

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

**WRIT PETITION NO.6893 OF 2018
WITH
CIVIL APPLICATION NO.11050 OF 2018
IN
WRIT PETITION NO.6893 OF 2018**

Jayesh S/o Yashwant Bhadane & Ors. ..PETITIONERS

VERSUS

The State of Maharashtra & Ors. ..RESPONDENTS

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Mr. S. P. Bramhe, Advocate for the Petitioners.
Mr. K. N. Lokhande, AGP for Respondent Nos.1 and 2.
Mr. S. S. Jadhavar, Advocate for Respondent No.3.
Mr. S. V. Adwant, Advocate for Respondent No.4.
Mr. B. R. Waramaa, Advocate for Respondent No.5.

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**WITH
WRIT PETITION NO.6882 OF 2018**

Bhushan Shantaram Patil & Ors. ..PETITIONERS

VERSUS

The State of Maharashtra & Ors. ..RESPONDENTS

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Mr. S. P. Bramhe, Advocate for the Petitioners.
Mr. K. N. Lokhande, AGP for Respondent Nos.1 and 2.
Mr. S. S. Jadhavar, Advocate for Respondent No.3.
Mr. S. V. Adwant, Advocate for Respondent No.4.
Mr. B. R. Waramaa, Advocate for Respondent Nos.5
and 6.

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**WITH
WRIT PETITION NO.6888 OF 2018**

Shankpal Dnyaneshwar Pundalik ..PETITIONERS

VERSUS

The State of Maharashtra & Ors. ..RESPONDENTS

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Mr. S. P. Bramhe, Advocate for the Petitioners.

Mr. K. N. Lokhande, AGP for Respondent Nos.1 and 2.
Mr. S. S. Jadhavar, Advocate for Respondent No.3.
Mr. S. V. Adwant, Advocate for Respondent No.4.
Mr. B. R. Waramaa, Advocate for Respondent Nos.5 and 6.

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WITH

WRIT PETITION NO.5099 OF 2019

Mahatma Gandhi Shikshan Mandal & Anr...PETITIONERS

VERSUS

The State of Maharashtra & Anr. ...RESPONDENTS

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Mr. B. R. Waramaa, Advocate for Petitioners.
Mr. K. N. Lokhande, AGP for Respondent Nos.1 and 2.

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**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

Closed for Orders on : 20.08.2019.

Order Pronounced on : 06.12.2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. In all these petitions except Writ Petition No.5099/2019, petitioners are seeking following reliefs:

a. This Hon'ble Court may be pleased to issue appropriate writ, order or directions to the respondent nos.5 and 6 to disburse the arrears of salary for last three years to the petitioners as per the calculations annexed at Exhibit-'K' with interest, to award all the benefits of permanency and to disburse future monthly salary punctually.

b. This Hon'ble Court may be pleased to issue appropriate writ, order or directions to the respondent nos.1 to 4 to take action against the respondent nos.5 to 6 for withholding the benefits

of permanency, arrears of salary and monthly salary of the petitioners with interest.

c. This Hon'ble Court may be pleased to issue appropriate writ, order or directions to the respondent nos.5 and 6 to deposit of arrears of salary, monthly salary with interest in this Hon'ble Court.

d. This Hon'ble Court may be pleased to restrain the respondent no.5 and 6, their servants, office bearers from taking any coercive action like termination, reduction in rank, reduction in scale against the petitioners.

2. All these petitioners are employees of petitioners in Writ Petition No.5099/2019.

3. The petitioner in Writ Petition No.5099/2019 have filed the petition with the following prayers:

a. By issuing Writ of Mandamus or appropriate writ or directions or orders in the like nature, the respondents be directed to reimburse/to pay unpaid tuition fees of Rs.1,22,88,575/- for the academic year 2017-2018 and 2018-2019 against the admitted students of S.C., S.T., N.T., V.J.N.T., S.B.C. and O.B.C. categories forthwith.

b. By issuing Writ of mandamus or appropriate writ or directions or orders in the like nature, the respondent no.1 be directed to issue necessary instructions for releasing tuition fees required to be borne for admitted students of reserved

categories on confirmation of their admission by the unaided institution and directorate of Technical Education.

