

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.5264 OF 1996

Lect. S.V. Pandharpure & others ...Petitioners  
vs.  
The State of Maharashtra & others ...Respondents

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Shri S.S. Pakale for the Petitioners.  
Dr. Kirti Kulkarni, AGP for Respondent Nos. 1 to 3.  
Shri P.B. Deo for Respondent No.4.

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

RESERVED ON : 25<sup>th</sup> SEPTEMBER, 2018

PRONOUNCED ON : 15<sup>th</sup> OCTOBER, 2018

**JUDGMENT (PER M.S.KARNIK, J.) :-**

The present Writ Petition was again listed for further hearing on 25<sup>th</sup> September, 2018 when we have heard learned Counsel for the respective parties. At the outset, Shri Pakale, learned Counsel for the Petitioners invited our attention to the judgment and order dated 16<sup>th</sup> August, 2018 passed by this Court in **Writ Petition No. 8493 of 2004** in the matter of **Shri Salunkhe Jayawant Vishnu & ors. Vs. The State of Maharashtra and ors.** In his submission, the issue involved in the present Petition is squarely covered by the

decision of this Court in Writ Petition No. 8493 of 2004. Learned Counsel for the Respondent No.4 – Management fairly submits that the decision of this Court would cover the present controversy also.

2. In this light of the matter to a large extent the issue raised in the present Petition stands covered except a very limited area which is raised by Shri Deo, learned Counsel for the Respondent No.4 which has been objected to by the learned Counsel for the Petitioners Shri Pakale. We shall deal with the said issue after setting out the relevant portion of the decision of this Court.

3. The relevant portion of the decision of this Court in Writ Petition No. 8493 of 2004 reads thus :-

“16. In light of the pronouncement of the Hon'ble Apex Court, in the aforesaid issue, it is not now open for this Court to examine the issue and it is imperative on the part of the respondent nos.5 and 6 to abide by the mandate issued by the Director in his circular to pay its teaching and non-teaching staff the pay scales made applicable in terms of the Government Resolution issued from time to time. However, one more aspect also needs a clarification. It is noted by us that while refusing the pay scales of teachers in Government/non-government, pharmacy polytechnic and in applying the recommendation of the 4<sup>th</sup> Pay Commission by Government Resolution dated 26<sup>th</sup> May 1992 and by applying the

recommendation of 5<sup>th</sup> Pay Commission by Government Resolution dated 20<sup>th</sup> October 2000, the Government Resolution had stipulated minimum educational qualification to be possessed by the teachers/lecturers so as to hold them eligible to secure the revised pay scale prescribed in the Government Resolution. The petitioners have not set out the educational qualification possessed by them except those which have been mentioned by them in a chart annexed at Exhibit-A of the petition and it can be seen from the said chart that the teachers i.e. petitioner nos.2 to 5 possessed a degree B-Pharm along with petitioner no.18, but as far as petitioner no.13 is concerned, educational qualifications that are reflected against his name at Exhibit- A is M.Sc (Micro Biology). By the bare reading of Exhibit-A, petitioner no.3 does not qualify himself for availment of the revised pay scale in absence of the requisite educational qualification as set out in the Resolution and based on AICTE recommendations, holding him entitled for the said pay scale. However, though we direct the respondent nos.5 and 6 to implement the revised pay scale as contained in the government resolution to the petitioners, we also grant liberty to the respondent no.6 to examine the educational qualification of the petitioners who were working as lecturers and to satisfy itself that they fulfill the requisite educational qualification in terms of the government resolution revising the pay scale and it is only when they are found to be qualified and eligible in terms of the said Government Resolution, the said pay scale should be extended. As far as non-teaching staff is concerned, the respondent no.6 is directed to extend the benefits of the communication dated 29<sup>th</sup> September 1995 issued by the Director of Technical Education and extend the benefits of pay and allowances as well as other benefits enumerated in the said communication to its non-teaching staff. The entire exercise of fixation of pay of the petitioners in the revised pay

should be carried out within a period of six months and the respondent no. 6 should release the arrears within the said period by reworking the pay scale and also pay the amount of gratuity and post retiral benefits in case of the petitioners who have retired from service during the pendency of the petition.

Rule is made absolute.

Writ Petition is allowed in the aforesaid terms.”

