

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

WRIT PETITION NO. 11899 OF 2015

Sanjay Shankarrao Darwande .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri U. R. Awate, Advocate for the Petitioner.

Ms. Vaishali N. Patil, A.G.P. for Respondent Nos. 1 and 2.

Shri V. D. Hon, Senior Advocate i/by Shri A. V. Hon, Advocate for Respondent Nos. 4 and 5.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 27TH FEBRUARY, 2017.

PER COURT :

. Mr. Awate, the learned counsel for the petitioner states that, pursuant to the advertisement the petitioner is appointed with the respondent No. 5/college as a lecturer in politics in the pay scale of Rs. 15600 – 39100 plus Grade Pay of Rs. 6,000/- with effect from 13.01.2012. The appointment of the petitioner is also approved by the university. However, the respondent No. 5 is not paying the salary to the petitioner as per the pay scale. The respondent No. 4 runs the respondent No. 5/college. The learned counsel submits that, the appointment order further states that, the appointment and salary of the petitioner would be subject to

approval of the University of Pune. The University of Pune has approved the appointment of the petitioner, however, the petitioner is paid only Rs. 10,000/- per month and not as per the pay scale.

2. The learned counsel for the petitioner further submits that, the respondents are duty bound to make payment as per the pay scale. The learned counsel relies on the judgment of the Apex Court in a case of Secretary Mahatma Gandhi Mission and another Vs. Bhartiya Kamgar Seva and others dated January 05, 2017 in *Civil Appeal Nos. 117-118 of 2017*.

3. Mr. Hon, the learned senior advocate for respondent Nos. 4 and 5 submits that, the writ petition cannot be entertained as against the unaided minority private institution and relies on the order of the Apex Court in *Civil Appeal No. 7030 of 2016* in a case of Committee of Management Vs. Vatsal Gupta dated 26.07.2016. Even the writ petition is not maintainable against the private educational institution. The learned counsel relies on the judgment of the Apex Court in a case of Sushmita Basu and another Vs. Ballygunge Siksha Samity and others reported (2006) 7 SCC 680. The respondent Nos. 4 and 5 do not come within the meaning of State. No other staff members are making grievance about payment of salary. The petitioner is not interested in teaching to the students and is bent upon harassing

the principal and other staff members as is writ large by his conduct.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. The appointment order issued to the petitioner is not disputed. The said appointment order itself states that, the petitioner is appointed in the pay scale of Rs. 15600 – 39100 plus Grade Pay of Rs. 6,000/- with effect from 13.01.2012. The said appointment of the petitioner is also approved by the University of Pune under its letter dated 30th March 2012. The petitioner is officiating as an Assistant Professor full time in politics subject.

6. From the affidavit in reply, it appears that, the respondents have not paid the salary to the petitioner as per the pay scale. The ground agitated in the affidavit in reply is with regard to the fact that the issue is pending with the Apex Court in a case of **Secretary Mahatma Gandhi Mission and another Vs. Bhartiya Kamgar Seva and others** referred to supra. The same is now decided by the Apex Court. The institution before the Apex Court was also a private institution. The Apex Court in the said case has observed as under :

76. Accepting the offer made under the scheme of the Union of India, the State of Maharashtra issued the GR dated 12.8.2009 revising the pay scales of the cadres

specified therein (essentially teaching staff) of the "universities' colleges and other higher educational institutions". By the said GR, the State of Maharashtra declared the revision of the pay scales of the teaching staff of the educational institutions. It is stated in the counter affidavit filed before this Court on behalf of the State:

"3. I say that as things stand today, the Government of Maharashtra has taken a policy decision to implement the recommendations of 6th Pay Commission to teaching and non-teaching staff of government-run and government-aided educational institutions only.

4. I say that the Government of Maharashtra has not taken any policy decision and/or issued any Government Resolution in respect of implementation of the recommendations made by 6th Pay Commission for teaching and non-teaching staff in un-aided private educational institutions. ..."

81. We are now left only with the GR dated 12.08.2009 which laid down the policy of the Government of Maharashtra to adopt the pay-scales stipulated by the Government of India in its Scheme dated 31.12.2008 insofar as the teaching staff of the various affiliated colleges are concerned and the rules framed by the Government of Maharashtra dated 07.10.2009 in exercise of the power under Section 8(3) insofar as the non-teaching staff are concerned.

