

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8493 OF 2004

Shri. Salunkhe Jayawant Vishnu & ors .. Petitioners
Versus
The State of Maharashtra and ors .. Respondents

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Mr.S.S.Pakale for the petitioners.
Mrs.Shruti Vyas 'B' Panel Counsel for respondent nos.1 to 4.
Mr.Sugandh Deshmukh for respondent nos.5 and 6.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.
RESERVED ON : 18th JULY 2018
PRONOUNCED ON : 16th AUGUST 2018

JUDGMENT:- (Per SMT.BHARATI H. DANGRE, J)

1 The petitioners employed as teaching and non-teaching staff of Satara Education Society have invoked the writ jurisdiction of this Court, seeking implementation of the Government Resolutions/Circulars issued by the State Government, thereby extending the benefits of the pay scales as contained in the said Government Resolution and seeking payment of arrears flowing therefrom. The petitioners have also claimed a relief of payment of salary in accordance with the pay scales and allowances applicable to the post held by the

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them on a regular basis and has also sought direction to deposit the death-cum-retirement gratuity.

In response to the writ petition, this Court was pleased to issue notice to the respondents and on 4th April 2005, 'Rule' came to be granted in favour of the petitioners and the hearing was expedited. The matter was listed before us for hearing. We have heard learned counsel Shri Pakale appearing for the petitioner and Ms.Shruti Vyas, learned counsel for the respondent nos.1 to 3. We have also heard Mr.Sugandh Deshmukh for respondent nos.5 and 6.

2 The petitioners are the employees employed in the Respondent no.6 Satara Polytechnic (Suman Dhekane Department of Pharmacy) run by the respondent no.5 Satara Education Society, Satara. Amongst the petitioners, the petitioner no.2 and petitioner nos.13 and 18 are working as Lecturers, whereas rest of the petitioners are working as peons, barring petitioner nos.1 and 6, who are working as Laboratory Assistants in the respondent no.6 institute. It is the case of the petitioners that they came to be appointed in their respective

posts which were vacant and sanctioned by following a valid process of appointment. The petition specifically contains a statement that the performance of the petitioners is excellent and there is no flaw pointed out by the Management in their working since their initial appointment. Along with the petition, the petitioners have placed on record the list of the petitioners along with their educational qualifications, date of joining, designation and the capacity in which they came to be appointed in the respondent No.6-School run by the respondent No.5-Management.

3 The petitioners are aggrieved by non-extension of benefits of the pay scales to them, including the various allowances and provision of other service benefits as extended to the teachers/non-teaching staff working in the Non-aided Government Polytechnics through various resolutions passed by the State of Maharashtra. According to the petitioners, the State Government issued a resolution on 26th May 1992, thereby revising the pay scale of teachers in Government/Non-Government, public, engineering/technical/Architecture,

Pharmacy Polytechnics. The petitioners submit that, those of the petitioners who are appointed as teachers falling within the purview of the said Government Resolution and are entitled for the revision of their pay with effect from 1st January 1986. Reliance is also placed by the petitioners on a communication issued by the Director, Technical Education addressed to the Principals/Chairman of non-aided engineering/technical colleges including the colleges of Pharmacy, Architecture etc, thereby making it obligatory on part of all the non-aided institutions to pay the salary and allowances applicable to its employees as per Government Rules and Regulations in force including the benefits like the bonus, benefits of Leave Travel Concession, gratuity, provident fund etc. The said communication made it imperative on the Management to pay the said pay scale as per government norms, since it was one of the binding condition imposed at the time of starting the various courses at these institutions. The petitioners have also placed reliance on a Government Resolution dated 18th December 1999, resolving to implement the revised pay scales to the teachers of the Government and government aided

polytechnics, to submit that the teachers working in the non-aided polytechnic institutes are also entitled for the coverage of the said Government Resolution. The further Government Resolution which has been pressed into service is the one issued by the Higher and Technical Education Department on 20th October 2000 in regards to the implementation of revised pay scales as per the 5th Pay Commission to the non-teaching post in the non-government aided polytechnic, pharmacy institutions, engineering colleges and similar institutions. As per the said Government Resolution, non-teaching employees were also covered by the said G.R and were entitled for revision of pay scale and placement in the pay scale as per the Appendix-1 of the said Government Resolution.

