitions and granted (insofar as they are relevant) can be culled out.

17. Writ Petition No.11091 of 2010 was filed by the "teaching and non-teaching staff of the engineering college" at Aurangabad run by the 1st appellant. The main prayer is for recovery of the amount in respect of the pay scales fixed by the Fifth Pay Commission and for the implementation of the pay scales fixed by the Sixth Pay Commission. The High Court declined to grant any relief with respect to the Fifth Pay Commission on the ground of laches but allowed the petition insofar as it prayed for the implementation of the pay scales fixed by the Sixth Pay Commission.
18. *Writ Petition No.8780 of 2010* : It was filed by the "non-teaching staff" of the Engineering College, Nanded run by the 1st appellant herein. They prayed that the management be directed to implement the Fourth, Fifth and Sixth Pay Commission Reports w.r.t. the petitioner/ non-teaching staff. The High Court directed that the pay scales suggested by the Sixth Pay Commission for the non-teaching staff be given.
19. *Writ Petition No.2035 of 2011* : The prayer in this writ petition (filed by a lone petitioner) is for the implementation of the revision in the pay scales in terms of the Fourth, Fifth and Sixth Pay Commission Reports. The High Court opined that relief could be granted only with reference to the Sixth Pay Commission Report but not the other two Pay Commission Reports in view of laches.

9. While dealing with the controversy before it, the Hon'ble Apex Court has concluded in para Nos.95, 96 and 97 as under :

95. At the outset, we make it clear that at least insofar as non-teaching staff are concerned, the appellants have no excuse for making such a submission because in the earlier round of litigation the respondents non-teaching employees of the appellants, though succeeded both before the High Court and this Court in obtaining appropriate directions to the appellant and other authorities to revise the pay scales of the employees in tune with the Fifth Pay Commission, entered into a settlement dated 30.1.2006, the terms of which have already been taken note in this judgment at para 4.
96. Under the said agreement, the management agreed to revise the pay scales from time to time in tune with the revision of the pay scales of the employees of the State. Therefore, the submission of the management in this regard is liable to be rejected on that ground alone.
97. Even otherwise, if the appellants are obliged under law, as we have already come to the conclusion that they are in fact obliged, it is for the appellants to work out the remedies and find out the ways and means to meet the financial liability arising out of the obligation to pay the revised pay scales.

10. The appeal filed by the Mahatma Gandhi Mission

institution was, therefore, dismissed and it was concluded that, Pay Commission recommendations, having been accepted by the State and made applicable, the employees working in such institutions would be entitled to receive the benefit of the recommendations.

11. Learned counsel for the Medical College has vehemently contended before us that the petitioner has approached this court in 2006 for the benefits of the Vth Pay Commission recommendations, which were made applicable from 1.1.1996. The fact that he has resigned from the employment of the management by his resignation letter dated 8.9.2000, made effective from 9.9.2000 by the petitioner himself, the lodging of this petition on 28.7.2006 would amount to an inordinate delay and hence, the matter does not deserve to be entertained.

12. He placed reliance upon a recent judgment delivered by this Court, dated 2.2.2017 in the matter of Hukumchand s/o Shivram Kumbhar & 12 ors. Vs. Kisan Vidya Prasarak Sanstha & 4 others in Writ Petition No.4099/2001, to contend that this Court has concluded that though the petitioners were entitled to the benefits of the Pay

Commission recommendations, the delay caused cannot be ignored and at best, the benefits of the Vth Pay Commission can be extended for a period of three years preceding the date on which the said petition was filed. It is, therefore, canvassed that, as this petition was filed in 2006, even if the petitioner is to be granted the benefits of the recommendation for a period of three years preceding the date of filing of the petition, the petitioner still would not stand to earn any benefits as he has already resigned in the year 2000.

13. We find from the judgments cited before us in the matter of Secretary, Mahatma Gandhi Mission & anr. Vs. Bhartiya Kamgar Sena & ors. (supra) and **Bhartiya Kamgar Sena & ors. Vs. State of Maharashtra & ors.** reported in **[2012 (3) Mh.L.J. 872]**, that the Pay Commission recommendations would become applicable to such educational institutions in the light of the Government Resolution introduced on 27.1.2000. This would clearly indicate that, though the petitioner has resigned from service from 9.9.2000, he would be entitled to the benefits of the Pay Commission recommendations, keeping in view that the State of Maharashtra has accepted the recommendations w.e.f 1.1.1996, by the Government Resolution dated 27.1.2000.

