IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4336 OF 1997
WITH
CONTEMPT PETITION NO.11 OF 2017
(Not on Board)

…

Subhash Baburao Gade and ors. ...Petitioners

v/s.

The State of Maharashtra and ors. ...Respondents

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Mr.Mihir Desai, Senior Advocate i/b Mr.Arjun Pawar a/w Mr.Shrikant Patil for the Petitioners.
Mrs.K.R.Kulkarni, AGP for the Respondents Nos. 1 to 3.
Mr.A.D.Damle, Senior Advocate i/b Mr.Vivek Salunke for the Respondents Nos.4 and 5.

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CORAM : A.A. SAYED &
M.S.KARNIK,JJ.

DATED : 31 JULY 2017

P.C.:

The Petitioners are teaching and non-teaching staff of Industrial Training Institution viz.Respondent No. 5- Shri Chatrapati Industrial Training Centre run and managed by the Respondent No.4- Management, which were also runs several other institutions. The Petitioners have stated in the Writ Petition that Respondent No.5-Institution is recognized by the Director of Training, Government of India, Ministry of Labour, Directorate General of Employment and Training, New Delhi. The Petitioners' grievance is that they are not being paid salary equivalent to the employees of Government Industrial Training Institutions.

2. Learned Senior Counsel for the Petitioners has invited our attention to the letter dated 16 August 1996 of the Joint Director of Training, New Delhi. By this letter the Joint Director of Training directed all the State Governments to ensure that all the teaching and non-teaching staff in the Industrial Training Institutes (ITIs) are paid at least 2/3rd of the salary drawn by similarly situated employees in Government Industrial Training Institutions. Pursuant thereto, the Respondent No. 3 - Deputy Director of Technical Education by Circular dated 18 October 1996 directed the Principals of all Industrial Training Institutes to pay their teaching and non-teaching staff at least 2/3rd of the payscales which is paid to similar situated persons in Government Industrial Training Institutes. Learned Senior Counsel submitted that Respondent Nos. 4 and 5 have filed undertakings to the State Government (some of such undertaking are annexed to the Petition) wherein they have agreed to pay at least 2/3rd salary to their employees which is a condition for granting recognition. Learned Senior Counsel has relied on the judgment of the Division Bench of this Court (Aurangabad Bench) dated 3 July 2001 in the case of **Teachers Association for Non-aided Polytechnis & ors. v/s. Hindi Seva Mandal, Bhusawal in Writ Petition No.364 of 1999,** wherein this issue has been considered by the Division Bench and the Management therein was directed to implement Circular dated 29 September 1995. The said Circular

dated 29 September 1995 was also issued by the State Government addressed to all Principals of private Technical and Polytechnical Institutions and is substantially on the same lines (except reduction to 2/3rd salary) as that of the Circular dated 18 October 1996 with which we are concerned in the present Petition. It is pointed out that the SLP filed against the judgment and order of the Division Bench has also been dismissed.

3. Learned Senior Counsel for Respondent 4 and 5, on the other hand, has relied upon the judgment in the case of **Satimbla Sharma & ors. v/s. St. Paul's Senior Secondary School & ors., (2011) 13 SCC 760,** in support of his submission that the Court cannot issue a mandamus to a private unaided institution to pay salary on the basis of the salary paid to employees of Government Institutes/Government aided institutions. He invited our attention to the Affidavit in Reply dated 4 December 2013 filed by Mr.Prashant Kate on behalf of Respondent 4 and 5, wherein it is inter alia stated that in view of the reduction in admissions, there were financial constraints and Respondents Nos.4 and 5 are unable to pay the amount @ 66% to the Petitioners. It is pointed out that presently they are paying at the rate of 48%. In the said Affidavit in Reply, it is also stated that a sugar factory by the name Shri Chhatrapati Factory provides the expenses to the Respondent No.5 - ITI. The amount of expenses is arranged by deducting

certain amounts from the amounts of members of the said sugar factory. Since there is no source of income it has been decided to close down the Respondent No.5-Institute from the next academic year. Learned Senior Counsel for the Respondents Nos.4 and 5 submitted that the Petition would not be maintainable against Respondent Nos.4 and 5 which are private and unaided Institutions.

