

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

**Writ Petition No. 4352 of 2005
With
Civil Application No.13691 of 2017**

* Teachers Association for Non
Aided Polytechnics' registered
Association of Teachers of
Non-aided Polytechnics
Through its Bhusawal Unit
President
A.V. Anil Kumar. **.. Petitioner.**

Versus

- 1) Hindi Seva Mandal, Bhusawal
Through its President
C/o Shastri Vidya Nagar,
Shivaji Nagar, Bhusawal,
District Jalgaon.
- 2) Shri. Sant Gadge Baba Polytechnics
Near Z.T.C., Bhusawal,
District Jalgaon
Through its Principal.
- 3) Director of Technical Education,
5-Mahapalika Marg,
Mumbai (M.S.)
- 4) Joint Director of Technical
Education Nashik Region,
Samangaon Road,
Nashik Road, Nashik.
- 5) State of Maharashtra
Through Secretary,
Higher and Technical Education,
Mantralaya, Mumbai.

- 6) All India Council of Technical Education, I.G. Sports Complex, I.P. Estate, New Delhi 110 002 Through its Adviser (Ext) .. **Respondents.**

Shri. S.S. Bora, Advocate, for petitioner.

Shri. S.B. Yawalkar, Advocate, for respondent No.1.

Shri. Y.G. Gujarati, Assistant Government Pleader, for respondent Nos.3,4 and 5.

Shri. S.V. Adwant, Advocate, for respondent No.6.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Judgment reserved on : 14 February 2018

Judgment pronounced on : 20 March 2018.

JUDGMENT (Per T.V. Nalawade, J.):

1) The petition is filed under Articles 14, 19, 21 and 226 of the Constitution of India for giving direction to the respondent-management to pay the entire dues of salary and other allowances payable to the petitioners in respect of the services rendered by them and also for direction to give other service benefits to the petitioners. They are teaching and non-teaching staff members of respondent-management. Both the sides are heard.

2) The submissions made and the record show that in the previous order made by this Court in Writ Petition Nos.364/1999 & 3208/1999 entitlement of the petitioners to get the salary as per 5th Pay Commission is decided and the decision is applicable for the period ending on 31-5-2002.

3) The respondent Nos.1 and 2 were running diploma courses in Engineering and it was unaided private college. The petitioners had prayed for direction in Writ Petition No.364/1999 to give them scale which was adopted by the State Government on the basis of the recommendations made by the Pay Commission. There was circular of the State Government in that regard and so this Court gave such direction in favour of the petitioners. In the subsequent proceeding like Civil Application No.6172/2002 this Court made order against the respondent Nos.1 and 2 and directed them to pay arrears of salary for the period from 1-9-1995 to 31-5-1999. Another proceeding like Writ Petition No.3208/1999 was filed as the respondent-management was not allowing the petitioners to work in the college and they

had taken steps for new appointments. Directions were given to the management to pay salary for the period ending on 31 May 1999. This Court had directed the authority like the Director of Technical Education to ascertain the liability of the management and for the period ending on 31 May 1999. The liability was ascertained as Rs.51,21,498/-. Then direction was given to calculate the liability for further period ending on 31-5-2002. The amount was calculated and it was Rs.82,41,121. In the first instance the respondent-management deposited an amount of Rs.35,34,965/- and the petitioners were allowed to withdraw this amount by this Court.

4) Upto 31-5-2002 the liability of respondent Nos.1 and 2 was to the extent of Rs.98,27,654 excluding the aforesaid amount deposited by the management. In the present proceeding the respondent-management deposited amount of Rs.35 lakh on 29-1-2007 as per the direction given by this Court and the petitioners were allowed to withdraw that amount also. Thus, as on today, the amount of around Rs.63,27,000/- is payable to the petitioners as per the previous decisions given by this

Court and this amount is in respect of the period ending on 31-5-2002. In view of these circumstances, it can be said that in the present proceeding only the entitlement of the petitioners to get the amount in respect of period starting from 1-6-2002 is to be decided.

5) It is the case of the respondent-management that it had applied for closure of the institution by passing a resolution in the year 2000. It is the contention of the management that in the year 2003 the authority of the Government had recommended the Government to grant permission to close down the institution as it was not viable for the respondent-management to run the courses. It is the contention of the respondent-management that it had stopped admitting the students from the academic year 2000-2001 and no new admission was given in that year. It is the case of the management that subsequent to that year the institution was in existence only for taking care of the students who were already admitted. It is the case of the management that the Government gave permission to close down the college on 3-11-2012 but in fact the institution was closed down long back and since

the year 2000-2001 no new admission was given and even the AICTE had placed this institution on "No Admission" category long back. It is the case of the respondent-management that there was no work to the petitioners due to this circumstance and they did not actually work and so they are not entitled to get salary and other allowances in respect of the period starting from 1-6-2002.

