

Tilak

2 Pertinently, no relief is claimed against the employees for they cannot be called upon to refund or return the money which they are entitled to receive and the college is obliged to pay in terms of the University statute and policies of the Government.

3 Mr.Talkute appearing for the petitioners would submit that here the factual position is different than the petitioner in Writ Petition No.11038 of 2012. Here, the petitioners are receiving 100% grant-in-aid for salaries. However, in para 3, 4(a) of the petition, it is stated that this aid is received from the respondent no.1. The second respondent to the writ petition is the Joint Director, Higher Education. It is common ground that the same factual position, which enables the teachers to obtain the leave encashment, as set out in the above petition, the same refusal, the identical reference to the Grievance Redressal Committee, its recommendation to the University and its acceptance by the management council of the University, is the foundation for the relief claimed. These facts are but the background for upholding the claim of the

employees and that decision of the University and the Grievance Redressal Committee was unsuccessfully challenged by the petitioners. They also are relying upon an identical direction and flowing from the order of this Court, as also that of the Government, but pertinently, what the petition proceeds to state is that the Statutes have been amended by the University and because they stand amended, there was an obligation to refund or reimburse the amount paid by the petitioner no.1 Management to its employees. It is conceded, however, that the statutes were later on amended and the University refused to take over any such obligation to reimburse. Petitioners addressed letters to the respondent no.3 demanding reimbursement of the amount paid and balance 50% amount from the respondent no.3 in view of the reply dated 12th July 2012 of the Joint Director. The third respondent by its communication dated 17th September 2012 rejected the claim and in rejecting it, the University stated that the teachers were employed by the Gokhale Education Society. They had retired after rendering services till the age of superannuation from a college/educational institution entirely

controlled, governed and administered by the Gokhale Education Society. It is the Gokhale Education Society which is obliged to pay their salaries, emoluments, retiral dues and it is the duty of the Management to then abide by Grievance Redressal Committee's recommendation as approved and upheld by the Management Council of the University. In such circumstances, it is no obligation of the University to make any reimbursement. The petitioner, however, persisted and then relied upon the communication from the State Government and took up the matter with the State Government. This is annexed at Exhibit 79 and 80 of the paper book. On 19th October 2012, this communication was addressed. Since the Government did not respond, and the University refused, this writ petition has been filed according to Shri Talkute.

4 Mr.Talkute, however, conceded that by virtue of the judgment of the Supreme Court of India in the case of ***State of Maharashtra Vs.Nowrosjee Wadia College & others***¹ which is an appeal by the State Government, it has been held that the

¹ Civil Appeal 531/532/2013 dtd 29/1/2013

Government has no duty and obligation to reimburse the amount. A copy of this judgment is also annexed.

5 As far as University is concerned, its stand is identical as in Writ Petition No.11038/2012 and to be found in paragraph no.6 of its affidavit in reply. That paragraph is reproduced for ready reference :-

6) I say that as per Section 81(1)(a) of the Maharashtra Universities Act, 1994, it is obligatory upon the Management of an affiliated college to observe the provisions of the Act, Statutes, Ordinances and Regulations thereunder and the standing orders and directions of the University, strictly. In view of the said provision of the Maharashtra Universities Act, 1994, it is obligatory upon the petitioners to comply with the decision of the Grievances Committee of the University as regards encashment of unutilized earned leave of the Respondents No.5 to 31. A copy of the relevant extract of the Maharashtra Universities Act, 1994 is annexed thereto as Annexure B. It may be appropriate to mention that the University has framed the Statute governing terms and conditions of service of teachers appointed in the University, colleges and institutions conducted by the University, affiliated colleges, constituent colleges and recognized institutions of the University. As per Statute 411(2), the appointing authority for the affiliated college/recognized institution shall be the Management of the college/recognized

institution or the authority constituted by the Management as per its constitution. Petitioners No.2 to 5 Colleges being affiliated to the University, the Management of the said Colleges is the appointing authority of the Respondents No.5 to 31. Therefore, it is obligatory upon the Petitioners to pay to the Respondents No. 5 to 31 encashment of unutilized earned leave. A copy of the relevant extract of the Statutes is annexed hereto as Annexure C. It is further submitted that as per the provisions of Maharashtra Universities Act, 1994, the objects of the University shall be to disseminate, create and preserve knowledge and understanding by teaching, research, extension, etc. The University is an affiliating body and is not a body providing funds for payment, allowances, post-retirement benefits and other benefits of the teachers or other employees of the affiliated colleges and recognized institutions. A copy of the relevant extract of the Maharashtra Universities Act, 1994 is annexed hereto as Annexure D. Therefore, the Petitioners are not entitled to claim reimbursement/payment of an amount of encashment of unutilized earned leave from the Respondent University.

6 We repeatedly inquired from Shri Talkute as to how we can issue a writ in the teeth of this position and set out in the affidavit of the University. The University says that it has framed the statute governing the terms and conditions of service of teachers appointed in the University, Colleges and institutions conducted by it, affiliated colleges etc. and relied

upon Statute 411(2), but the appointing authority for the affiliated college/recognized institution is the management of the college/recognized institutions.

7 The petitioner nos.2 to 5 colleges are affiliated colleges but are under the control of the management i.e. Gokhale Education Society. It is the obligation of the petitioners to pay the money to the teachers/employees respondent nos.5 to 31 by way of encashment of unutilized earned leave. The institutions and the management have to abide by the statutes but the statutes do not say that once such payment is made, the University can be approached for any reimbursement. Absent any statutory foundation or any obligation on the University otherwise, merely on the strength of some communication from the Government, we do not think that the petitioner can claim a writ of mandamus. There is no privity of contract as between the employees and the University. In such circumstances, reimbursement has to be sought from the authority with whom there is either privity of contract or there is a statutory duty and obligation to reimburse

the amounts. If the salary grants released to the petitioners are also not routed through the University, then, we do not see how we can direct the University to abide by any directive of the Government or independently issue a writ of mandamus to it.

8 The State Government cannot be called upon to make any payment or reimbursement. Hence, even this petition fails and dismissed, but without any order as to costs.

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