The petitioners further place reliance on the Government Resolution dated 27th February 2003 implementing the recommendations of 5th Pay Commission and thereby revising the pay scale of the teachers in the government/non-government engineering/technology, architectural and pharmacy polytechnic and other institutions of Technical Education.

The petitioners have staked their claim on the basis of the aforesaid Government Resolutions and have stated in the petition that the respondent no.6 which is an unaided polytechnic pharmacy is bound by the decision of the State Government, as contained in the aforesaid Resolutions and the respondent nos.5 and 6 are duty bound to extend the benefit of the said resolutions to petitioners. The petitioners would submit that the Director of Technical Education had already indicated to the respondent nos.5 and 6 through its communication that they are duty bound to abide by the norms as set out by the State Government in relation to the salary and allowances to be paid to the employees of the unaided polytechnic and pharmacy institutions and non-compliance thereof would result in serious consequences including its derecognition. The specific grievance of the petitioners is that on more than one occasion, the petitioners have lawfully demanded the pay scales and allowances admissible to them as per the Government Rules and Regulations, including extension of other service benefits. They have also prayed for payment of their salary in time, in the backdrop that there was undue delay

in payment of their monthly salary causing great concern to the petitioners and resulting into a tremendous financial hardship. The petitioners had adopted several modes of protest against the non-payment of salary in time and also on failure on the part of respondent nos.5 and 6 in extending the benefits of the revised pay scales.

4 In the light of the demands raised by the petitioners, the petitioners also raised an apprehension in the petition that the 5th respondent intended to close the pharmacy institute without discharging the liability of payment of salary and allowances due and payable to the petitioners along with the arrears due to them in terms of the Government Resolutions. The petitioners, therefore, specifically sought restraint order from closing the respondent no.6 institute or, in any way, dispensing with the services of the petitioners by any mode. The petitioners place reliance on a series of judgments/orders passed by this Hon'ble Court in similar circumstances and in specific, on a detail judgment delivered by this Court at Aurangabad in case of *Teachers Association for Non-aided*

Polytechnics & ors Vs. Hindi Seva Mandal & ors¹ and would submit that the issue of extension of the benefits of the pay scale to the petitioners is no more *res integra* and the said judgment being confirmed by the Hon'ble Apex Court, the petitioners are also entitled to derive the said benefit and has therefore, prayed for issuance of writ in the nature of mandamus, directing the respondent no.5 and 6 to implement the Government Resolutions dated 26/5/1992, 29/9/1995, 15/12/1999, 27/2/2003, and Government Resolution dated 20/10/2000 and to pay arrears of salary to the petitioners along with compound interest from the respective dates of their appointment and the amount claimed by the petitioners is set out in a chart annexed at Annexure-M of the petition. A direction is also sought to pay the salary prospectively in accordance with the Government Pay Scales and allowances applicable to the posts held by the petitioners from time to time before 10th day of every month and direction is sought to the respondent nos.5 and 6 to raise the gratuity fund to meet the future liability of gratuity of the petitioners and to deposit the

¹ WP 364-99 decided on 3/7/2001

amount payable in accordance with the rules.

5 In response to the said writ petition, two affidavits are filed on record by respondent nos.5 and 6. In the affidavit filed by the Principal, Satara of the respondent no.6 on 28th March 2004, the relief sought by the petitioners is opposed on the ground that in light of the judgment delivered by the Hon'ble Apex Court in case of "TMA Pai Foundation", all the issues relating to interpretation have been now referred to the larger Bench and the question which arises in the matter being that the State Government is entitled to give directions about payment of 4th Pay Commission and 5th Pay Commission to the teaching and non-teaching staff of unaided colleges, has also been referred. It is therefore prayed that the hearing of the present petition be deferred till the decision of the Hon'ble Apex Court. The petition is also opposed on another ground that it revolves around several disputed question of facts and the entitlement of the petitioners is highly inflated by them without giving any particulars and therefore, it cannot be entertained. Alternatively, it is submitted that the financial position of the

respondents should be taken into consideration and it is impossible for them to make the payments to the petitioners in the terms in which they have sought.