6) The record produced in the present proceeding and the submissions made show that in Writ Petition No.3208/1999 this Court had given direction to the Director of Technical Education to hold inquiry and inform as to what steps were taken to derecognise the institution. This order was made on 5-7-1999 as submissions were made for the institution in Writ Petition No.364/1999 that it was not in a position to run the institution with available resources. It is no disputed that subsequently the institution was placed on "No Admission" category by AICTE and after the year 2000 no new admission was given by this institution. The institution remained in existence in fact only up to 31-5-2002 as it was expected

to take care of the students who had taken admission in the college. It is not disputed that, there was dispute in respect of entitlement of teaching and non teaching staff to get salary even after decision given by this Court in the previous proceedings. This Court also had accepted the contention of the teaching and non teaching staff that the institution was not allowing them to work and it had actually taken steps for making new appointments by advertising the posts and some appointments were also made. That action of the management was also challenged by the petitioners and this Court declared that the action was illegal. Only due to that action of the institution this Court held that there was deemed continuation of the petitioners and they were entitled to get salary for the period ending on 31-5-2002. The amount calculated by the Director of Technical Education was as per the revised pay scales proposed by the Pay Commission but the record shows that the eligibility conditions of the petitioners and the procedure for their appointment was not touched by the authority. Thus even when from 1999-2000 the petitioners were not actually working this Court had given benefit to them due to the conduct of the institution and it

is held that they are entitled to get salary and other benefits for the period ending on 31-5-2002. The fact remains that no new admission was given from 2000-2001 and there was no reason to continue the courses from the academic year 2001-2002.

7) Learned counsel for the petitioners submitted that unless and until the due procedure is followed for closure it needs to be presumed that the teaching and non teaching staff was continued in service. The learned counsel submitted that it needs to be presumed that the petitioners were in service till the date when the State Government gave permission to close down the institution i.e. November 2012. Learned counsel submitted that the provision of section 35 of the Maharashtra State Board of Technical Education Act, 1997 (for short, "MSBTE Act") and the provision of Rule 25A of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short, "MEPS Rules") need to be kept in mind. He submitted that in view of those provisions it needs to be presumed that the institution was actually closed in November 2012.

8) Provision of section 35 of the MSBTE Act shows that the management cannot close down the institution without prior permission of the State Government. The application for closure needs to be made before the last date of April of the preceding year for such permission. Then inquiry needs to be made by the Board to ascertain as to whether the closure can be avoided. If the Board recommends closure then discretion is given to the Government to issue order of closure. The closure can be in phases so as to ensure that the students already admitted are not affected due to the closure.

9) Rule 25-A of the MEPS Rules 1981 shows that three months' notice needs to be given informing the employees that their services shall automatically stand terminated in the event of closure of the school.

10) In the present matter the provisions of the MEPS Rules need to be considered and in the litigations mentioned above right from the year 2000 submissions with regard to the closure of the institution were made in the Court. Proposal was actually made for closure by the

management prior to the academic year 2003-04 and so it can be said that it was submitted before starting of that academic year. Admittedly there was no new admission given from the year 2000-2001. It is contended that AICTE had also put this institution on "No Admission" category by letter dated 30-6-2005 but prior to that the Board had recommended to the Government to grant permission for closure of the institution. However, Government granted permission by letter dated 3-11-2012.

11) Learned counsel for AICTE has placed reliance on the case reported as **2014 SCC OnLine Guj 15778 (Parul Arogya Seva Mandal v. All India Council for Technical Education)**. This case is altogether on different point. In that case the procedure for closure is quoted. Similarly, the case on which reliance was placed by the learned counsel for the AICTE viz. **2005 SCC OnLine Bom 221 (Sanjay Raghunath Deshmukh v. State of Maharashtra)** is on different point like entitled of the staff members to get absorbed due to closure of some courses. If the institution has other courses then this contention can be considered. In the present matter the respondent-

institution had not advertised such posts. There is nothing on the record to show that such posts are available.

12) The learned counsel for the respondent-management has placed reliance on the case reported as **(2007) 7 SCC 455 (Sukhdeo Pandey v. Union of India)** to support the contention that the petitioners did not work and so they are not entitled to get salary. It is not disputed that there was no fault on the part of the petitioners and they were only claiming that they were entitled to get scales as adopted by the State. In view of this circumstance the proposition of "No work No Salary" cannot be made applicable against the petitioners.