4. Mr. Brahme, learned counsel for petitioners submits that respondent no.6 is Polytechnic College run by respondent no.5. The petitioners are not paid the salary as per the pay scale provided by the AICTE and the State Government. The petitioners are claiming arrears from July 2015. No valid reason is given by the respondent-Management for withholding salary or arrears of salary to petitioners. The said action is arbitrary. The petitioners have given details about the arrears of salary and the difference of the salary payable for last three years. The learned counsel refers to the appointment orders and the pay scales upon which they are appointed. Mr. Brahme, learned counsel relied on the following judgments:

1. **Teachers Association for Non-Aided Polytechnics, registered Association of Teachers of Non-Aided Polytechnics, through its Bhusawal Unit President, A.V. Anilkumar & Others** reported in 2003 (Supp.1) Bom. C.R. 846.

2. **Shivaji Shikshan Prasarak Mandal and Others Vs. State of Maharashtra and Others** reported in (2005) 13 Supreme Court Cases 407.

3. **Hukumchand S/o. Shivram Kumbhar and Ors. Vs. Kisan Vidya Prasarak Sanstha and Ors.** in Writ Petition No.4099 of 2001.

4. **Sunanda w/o Pandharinath Adhav (Mrs.) & others Vs. State of Maharashtra & others reported in 2001 (1) Bom. C.R. 809.**

5. The learned A.G.P. submits that the respondent is an unaided institution. The Government is not liable to pay the salary. The private unaided institute are required to follow the norms laid down by AICTE or other Apex bodies and to abide by the Rules and Regulations of the Apex body and the State Government.

6. Mr. Waramaa, learned counsel for respondents submits that the respondent-Institute is unaided institute. In view of that, it is not 'State' within the meaning of the Article 12 of the Constitution and the respondents cannot maintain the present writ petition nor the respondent is bound to pay the salary on par with the employees of aided schools. The learned counsel relies on the judgment of the Apex Court in a case of **Satimbla Sharma & Ors. Vs. St. Paul Sr. Senior Secondary School and Ors. reported in 2011 (13) SCC 760.**

7. The learned counsel further submits that the Institution has paid the salary to the petitioners as is applicable. The learned counsel further submits that the institution has to receive more than Rs.1,22,88,575/- towards unpaid tuition fees for academic year 2017-2018 and 2018-2019 i.e. the reimbursement of tuition fees by Government as against the admitted students of S.C., S.T., N.T.,

V.J.N.T., S.B.C. and O.B.C. categories. The State and the authorities be directed to pay the same. The employees are paid the salary as per the pay scales applied by the Institute and agreed by the employees. The learned counsel submits that, the moment institute receives the reimbursement of tuition fees of the reserved category students from the Government, the salaries of the employees would be paid as per the pay scales agreed between the Institute and the employees. Further, petitioners do not have right to claim amount as per the pay scale of the Government aided Polytechnic College.

8. The learned A.G.P. submits that as far as the claim of the institute for reimbursement of fees is concerned, the office of the Assistant Commissioner, Social Welfare has forwarded the forms to the Directorate Office at Pune. The claim of petitioners is being considered by Maha-DBT-Authority (Commissioner of Pune). The scholarship forms of the concerned students for the academic year 2017-2018, 2018-2019 on the reserved seats are processed and forwarded with the recommendation of the Assistant Commissioner, Social Welfare, Jalgaon to the concerned authority for further orders and sanction.

9. We have considered the submissions canvassed by the learned counsel for the respective parties.

10. The petitioners (employees) are appointed by the Institute on probation and the pay scale is

also detailed in the appointment orders. It is not a matter of dispute that the Institute is governed by the AICTE Regulations and is bound to follow the same.

11. The Junior College running Polytechnic is within the realm of the definition of school as contemplated under section 2(24) of the M.E.P.S. is no longer res integra and the provision of M.E.P.S. Act and Rules apply.