6 The affidavit further proceeds to state that the total sanction intake capacity of the courses run by the respondent nos.5 and 6 is 1050 which is spread over in 7 faculties i.e. Automobile, chemical, industrial electronics, Catering, pharmacy, computer engineering and mechanics. As far as faculty of pharmacy is concerned, it is stated that it runs diploma course of two years duration, whereas the other courses are of three years duration. Then, it is stated that though the total sanctioned intake capacity for all the courses is 1050 whereas the strength of the students admitted to the institutes are 640. It is stated that there are in all 32 teachers who are recruited along with 56 non-teaching employees working in the said polytechnic institute, out of whom only 18 employees have filed the present writ petition. It is stated that 70 employees have not approached this Court, but if relief is granted in favour of the petitioners, then it would be incumbent

upon the respondents to extend the benefit to other 70 employees who are similarly situated as the petitioners. The total emoluments which are sought by the petitioners vide Exhibit-M appended to the petitioners has been disputed and it is stated that the petitioners have never quantified their demands before filing of the writ petition and there are several factual discrepancies and the affidavit cites a few of them.

A categorical statement is made in the affidavit that as far as extension of benefit of 4th Pay Commission is concerned with effect from 1st January 1986, the institute has actually made the payment with effect from 1st January 1986 to all 18 petitioners. As far as the benefits of 5th Pay Commission are concerned, though they are made applicable from 1st January 1996, it is stated that the respondent institute has extended the benefit from October 2000 and as far as the petitioners are concerned, from October 2000 till July 2004, the salary has been paid to them as per 5th Pay Commission. Then, the financial crunch has been cited as a reason to pay the arrears accruing from the extension of the 4th and 5th Pay Commissions and it is stated that the respondent management

had already informed the petitioners that the arrears towards them would be cleared in future point of time when the economic condition of the Management would improve. It is then stated that it is not the case that the institution has the funds, but it is deliberately not making the payment. Another ground which has been cited in the affidavit for non-extending the benefits in favour of petitioner nos.5, 13 and 18 are concerned, it is stated that they are claiming the scale of a senior lecturer. However, for being entitled to such a scale, it is necessary that they must have completed a refresher course of eight weeks, which admittedly, these petitioners have not. As far as petitioner no.13 is concerned, it is specifically stated that he is not even qualified to be appointed as a lecturer and on this count, the benefit sought in the petition cannot be extended to him.

7 Another affidavit is filed by respondent nos.5 and 6 on 11th December 2004 which recites the contents of various Government Resolutions in a chronology. The reliance placed

by the petitioners on the various Government Resolutions is termed to be 'unfounded' and it is stated in the affidavit that the Government Resolution dated 26th May 1992 applies only to the teachers and do not apply to non-teaching staff. As far as Government Resolution dated 20th October 2000 is concerned, it is stated that it extends the benefit only to aided polytechnic and therefore, the petitioners cannot seek recourse to the said Government Resolution because the respondent no.6 is a non-government and non-aided polytechnic. In nutshell, the claim of the petitioners is opposed by stating that the reliance on the Government Resolution of 26th May 1992 in respect of non-teaching staff is not sustainable. Further, it is clarified that in terms of the Government Resolution dated 27th February 2003, though in case of Government service, the benefit of 5th Pay Commission has been conferred from 1st January 1996 in case of polytechnic, the teachers are held not eligible to the arrears for the period prior to 31st January 2003 and rather they are held entitled for securing the benefits of 5th Pay Commission from 1st February 2003.