82. While the GR dated 12.08.2009 is specific in its declaration that the elaborate Rules contained therein dealing with the pay scales of the various cadres of the teaching staff of the educational institutions mentioned therein, it does not make any distinction between aided and un-aided colleges. However, the GR does not purport to be one made in exercise of the power under Section 8(3) of

the Universities Act. It is agreed on all hands at the Bar that the expression "Government Resolution" in the Maharashtra Administrative jargon means a decision taken either in exercise of the authority of the State under Article 162 of the Constitution of India or in exercise of the authority under some statutory provision. No doubt the GR does not refer to the source which authorises the exercise of the power for revising the pay scales of the teaching staff of the various educational institutions mentioned therein. The mere absence of the recital of the source of power in our opinion cannot determine the legal status of the instrument or deprive the instrument of its efficacy.

85. The colleges run by the appellants are admittedly colleges affiliated to the Universities functioning under the Act. Therefore, their teaching staff would be entitled to the revised pay scale in terms of the G.R. dated 12.08.2009.

89. The objects sought to be achieved by the periodic revision of the pay-scales is obviously to comply with the constitutional mandate emanating from Article 43 of the Constitution of India. If that is the object, we fail to understand the rationale behind the classification made by the State of the Maharashtra between aided and unaided colleges. People employed in educational institutions run by non-State actors are not treated any more kindly by the market forces and the economy than the people employed either by the Government or its instrumentalities or institutions administered by non-State actors receiving the economic support of the State.

90. The very fact that the Government of India thought it fit to revise the pay scales of its employees and also thought it fit to

accept the suggestions of the UGC to revise the pay scales of various Universities and other bodies whose maintenance expenditure is met by the UGC (in other words virtually by the Union of India), shows that the Government of India is completely convinced that there is a definite need to revise the pay scales of not only its employees, but also the employees of its instrumentalities. The fact that the Government of India made an offer to the States that the Government of India is willing to shoulder a substantial portion of the financial burden arising out of the adoption of revised pay scales in the event of the States choosing to adopt the revised pay scales, also indicates that the Government is fully convinced that having regard to various factors operating in the economy of the country there is a need to revise the pay scales of the personnel employed even by various States and their instrumentalities. Such a conclusion of the Union of India is endorsed by the State of Maharashtra. The decision of the State in issuing the two GRS revising the pay scales of the teaching staff of all the educational institutions and non-teaching staff of the aided educational institution is proof of such endorsement.

91. Therefore, we see no justification in excluding the non-teaching employees of the unaided educational institutions while extending the benefit of the revised pay scales to the non-teaching employees of the aided educational institutions. Such a classification, in our opinion, is clearly violative of Article 14 of the Constitution of India.

104. We must at this stage mention that the appellants made elaborate submissions during the course of the arguments regarding the inter play between Entry 66 of the List I and Entry 25 of the List III of the Seventh Schedule and the judgments of this Court in

the line of judgments commencing from State of Tamil Nadu v. Adhiyaman Educational and Research Institution, (1995) 4 SCC 104, Bharathidasan University v. AICTE, (2001) 8 SCC 676 etc. in a bid to demonstrate that the Council constituted under the AICTE Act would be incompetent to regulate the service conditions of the employees of the engineering colleges and therefore the Regulations of 2010 dated 05.03.2010 made by the AICTE purporting to give effect to the recommendations of the Sixth Pay Commission are without any authority of law.

105. In view of our conclusion that the State of Maharashtra has taken a decision in exercise of the power allowable to it under Section 8(3) of the Maharashtra Universities Act, the question whether AICTE is the competent body to regulate the service conditions of the employees of engineering colleges in our opinion is wholly irrelevant to the issue and academic.

106. Even if the appellant's submissions in this regard were to be accepted, it only leads to the inevitable conclusion that the Maharashtra State legislature is the competent body to deal with the subject.

7. The respondent Nos. 4 and 5 institution are similarly situated as the appellant before the Apex Court in a case of Secretary Mahatma Gandhi Mission and another Vs. Bhartiya Kamgar Seva and others referred to supra. In view of that, we pass following order.

8. The respondents shall pay salary to the petitioner as per the pay scale agreed in the appointment order of the petitioner regularly i. e. Rs. 15600 – 39100 plus Grade Pay of Rs.

6,000/- per moth from the date of appointment. The arrears be paid expeditiously and preferably within a period of six (06) months from today. The amount already paid to the petitioner under the salary shall be adjusted. The writ petition accordingly is disposed of with above observations and directions. No costs.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]

bsb/Feb. 17