Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13855 OF 2017

Yashwant Shikshan Prasarak Mandal and anr. .. Petitioners
And
Mr.Sadashiv Dnyandev Raktade and ors. .. Respondents

WITH
CIVIL APPLICATION NO. 2368 OF 2018
IN
WRIT PETITION NO. 13855 OF 2017

Mr.Sadashiv Dnyandev Raktade .. Applicant
Vs.
Yashwant Shikshan Prasarak Mandal and anr. .. Petitioners
And
Shivaji University, Kolhapur and anr. .. Respondents

WITH
WRIT PETITION NO. 13854 OF 2017

Shree Yashwant Shikshan Prasarak Mandal
and anr. .. Petitioners
And
Mr.Ajit Gopalrao Lokare and ors. .. Respondents

Mr.Meelan Topkar, for Petitioner in WP/13855/2017 & in WP/13854/2017.
Mr.S.S.Panchpor, AGP for State.
Mr.Amit Borkar, for Respondent No.2 in both Petitions.
Mr.C.G.Gavnekar a/w Mr.A.C.Gavnekar and
Mr.G.S.Hiranandani, for Respondent No.1 in WP/13854/2017.
Mr.S.D.Paithane I/b Mr.A.S.Raktade, for Applicant in

CAW/2368/2018 and for Respondent No.1 in WP/13855/2017.

CORAM : S.C.DHARMADHIKARI &
M.S.KARNIK, JJ.

RESERVED ON : 11th FEBRUARY, 2019
PRONOUNCED ON : 18th APRIL, 2019

ORDER (PER M.S.KARNIK, J) :

. Heard.

2. Rule. The respondents waive service. By consent, Rule made returnable forthwith and heard finally.

These Petitions involve common questions. The decision in Writ Petition No. 13855 of 2017 would cover the controversy in the connected Petition. For convenience, we deal with the facts in Writ Petition No. 13855 of 2017.

3. By this Petition filed under Article 226 of the Constitution of India, the petitioners challenge the communication dated 16/11/2016 directing the petitioners to implement the decision of the Grievance Committee to pay arrears of salary to the petitioners and consequent declaration

that the petitioners are not liable to pay any arrears of salary to respondent No.1.

The facts of the case in brief are as under :

4. The Respondent No.1 was appointed as a Lecturer (Hindi) in the petitioner No.2 – College by an order dated 28/09/1994. The said appointment was temporary and for a period of one year. This temporary appointment was continued for one more year vide an order dated 15/06/1995. Respondent No.1 was appointed on probation for a period of one year by an order dated 18/06/1996 for the period from 20/06/1996 to 20/04/1997. The respondent No.2 approved the appointment of respondent No.1 on probation.

5. In the Petition, it is stated that the petitioner No.2 – College was established in 1989 in a hilly region in Kodoli, Taluka – Panhala, District – Kolhapur. The fees to be charged per student are fixed by the Shikshan Shulka Samiti. The fees

have been gradually increased from time to time. It is stated that the Shikshan Shulka Samiti fixes the fee structure based upon the actual expenses incurred by the College.

6. It is the petitioner's case that since the petitioner No-2 – College is situate in a hilly area, with a view to ensure maximum admissions, the petitioners are required to give concessions in fees to secure admissions of students. This resulted in loss of income. The expenses never reduced. Petitioner No.1 – Institution has to pay the shortfall amount to the petitioner No.2- College to balance the income and expenditure statement. The teaching and non-teaching employees are aware of the financial constraints faced by the petitioners.

7. The staff members raised grievances about pay and other service conditions. Pursuant to a meeting held, an agreement was executed between the petitioners and all the staff members on 25/08/2003. It was agreed that the staff

members shall be extended the benefits of V th Pay Commission with effect from 01/01/1996 based upon their basic pay in the IV th Pay Commission and consequent DA thereon. It was agreed that though the benefits of V th Pay Commission are to be extended from 01/01/1996, the actual pay and DA as per V th Pay Commission is payable with effect 01/06/2004. Upon request of the petitioners, the staff members voluntarily gave up the claim of arrears payable as per V th Pay Commission's recommendations.

8. Despite the agreement dated 25/08/2003, the respondents filed an application dated 04/03/2013 to the Grievance Committee of the Shivaji University, Kolhapur claiming salary and arrears as per V th and VI th Pay Commission for the entire period of their service. The Petitioner - Shree Yashwant Shikshan Prasarak Mandal in Writ Petition No. 13854 of 2017 filed similar Petition against Shri Ajit Gopalrao Lokare.