An affidavit is also placed on record by the Deputy

Director of Technical Education in response to the said petition. A bold stand has been adopted by the State Authorities at is stated that against the Government Resolution dated 18th December 1999, directs the private non-aided institutions to implement the revised pay scale for teaching staff from 1st January 1996, itself clarifies that neither any financial assistance nor any grant or financial assistnace arising due to implementation of the revised pay scale to such institutions will be borne by the Government. Further, the Directorate also issued a circular 7th February 2000 to all unaided engineering / technology / pharmacy / Architecture / diploma institutions to implement the revised pay scale with effect from 1st January 1996 and it was stated in the said circular that all the institutions shall implement the revised pay scales for teaching staff only. However, it is stated in the affidavit that it depends on the concerned institutions whether to follow the said circular or otherwise. It is further stated that a clarification was contained in the Government Resolution dated 20th October 2000 that it is applicable to non-teaching staff of non-government aided institutions only and the same is not

applicable to non-teaching staff of non-aided institutions. A categorical statement is made in relation to the government circular dated 21st September 1995 that it is sweet Will of the concerned institute to follow the Government Resolution/Government circular as it is a private unaided institution and the Government cannot compel them in any way, since the Government is not giving grants to these institutions. It is stated that the institutions are run on private unaided basis and hence, implementation of various instructions issued to the institutions running on no-grant basis, it was left to the choice of the Management and that it is respondent nos.5 and 6 to comply the lawful demands to the employees. It is also categorically stated that the respondent nos.1 to 3 do not have any direct control over the internal administration of such unaided institutions for any irregularity committed by the concerned Management, the Management is held responsible and not the respondents. However, in order to maintain uniformity in the pay scales, the Government had issued the resolutions/circulars from time to time. The said affidavit ends with a statement that the Hon'ble Court may pass

appropriate orders in the instant case taking into consideration the facts and circumstances. On behalf of the respondent authorities, another affidavit is filed by the Administrative Officer on 17th June 2006, wherein the stand of the respondent nos.5 and 6 to close down the institute has been clarified and it is stated that there is a procedure which is required to be followed in case of a closure of an institute which will have to be in phases. Apart from this statement, the said affidavit does not deal with the reliefs sought in the petition.

8 On a careful consideration of the contentions raised in the petition and the response of the respondent nos.5 and 6 of the State authorities i.e. respondent nos.1 and 3, the undisputed facts that emerge is that the petitioners are employed as teaching and non-teaching staff in the Satara Polytechnic which consists of a Department of Pharmacy and the said Satara Polytechnic is run by Satara Education Society, Satara. The petitioners can be segregated into two categories i.e. those who were recruited as teachers with the respondent no.6 and those who were recruited in the non-teaching

capacity and on the post of peon and laboratory assistants. The petitioners are seeking to derive benefits of the policy of the State Governing as contained in various government resolutions and recommending the implementations of the revised pay scales in conformity with the AICTE norms and the pay scales prescribed by it, commensurating with the qualifications to be possessed as minimum qualification by the teachers working the pharmacy schools/colleges.

The said Polytechnic offers a Diploma in Pharmacy and therefore, the petitioners who are working on the post of lecturers must necessarily qualify themselves to work as lecturer/teacher in pharmacy. The remaining petitioners are working in Class IV category. The respondent no.6 imparts Diploma in Pharmacy and is covered by the term "School" as defined and contemplated under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The term "School" is defined in the said enactment, to mean a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called, including technical, vocational or Art institution or

part of any such school, college or institution which imparts general, technical, vocational, Art or as the case may be, special attention or training in any faculty or subject below degree level. The respondent no.6 institution is a private non-aided institution which imparts the diplomas in pharmacy. The Full Bench of this Court in case of *Anil Dattatraya Ade Vs. Presiding Officer, School Tribunal*² has held that the employee including the teaching and non-teaching staff of a recognized pharmacy school and other technical institutions is governed by the provisions of MEPS Act 1977. The Full Bench examined in detail the scheme of the enactment i.e. MEPS Act 1977 as against the Pharmacy Act, 1948, which provides for Regulation of the profession and practice of pharmacy. On examination of the scheme of two enactments, the Full Bench has concluded that all schools imparting education or training below degree level, including institutions imparting technical or vocational education recognized by the Director of Education or Director of Technical Education falling within the category of private schools are governed by the provisions of MEPS Act and MEPS

2 2003 (3) Bom CR 465

conditions of Service Regulation Rules 1981. The pharmacy schools have been held to be such schools and therefore, covered by the said Act and Rules.