14. In that view of the matter, it appears that, it was about eight months prior to the resignation of the petitioner, that the Pay Commission recommendations were made applicable by the Government of Maharashtra. Making a demand pursuant to the said Government Resolution would not indicate a delay on the part of the petitioner in making representations before the authorities.

15. It is obvious that the moment the Government Resolution was introduced on 27.1.2000, employees like the petitioner became alert and started pursuing their demand against a private management. The representations made by the petitioner to the management are dated 8.7.2000, 25.8.2000, 30.8.2000 and the last one being dated 8.9.2000. After resigning, he has forwarded few more representations dated 11.11.2000, 27.4.2001 and in March 2005.

16. It is, therefore, apparent that, with the representations forwarded by the petitioner, the management was made aware of the demand of the petitioner for salary at the rate of the Vth Pay Commission recommendations. It is strenuously contended by the learned counsel for the Medical Institution that the petitioner cannot be permitted to take

advantage of the delay caused, and the delay would be fatal to his case, keeping in view the law laid down by this Court in the matter of Hukumchand s/o Shivram Kumbhar & ors. (supra).

17. There is no dispute that this petition was filed in 2006, inasmuch as, there is no dispute that after the Government Resolution dated 27.1.2000 was introduced, accepting the Vth Pay Commission recommendations, it led to a cause of action as the management declined to make the payment as per the Vth Pay Commission recommendations. In this backdrop, it needs no debate that it is the respondent management which has declined to extend the benefits to the petitioner, and keeping the law in view, can be said to have committed a wrong. The issue, therefore, is as to whether the said management can be permitted to take advantage of its own wrong.

18. Once it is concluded that it was obligatory on the part of the management to make the payment of salary as per the Vth Pay Commission recommendations, refusal or denial to make the payment would not shift the blame to the petitioner. By refusing to make the payment, the

management has committed a wrong and when the petitioner waited for the management to take a decision and approached this Court after he was exasperated and exhausted, accepting the contention of the management that delay would deprive him of the benefits, would amount to accepting the contention that delay would legalise an illegality. We are of this view since we are taking cognizance of the representations made by the petitioner to the management, which would indicate that he was not sleeping over his rights. We are conscious of the view taken by a coordinate Bench of this Court in *Hukumchand Shivram Kumbhar's* case. However, in the case in hand, the representations were put forth by the petitioner from 8.7.2000 till he finally resigned from employment on 9.9.2000 and he continued to make such representations till March 2005.

19. We would have better considered the contentions of the learned counsel for the Medical College if the State of Maharashtra would have introduced a Government Resolution in 1996 itself declaring that the Vth Pay Commission recommendations are accepted and the petitioner slept over his rights till July 2000. However, the State of Maharashtra introduced the said Government Resolution on 27.1.2000, and

the petitioner started requesting the management from July 2000 for his Pay Commission benefits. It would indicate that he was pursuing his demands. No doubt, the petitioner has filed this petition in 2006. Since he has resigned from 9.9.2000, if we accept the contention of the learned counsel for the Medical college, the petitioner would be deprived of all benefits which the respondent College was legally obliged to extend him the same.

20. Considering the same, this petition is allowed in terms of prayer clause (C).

21. With regard to the revised non-practicing allowance on the basis of Government Resolution dated 18.3.2000, whether the said Government Resolution would be applicable to a private Medical College teaching staff or whether it would be restricted only to those teachers who are employed in the Government Medical Colleges, being disputed, we leave the said issue open for respondent No.3 and 4 to consider.

22. In the event the non-practicing allowance was being paid to the petitioner earlier, it may review the situation and take a decision about the revised payment within a period

of eight weeks from today. In the event the respondent No.3 and 4 conclude that the Government Resolution dated 18.3.2000 would not apply to the petitioner, they may accordingly take a decision and communicate the same to the petitioner in writing. If an adverse decision is taken, and if the petitioner is aggrieved, he would be at liberty to seek redressal of his grievance by resorting to a remedy as may be permitted in law.

23. Rule is made partly absolute in the above terms.

(SUNIL K. KOTWAL)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

fmp/