4. We have considered the rival contentions of the parties. We are of the view that the Respondents Nos.4 and 5 are obliged to pay salaries to the Petitioners at the rate of 2/3rd of the salaries which are being paid to the employees of Government Training Institutions. It is not disputed before the Court that the Respondents Nos. 4 and 5 have given undertakings to the Government that they will pay the salaries to its employees at the rate of 2/3rd of the salaries paid to the employees of Government Training Institutes. On this count alone the Petition deserves to be allowed and it is accordingly allowed. Even otherwise, we are of the view that the case of the Petitioners is covered by the judgment of the Division Bench (Aurangabad Bench)of this Court in the case of **Teachers Association for Non-aided Polytechnis & ors.** (supra), which judgment has not been interfered by the Supreme Court. The Division Bench in the said case has also considered the issue of financial capacity of private institutions to pay

salaries to their employees as also the issue of maintainability of Petition and has followed the earlier judgments of the Supreme Court. In paragraphs 10, 11 and 12, the Division Bench has held as follows:

> "10. The financial capacity of the private institutes to pay the salaries and other allowances to their employees has been considered by the Apex Court in the case of "**The Chandigar Administration and others v/s. Mrs.Rajni Vali and others" (JT 2000 (1) SC 1591.** On referring to its earlier decisions in the case of "Haryana State Adhyapak Sangh and others v/s. State of Haryana and others" (AIR 1990 S.C. 1663) and "State of Haryana and another V/s. Ram Chander and another" (JT 1997 (5) SC 217), the Supreme Court held that the difficulty of additional financial burden faced by the management cannot be a reason to deny the parity in salary. … …
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> 11. Regarding the preliminary objection about the maintainability of the petition, we may usefully refer to the judgment of the Supreme Court in the case of "Andi Motia Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others V/s. V.R.Rudani and others" (1989 (2) SCC 691) wherein the Supreme Court, in para 22 held thus:
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> > "22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed byu the statute. Commenting on the development of this law, Professor de Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." We share this view. The judicial control over the fact expanding maze of bodies affecting the rights of the people should not be put in to watertight compartment. It should remain flexible to meet the requirement of variable circumstances.

> Mandamus is a very wide remedy, which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petitions."
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> 12. This issue was also answered in the subsequent judgment of the Apex Court, which has been relied upon by the Petitioners i.e. "K.Krishnamacharyulu and others" (supra). We, therefore, over rule the preliminary objection regarding the maintainability of the petition"

In view of the above, it is not possible to accept the contentions raised on behalf of the Respondents Nos. 4 and 5 that the Petition is not maintainable or that the Respondents Nos. 4 and 5 have financial constraints.

5. The judgment in the case of **Satimbla Sharma** (supra) relied upon by the learned Senior Counsel for the Respondents Nos. 4 and 5 would not assist the case of the Respondents Nos. 4 and 5. In that case the Supreme Court in paragraph 26 has noted that there were no executive instructions issued by the Government. It is also noticed that the school in that case was a minority school under Article 30(1) of the Constitution of India. In the present case, executive instructions as indicated earlier have been issued by the Government to pay minimum of 2/3rd salary being paid to the employees of Government Industrial Training Institution of equivalent posts. Moreover, Affidavits have also been filed on behalf of the State Government

in support of the case of the Petitioners. The Respondents have not challenged the letter dated 16 August 1996 or Circular dated 18 October 1996. We may reiterate that notwithstanding the legal position, inasmuch as the Respondents Nos.4 and 5 themselves have given undertakings to pay their employees at 2/3rd salaries paid to Government ITIs, the Respondents Nos.4 and 5 cannot resile therefrom and take a different stand.

6. For the aforesaid reasons, we are of the view that the Petitioners have made out a case for the grant of reliefs to them. Hence the following order:

ORDER

(i) Respondents Nos.4 and 5 are directed to pay salaries to the Petitioners at the rate of 2/3rd of the salaries which are paid to employees of Government ITIs for the period for which they have rendered services.

(ii) The Petition is allowed to the aforesaid extent. Rule is made absolute accordingly.

7. The Contempt Petition be placed before the appropriate Bench.

(M.S.KARNIK, J.) **(A.A.SAYED, J.)**