9. The petitioners filed response to the said application on 04/03/2013. In the response, the reasons are mentioned why it is not possible for the petitioners to pay salaries as per V th and VI th Pay Commission are stated. It was stated that it was for the first time that a claim is made for the entire service period. The petitioners pointed out the financial constraints faced in paying the arrears and also the agreement executed by the staff members voluntarily giving up the claim of the arrears payable as per V th Pay Commission. A separate reply was also filed by the petitioner No.2 - College supporting the stand adopted by petitioner No.1

10. The Grievance Committee in the meeting held on 16/09/2013 took a decision that within one month from the date of order, the petitioners should pay all arrears of salary as per rules and report compliance. This Court vide order dated 18/01/2016 in Writ Petition No. 1908 of 2014, in a challenge to the Grievance Committee's decision, held that the Grievance Committee has to merely make a report to the Management

Council and it is the Management Council which has to give hearing to all parties and take a decision. Thereafter, the Deputy Registrar, Affiliation Department by the impugned communication dated 16/11/2016 informed the petitioners that the Management Council has passed a resolution and directed the petitioners to implement the decision of the Grievance Committee. The petitioners are directed to pay the arrears of salary claimed by them.

11. In the challenge to the order passed by the Grievance Committee and the Management Council, inter alia, it is contended that the petitioners are not under legal obligation to pay salary as per Pay Commission's recommendations as petitioner No.2 – College is a private and unaided College. Learned Counsel contended that the right of the unaided, private professional courses Colleges to pay salaries to the staff as decided by the said Colleges without government interference and impositions is well recognised. It is the further contention that the order passed by the Grievance Committee is in flagrant

violation of the principles of natural justice. In the submission of the learned Counsel, the Management Council has merely directed implementation of the Grievance Committee recommendations which clearly violates mandate of sub-section 2 of section 57 of the Maharashtra Universities Act, 1994 which casts a duty on the Management Council to apply mind and pass a reasoned order. In the submission of the learned Counsel there was no effective hearing in as much as the Management Council only asked 2 or 3 questions to petitioner No.2. Learned Counsel would submit that failure to give the petitioners an effective opportunity of representing their case which vitiates the impugned order. Learned Counsel would submit that the Management Council has not taken into consideration financial condition of the petitioners before directing implementation of the Grievance Committee's report.

12. Learned Counsel for the respondents on the other hand invited our attention to the affidavit-in-reply filed by respondent No.1. Learned Counsel for the respondent No.1

would submit that though an agreement dated 25/08/2003 was entered into, such an agreement is contrary to the provisions of the law and the Apex Court has in the case of **Mahatma Gandhi Mission Vs. Bhartiya Kamgar Sena,** specifically held that such agreements are not enforceable. Learned Counsel would submit that the issue is no longer res-integra in view of the decision of this Court **dated 16/08/2018 in the case of Shri Salunkhe Jayawant Vishnu and ors. Vs. State of Maharashtra and ors. in Writ Petition No. 8493 of 2004.**

13. We have gone through the decision of this Court in **Shri Salunkhe Jayawant Vishnu** *(supra)* to which one of us S.C.Dharmadhikari, J. was a party. This decision squarely covers the controversy in the present case. After considering the various Government Resolutions issued by the State Government from time to time and the various decisions of the Apex Court, this Court in the case of **Shri Salunkhe Jayawant Vishnu** *(supra),* held that the Managements are liable to pay arrears by implementing revised pay scale as

contained in the Government Resolutions. It would be necessary to set out paragraphs 15 and 16 of the decision of this Court in the case of **Shri Salunkhe Jayawant Vishnu** *(supra)* which read thus :

> "15. The view taken by the Division Bench at Aurangabad is further fortified by a recent judgment delivered by the Hon'ble Apex Court in case of **Secretary, Mahatma Gandhi Mission & Anr V/s. Bharatiya Kamgar Sena & Ors.** decided on 5th January 2017.
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> The Hon'ble Apex Court was approached by the Charitable Trust registered under the Bombay Public Trust Act administering two engineering colleges. The respondent who was an unregistered association of employees working with the appellant, which included the teaching and non-teaching members, had approached the High Court at Bombay seeking direction to extend the benefit of the revised pay scale as recommended by 5th Pay Commission set up by the Government of India. The said writ petition came to be allowed by the Bombay High Court directing the Dr.Babasaheb Ambedkar Marathwada University, Aurangabad to enforce the pay scale in terms of the Rules, and on failure to make the payment to the non-teaching staff resulting into withdrawal of recognition of the college. The employer being aggrieved, filed the Special Leave Petition which came to be dismissed on an earlier occasion. Subsequently, the terms of settlement were worked out between the parties and the employees agreed to waive their right to claim arrears of pay calculated in terms of recommendation of 5th Pay Commission for the period between 1st January 1996 to 31st December 2000.
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> In this backdrop, the Hon'ble Apex Court examined the existing resolutions governing the field, and in specific the Government Resolution dated 12th August 2009 revising the pay scale and the Dearness Allowances of the Teachers and other equivalent cadre of University, colleges and other higher educational institutions coming