9 Since we are not required to delve upon the issue that the respondent no.6 institution is a school as defined in Section 2(24) of the MEPS Act 1977 and the petitioners being employees as defined in Section 2(7) of the MEPS Act 1977, we would be required to proceed to a further question as to what are the pay scales and allowances that are admissible to the petitioners who are the employees of a private school of pharmacy recognized by the State Government and established by the respondent no.5.

10 Perusal of the MEPS Act 1977 would reveal that the said Enactment regulates the recruitment and conditions of service of employees in certain private schools. School has been assigned a specific meaning and since it is already held that a school imparting a diploma in pharmacy is a school within the meaning of Section 2(24) of MEPS Act 1977, Section

3 of the said Act of 1977 makes is amply clear that the provisions of the Act shall apply to all private schools in the State of Maharashtra whether they are receiving any grant-in-aid from the State of Maharashtra or not. Section 4 of the MEPS Act of 1977 provides for the terms and conditions of services of employees of private schools and it would be useful to reproduce sub-section (1) of Section 4 which reads thus :

(1) Subject to the provisions of this section, the State Government may make rules providing for the minimum qualifications for recruitment (including its procedure), duties, pay, allowances, post-retirement and other benefits, and other conditions of service of employees of private schools and for reservation of adequate number of post for members of the backward classes :

Provided that, neither the pay nor the rights in respect of leave of absence, age of retirement and post-retirement benefits and other monetary benefits of an employee in the employment of an existing private school on the appointed date shall be varied to the advantage of such employee by any such rules.

Further, sub-section (3) and (4) also needs a reproduction :

(3) If the scales of pay and allowances, post-retirement and other benefits of the employees of any private school are less favourable than those provided by the rules made under sub-section (1), the Director shall direct in writing the Management of such school

to bring the same upto the level provided by the said rules, within such period or extended period as may be specified by him.

(4) Failure to comply with any direction given by the Director in pursuance of sub-section (3) may result in the recognition of the school concerned being withdrawn, provided that the recognition shall not be withdrawn unless the Management of the school concerned has been given a reasonable opportunity of being heard.

Thus, in the scheme of Enactment, the State Government is empowered to make rules prescribing the qualifications for recruitment and also the pay and allowances and other service benefits along with the conditions of service of employees working in such schools. By virtue of sub-section(3), if the scales of pay and allowances payable to the employees of any private schools are less favourable than those provided by the Rules made under sub-section (1), the Director is empowered to issue directions to the Management to bring the same upto the level provided by the Rules and failure to comply with any directions given by the Director, may result into de-recognition of such a school.

11 Perusal of the MEPS Rules of 1981 would reveal

that Rule 6 provides that minimum qualifications for the post of teachers and the non-teaching staff in primary schools, secondary schools, junior colleges and junior colleges of education shall be the one specified in Schedule-B. Schedule-B enumerates the qualifications for the teaching and non-teaching post in the junior colleges including the junior colleges offering vocational subjects/courses. Schedule-C of the Rules of 1981 sets out the scales of pay of the Head Masters and teachers in primary school, secondary school as well as for the teaching staff in technical/multi-purpose and vocational high schools along with special teachers in secondary schools and junior colleges of education. The said schedule also prescribe a scale of pay of teachers in junior colleges (Higher Secondary) units attached to secondary schools or colleges including the various categories i.e. technical group, electronic group, commerce group, food technology group, para medical group etc. Further, scales of pay for non-teaching staff in the schools are also provided in part 8 of Schedule-C. Thus, it can be seen that the MEPS Act and Rules contain an entire scheme and mechanism where the minimum qualifications are prescribed for being

appointed to a teaching and non-teaching post in a private school, in receipt of grant-in-aid from the State Government and the prescribed pay scales are set out in Schedule-C.

12 On recommendations of the pay commission from the Central Government, the State Government had issued resolutions from time to time revising the pay scale of teachers working in Government, non-government Engineering, Technology, Architecture, Pharmacy, Polytechnic institutes. The State Government has approved the implementation of revised pay scales with effect from 1st April 1976 by issuing a resolution on 24th January 1979 for the staff of non-government engineering / technology / Architecture and Pharmacy polytechnic. Thereafter, a National Expert Committee was set up in October 1984 under the Chairmanship of Professor R.N.Dogre to look into the question of revision of salary structure, qualification, conditions of service etc. of the teachers of technical institutions including those of polytechnics. The said report submitted by the Committee in June 1987 was considered by the All India Council for Technical Education

(fort short “AICTE”). These recommendations were also placed before the empowered committee set up in the Ministry of Human Resources Development.

