

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8949 OF 2016

Rangnath Vishnu Raskar,
Age: 62 Years, Occu.: Retired/Unemployed,
R/o.: Mangalmurti 41, Aikya Nagar,
Pipeline Road, Savedi, Ahmednagar,
Dist.: Ahmednagar

.. **Petitioner**

Versus

1. The State of Maharashtra,
Through Secretary,
Higher & Technical Education Department,
Mantralaya, Mumbai-32
2. Director of Technical Education,
Maharashtra State, Mumbai
3. Registrar,
Sevitribai Phule Pune University,
Ganesh Khind, Pune
4. Regional Officer,
All India Council for Technical Education,
Industrial Assurance Building,
2nd Floor, Veer Nariman Road,
Church Gate, Mumbai-400 020
(Maharashtra)
5. Secretary,
Padmashri Dr. Vithalrao Vikhe
Patil Foundation, Wadgaon Gupta,
Viladghat, Post MIDC, Ahmednagar,
Tal. and Dist. : Ahmednagar

6. Principal,
Padmashri Dr. Vithalrao Vikhe Patil
Foundation of Engineering College,
Wadgaon Gupta, Viladghat,
Post MIDC, Ahmednagar,
Tal. and Dist.: Ahmednagar

.. **Respondents**

Shri S. R. Choukidar, Advocate for the Petitioner.

Shri K. D. Mundhe, A.G.P. for Respondent Nos. 1 and 2.

Shri V. D. Hon, Senior Advocate h/f Shri A. V. Hon, Advocate for
Respondent Nos. 5 and 6.

Respondent Nos. 3 and 4 served.

**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

Reserved for Judgment on : 6th December, 2017

Judgment pronounced on : 19th December, 2017

JUDGMENT *(Per: S. V. Gangapurwala, J.) :*

1. Rule. Rule returnable forthwith. With the consent of learned counsel for respective parties taken up for final hearing.

2. The petitioner seeks declaration that he is entitled to be paid salary in accordance with the recommendations of the 6th Pay Commission as prescribed under Government Resolution dated 12th August, 2009, AICTE Notification dated 5th March, 2010 in the pay band of Rs. 53,700/- for the period 1.1.2006 to 31.5.2014. The petitioner has attained the age of superannuation on 31.5.2014. The petitioner had filed Writ Petition No. 3528 of 2001 praying for payment of salary in accordance with the recommendations of the 5th Pay Commission.

3. Mr. Choukidar, learned advocate for the petitioner submits that the petitioner possesses educational qualification of B.E. and M.E. (Mechanical). The petitioner is appointed as a lecturer with the respondent – Institution. The University of Pune has granted approval to the appointment of the petitioner as Assistant Professor with effect from 25.7.1989. The petitioner on 9.6.2004 was terminated from service. Aggrieved by the termination order petitioner filed an appeal before the University and College Tribunal bearing Appeal No. 63 of 2004 along with appeal application for stay was filed. The Presiding Officer, College Tribunal allowed the stay application. The effect of the termination order dated 9.6.2004 was stayed. The respondent – Management had challenged the stay order by filing writ petition. The writ petition was dismissed. The appeal bearing No. 63 of 2004 filed by the petitioner was allowed by the College Tribunal by setting aside the order dated 9.6.2004 and directed reinstatement from the date of suspension i.e. 1.7.2003 with continuity and other consequential benefits.

4. In spite of the order of the College Tribunal setting aside the order of termination the respondent – Institution did not allow the petitioner to rejoin the duties. The petitioner made numerous representations. Though the respondent – Management challenged the order of the tribunal passed in Appeal No. 63 of 2004 by filing Writ Petition No. 5341 of 2005 this court did not grant stay to the order of the tribunal. The said writ petition is only admitted. The petitioner was neither

paid the salary in accordance with the recommendations of the 6th Pay Commission nor was allowed to join the duties. The petitioner filed an application bearing Miscellaneous Application No. 8 of 2011 before the College Tribunal for initiating action of contempt under Section 63 of the Maharashtra Universities Act for non compliance of the order. The Miscellaneous Application No. 8 of 2011 was entertained by the tribunal and directed the Principal to attend the tribunal for compliance of the order. The said order was challenged by the respondent – Institution by filing Writ Petition No. 6508 of 2013. In the said writ petition three members committee consisting of Joint Director, Deputy Education Officer, Head of Department, Government Polytechnic College, Nasik and Administrative Officer, Government Polytechnic College, Nasik were appointed to enquire into the factual aspect. The enquiry committee submitted a report to this court on 31.12.2013, stating that it was the Management who did not permit the petitioner to rejoin the duties. After said report was received the Management / Institution withdrew the said writ petition.

5. Mr. Choukidar, the learned advocate further submits that Writ Petition No. 3528 of 2001 filed by the petitioner was compromised on 16th December, 2014. In terms of the settlement the salary of the petitioner was fixed in the pay band of Rs. 15,370/- alongwith the admissible pay and allowances. The salary was 18,310/- and it was the basic pay scale. The learned advocate submits that on 12th August, 2009 the Government

Resolution was issued by the Government whereby the recommendations of the 6th Pay Commission has been accepted and are made applicable with effect from 1.1.2006. The AICTE also issued notification on 5th March, 2010 to that effect. The petitioner raised demand for payment of salary in accordance with the recommendations of the 6th Pay Commission on 20th May, 2011 and another application on 1.7.2012. In response to the petitioner's application in respect of non payment of arrears of 6th Pay Commission AICTE addressed a letter to the Principal. The petitioner submitted various applications and lastly on 13.10.2015 submitted an application before the University and College Tribunal raising demand for salary in accordance with the recommendations of the 6th Pay Commission from January-2006 upto 31.5.2014. The tribunal did not entertain the said application holding that the same cannot be gone into in proceedings under Section 63 of the Maharashtra Universities Act.