4. In the submission of Shri Pakale, in the light of the decision of this Court in Writ Petition No. 8493 of 2004, nothing further needs to be done. In his submission, the Respondent No.2 was already directed to examine the educational qualification of the petitioners who are working with the Respondent No.4 and to satisfy itself that they fulfill the requisite educational qualification in terms of the Government Resolution revising the pay scale. It is his submission that the Joint Director had already conducted this exercise and in respect of those Petitioners who are found to be qualified and eligible, the amounts quantified have already been deposited in this Court which the Petitioners be allowed to withdraw. Learned Counsel Shri Pakale relied upon the statement showing the details of the staff members of the Respondent No.4 and the arrears on account of pay and allowances which have been calculated by the Joint Director of

Technical Education (Admn.), Regional Office, Pune-16. Shri Pakale therefore submits that as the entire exercise has been already carried out there is no need to re-examine the issue.

5. This submission of Shri Pakale is vehemently opposed by Shri Deo, learned Counsel for the Respondent No.4. He has invited our attention to an Additional Affidavit-in-Reply filed on behalf of the Respondent No.4 in June, 2017 which records the information of the staff members who have either abandoned service or tendered their resignation or have since retired. In his submission, out of 43 Petitioners 10 have abandoned service, 15 are either retired or have resigned or have died. The number of Petitioners actually in service, in the submission of the Respondent No.4, is only 8 out of the 43 Petitioners. Learned Counsel also has raised objection to the eligibility of the Petitioners to receive the revised pay scale.

6. Relying on the decision of this Court dated 18<sup>th</sup> June, 2018 passed in Contempt Petition No. 279 of 2007, which was filed by the Petitioners seeking action against the Respondents for not implementing the order dated 8<sup>th</sup> January, 1997 passed by this Court

in the present Writ Petition, learned Counsel for the Respondent No.4 place specific emphasis on the paragraph 13 of the said order which reads thus :

“13. After having heard the learned advocate for the parties and perusing this petition with all these annexures, we are of the clear opinion that when there is a dispute as to whether the order protects the petitioners against termination, but the termination of the services has not been effected by any act attributable to the Management, as stated in the petition, but on account of the absentism of the petitioners themselves and an inference is drawn that they have abandoned the services, then, this aspect cannot be gone into in contempt jurisdiction. We cannot assume that the order of this court prevents the respondents from terminating the services or treating the services as terminated under any of the eventualities. If the allegations are that the petitioners themselves have not taken advantage or benefit of the interim order and have not reported for work, then all the more we are disinclined to grant any relief or pass any order in contempt jurisdiction. This not a normal and ordinary jurisdiction, under which, parties like the petitioners can claim additional relief or seek further directions. The remedies for that are distinct. The contempt petition is entirely misconceived and it is dismissed. There would be no order as to costs.

7. Learned Counsel for the Respondent No.4 would therefore submit that it is in this light of the matter and particularly when there is a serious dispute as to whether the Petitioners have continued in service after abandonment or resignation, it is necessary for the

Respondent No. 2 – Joint Director – Technical Education to re-examine whether the Petitioners fulfill the requisite educational qualification in terms of the Government Resolution revising pay scale and it is only when they were found to be eligible in terms of the Government Resolution the said pay scale should be extended.

8. At this stage it would be pertinent to note that this Court vide order dated 22<sup>nd</sup> October, 1996 issued “Rule” and granted interim relief in terms of prayer Clause (d) which reads as follows :-

“ (d) pending the hearing and final disposal of this petition, this Hon'ble Court may be pleased to direct respondent No.4 to pay the arrears of salary from the respective dates of petitioners upto date and continue to pay salary in accordance with the Government pay-scale.”

The Petitioners thereupon filed Contempt Petition No. 41 of 1997 alleging breach of the interim order dated 22<sup>nd</sup> October, 1996. During the course of the hearing of the Contempt Petition No. 41 of 1997, on 1<sup>st</sup> December, 1997, an order came to be passed in terms of the Minutes of Order signed by Advocates of both parties. By the said order the 4<sup>th</sup> Respondent was directed to pay a sum of Rs.47,000/- to

the Petitioners who are from the non-teaching staff in compliance with the earlier order passed by this Court. The Respondent No.4 was also directed to deposit an amount of Rs.13,00,000/- within a period of 14 weeks from the date of the order since according to the 4<sup>th</sup> Respondent, the said amount was payable to the employees, towards the arrears of salary. The Director of Technical Education, Maharashtra State was directed to determine the amount of arrears of salary payable to the employees as per the order dated 22<sup>nd</sup> October, 1996. The Deputy Director of Technical Education has submitted a report that approximately Rs.90,00,000/- are payable by the 4<sup>th</sup> Respondent to its staff.

