

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION st. NO.25718 OF 2019**

Dr.Arjun Haribhau Musmade & Ors.

... Petitioners

Vs

State of Maharashtra & Ors.

... Respondents

Mr.Sanjay Kshirsagar with V.Y. Kulkarni for the Petitioners

Mr.B.V. Samant, AGP, for Respondent Nos.1, 2 and 3

Mr.S.R. Ganbavale for Resp. No.4

Mr.S.V. Jadhav, Junior Administrative Officer from the office of Joint Director, Higher Education, Pune Region, Pune – present

**CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.**

DATED: NOVEMBER 28, 2019

P.C.:

1. The 25 petitioners before us have stated on oath that the institution known as Tikaram Jagannath College, Khadki, Pune established in 1983 by Khadki Education Society has employed them as permanent employees.

2. In paragraphs 4 and 5 of the petition, it is stated as under:

“4 The Petitioners are the permanent employees of the Respondent No.4, i.e. Tikaram Jagannath college, Khadki, Pune and some of them are still in the service while some of them are retired. The details of the petitioners along with their designation, length of service rendered etc. are enclosed herewith as **Exhibit A.**

5 The Petitioners are/were the permanent employees of the Pune based college named Tikaram Jagannath College,

Khadki, Pune. This college has been established in the year 1983 by the society named “Khadki Education Society”, Pune. It is submitted that on 13th June 1982 the Additional Secretary, Maharashtra State issued a letter to the Vice Chancellor of non agricultural universities thereby granting permissions to the concerned universities to proceed for affiliation and recognition. It is submitted that the annexure to the said letter gives name commerce faculty of the Respondent no.4. A copy of the letter bearing number NGC-3582/7022/Vishi-2 dated 13th June 1982 send (sic) by the Additional Secretary, State of Maharashtra to the Vice Chancellor of all non agricultural universities is hereby annexed to this Petition as **Exhibit B.**”

3. The further paragraphs say that respondent No.4 is an approved institution and duly affiliated with the Savitribai Phule Pune University, the then Pune University. We do not know whether these paragraphs of the petition are inserted at the instance of the management or the petitioners have in their possession all the records in relation to the management based on which they made these positive statements. However, they highlight the position that the institution complied with all the rules and regulations and thereafter employed them. Four petitioners from serial Nos.21 to 25 have now retired from the college after rendering selfless service. They are entitled to benefits termed as retiral benefits post superannuation. While some others are on the verge of retirement.

4. It is now alleged by the Joint Director of Higher Education at this belated stage that the college/institution has misappropriated public funds or it otherwise owes an amount of Rs.6,81,46,811/-. This is an amount of excess salary paid.

5. The present petition restricts itself to the case of 25 petitioners whose appointments have been faulted and who have been allegedly overpaid by the management.

6. On such a writ petition, which challenges the orders of recovery or adjustment or refusing to release the admissible payscales or withdrawing them or stopping them altogether, when it was placed before us on the previous occasion, the learned AGP sought time to take instructions.

7. The order of the previous hearing of November 11, 2019 reads as under:

P.C:

1. Mr.B.V. Samant, learned AGP, accepts notice and waives service for respondent Nos.1 to 3.

2. At his request, we post this matter on 28-11-2019. It shall be listed on the supplementary board.

3. We are informed that the Principal of respondent No.4-College is present.

4. Let a copy of the writ petition with the annexures be handed over to him.

5. Should the 4th respondent decide to engage an Advocate, then that be done before the next date. The matter will not be adjourned on the ground that the 4th respondent has yet to instruct an Advocate.

6. Mr. Samant should produce along with affidavit the necessary and relevant original records so that we can verify, in addition to the statements in the affidavit in reply, independently, whether the petitioners are indeed over-paid or that the salary grant admissible to the institution/4th respondent has been misutilised or misappropriated in any manner.”

8. Post this order, the matter was called out today and Mr.Samant, the learned AGP, says that the record is huge and bulky. However, the substance of the record is that the institutions are not proceeded against at the sweet will and fancies of the authorities but on specific ground and satisfaction reached by the authorities with regard to this misappropriation. The beneficiaries are the petitioners. The management has, till date, not complied with the requisitions of the department and produced the relevant and germane documents with regard to the appointment of these petitioners muchless their updated service books.

9. Mr.Samant has handed over to us a copy of the communication dated 27.11.2019 addressed by the Department of

Higher Education (Joint Director of Higher Education, Pune). In the said communication, a copy of which is taken on record and marked 'X' for identification, it is stated that primary documents such as the service books and the original records with regard to the issuance of the advertisement, constitution of selection committee, the details and records of the interviews and the ultimate resolution of the college have not been forwarded till date.

10. Therefore, Mr.Samant says that eight candidates are such whose salaries have altogether been stopped whereas 17 others are such whose salaries are not stopped but their appointments are faulted.

11. We enquired with Mr.Samant as to how the petitioners can be visited with the extreme penal measures including recovery by coercive means until and unless all including the teachers were heard and a speaking order was passed. Mr.Samant had no answer to our query save and except stating that there is no cooperation received from the management. We are surprised at this statement of the authorities simply because the Directorate of Higher Education is situate at Pune and the management is also at Pune and the petitioners are also residing or serving for gain at

Pune and if everything is available at Pune then why this order had to be passed without complying with the principles of natural justice.

12. We have no satisfactory answers and after brief hearing, Mr.Samant says that the Directorate of Higher Education will now call for and summon the original records from the management. If the management does not forward them within one week from today, the Director of Higher Education will use his powers and forcibly requisition these records or take custody of them in accordance with law. Thereafter, the management will be heard together with the concerned employees and the Director of Higher Education will pass a speaking order, a copy of which will be forwarded to all concerned.

13. The needful will be done by the Director of Higher Education within two months from today.

14. Needless to clarify that before we accept these statements of Mr.Samant, made as above, as undertakings given to this court and dispose of the petition on that basis, we are bound to clarify that should the steps be not taken within the time stipulated above,

after that period, nobody including the Director and the Secretary in the Department of Higher Education should not resort to any means. The unpaid salaries will have to be released to all such employees whose salaries are not paid and all recovery proceedings would have to be dropped against the rest of them. Thereafter, the payscales, as admissible, would have to be made applicable including to the retiral benefits. Thereafter, the sanctity of the records maintained by the management cannot be probed into. These records will have to be accepted as conclusive evidence of the appointments of these 25 employees.

15. This Writ Petition is disposed of by making it clear that we have not examined the correctness of the rival contentions.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)