The All India Council of Technical Education has forwarded its recommendations to the State Government for appropriate action with the clear indication that no financial assistance would be forthcoming either from the Government of India or the AICTE, for implementation of the scheme. The recommendations of the AICTE were under consideration of the State Government for a considerable time and thereafter, the State Government decided to implement the scheme with some modifications in the scales of pay and with terms and conditions set out by issuing a resolution on 26th May 1992. By virtue of the said resolution, the scheme of revision of pay scales (4th Pay Recommendation) was made applicable to the teachers in the government and the non-government engineering/technology/Architecture and pharmacy polytechnic who fulfilled the requisite qualifications laid down by AICTE. The revised pay scales were also made applicable to the teachers in the unaided diploma institutions. It was

clarified that the non-aided institutions will not be entitled for any financial assistance from the State Government. The revised scales of pay were directed to be made effective from 1st January 1986. The details of the qualifications and the experiences required for the teachers in the engineering/technology/Architecture and Polytechnic were incorporated in Appendix V of the said resolution and it was clarified that only the candidates fulfilling the minimum qualification prescribed for the post of teachers would be held eligible for grant of revised scales of Pay. Appendix-V of the said Government Resolution stipulated the qualification of First Class Bachelor Degree in appropriate branch of Engineering, Technology or M.Sc First Class in appropriate Branch study for teaching in Humanities and Sciences with a qualifying All India Examination (such as GATE or any equivalent and selection through prescribed selection procedure) for the post of lecturer i.e. a teaching post.

The said Government Resolution was followed by a resolution issued by the higher and technical education department on 18th December 1999 in the backdrop of the fact

that the AICTE had not announced the revised pay scales to be implemented to the teachers of Polytechnic institute, and therefore, the 5th Pay scale which were implemented to the government employees other than teachers of Polytechnic Institute were not conferred with the said benefits as they continued to receive the old pay scales as per Government Resolution dated 26th May 1992. In this peculiar circumstances, the State Government by the resolution of 18th December 1999, resolved to confer the pay scales on the teachers of Polytechnic Institute as per the Government Resolution dated 26th May 1992 from 1.1.1986. The said pay scales were made applicable to the teachers of Government and non-government, aided, unaided, polytechnic, Architectural and pharmacy institute. It was also clarified that the unaided polytechnic institute will not receive any grant or grant-in-aid from the government for implementing the said pay scale to the teachers on their roll. Thus, for a lecturer, the revised pay scale was fixed at Rs.7450 – 225 – 11500 in substitution of the existing pay scale as per Government Resolution dated 26th May 1992 in the scale of Rs.2200 – 75 – 2800 – EB – 100 – 3700. The service conditions

of the teachers, however, continued to be governed in terms of the Government Resolution dated 26th May 1992. Further, on 20th October 2000, the Government issued another resolution on account of the recommendations of the 5th Pay Commission and on obtaining a report forwarded by a Committee constituted under the Chairmanship of Mr.D.N. Sukhtankar to recommend the revised pay scale to the State Government and other employees. In terms of the said recommendations of the Committee, the revised pay scales were implemented to the teaching and non-teaching staff of the government polytechnic and engineering institute with effect from 1st January 1996 as per G.R. dated 10th December 1998. The Government by the said Resolution implemented the revised pay scales to the non-teaching staff of the non-government aided polytechnic, pharmacy institute etc and the revised pay scales were made applicable from 1st January 1996. The enclosure to the said Government Resolution enumerated the revised pay scales in the 5th Pay of the various non-teaching posts. By a further Resolution of 27th February 2003, the pay revision scheme was made applicable to the Teachers, librarians and instructors of

Physical Education in Government/Non-Government Technical institutions covered under the AICTE Act.