9. In the order dated 6<sup>th</sup> May, 1998 passed by this Court, the assurance of the learned Counsel for the Respondent No.4 is recorded that they will make arrangement for payment of the salary of the teachers from August, 1997 in accordance with the Act and the Rules and further the sum of Rs.13,00,000/- will be deposited, provided some further time is given. This Court was pleased to grant six weeks time as a last chance to deposit the amount.

10. No doubt, the Joint Director has pursuant to the directions of this Court submitted a statement showing the details of the Petitioners regarding the date of appointment, date of birth, qualification, caste and arrears on account of pay and allowances. We however find that in respect of the Lecturers mentioned at Serial Nos. 2,4,7,9,13,20,35,40 and in respect of Serial No.44 who is working as “Workshop Superintendent”, it is mentioned that they are not eligible for the said post. Insofar as Serial No.19 is concerned, it is mentioned that certificates of qualification are not produced and it is to be verified whether she is fulfilling the educational qualification required for the post of librarian. As regards a Lecturer at Serial No. 24 it is mentioned that equivalency certificate is to be verified. The remark about Mrs. P.R. Deshmukh, Time Clerk (Serial No.26) is that rate of the salary of the post of “Time Clerk” is not known.

11. Now that this Court has by detailed judgment in Salunkhe's case (supra) held that the Petitioners are entitled to the benefits of the revised pay scale as per the Government Resolution, we deem it appropriate that the issue as regards the eligibility be re-examined once again by the Joint Director. We may not be

understood to have expressed any doubt on the statement which has been furnished by the Joint Director of Technical Education as regards the arrears of the pay and allowances with reference to the implementation of the interim order passed in the present Writ Petition and the Contempt Petition No. 41 of 1997. After hearing the parties if the Joint Director finds that the quantification of the arrears as mentioned in the statement is proper and correct, he may proceed accordingly, then in that case nothing further needs to be done. However, Joint Director is requested to ensure that the entitlement and arrears of the revised pay are re-examined in terms of the decision of this Court in Salunkhe's case (supra) and in accordance with the directions issued in this Petition. In our opinion the following order therefore would meet the ends of justice.

### **ORDER**

- i) The petitioners are entitled to the benefit of the decision of this Court dated 16<sup>th</sup> August, 2018 passed in Writ Petition No. 8493 of 2004.
- ii) The Respondent No. 4 is directed to implement the revised pay scale in terms of the Order of this Court in Writ Petition No. 8493 of 2004 to the Petitioners.

iii) Liberty is granted to the Respondent No.2 - Joint Director of Technical Education (Admn.), Regional Office, Pune-16, to re-examine the educational qualification of the Petitioners who are/were working as Lecturers and to satisfy itself that they fulfill the requisite educational qualifications in terms of the Government Resolution revising the pay scale and it is only when they are found to be qualified and eligible in terms of the said Government Resolution, the said pay scale should be extended.

iv) The Petitioners and/or their legal representatives/heirs are permitted to appear before the Respondent No.2 – Joint Director on 15<sup>th</sup> October, 2018 or at any time thereafter as the Respondent No.2 - Joint Director may direct to plead and place such materials on record (if not already submitted) that they fulfill the requisite educational qualifications in terms of the Government Resolution. The Respondent No.2 - Joint Director to re-examine this aspect after hearing the Petitioners and/or legal representatives/heirs and also the Respondent No.4 within a period of 2 months from 15<sup>th</sup> October, 2018.

v) If the Petitioners are found to be qualified and eligible, the pay scale should be extended to them for the period which they

have worked.

vi) So far as non-teaching staff is concerned, the Respondent No.4 is directed to extend the benefits of the communication dated 29<sup>th</sup> September 1995 issued by the Respondent No. 2 - Joint Director and extend the benefits of pay and allowances as well as other benefits enumerated in the said communication to its non-teaching staff.

vii) The entire exercise of fixation of pay of the petitioners in the revised pay should be carried out within a period of two months from 15<sup>th</sup> December, 2018 and the Respondent No. 4 should release the arrears within the said period by reworking the pay scale and also pay the amount of gratuity and post retiral benefits in case of the petitioners who have retired from service during the pendency of the petition. In respect of those Petitioners who have died, the arrears may be paid over to the legal heirs.

viii) The amount which has been deposited in this Court is permitted to be withdrawn by the Joint Director of Technical Education (Admn.), Regional Office, Pune-16 which shall be paid over to the Petitioners found eligible and as per their entitlement. Over and above this amount the Respondent No.4 to release the

arrears to the petitioners.

12. Writ Petition is allowed in the above terms.

13. Rule made absolute in the above terms with no order as to costs.

(M.S. KARNIK, J.)

(A.A. SAYED, J.)