

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11038 OF 2012

Maratha Vidya Prasarak Samaj,
Nashik, through its General Secretary .. Petitioner
Versus
State of Maharashtra and ors .. Respondents

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Mr.Praful B. Shah for the petitioner.
Mr.V.M.Mali, AGP for respondent nos.1 and 2.
Mr.A.Y.Sakhare, Sr. counsel i/b Rajendra Anbhule for
respondent nos.3 to 5.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.
DATED : 3rd JULY 2018

P.C:-

1 By this petition under Article 226 of the Constitution of India, the Maratha Vidya Prasarak Samaj, Nashik, which does not obtain any aid from the State has sought a writ of mandamus in the following terms.

- (a) by appropriate writ, order or direction this Hon'ble Court be pleased to quash and set aside the letter dated 9th February 2012 issued by the respondent no.1 to the petitioner and direct the respondent no.1 – Joint Director of Education (Higher Education), Pune Region, Pune-1 to reimburse the amount of Rs.17,09,614/- to the petitioner.

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- (b) In the alternative to the above, by appropriate writ, order or direction this Hon'ble Court be pleased to quash and set aside the letter dated 9th February 2012 issued by the Respondent no.1 to the petitioner and direct the Respondent No.1 – Joint Director of Education (Higher Education), Pune Region, Pune-1 to reimburse the amount of Rs.17,09,614/- by deducting the same from Salary Grant of the Pune University.

2 During the course of arguments, we asked Mr.Praful B. Shah appearing for the petitioner as to what is the foundation for this relief and he would rely upon page 122 of the paper book. He would submit that on 7th October 2008, the Government of Maharashtra through the Department of Higher and Technical Education referred to firstly a Writ Petition filed in the Bench of this Court at Aurangabad being Writ Petition no.2671 of 2006. That Writ Petition of one Ramdas B. Patil prayed for payment of 'Earned leave' what is called as 'leave encashment', but this Court directed that this application of the petitioner Ramdas be disposed of within three months. There was pertinently no direction either to pay to Ramdas anything nor to reimburse any amount to the employer of Ramdas Patil. Ramdas B. Patil approached the Grievance Committee set up by the North Maharashtra University and that directed the

concerned employer to pay the amount of such leave to Ramdas. Thereafter, that order of the Committee (Grievance Redressal Committee) was placed before the Management Council of the North Maharashtra University and North Maharashtra University forwarded this order and together with its proposal, to the State Government. The State Government found from the conduct of that and other Universities that such reimbursement of the amount paid towards leave encashment by the Management of the colleges is not liable to be reimbursed by the University and the North Maharashtra University relied upon Statute 424(C). It clarified to the Government that though it is mandated by the Statute/ Ordinance that such leave is admissible and payable, still there is no corresponding obligation on the part of the University to reimburse the amount after payment by the Management to the teacher. That is a matter entirely governed by the relationship between the State and such institutes who are eligible and entitled to claim financial aid and that financial aid in the form of salary grant is admissible to such institutions. Hence, the non-agricultural Universities categorically opine that in the light

of this, they are not obliged to reimburse the amount. The Government however, did not agree with this stand of the Universities and invited the attention of the University to possible and probable litigation by the managements and when it seeks the reimbursement and in the event there are positive orders and directions of competent courts of law to reimburse that sum, then, the consequences would have to be borne entirely by the University is but a caution administered by this letter.

3 Based on this letter, the petitioner before us says that the reimbursement should be directed and the University must abide by the Government's order or direction, irrespective whether there is any statute to the contrary and in the event the Government is not insisting that the University abides by its order and directions, then a mandamus must go to both according to this petitioner.