within the purview of the State Legislature. On examination of the scheme contained in the standard code provided for terms and conditions of service of non-teaching employees of various organizations, it was traceable to the Maharashtra University Act, 1994, authorizing the said Rules providing various aspects of employment of Officers, teachers and other employees of the University, affiliated colleges and recognized institutes, the Hon'ble Apex Court examined the applicability of the Rules to the non-teaching employees of the classes of educational institutions. A distinction was sought to be drawn between the non-teaching employees of the unaided non-government colleges and those of the aided colleges. The Hon'ble Apex Court, on detail consideration of the entire existing frame work and the 2009 Rules formulated under Section 8(3) of the Maharashtra University Act, 1994 dealing with the service conditions of non-teaching employees and on consideration of the argument that an unaided college cannot be compelled to pay the salary and allowances to its employees in terms of recommendations of 6th Pay Commission in absence of any statutory obligation to make such payment, the Hon'ble Apex Court concluded that the Government Resolution dated 12th August 2009 can be construed to be made in exercise of power under Section 8(3) of the University Act, conferring a legal right on the teaching staff of the affiliated colleges, irrespective of the fact whether they are aided or not. The colleges run by the appellant were found to be affiliated to Maharashtra Public Universities Act 2016 and therefore, the teaching staff was held to be entitled to the revised pay scale in terms of the Government Resolution dated 12th August 2009. Testing the said Government Resolution on the parameters of Article 14, the Apex Court concluded that merely because the appellant did not receive any financial aid from the State, they cannot be compelled to pay the revised pay scale to its employees. Their Lordships observed that it is always open to the Management to make an appropriate application before the Fee Regulatory Committee bringing all the relevant facts to the notice of the body competent to determine the fee structure and raise appropriate revenue. In this backdrop, with the aforesaid observation, and with a specific conclusion that the appellants are obliged under a law to find out ways and means to find out the financial liability arising out of application to pay the revised scale, the Special Leave Petition came to be dismissed.

16. In light of the pronouncement of the Hon'ble Apex Court, in the aforesaid issue, it is not now open for this Court to examine the issue and it is imperative on the part of the respondent nos.5 and 6 to abide by the mandate issued by the Director in his circular to pay its teaching and non-teaching staff the pay scales made applicable in terms of the Government Resolution issued from time to time. However, one more aspect also needs a clarification. It is noted by us that while refusing the pay scales of teachers in Government/ non-government, pharmacy polytechnic and in applying the recommendation of the 4th Pay Commission by Government Resolution dated 26th May 1992 and by applying the recommendation of 5th Pay Commission by Government Resolution dated 20th October 2000, the Government Resolution had stipulated minimum educational qualification to be possessed by the teachers/lecturers so as to hold them eligible to secure the revised pay scale prescribed in the Government Resolution. The petitioners have not set out the educational qualification possessed by them except those which have been mentioned by them in a chart annexed at Exhibit- A of the petition and it can be seen from the said chart that the teachers i.e. petitioner nos.2 to 5 possessed a degree B-Pharm along with petitioner no.18, but as far as petitioner no.13 is concerned, educational qualifications that are reflected against his name at Exhibit-A is M.Sc (Micro Biology). By the bare reading of Exhibit-A, petitioner no.3 does not qualify himself for availment of the revised pay scale in absence of the requisite educational qualification as set out in the Resolution and based on AICTE recommendations, holding him entitled for the said pay scale. However, though we direct the respondent nos.5 and 6 to implement the revised pay scale as contained in the government resolution to the petitioners, we also grant liberty to the respondent no.6 to examine the educational qualification of the petitioners who were working as lecturers and to satisfy itself that they fulfill the requisite educational qualification in terms of the government resolution revising the pay scale and it is only when they

> are found to be qualified and eligible in terms of the said Government Resolution, the said pay scale should be extended. As far as non-teaching staff is concerned, the respondent no.6 is directed to extend the benefits of the communication dated 29th September 1995 issued by the Director of Technical Education and extend the benefits of pay and allowances as well as other benefits enumerated in the said communication to its non-teaching staff. The entire exercise of fixation of pay of the petition in the revised pay should be carried out within a period of six months and the respondent no. 6 should release the arrears within the said period by reworking the pay scale and also pay the amount of gratuity and post retiral benefits in case of the petitioners who have retired from service during the pendency of the petition.
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> Rule is made absolute.
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> Writ Petition is allowed in the aforesaid terms."

14. In the light of the law laid down by the Apex Court and this Court, as the issues raised by the petitioners in this Petition stand concluded in view of the decision of the Apex Court and this Court in the case of **Shri Salunkhe Jayawant Vishnu** *(supra),* we do not, therefore, find any merits in these Petitions viz. Writ Petition No. 13854 of 2017 and Writ Petition No. 13855 of 2017. The same are accordingly dismissed with no order as to costs. Rule is discharged.

15. In view of dismissal of the Petition No.13855 of

2017, Civil Application No.2368 of 2018 does not survive and the same is accordingly stands disposed of.

(M.S.KARNIK, J.) **(S.C.DHARMADHIKARI, J.)**