13 Thus, from the perusal of the scheme of the Government Resolutions, it appears that the State Government, from time to time, has extended the benefits of the revised pay scales to the teaching and non-teaching staff working in the pharmacy polytechnic and the petitioners are justified in contending that they are entitled for coverage of the said Government Resolutions and they ought to have been conferred with the pay scales set out in the said Government Resolutions.

A similar issue which came up for consideration before the Division Bench at Aurangabad in form of a petition filed by the Teachers Association for unaided Polytechnic, who were appointed in a polytechnic college at Jalgaon on a consolidated salary. On the basis of the directives issued by the Directorate of Technical Education dated 29th September 1995, thereby directing all the Principals of the Unaided Technical college/polytechnic institutions, calling upon them to pay the salary and allowances as per the rules framed by the

Government from time to time, the petitioners stake their claim for extension of the pay scales made applicable by the Government Resolutions. In the initial round of litigation by the said Association, the Division Bench had disposed of the petition directing the college to pay the salary as per the pay scales prescribed in the Government, on the promise that the college is a unaided college and though the college at the time of recognition had given an undertaking to comply with all the conditions including payment as per the scale prescribed by the government, by fastening the liability on the college to pay the pay scale prescribed by the Government, the petition came to be disposed of. The matter was taken up before the Hon'ble Apex Court and it was remitted back to the High Court for reconsideration in light of the submissions made by the parties. On remand, the Division Bench re-examined the issue, including the preliminary issue as to the maintainability of petitioners as against the private polytechnic college and as to whether it was amenable to the writ jurisdiction of the Court and also the claim of the management that the petitioners have waived off their right by accepting the terms and conditions of

appointment and hence they are estopped from claiming salary over and above what was stated in the order of appointment. Another ground which was raised by the polytechnic college above the applicability of the circular dated 29th September 1995, since it was issued by the Government in exercise of its administrative power and its binding effect was also one of the consideration which the Division Bench had gone into, apart from the absence of the requisite qualifications to claim the pay scales and allowances as prescribed by the AICTE.

The Hon'ble Division Bench held that the polytechnic college is amenable to the writ jurisdiction and entertained the petition by turning down the preliminary objection. The Division Bench specifically felt back on the scheme of the MEPS Act which covered the private unaided polytechnic within the term “school” as defined in the MEPS Act. Based on the earlier Division Bench of ***Shailaja Ashokrao Walse Vs. State of Maharashtra***³, wherein it was held that there cannot be any distinction between the private aided and unaided schools when it came to the applicability and of MEPS

3 (1999) 1 Mh.L.J 291

Act and Rules framed thereunder, which included the Government instructions issued from time to time, the Hon'ble Division Bench made reference to Section 4 of the MEPS Act. In the scheme of the said Enactment, the Division Bench observed that the Government of Maharashtra had granted permission to the respondent to open the polytechnic for the Academic Year subject to certain terms and conditions which included an undertaking on part of the institute to comply with the terms and conditions as stipulated by the Government while granting such permission and that the Management had given a specific undertaking that it is ready and willing to abide by the orders and rules laid down by the Department or that would be laid down in future regarding recognition, grant-in-aid, conduct of the institution. This Court, therefore, concluded that the Management was duty bound to comply with the directions/orders issued by the Director from time to time for conduct of the polytechnic college and the term "conduct of institution" would include the implementation of pay scales and other service conditions in respect of its employees. With this observation, the Division Bench allowed the Writ Petition and

directed the respondent no.1 Management and the respondent no.2 School to implement the circular dated 29th September 1995 issued by the Director of Education. The said order passed by the Division Bench has been confirmed by the Hon'ble Apex Court in a Special Leave to Appeal and even the Review Petition filed by the Management was dismissed.

14 Based on the said judgment delivered by the Division Bench at Aurangabad, Writ Petition No.298 of 2002 was decided at Nagpur and the respondent Management running a polytechnic college was held to be legally bound by circular dated 29th September 1995 and directions were issued to implement the same. Based on the said judgment, several writ petitions came to be filed even at the principal seat and they came to be disposed of with directions to the Management to pay to the petitioners teachers in accordance with the Government Pay scale prescribed in the Government Resolution which was held to be a mandate in terms of the MEPS Act and Rules. Thus, the issue raised by the petitioners, as regards the applicability of the Government Resolutions and the revised pay

scales applicable to the teaching and non-teaching staff in Polytechnic colleges, has been put to rest by a series of judgments and orders and we do not intend to re-open/re-examine the said issue.