12. The M.E.P.S. Act and Rules regulate the recruitment and the conditions of service of the employees in private schools. Schedule 'C' of M.E.P.S. Rules prescribes the pay scale payable to the teachers. The said Rules are framed by the State Government pursuant to its powers under section 4 of the M.E.P.S. Act. The schedule 'C' nor other provisions in the M.E.P.S. Act or Rules prescribe the pay scales payable to the teachers in the junior college (school) running Polytechnics. In such a scenario the State can exercise its executive powers by issuing administrative orders, circulars, instructions or resolutions, so long as the legislature does not make any law on that subject. In absence of the pay scale being provided by the Rules certainly reliance can be placed on the Government instructions issued from time to time.

13. One of the limb of the argument of the employer is that the Government Resolution deals

with the pay scale to be paid to the aided non-government institution and respondent-Institution is unaided institution. The aspect of the pay scale for unaided institution was subject matter of consideration before the Apex Court in a case of **Secretary Mahatma Gandhi Mission and Another Vs. Bhartiya Kamgar Sena and Others** reported in 2017 (4) SCC 449.

14. The respondent no.7-Institution is covered under the definition of Technical Education as provided under section 2 (h) of the All India Council for Technical Education Act, 1987. The A.I.C.T.E. has made recommendations regarding the qualification and the pay scales for teachers under the Higher and Technical Education. The A.I.C.T.E. has prescribed the pay scales. The All India Council for Technical Education is established under the provision of A.I.C.T.E. Act, 1987. In exercise of its power, the Council had framed the norms and standards for colleges offering diploma course such as Polytechnic and Pharmacy. The A.I.C.T.E. has under the notification dated 05.03.2010 enforced All India Council for Technical Education [pay scales, service conditions and qualifications for teachers and other academic staff in technical institution (diploma)] Regulations, 2010. It states that the said regulations shall apply to the teachers in the polytechnic namely Lecturers, Head of the Department and Workshop Superintendent. The pay scales and the career advancement of the teachers

and the conditions of eligibility and academic qualification is provided by the A.I.C.T.E..

15. Thus A.I.C.T.E. provides the norms/guidelines of the pay scales payable to the teachers, qualifications and service conditions for teachers and other academic staff in technical institutions (Diploma), which is to be implemented by the State Government. The Government Resolution dated 20.08.2010 prescribes the pay scales of the teachers in diploma level technical education as per 6th Pay Commission. Under the said G.R. the Government infact accepted the recommendations issued by A.I.C.T.E. under notification dated 05.03.2010. The distinction cannot be made in respect of the pay scales payable to the members of the teaching and non-teaching staff of aided diploma in pharmacy college and unaided one.

16. This Court in a case of Kiran v. State of Maharashtra in Writ Petition No.5150 of 2013 under judgment dated 15.01.2018 has held that the members of teaching staff of the junior college running diploma in pharmacy course are entitled for the salary as per the 6th Pay Commission. The said judgment it appears is confirmed by the Apex Court. The Division Bench of this Court at its Principal Seat at Bombay in Writ Petition No.8493 of 2004 under its judgment and order dated 16.08.2018 has also held that the teaching and non-teaching staff are entitled for the pay scales as fixed based on the recommendations of A.I.C.T.E.

17. In light of the above, the Institution is bound to pay the salary to petitioners-employees as per the Government Resolution dated 20.08.2010 and A.I.C.T.E. notification dated 05.03.2010.

18. The Institution shall pay to the petitioner since three years prior to the filing of writ petition as per pay scale as prescribed in the Government Resolution dated 20.08.2010 and A.I.C.T.E. notification dated 05.03.2010 within a period of four (04) months. The payment already made shall be adjusted.

19. As far as the claim of petitioners in Writ Petition No.5099/2019 for reimbursement of the tuition fees is concerned, the State has already said that the matter is pending consideration with the Directorate Office at Pune. The decision shall be taken preferably within a period of three (03) months and endeavour shall be made to pay the amount of the reimbursement of the tuition fees as would be determined within a period of three (03) months thereafter.

20. Writ Petitions accordingly disposed of. No costs.

21. In view of disposal of writ petitions, present civil application stands disposed of.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE