

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO.11259 OF 2017**

- 1) Vinayak s/o Laxmanrao Gadhekar,
Age-42 years, Occu:Service,
R/at. Plot No.D-75, Renuka Nagar,
Garkheda Parisar,
Aurangabad,
- 2) Abhijeet s/o Sudhakar Pashan,
Age-28 years, Occu:Service,
R/at. E-20/11, Sambhaji Colony,
N-6, CIDCO, Aurangabad,
- 3) Santosh s/o Pandurang Katore,
Age-42 years, Occu:Service,
R/at. C/38, Police Colony, N-7,
CIDCO, Aurangabad,
- 4) Hiranman s/o Bhausaheb Kalunke,
Age-31 years, Occu:Service,
R/at. Plot No.4/38/55, Visharanti Nagar,
Galli No.1, Mukundwadi Railway Station,
Aurangabad,
- 5) Amol s/o Balkrishna Joshi,
Age-32 years, Occu:Service,
R/at. C-60/6, Shivajinagar,
Garkheda Parisar,
Aurangabad,
- 6) Gahininath s/o Vitthalrao Wagh,
Age-38 years, Occu:Service,
R/at. Chaudhari Colony, Plot No.31,
Chikalthana, Aurangabad,

- 7) Nita d/o Bharat Daund,
Age-27 years, Occu:Service,
R/at. House No.5-8/1655,
Chaudhari Colony, Lane No.3,
Chikalthana, Aurangabad,
- 8) Dnyaneshwar s/o Namdeo Aglawe,
Age-26 years, Occu:Service,
R/at. A/P Georai Budruk,
Tq-Paithan, Dist-Aurangabad,
- 9) Rushinder s/o Hiranman Wagh,
Age-31 years, Occu:Service,
R/at. Plot No.111, S.No.57/2,
Rajnagar, Mukundwadi,
Aurangabad,
- 10) Raju s/o Bhagaji Pathre,
Age-28 years, Occu:Service,
R/at. H. No.C-5/3, Jalgaon Road,
N-13, HUDCO, Bharat Nagar,
Aurangabad.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai,
- 2) All India Council For Technical
Education, Human Resources and
Development Department, 7th Floor,
Chandralok Building, Janpath,
New Delhi,

- 3) The Director,
Directorate of Technical Education,
Maharashtra State, 3,
Mahapalika Marg, Post Box No.1967,
Mumbai-400001,
- 4) The Joint Director,
Directorate of Technical Education,
Regional Office, Near Government
Polytechnic, Usmanpura, P.B. No.516,
Aurangabad,
- 5) Bhagwan Shikshan Prasarak Mandal,
Dr. Khedkar Marg, CIDCO, N-6,
Aurangabad,
Through its Secretary,
- 6) The Principal,
Shri Bhagwan College of Pharmacy,
Dr. Khedkar Marg, CIDCO, N-6,
Aurangabad.

...RESPONDENTS

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Mr. P.S. Shendurnikar Advocate h/f. Talekar and Associates
Associates for Petitioners.
Mr. A.V. Deshmukh, A.G.P. for Respondent Nos.1, 3 and 4.
Mr. A.M. Karad Advocate h/f. Mr. S.G. Rudrawar Advocate for
Respondent Nos.5 and 6.

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**CORAM: SUNIL P. DESHMUKH AND
S.M. GAVHANE, JJ.**

DATE : 28TH AUGUST, 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. This is a petition moved by non-teaching staff of respondent No. 6 pharmacy college run by respondent No. 5 praying for a direction to said respondents to pay the petitioners as per the pay-scales as prescribed by the government from time to time and to give them all other service benefits, and to pay the petitioners arrears of pay i.e. difference of pay between actual payment made to them and the pay-scale which is applicable to them as prescribed by the government from time to time and to implement the pay-scales prescribed by 6th pay commission as adopted by the state government with effect from 1st January, 2006 and also praying for further directions to keep on paying monetary benefits as per the pay-scales prescribed under 6th pay commission, and additionally for the direction to pay arrears and consequential benefits with the interest @ 18% per annum.

3. It is the case of the petitioners that they are employees of respondents No. 5 and 6, respondent institution and college comprising non-teaching staff. They have been working with said respondents for over last 10 years save petitioner No.10 who is employed in the year 2011.