6. Mr. Choukidar, learned advocate further submits that the issue as to entitlement of salary with the recommendations of the 6th Pay Commission to the lecturers / professors of the Colleges affiliated to the University is no longer res-integra and is decided by the Apex Court in Civil Appeal Nos. 115-116 of 2017. The learned advocate submits that all the staff members except the petitioner have been extended the benefit of the recommendations of the 6th Pay Commission. The petitioner has been paid fixed salary of Rs.19,094/- from 1.1.2006 until his age

of superannuation i.e. 31.5.2014 as against his entitlement of Rs.1,18,194/-. The learned advocate submits that the respondent be directed to pay the dues and the arrears of salary as per the 6th Pay Commission from 1.1.2006 till the date of his superannuation on 31.5.2014.

7. Mr. Hon, learned Senior Advocate for the respondent – Institution submits that the writ petition filed by the petitioner is not tenable. The Writ Petition bearing No. 5341 of 2005 filed by the respondent – Institution against the order of the College Tribunal setting aside the termination order and directing reinstatement of the petitioner is admitted and pending before this court and as the said writ petition is pending, petitioner is not entitled for any reliefs. The learned Senior Advocate submits that the petitioner is not entitled for any reliefs. The learned Senior Advocate submits that the petitioner was always harassing the Management and the College staff. On account of the misconduct and the non co-operation of the petitioner the respondent Management terminated the services of the petitioner. The claim for the benefit of 6th Pay Commission from 1.1.2006 onwards till the date of superannuation of the petitioner cannot be entertained. It being a monetary claim the writ petition suffers on the count of delay and laches. On this count itself the writ petition deserves to be dismissed. The calculations given by the petitioner are incorrect and contrary to the notification dated 5.3.2010 issued by the AICTE. The statements which are prepared by the petitioner are as per his convenience

and does not reflect true and correct factual position. The petitioner is already paid with all dues as per the compromise arrived at in writ petition bearing No. 3528 of 2001. He has been paid an amount of Rs.6,10,846/- as per agreed terms and conditions. Till the writ petition No. 5341 of 2005 is finally adjudicated the petitioner does not have right to claim any relief in the present writ petition. The learned Senior Advocate submits that the present petition is filed by the petitioner after a period of two year's of his retirement. As per the law of limitation the maximum period for claim of recovery is three years. The petitioner therefore has no right to claim the arrears which are beyond the period of three year's. The learned Senior Advocate relies on the order of the Division Bench of this court in Writ Petition No. 6972 of 2005 dated 23.8.2017.

8. We have considered the submissions canvassed by the learned advocate for respective parties.

9. Though the learned advocate for respective parties have canvassed submissions upon the orders passed by the College Tribunal and the earlier writ petitions filed, the same is not relevant for deciding the present petition. The only issue germane for the decision in the present writ petition is about entitlement of the petitioner to receive salary as per the 6th Pay Commission recommendations.

10. In a writ petition filed by the Management bearing No.

6508 of 2013, three members committee appointed by this court has submitted the report to the effect that the petitioner was ready to rejoin and it was the Management who was not allowing the petitioner to rejoin the duties. It is also not disputed that till the date of retirement the petitioner has been paid consolidated amount per month. It also appears that the petitioner has not been paid the salary as per 6th Pay Commission recommendations.

11. The issue that the Assistant Professors / Lecturers of private colleges are entitled for affiliation to the University, are entitled for the payment of salary as per 6th Pay Commission recommendations is no longer res integra. The Apex Court in Civil Appeal No. 115-116 of 2017 upholding the Judgment of this court has observed that the Government Resolution dated 12.8.2009 confers a legal right on the teaching staff of the affiliated colleges irrespective of the fact whether they are aided or not for payment as per the recommendations of the 6th Pay Commission. In view of that, there would be no difficulty in holding that the petitioner would be entitled for the salary as per the 6th Pay Commission recommendations.

12. Though the petitioner it appears had made application to the Institution however had not ventilated his grievance before the court of law and for the first time on or about 13.10.2015 made an application before the College Tribunal for payment of salary in accordance with the recommendations of the 6th Pay

Commission. It would appear that the petitioner has already retired from service on attaining the age of superannuation on 31.5.2014 and till his retirement has not approached the judicial or quasi judicial forum for redressal of his grievance to grant the benefit of 6th Pay Commission. It would be too inequitable to grant benefit to the petitioner from 1.1.2006 and put the respondent to hardship.

13. Considering the fact that the petitioner had made application before the tribunal on 13.10.2015 for the first time claiming benefit of 6th Pay Commission we are inclined to entertain this petition and grant relief to the petitioner for payment of salary as per the 6th Pay Commission with effect from 1.10.2012 viz. three years prior to the application filed before the College Tribunal on 13.10.2015, we had granted similar relief in Writ Petition No. 6972 of 2005 dated 23.8.2017.

14. In the result, we pass the following order.

15. The respondent Nos. 5 and 6 shall pay salary as per 6th Pay Commission recommendations to the petitioner from 1.10.2012 till the date of his superannuation within a period of three (3) months from the date of this order.

16. Rule is partly made absolute in above terms. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

17. At this stage Mr. Hon, learned counsel seeks stay of this order for a period of four (4) weeks. Mr. Choukidar, learned counsel for the petitioner opposes the request. However considering the fact that monetary liability is imposed on the respondents and so as to enable the respondents to take appropriate measures if they so choose to, the present order is stayed for a period of four (4) weeks. Needless to state, on lapse of four (4) weeks the order shall become operative.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

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