13) Learned counsel for the petitioners has placed reliance on the observations made by this Court in the order passed in **Writ Petition No.5363/2015 (Rajendra G. Kulkarni & Others vs. The State of Maharashtra & Others)** which is decided at the Principal Seat. Government decision to permit closure was under challenge and the procedure to be adopted for such closure was considered. In the present matter closure is

not challenged. The learned counsel for the petitioners has placed reliance on the following reported cases :-

- (i) **(2015) 4 SCC 544 (Mackinnon Mackenzie and Com. Ltd. v. Mackinnon Employees Union);**
- (ii) **(2013) 10 SCC 324 Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya;**
- (iii) **(2013) 1 SCC 390 (Satbir Singh vs. Chief of Army Staff);**
- (iv) **(2016) 16 SCC 663 (Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam;**
- (v) **(1989) 2 SCC 691 (Anandi Mukta Sadguru Shree v. V.R. Rudrani;**
- (vi) **2010 (1) Mh.L.J. 391 (Chandrakant Shiksan Sanstha v. Rajendra Ramji Belekar);**
- (vii) **2015 (2) Mh.L.J. 435 (Gangubai Madhukar Jagdhane v. Sardar Pratapsingh Education Society);**
- (viii) **AIR 1979 SC 1981 (State of Punjab v. Labour Court Jullunder);**
- (ix) **2012 (2) Mh.L.J. 752 (President Vidarbha Youth Welfare Institution v. Pradipkumar R. Lambhate).**

14) In the case of *2015(2) Mh.L.J. 435 (Gangubai Jagdhane)*, cited supra, the facts were different. The procedure given in Rule 27 of MEPS Rules was required to be considered as the principle of common seniority of staff from all schools of the institution was required to be

followed. That principle was not followed and in view of such conduct of the institution, compensation amount was given by this Court to the staff members who were terminated prior to the date of closure of the last school. Thus, the facts were different.

15) In the case reported as **2010(2) Mh.L.J. 837 (Laxmi Education Society v. State of Maharashtra)** the college governed by the Secondary School Code was involved and the said college was receiving 100% grant-in-aid. It had applied for permission to close down the college. Rule 7.5 of the Secondary Schools Code was applicable. This Court held that the procedure involved is giving of “due notice” of closure and there will be no necessity of prior approval for closure. In that rule also the authorities of the Government were expected to consider as to whether it was possible to continue the college. It is held that right of closure is not absolute. There is somewhat similarity in the said proceeding and the present proceeding. In the present matter, relevant portion of section 35 of MSBTE Act, 1997 needs to be considered and it is as under :

"35. Closure of institution. (1)

(2)

(3)

(4)

(5) If the Board has recommended the closure of the affiliated Institution the Government may issue the order for closure.

(6) If the Government decides to take over the institution or transfer the same to another management the procedure to be followed shall be such as may be prescribed by the Government.

(7) The procedure to effect the closure shall be in phases, so as to ensure that the students already admitted to the institution are not affected, and that the first year shall be closed first and no new admissions shall be effected The procedure to phase out the closure shall be such as may be prescribed by the Government."

16) It is already observed that the institution was closed down and after academic year 2001-2002 there was no reason for the institution to remain in existence. The Board recommended closure in the year 2005 and the AICTE also put the institution on "No Admission" category list. The Government gave permission though in the year 2012 and there was recommendation of the Board of the year 2005 for closure. Thus, after 7 years the Government found that there was no other option than to permit the closure. It was a private unaided institution. In view of

these circumstances it is not proper and possible to presume that the staff was continued till 2012, till the date of granting permission by the Government. In view of the facts of the present matter such presumption is not possible. Further, in the past this Court had given decision in Writ Petition No.3208/1999 on 25-7-2003 and by presuming that the courses were not running this Court had presumed that staff was continued till the end of academic year 2001-2002. Thus, even when the staff did not work after 1999-2000 they are getting salary upto the end of 31-5-2002.

17) In view of the aforesaid circumstances and the relevant provisions, this Court holds that due to circumstance that three months' notice was not given though the petitioners knew about the intention and the decision taken by the institution, the petitioners are entitled to get salary in respect of period of notice of three months. The salary can be calculated by the respondent - Director of Technical Education on the basis of salary which was payable for the month of May 2002. Thus, direction needs to be given to the respondent-

management to pay salary of three months. The petitioners are also claiming gratuity by submitting that they had worked for more than five years upto 31-4-2002. Thus apparently they are entitled to get gratuity amount. In that regard direction can be given to the authority to ascertain the entitlement and to give direction to the respondent-management to make payment of gratuity. The respondent-management has not paid amount to which the petitioners were entitled and so interest at the rate of 8% per year needs to be given to them from 1-6-2002. In the result, following order:-

18) The writ petition is partly allowed.

(A) The respondent-management to pay amount of Rs.63,27,654 towards arrears of salary with interest at the rate of 8% per annum to the petitioners. Interest will be payable from 1-6-2002 till the date of realisation of the amount.

(B) The respondent-management to pay three months' salary to the petitioners and the salary is to be calculated on the basis of the salary which was payable in the month

of May 2002. On this amount also interest at the 8 per cent per annum needs to be given and the interest will be payable from 1-6-2002.

(C) The petitioners are entitled to get gratuity and this amount needs to be calculated by the authority. This amount also needs to be paid by the respondent-management.

(D) The authority is to calculate the aforesaid amounts within four months from the date of this order. If the gratuity amount is not paid within four months from today, interest at the rate of 8% will be payable on that amount also.

(E) The amount is to be deposited in this Court within four months of calculation.

(F) Rule is made absolute in the aforesaid terms.

(G) Civil Application No.13691/2017 stands disposed of.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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