4. While permission to open private colleges had been subject to certain terms and conditions, it is with the specific term that such permission would be subject to, implementation of rules and regulations framed by the state government from time to time, by the concerned institution. For said purpose, government resolution dated 21st May, 1983 has been referred to. While noticing irregularities in payment of salary and allowances as per the pay-scale prescribed by the state government, a circular had been issued by the director of technical education, dated 29th September, 1995 ordering payment of salary according to the pay-scale prescribed by the pay commission. The petitioners have also referred to All India Council for Technical Education (for short "AICTE") prescribes pay and service conditions and qualification for teachers and other technical staff and other academic staff and it is mandatory that institutions imparting technical education would follow such procedure/regulations/conditions/instructions/terms. The state government had framed Maharashtra Non-agricultural University and Affiliated Colleges Standard Code (revised pay of non-teaching employees) Rules, 2009 prescribing pay-scales as

per the recommendations of 6th pay commission. Rules were framed in accordance with the powers conferred under Maharashtra Universities Act and the petitioners being employees of non-teaching staff serving in affiliated college are governed by such rules and thus their salaries and pay allowances should be in compliance with said rules. Notification had also been accordingly issued.

5. It has been submitted by learned counsel for petitioners Mr. P.S. Shendurnikar that petitioners and one Bhartiya Kamgar Sena had been approaching respondent No. 5 for pay and salary and allowances according to the pay-scale prescribed by the state government. Representations accordingly were submitted on 19th September, 2015, 21st March, 2017 and 25th April, 2017. Oral requests made by the petitioners were not responded to. It is being submitted that right from inception, respondents No. 5 and 6 are not paying salary and allowances as per the pay-scales prescribed by the state government. The petitioners being in need of employment have continued with the hope that some day or other their legitimate demands will be met with.

6. Learned counsel Mr. Shendurnikar refers to and relies on the decision of the Apex Court in the case of *Secretary, Mahatma Gandhi Mission and another vs. Bhartiya Kamgar Sena and others*, reported in 2017(4) SCC 449, particularly paragraphs 73, 74, 75 and 76 thereof. He as well refers to and relies upon the decision of the Supreme Court in the case of *State of Punjab and others vs. Jagjit Singh and others*, reported in 2017(1) SCC 148, which is with reference to temporarily engaged employees, ad-hoc appointees, casual appointees and contractual employment and minimum regular pay-scale along with other allowances, and further refers to a principle of 'equal pay for equal work'. The petitioners, since, for over a decade, their legitimate pay-scales were being ignored and their representations and requests were not being responded to, had been compelled to approach this Court under this petition.

7. Mr. Shendurnikar submits that petitioners are entitled to the pay-scales as prescribed by the state government from time to time and as the state government had decided to apply pay-scales recommended by 6th pay commission, the demand of the petitioners being for legitimate monetary

benefits, ought to be considered with accorded to the same. He draws attention to the observations of the Supreme Court in paragraphs No.78, 79, 80, 93, 95 in the case of *Secretary, Mahatma Gandhi Mission* (supra) and emphasizing paragraph 96 thereof, reading, thus:

“ 78. The objects sought to be achieved by the periodic revision of the pay scales is obviously to comply with the constitutional mandate emanating from Article 43 of the Constitution of India. If that is the object, we fail to understand the rationale behind the classification made by the State of Maharashtra between aided and unaided colleges. People employed in educational institutions run by non-State actors are not treated any more kindly by the market forces and the economy than the people employed either by the Government or its instrumentalities or institutions administered by non-State actors receiving the economic support of the State.

79. The very fact that the Government of India thought it fit to revise the pay scales of its employees and also thought it fit to accept the suggestions of UGC to revise the pay scales of various Universities and other bodies whose maintenance expenditure is met by UGC (in other words virtually by the Union of India), shows that the Government of India is completely convinced that there is a definite need to revise the pay scales of not only its employees, but also the employees of its instrumentalities. The fact that the Government of India made an offer to the States that the Government of India is willing to shoulder a substantial portion of the financial burden arising out of the adoption of revised pay scales in the event of the States choosing to adopt the revised pay scales, also indicates that the Government is fully convinced that having regard to various factors operating in the economy of the country there is a need to revise the pay scales of the personnel employed even by various States and their instrumentalities. Such a conclusion of the Union of India is endorsed by the State of Maharashtra. The decision of the State in issuing the two GRs revising the pay scales of the teaching staff of all the educational institutions and non-teaching staff of the aided educational institution is proof of such endorsement.

80. Therefore, we see no justification in excluding the non-teaching employees of the unaided educational institutions while extending the benefit of the revised pay scales to the non-teaching employees of the aided educational institutions. Such a classification, in our opinion, is clearly violative of Article 14 of the Constitution of India.

93. Another submission of the appellants that is required to be dealt with is that since the appellant does not receive any financial aid from the State, calling upon the appellants to pay its employees in terms of the revised pay scales would be compelling them to perform an impossible task. The appellants submitted that their only source of revenue is the fee collected from the students.

Their right to collect fee is regulated pursuant to judgments of this Court in coherence with *T.M.A. Pai Foundation v. State of Karnataka* and *Islamic Academy of Education v. State of Karnataka*. Therefore, if they are compelled to pay their staff higher salaries they would be without any financial resources as they do not receive any aid from the State.

95. At the outset, we make it clear that at least insofar as non-teaching staff are concerned, the appellants have no excuse for making such a submission because in the earlier round of litigation the respondents non-teaching employees of the appellants, though succeeded both before the High Court and this Court in obtaining appropriate directions to the appellant and other authorities to revise the pay scales of the employees in tune with the Fifth Pay Commission, entered into a settlement dated 30-1-2006, the terms of which have already been taken note in this judgment at para 4.

96. Under the said agreement, the management agreed to revise the pay scales from time to time in tune with the revision of the pay scales of the employees of the State. Therefore, the submission of the management in this regard is liable to be rejected on that ground alone. ”

8. Learned counsel submits that aforesaid decision of the Supreme Court is the outcome of challenge to the judgment and order passed by the division bench of this court in a group of writ petitions being writ petition No.11091 of 2010 and other petitions (*Bhartiya Kamgar Sena and others vs. the State of Maharashtra and others*) and said judgment has been reported in 2012(2) All MR 597 and one of the petition in the concerned group of petitions pertains to non-teaching staff of engineering college, bearing writ petition No.8780 of 2010. Learned counsel submits that following extract of observations in paragraph No.21 in said judgment would be worthwhile to be considered, reading, thus:

“ The Management in the present cases got recognition from A.I.C.T.E. and the engineering colleges are affiliated to the aforesaid two universities. Undertakings were obtained from the colleges that they will comply with the

directions given by the Universities and A.I.C.T.E. and as the decision in regard to the matter in issue is to be taken by the authority, this policy decision is binding on the Management and it is bound to implement the revision of pay scales and the hierarchical structure of staff prepared by the authorities. Thus, in case of both teaching and non teaching staff prepared by the A.I.C.T.E. and the State Government respectively and it is also bound to apply the pay scales applied by the State Government. ”

9. Learned counsel also refers to that it has been specifically observed in said judgment that financial difficulties of employer would hardly be a consideration. In addition to aforesaid, learned counsel has also referred to judgment of yet another division bench of this court which is in respect of teaching staff of respondents No. 5 and 6. Said decision is reported in *(2018) 2 AIR Bom R 128 (Kiran s/o Manikrao Bhusare and others vs. the State of Maharashtra and others)*. He draws our attention to paragraph No.17 thereunder to emphasize that the points which are likely to be raised on behalf of the respondents in the present petition, were the points disputed and those were set at rest by the Apex Court in the case cited supra. Learned counsel, in addition to aforesaid decisions, also refers to decision in the case of *Bhagwan s/o Govindrao Khalse vs. the State of Maharashtra and others, reported in 2018 SCC OnLine Bom 2827*. He, therefore, urges this Court to grant reliefs as prayed for.

10. Learned counsel Mr. A.M. Karad appearing on behalf

of respondents No. 5 and 6 purports to stoutly resist the request made under writ petition contending that the petition suffers gross *laches*. He submits that the state government had implemented 6th pay commission with effect from 1st January, 2006 and since then there had been no demand made on behalf of the petitioners till filing of the present writ petition. He purports to refer to first communication dated 19th September, 2015 made on behalf of the petitioners in respect of application of 6th pay commission recommendations with effect from 1st January, 2006, and submits that the petitioners for the first time made representation in the year 2015 demanding the pay-scales. Learned counsel submits that the demand is being made 11 years after 1st January, 2006. Even the decision in the case of *Secretary, Mahatma Gandhi Mission* (supra), which is sought to be relied upon, is of 2017 and till 2017 no demand had been made. So is the case while reliance is sought to be placed on the decision in the case of *State of Punjab and others* (supra), which too is decided in the year 2017. Learned counsel Mr. Karad goes on to submit that indisputably respondents No. 5 and 6 are private unaided colleges affiliated to Dr. Babasaheb Ambedkar Marathwada University and pay fixation is the province under the

AICTE Act and it is not the case of the petitioners that either AICTE or any other competent authority had prescribed any pay-scales which would be enforceable. The 6th pay commission are only recommendations and there is no specific mandate that 6th pay commission recommendations would be an obligation arising out of the statute or would be a statutory obligation.

11. Other limb of submission on behalf of respondents No. 5 and 6 is that financial resources of respondents No. 5 and 6 are very limited and are subject to restrictions imposed by fee regulatory committee as well as by various judgments. In the present case, while the students who had taken admissions from 2006 onwards, have completed their educational courses and have also left the college and there is no privity between the college and those students. In the circumstances, it is very difficult or rather impossible to recover any amount from such students. Learned counsel further submits that if writ petition is to be allowed, it would be a death knell for the institution as the institution is not at all in a position to bear the financial burden with effect from 1st January, 2006.

12. In support of his submissions, learned counsel refers

to decision of the division bench of this court dated 19th December, 2017 in writ petition No.8949 of 2016 (*Rangnath Vishnu Raskar vs. the State of Maharashtra and others*), emphasizing paragraph No.13 thereunder, reading thus:

“ 13. Considering the fact that the petitioner had made application before the tribunal on 13.10.2015 for the first time claiming benefit of 6th Pay Commission we are inclined to entertain this petition and grant relief to the petitioner for payment of salary as per the 6th Pay Commission with effect from 1.10.2012 viz. three years prior to the application filed before the College Tribunal on 13.10.2015, we had granted similar relief in Writ Petition No.6972 of 2005 dated 23.8.2017. ”

13. Learned counsel submits that in an unlikely event of request of the petitioners being granted, having regard to the aforesaid observations, the petitioners would be entitled, at the most, the payment of three years from the date of filing of the petition.

14. In addition to above, learned counsel submits that respondents No. 5 and 6 are surrounded by various problems and would be unable to, much less is in a position to fulfill the demand made by the petitioners.

15. Having heard aforesaid submissions, it emerges that respondents No. 5 and 6 are not disputing that petitioners are in

their employment from the respective dates as referred to in the petition. It is also not denied that the petitioners are comprising non-teaching staff of respondents No. 5 and 6. The nature of the grievance of the petitioners would not be said to be any longer *res integra*. Such situations have been decided and dwelt upon by various judgments of this court as well as the Supreme Court, particularly one in the case of *Bhartiya Kamgar Sena and others vs. the State of Maharashtra and others*, reported in 2012(2) All MR 597 (supra), which also refers to similar case of non-teaching staff of engineering college. Decision in the case of *Kiran s/o Manikrao Bhusare and others vs. the State of Maharashtra and others*, reported in (2018) 2 Bom R 128, concerns the teaching staff of present respondents No. 5 and 6. In both the decisions the division benches have observed to the effect that, while the managements are recognized by AICTE and the colleges are affiliated to the universities, an undertaking was taken from the colleges that they will comply with the directions given by the universities and AICTE. The policy decision taken by the government is binding on the management and it is bound to implement the revision of pay-scales accordingly. It has been particularly observed that in the case of both, teaching and non-teaching staff the management is bound to apply hierarchical

structure of the teaching and non-teaching staff prepared by the AICTE and the state government respectively and it is also bound to apply the pay scales applied by the state government. It has further been observed that affordability of the management would not be a proper consideration. Said petitions, accordingly had been allowed directing application of pay-scales recommended by 6th pay commission and the same to be implemented by the management and in case of failure to implement the recommendations, steps were to be taken for withdrawal of affiliation given by the respective universities and withdrawal of recognition given by AICTE.

16. The Apex Court in the case of *Secretary, Mahatma Gandhi Mission* (supra), in paragraph No.80 of the judgment, while dealing with the case of non-teaching employees employed in unaided engineering colleges, observed to the effect that, there is no justification in excluding the non-teaching employees of the unaided educational institutions while extending the benefit of the revised pay scales to the non-teaching employees of the aided educational institutions. It has been further observed that, such a classification is clearly violative of Article 14 of the Constitution of India.

17. Thus, the position overwhelmingly emerges that respondents No. 5 and 6 have no excuse to shirk their responsibility to make the payments according to the pay-scales prescribed by the state government and recommendations of 6th pay commission. We are therefore, inclined to accede to the prayers in the petition.

18. Learned counsel for the petitioners, during the course of submissions, has drawn our attention to the prayer in respect of payment of interest as claimed under prayer clauses as the dire necessity, in the sense that the directions given by the high court and the supreme court in respect of extending pay-scales and other monetary benefits to the teaching staff of present respondents No. 5 and 6 are not yet being complied with while it may take longer time than reasonable to comply with the directions, by which time the value of the amount to be paid would deplete, squeezing its economic or purchase capacity. He, therefore, urges that interest @ 18% per annum be awarded.

19. Having regard to aforesaid, we deem it appropriate to direct respondents No. 5 and 6 to pay to petitioners according

to the pay-scales prescribed by the government from time to time and give incidental, ancillary and consequential service benefits arising therefrom. Respondents No.5 and 6 would also pay to petitioners amount of difference between actual payment made to them and pay and allowances payable to them with effect from their dates of appointments. Respondents No. 5 and 6 shall implement the pay-scales prescribed by 6th pay commission as adopted by State of Maharashtra with effect from 1st January, 2006 and give and pay the benefits accordingly to petitioners.

20. In case of failure to pay the salary and other benefits as referred to above along with the arrears within six months from today, the amount due to the petitioners as aforesaid, shall carry an interest at the rate of 8 % per annum till its realization.

21. Rule is made absolute accordingly. Writ petition is allowed to the above extent and stands disposed of.

(S.M. GAVHANE, J.)

[SUNIL P. DESHMUKH, J.]