15 The view taken by the Division Bench at Aurangabad is further fortified by a recent judgment delivered by the Hon'ble Apex Court in case of ***Secretary, Mahatma Gandhi Mission & Anr V/s. Bharatiya Kamgar Sena & Ors***⁴ decided on 5th January 2017.

The Hon'ble Apex Court was approached by the Charitable Trust registered under the Bombay Public Trust Act administering two engineering colleges. The respondent who was an unregistered association of employees working with the appellant, which included the teaching and non-teaching members, had approached the High Court at Bombay seeking direction to extend the benefit of the revised pay scale as recommended by 5th Pay Commission set up by the Government of India. The said writ petition came to be allowed by the

⁴ Civil Appeal Nos.115/116 of 2017

Bombay High Court directing the Dr.Babasaheb Ambedkar Marathwada University, Aurangabad to enforce the pay scale in terms of the Rules, and on failure to make the payment to the non-teaching staff resulting into withdrawal of recognition of the college. The employer being aggrieved, filed the Special Leave Petition which came to be dismissed on an earlier occasion. Subsequently, the terms of settlement were worked out between the parties and the employees agreed to waive their right to claim arrears of pay calculated in terms of recommendation of 5th Pay Commission for the period between 1st January 1996 to 31st December 2000.

In this backdrop, the Hon'ble Apex Court examined the existing resolutions governing the field, and in specific the Government Resolution dated 12th August 2009 revising the pay scale and the Dearness Allowances of the Teachers and other equivalent cadre of University, colleges and other higher educational institutions coming within the purview of the State Legislature. On examination of the scheme contained in the standard code provided for terms and conditions of service of non-teaching employees of various organizations, it was

traceable to the Maharashtra University Act, 1994, authorizing the said Rules providing various aspects of employment of Officers, teachers and other employees of the University, affiliated colleges and recognized institutes, the Hon'ble Apex Court examined the applicability of the Rules to the non-teaching employees of the classes of educational institutions. A distinction was sought to be drawn between the non-teaching employees of the unaided non-government colleges and those of the aided colleges. The Hon'ble Apex Court, on detail consideration of the entire existing frame work and the 2009 Rules formulated under Section 8(3) of the Maharashtra University Act, 1994 dealing with the service conditions of non-teaching employees and on consideration of the argument that an unaided college cannot be compelled to pay the salary and allowances to its employees in terms of recommendations of 6th Pay Commission in absence of any statutory obligation to make such payment, the Hon'ble Apex Court concluded that the Government Resolution dated 12th August 2009 can be construed to be made in exercise of power under Section 8(3) of the University Act, conferring a legal right on the teaching

staff of the affiliated colleges, irrespective of the fact whether they are aided or not. The colleges run by the appellant were found to be affiliated to Maharashtra Public Universities Act 2016 and therefore, the teaching staff was held to be entitled to the revised pay scale in terms of the Government Resolution dated 12th August 2009. Testing the said Government Resolution on the parameters of Article 14, the Apex Court concluded that merely because the appellant did not receive any financial aid from the State, they cannot be compelled to pay the revised pay scale to its employees. Their Lordships observed that it is always open to the Management to make an appropriate application before the Fee Regulatory Committee bringing all the relevant facts to the notice of the body competent to determine the fee structure and raise appropriate revenue. In this backdrop, with the aforesaid observation, and with a specific conclusion that the appellants are obliged under a law to find out ways and means to find out the financial liability arising out of application to pay the revised scale, the Special Leave Petition came to be dismissed.

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 4th Pay Commission by Government Resolution dated 26th May 1992 and by applying the recommendation of 5th Pay Commission by Government Resolution dated 20th 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 29th 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 petition 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 re-working 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.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)

Manali
Prasanna
Tilak

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