

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

**917 REVIEW APPLICATION (CIVIL) NO.256 OF 2019
IN WP/8388/2014 WITH CA/1133/2020 IN RA/256/2019**

SHRI SHARADA BHUVAN EDUCATION SOCIETY NANDED
THROUGH ITS SECRETARY AND OTHERS ..APPELLANTS

VERSUS

SURESH BALIRAM GAJBHARE AND OTHERS ..RESPONDENTS

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Mr. P. M. Shah, Senior Advocate i/b Mr. Ramesh R.
Mantri, Advocate for the Appellants.

Mrs. V. S. Chaudhary, AGP for Respondents-State.

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**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATED : 21st FEBRUARY, 2020.

PER COURT:-

1. The present litigation depicts the victimization of an employee at the hands of the employer. The extraction of the work from the employee from an employer without paying remuneration to an employee.

2. Under the judgment and order dated 21.09.2019, we had partly allowed Writ Petition No.8388/2014 filed by the employee. The employee sought the relief of declaration as surplus and absorption in another institution and payment of arrears of salary. The petition is filed in the year 2014.

3. It was observed that the employer never paid the petitioner-employee as per pay scale prescribed in the appointment order. The plea was taken by the management that the contract/agreement has not been executed by the employee. The employer also could not remotely prove that the petitioner was paid the salary as per the pay scale prescribed in the appointment order. The appointment of the petitioner was on an unaided post. The responsibility of making payment of salary was of the employer. In gross dereliction of its obligation, the employer did not pay the salary to the petitioner as agreed in the appointment order. The petitioner had to approach this Court for payment of salary and also for declaration of being surplus.

4. We did not grant the relief of declaration as surplus employee considering the Maharashtra Universities Act, 2016.

5. It was observed that the petitioner was not paid salary and the directions were issued for payment of salary only for the period preceding three years of filing of the writ petition till the year 2017-2018. In fact, the petitioner was appointed much prior to the year 2011. The petitioner was appointed in the year 2005 in the pay scale of 8000-275-13500. On and from 01.01.2006, even the salary as per 6th pay commission is applicable.

6. Considering the aforesaid, the directions were issued to pay the salary at the pay scale of 8000-275-13500 from 16.09.2011 that is pay scale that was prescribed in the appointment order.

7. Mr. Shah, learned senior counsel for the review applicant submits that an employee was in employment with another institution. The Court relied upon the letter issued by the subsequent employer of the petitioner dated 14.01.2019. The Court in paragraph no.21 observed that in view of the letter dated 14.01.2019, the employee now is working on clock hour basis in the Netaji Subhashchandra Bose Arts College, Nanded. The learned senior counsel submits that the initial burden to prove that the employee was not gainfully employed anywhere and had no earning to maintain himself or/and his family is on an employee. The learned senior counsel relies on the judgment of the Apex Court in the case of **Rajasthan State Road Transport Corporation, Jaipur Vs. Phool Chand (Dead) Through Legal Representative** reported in **(2018) 18 Supreme Court Cases 299**. The learned senior counsel submits that in paragraph 22 of the judgment under review, the Court had cast a negative burden on an employer and observed that the college and the management were not in a position to point out the date of appointment of the petitioner in another college. It was for the employee to prove the same. The learned senior counsel further submits that it has now come to the

knowledge of the review applicant that the employee was working with Netaji Subhashchandra Bose College on clock hour basis, even for the Academic Year 2017-2018 and 2018-2019. The learned senior counsel further submits that the course in the review applicant college was discontinued in the year 2014 and letter of the University is also on record. This Court had rejected the prayer for absorption in another institution. In view of that writ petition only for recovery of salary would not be tenable.

8. To pay the salary is obligation of the employer. The employee does not have a bargaining power while in employment. The employer cannot be allowed to extract the work and avoid payment of salary. On one hand review applicant was not paying any salary to the petitioner and on another hand contends that it would not pay the salary to the petitioner, as the petitioner was employed elsewhere. The employment was only for the year 2019-2020 that to on clock hour basis. For the purpose of survival the employee will have to work elsewhere. The salary was directed to be paid to the employee only till the Academic Year 2017-2018 and not beyond that.

9. The employer/review applicant is running an educational institution. The dual relief is claimed. Only because one of the relief is not granted that would not mean that the writ petition

itself was not tenable and this Court would not have granted relief for payment of arrears of salary.

10. Considering the aforesaid conspectus, we do not find merit in the review application.

11. Review Application is rejected. No costs.

12. In view of rejection of Review Application, the present Civil Application stands disposed of.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE