

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

CIVIL APPLICATION NO.8302 OF 2019
IN WP/9904/2011

MAULANA AZAD EDUCATIONAL TRUST THROUGH ITS CHAIRMAN AND
ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Applicants : Senior Advocate Mr. R. N. Dhorde
I/b Mr. Vikram R. Dhorde

AGP for Respondents No.1 to 3 : Mr. M. M. Nerlikar
Advocate for Respondent-original petitioners : Mr. S. N. Pagare

...
WITH CA/8307/2019 IN RAST/7270/2019
WITH CA/8310/2019 IN RAST/7234/2019
WITH CA/8313/2019 IN RAST/7272/2019
WITH CA/8315/2019 IN RAST/7239/2019
WITH CA/8316/2019 IN RAST/7253/2019
WITH CA/8317/2019 IN RAST/7248/2019
WITH CA/8318/2019 IN RAST/7263/2019
WITH CA/8319/2019 IN RAST/7400/2019
WITH CA/8320/2019 IN RAST/7229/2019

...
**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATED : 18th JULY, 2019.

ORDER :-

The application is filed for modification of the clause (D) of the operative part of order of Judgment passed in Writ Petitions No. 9904 to 9912 of 2011 and 2411 of 2012, dated 23-02-2018.

2. This Court has directed the applicant- institution to see that the benefit of 6th Pay Commission is given to the employees, who were petitioners and see that the order was complied with within six months from the date of decision. This order was taken up to the Supreme Court by filing Special Leave to Appeal (Civil) No. 23811 to 23820 of 2018. By order dated 07-09-2018, these Special Leave Petitions were dismissed by passing following order :-

"No case is made out to interfere with the impugned order passed by the High Court. The special leave petitions are, accordingly, dismissed.

Pending application, if any, stands disposed of."

3. Learned Senior Counsel submitted that this Court can pass the order like modification of the previous order in view of law laid down by the Apex Court in two cases, viz. (i) *Bakshi Dev Raj (2) and another Versus Sudheer Kumar*, reported in (2011) 8 SCC 679 and (ii) *Khoday Distilleries Limited (Now Known as Khoday India Limited) and others Versus Sri. Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (Under Liquidation) Represented by the Liquidator*, reported in (2019) 4 SCC 376. Relevant para 26(2) from the case of - *Khoday Distilleries Limited (Supra)*, reads as follows :-

"26.2 We reiterate the conclusions relevant for these cases as under:

"(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of [Article 141](#) of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC."

4. The applicant-institution has filed Writ Petition No. 5335 of 2019, which is pending before other Division Bench of this court, in which, relief is claimed mainly against the All India Council for Technical Education (AICTE), which has stopped admission process of the students of B-Pharmacy and M-Pharmacy. In view of the aforesaid order made by this Court and as there was no compliance, it appears that the said Division Bench observed that as there was previous decision in which time was fixed for compliance of the order, it is not possible to consider the prayer made by the institution in that petition.

5. In view of the law laid down in aforesaid two cases, this Court holds that this Court has power to extend the time for compliance. As the matter involves rights of employees, this Court granted them opportunity to give their say in writing. Today, affidavit came to be filed in respect of teaching and non-teaching staff. This Court does not want to go into the terms of settlement. They have no objection to give extension to comply the order upto 19-04-2020.

6. Learned counsel for respondent- AICTE submitted that settlement has taken place between the parties and AICTE is not party to it and the parties are duty bound to discharge the duties as imposed by law. There can not be dispute over that.

7. The institution has filed many proceedings like applications for condonation of delay and review applications. Learned counsel institution, on instructions, seeks leave to withdraw all these proceedings. Leave granted. Civil Applications for condonation of delay and review stand disposed of as withdrawn.

8. The Civil Application No. 8302 of 2019 in Writ Petition No. 9904 of 2011, is hereby allowed and time is extended till 19-04-2020. All the proceedings disposed of in aforesaid terms.

9. Authenticated copy allowed to both sides.

Sd./-

[K. K. SONAWANE]
JUDGE

Sd./-

[T.V. NALAWADE]
JUDGE

rrd.