

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

WRIT PETITION NO. 4916 OF 2020

Umesh Dhondu Tilake and Ors. ...Petitioners

Versus

The State of Maharashtra and Ors. ...Respondents

.....

Mr. Shailesh P.Brahme, Advocate for Petitioners
Mr. K.N.Lokhande, A.G.P. for Respondents No. 1 and 2
Mr. S.S.Jadhavar, Advocate for Respondent No. 3
Mr. C.V.Dharurkar, Advocate for Respondent No. 4
Mr. S.R.Barlinge, Advocate for Respondents No. 5 and 6

.....

WITH

WRIT PETITION NO. 4949 OF 2020

Sachin Sampat Patil and Anr. ...Petitioners

Versus

The State of Maharashtra and Ors. ...Respondents

.....

Mr. Shailesh P.Brahme, Advocate for Petitioners
Mr. K.N.Lokhande, A.G.P. for Respondents No. 1 and 2
Mr. S.S.Jadhavar, Advocate for Respondent No. 3
Mr. C.V.Dharurkar, Advocate for Respondent No. 4
Mr. S.R.Barlinge, Advocate for Respondents No. 5 and 6

.....

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

DATE : 17-12-2020.

PER COURT :

01. The petitioners are the employees of respondent No. 6 / polytechnique college. The gravamen of the petitioners' grievance is that the petitioners are not paid salary as per the scale fixed by the Sixth Pay Commission since 1.1.2006 and since the date of implementation of 7th Pay Commission as per 7th Pay Commission. According to the petitioners the notification was issued on 20.8.2010. The pay scale was adopted of 6th Pay Commission by the Govt. and the same is binding on all the colleges. Mr. Bramhe the learned Counsel submits that at least from the year 2010 the institution was liable to pay salary as per 6th Pay Commission, but the petitioners have restricted their claim for a period of 3 years prior to the filing of writ petition.

02. The learned Counsel submits that the respondent be directed to pay the arrears of salary as per the pay scale immediately and further to pay regular salary as per the pay-scale. Mr. Bramhe the learned Counsel submits that the respondent is threatening the petitioners. From January 2019, the respondents No. 5 and 6 management failed to disburse monthly salary to the petitioner. They were also not paid 15 days salary of October 2018. Since about 17 months the petitioners are without salary.

03. Mr. Bramhe the learned Counsel submits that he would not press prayer clause G of the petition. The learned Counsel for the petitioner relies on the following Judgments.

- 1) Teacher Association for Non-aided Polytechnics and Ors. V/s Hindi Seva Mandal, Bhusaval, 2003 (Suppl.) Bom. C.R. 846,*
- 2) Shivaji Shikshan Prasarak Mandal and Ors. V/s State of Maharashtra and Ors., (2005) 13 Supreme Court Cases 407,*
- 3) Hukumchand s/o Shivram Kumbhar and Ors. V/s Kisan Vidya Prasarak Sanstha and Ors.*

04. Mr. Barlinge learned counsel for the institution submits that the institution is an unaided institution, as such is not amenable to the writ jurisdiction of this Court. The learned advocate further submits that as the institution is unaided, the institution is not in a sound financial position to pay salary as per 6th pay commission and/or as per prevalent Pay Scale. The respondent also does not have new students. The affiliation of the institution to run the course is withdrawn from 12.6.2019. The withdrawal of the affiliation was on account of non-

cooperation of the petitioners. They went on illegal strike.

05. We have considered the submissions canvassed by the learned Counsel for the parties. The issue involved in the present case is no long res integra.

06. The institution is imparting education certainly would be amenable to the writ jurisdiction of this Court. The pay scale is prescribed under the Govt. notification and as per the M.E.P.S. Rules. If the institution is not adhering to the Rules and Notification validly issued then is certainly amenable to the writ jurisdiction of this Court. Mandamus can be issued against the institution to perform the statutory obligation. The Apex Court in case of *Shivaji Shikshan Prasarak Mandal V/s State of Maharashtra* (Supra) has observed that teachers in private unaided schools are entitled for revised pay scale and allowances. The employees are not against the institution. The employees are facing starvation. In view of the above this Court can exercise the writ jurisdiction under article 226 of the Constitution.

07. The institution is not closed. In view of that

the institution is liable to pay salary to the petitioners as per the pay scale applicable.

08. In light of the above we pass following Order.

09. The respondent shall pay salary to the petitioners as per the applicable pay-scale recommended by 6th pay commission and as applicable to the employees similarly situated in aided institution for a period of 3 years prior to the filing of the petition within a period of 3 months from today and shall pay salary regularly to the petitioners till they are in service.

10. Mr. Barlinge the learned Counsel submits that effect of the present order be stayed for a period of 6 weeks. Considering the period given of three months for payment of salary, prayer made by Mr. Barlinge is rejected.

11. The writ petitions are disposed of. No costs.

[SHRIKANT D. KULKARNI]

JUDGE

[S.V.GANGAPURWALA]

JUDGE

Dahibhate/-