

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

**CIVIL APPLICATION NO.13551 OF 2018
IN
WRIT PETITION NO.5730 OF 2014**

Sanjay Education Societies,
College Polytechnic, Wadibhokar,
Dhule, Tq. and Dist. Dhule
Through its Chairman

..Applicant

Vs.

1. Prakash Bhaurao More,
Age : 49 years, Occ. Service,
2. Sanjay Ramdas Lohar,
Age : 47 years, Occ. Service,
3. Sanjay Murlidhar Wagh,
Age : 47 years, Occ. Service,
4. Sanjay Shamrao Patil,
Age : 50 years, Occ. Service,
5. Rajendra Uttam Patil,
Age : 50 years, Occ. Service,

All r/o. Sanjay Education
Societies College Polytechnic,
Wadibhokar, Dhule

6. The State of Maharashtra,
Through its Principal Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai - 32

7. The Director of Technical Education,
Maharashtra State, Mumbai
 8. All India Council for Technical
Education, A statutory body of
Government of India,
Established under AICTE Act,
7th Floor, Chandralok Building,
Janpath, New Delhi 11001
Through its Member Secretary
 9. The Joint Director of Technical
Education, Samangaon,
Nashik Region, Nashik Road,
Nashik
- Respondents

Mr. S.P.Brahme, Advocate for applicant
Mr. V.P.Patil, Advocate for respondent nos.1 and 5
Mr. P.K.Lakhotiya, AGP for respondent nos.6, 7 and 9
Mr. S.V.Adwant, Advocate for respondent no.8

**CORAM : S.V. GANGAPURWALA
AND**

R.G. AVACHAT, JJ.

RESERVED ON : JUNE 07, 2019

PRONOUNCED ON : JULY 05, 2019

ORDER (PER R.G. AVACHAT, J.) :

This is an application for modification of the order dated 22.10.2018 passed by this Division Bench in Writ Petition No.5730 of 2014. The applicant was respondent no.3 in the said Writ Petition.

2. Heard learned Counsel for the parties. Perused the application.

3. Mr.Brahme, learned Counsel for the applicants, would submit that the applicant is an education society. The applicant has been running various colleges of engineering and polytechnic. It had, however, to close down its engineering college. Some of the employees (i.e. respondent nos.1 to 5) of the engineering college had preferred the said Writ Petition claiming arrears of salary and revision of pay in accordance with the Fifth and Sixth pay commissions recommendations. The Writ Petition was disposed of vide order dated 22.10.2018. The operative part of the order runs thus :-

6. There are disputed questions of facts involved. In the light of that, we direct the parties to approach the Joint Director of Technical Education, Nashik. The petitioner nos. 1 and 5 shall file a comprehensive representation with the Joint Director

of Technical Education, Nashik with regards to his claim. The Joint Director of Technical Education, Nashik shall hear petitioner nos. 1 and 5 and respondent no.3 and thereafter take decision with regard to the applicable pay scale to petitioner nos.1 and 5 and the salary as due and payable to them. Petitioner nos.1 and 5 and respondent no.3 are entitled to place on record the documents on which they rely. Joint Director of Technical Education, Nashik shall decide the same preferably within four months from the date of receipt of the application. In case petitioner no.5 is working with respondent no.3, then respondent no.3 shall pay petitioner no.5 regular salary, as is permissible. Writ petition is accordingly disposed of. No costs.

4. The applicant has no serious objection as to the aforesaid order. Learned Counsel would, however, submit that it is the settled position of law that the employees are entitled to arrears of salary of

the three years preceding filing of the petition. Respondent nos.1 and 5 could be, at the most, entitled to salary/difference of salary for the period from three years next before filing of the petition. It is, therefore, desirable to restrict the scope of enquiry to be conducted by the Joint Director of Technical Education, Nashik, for the period of three years next before presentation of the Writ Petition and thereafter. In support of his contentions, learned Counsel has relied on the judgment of the Hon'ble Apex Court in the case of **Union of India (UOI) and ors. Vs. Tarsem Singh, (2008)7 MLJ 1245 (SC).**

5. On the other hand, Mr.V.P.Patil, learned Counsel for respondent nos.1 and 5, would submit that these respondents had all along been agitating their claims for arrears of salary and revision of their pay scale in terms of the recommendations of Fifth and Sixth Pay Commissions, since, at least, from 2006. These respondents, therefore, would be entitled

for arrears of salary after revision of their pay scale since then i.e. October, 2006. In support of his submissions, learned Counsel has relied on the judgment of the Apex Court in the case of **Rangnath Vishnu Raskar Vs. The State of Maharashtra and ors. (Petition(s) for Special Leave to Appeal (C) No(S).8124/2018]**.

6. In the case of **Tarsem Singh (supra)**, the Apex Court in paragraph 5 of the judgment, has observed thus :-

"6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.

It being a case for arrears of salary, sympathy may be with these respondents. Law is, however, not on their side so far as regards the claim for arrears of salary is concerned.

The facts in the case of **Rangnath (supra)** indicate that the petitioner therein was throughout agitating for salary in accordance with the report of the Sixty Pay Commission, at least from the year 2011. The Writ Petition filed in the year 2016 was only because the proceedings that were commenced earlier was disposed of on the ground of maintainability. The same indicates that the petitioner therein had earlier initiated proceedings claiming arrears of salary. In that view of the matter, the Hon'ble Apex Court was pleased to set aside portion of the judgment dated 19.12.2017, which confined the relief to the petitioner therein to three years prior to filing the Writ Petition.

7. As such, the legal position is that normally a belated service related claim has to be rejected on the ground of delay and laches or limitation. The claim for arrears of salary or service related monetary benefits shall be restricted normally to a period of three years prior to the date of filing of the Writ Petition. In this view of the matter, we are inclined to allow the application and modify our order dated 22.10.2018. Hence, the following order :-

(i) Add paragraph 7 to our order dated 22.10.2018 as under :-

The Joint Director of Technical Education, Nashik, shall restrict the scope of enquiry into the arrears of salary for the period from three years prior to the filing of the Writ Petition till the date of entitlement of petitioner nos.1 and 5.

(ii) The Civil Application is accordingly disposed of.

[R.G. AVACHAT, J.]

[S.V. GANGAPURWALA, J.]

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