

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

WRIT PETITION NO.9653 OF 2017

Dr. Vijay s/o Ratanchand Katariya,
Age-54 years, Occu:Service,
R/o- Row House No.2,
Pagariya Residency, Vedant Nagar,
Station Road, Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Higher and Technical Department,
Mantralaya, Mumbai,
- 2) The Director,
Directorate of Technical Education,
3, Mahapalika Marg, Mumbai,
- 3) The Joint Director,
Directorate of Technical Education,
Regional Office, Osmanpura,
Aurangabad,
- 4) Maulana Azad Education Society,
Through its Secretary,
Dr. Rafiq Zakaria Campus,
Rouza Baug, Aurangabad,
- 5) Kamla Nehru Polytechnic (Pharmacy),
Through its Principal,
Rouza Baug, Dr. Rafiq Zakaria Campus,
Aurangabad.

...RESPONDENTS

...
Mr.P.S. Shendurnikar Advocate h/f. Mr. Kalyan V. Patil
Advocate for Petitioner.
Mr.S.N. Kendre, A.G.P. for Respondents No. 1, 2 and 3.
Mr.N.L. Jadhav Advocate for Respondent No.5.
...

**CORAM: SUNIL P. DESHMUKH AND
SMT. VIBHA KANKANWADI, JJ.**

DATE : 2ND DECEMBER, 2019

ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.

2. Petitioner, who has been employed in respondent No.5 pharmacy college after following due process is before us since a communication had been issued by the Principal seeking recovery of Rs.2,82,756/- in respect of three additional increments (three non-compoundable increments) in 18 installments at the rate of Rs.15,600/-.

3. Learned counsel for the petitioner submits that petitioner had acquired degree in pharmacy in 1994. By virtue of introduction of government resolution in 2010, petitioner had

requested for three non compoundable increments in view of acquisition of doctorate of philosophy (Ph.D.) in pharmacy. Pursuant to the same his case had been forwarded by respondent No.5 and accordingly three non compoundable increments were given to the petitioner. It appears that subsequently some instructions with respect to acquisition of M. Pharmacy had been issued to the effect that the professors who have acquired Ph.D. after 1st January, 2006 would not be eligible to have three non-compoundable increments in institutions imparting bachelor level education. It appears that under some misapprehension, thereafter, impugned communication dated 14th October, 2016 has been issued.

4. In response to the writ petition, respondents No. 1, 2 and 3 have submitted affidavit in reply and have stated in Paragraph No.4 thus:-

"4. I say and submit that Respondent No.2 i.e. Directorate of Technical Education, Mumbai and Respondent No.3 i.e. Joint Director, Technical Education, Regional Office, Aurangabad have not issued any letter to Respondent No.5 i.e. Kamla Neharu

Polytechnic (Pharmacy), Aurangabad to stop three non compoundable advance increments given to the petitioner acquiring Ph.D. degree as he is drawing PB-4 pay scale. Also Respondent No.2 and 3 have not issued any letter to recover the excess amount paid to the petitioner on account of three non compoundable advance increments as petitioner is drawing scale in PB-4 pay scale. Instead Respondent No.3 i.e. Joint Director, Technical Education, Regional Office, Aurangabad informed Respondent No.5 by its letter dated 07-01-2017 that he last para of letter of Respondent No.2 dated 03-02-2016 is only applicable for Degree institutes and it is not applicable for Diploma institutes. Copy of the letter dated 03-02-2016 issued by Respondent No.2 and letter dated 07-01-2017 issued by Respondent No.3 are annexed as **Exhibit R-1 (Colly).**"

5. In view of the aforesaid it appears that impugned communication dated 14th October, 2016 has been rendered untenable as the same is based on instructions not relatable to petitioner's case. The impugned communication, therefore, is set aside. The impugned recovery, accordingly is not to be effected

from petitioner.

6. Learned counsel for petitioner, at this stage, submits that since 2016 salary is not being paid to the petitioner with non compoundable increments.

7. In the circumstances, all the legitimate dues be restituted to the petitioner according to position as would have been if such communication had not been issued.

8. Learned counsel for respondent No. 5 submits that Respondent No. 5 would give all possible assistance for such restitution.

9. Rule is made absolute accordingly. The writ petition is allowed in the aforesaid terms and stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

[SUNIL P. DESHMUKH]
JUDGE