4 Pertinently, the petitioner's stand is that it was not obliged to pay any leave encashment amount on retirement to

the concerned employees/teachers. However, they approached the Grievance Cell set up by the Pune University. They relied upon Statute 424(C) of the Statutes governing terms and conditions of service of teachers appointed in the University/colleges and institutions conducted by the University affiliated colleges/constituent colleges/recognized institutions of the University of Pune. This Statute 424(C) provides for encashment of unutilized Earned Leave on superannuation. Thus, the teacher shall be entitled to encash earned leave in balance to his credit on the date of his superannuation subject to a maximum period of 180 days. In case the teacher is required to serve till the end of the academic session, beyond the date of his superannuation, he shall be entitled to encash the balance of Earned Leave to his credit or to the date of his actual date of retirement from his service. The petitioner firstly denied its liability to make any payment. However, the University Grievance Redressal Cell did not agree with this and made a recommendation, which in turn, came to be accepted by the Governing Council of the University. The petitioner filed a writ petition challenging this action of the University being

Writ Petition No.1920 of 2011 and this Court on 14th November 2011 while disposing of that Writ Petition, observed as under :-

1 Heard the learned counsel for the parties.

2 Mr.Mandlik, the learned counsel for respondent nos.1 to 5 on instructions from General Secretary of respondent no.1 institution submits that respondent no.1 shall make payment of all legal dues in pursuance of the order passed by the Grievance Committee dated 8.2.2010 within a period of three months from today. He further submits that respondent no.1 be given liberty to approach the government for seeking reimbursement of the amount that they are liable to pay to the petitioner within a period of three months therefrom. In view of the statement made by Mr.Mandlik, we are satisfied that the following order shall meet the ends of justice:

a) Respondent no.1 shall make payment of all the legal dues to the petitioner as per the order passed by the Grievance Committee within three months from today.

b) It is open to respondent no.1 to approach the Government seeking reimbursement of the said amount within a period of three months therefrom. If respondent no.1 approach the Government for seeking reimbursement of the aforesaid mentioned amount, the Government shall consider the same in accordance with law and if respondent no.1 is found to be entitled to claim reimbursement, the said amount be reimbursed at the earliest.

c) With these observations, petition is disposed of.

5 It is therefore urged that pursuant to the liberty granted by this Court, the petitioner approached the Joint

Director, Higher Education, Pune Region, Pune and he informed the petitioner that it is not liable to reimburse any sum and there is no financial obligation in that regard.

6 Therefore, relying upon the aforesaid communication from the Government to the University, this petition is filed.

7 The foundation of this is there is a salary grant admissible to the petitioner and that is routed through the University and that is why the University can be directed by the State Government and it so directed it to reimburse the sum which is paid by the petitioner to the teacher. If the University is refusing, then the Government can enforce its own order. However, there is an affidavit filed in reply to this petition by respondent nos.3, 4 and 5 i.e. the Savitribai Phule University. It very categorically says that in the case of State of Maharashtra and Others Vs. Navrojee Wadia College and others, the Hon'ble Supreme Court has delivered a judgment and order on 29th January 2013, holding that though statutes framed by the

University entitled the teachers of the affiliated colleges to get the benefit of earned leave encashment, the University and affiliated colleges are not entitled to reimburse this amount paid to the teachers in lieu of the Earned Leave from the State Government. The University says that the salary grants, if at all released as a part of the financial aid by the Government are not routed through the University. If only aided affiliated colleges are entitled to receive the salary grants for the post of the teachers, payment of salary allowances and other benefits to the teachers in the unaided affiliated colleges is an obligation of the management of that colleges and no grant is received from the Government by such colleges or from the University. The petitioner may be a aided college. Once this is the position clarified on affidavit and particularly in paragraph nos. 9 to 11 thereof, then we do not see how this writ petition can be entertained. There is no mandamus which can go either to the State or the University and admittedly when the petitioner management is not receiving any grant-in-aid or salary grant from the University. The entire foundation for this petition therefore, is totally lacking for there is neither any public duty

which can be enforced by a writ of mandamus to be issued to the State nor there is any statutory duty insofar as the University is concerned which can equally be enforced by such a writ. If the foundation for issuance of a writ of mandamus is a pre-existing legal right or legal obligation or a public duty and that is lacking, then, the writ petition cannot be entertained, it is entirely misconceived. It is therefore dismissed.

9 There will be no order as to costs.

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