

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

WRIT PETITION NO.6814 OF 2020
WITH
CIVIL APPLICATION NO.8670 OF 2021
IN
WRIT PETITION NO.6814 OF 2020

Dr.Mrs.Salma w/o Shakeel Shaikh,
Age : 63 years, Occupation : Retired,
R/o N-4, F Sector, Plot No.139,
CIDCO, Aurangabad-431003.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through the Principal Secretary,
Higher and Technical Education
Department, Mantralaya Annex,
4th Floor, Mumbai-400032.
2. The Director,
Directorate of Technical Education,
3, Mahapalika Marg, Post Box No.1967,
Mumbai-400001.
3. Maulana Azad Education Society,
Through its Secretary,
Dr.Rafiq Zakaria Campus,
Post Box No.65,
Dr.Rafiq Zakaria Marg,
Rauza Bagh, Aurangabad-431001.
4. Kamala Nehru Polytechnic (Pharmacy)
Aurangabad.
Through the Principal,
Dr.Rafiq Zakaria Campus,
Post Box No.65,
Dr.Rafiq Zakaria Marg,
Rauza Bagh, Aurangabad-431001.

...RESPONDENTS

5. Mahesh Dattopant Shivankar,
Age : 57 years, Occupation : Service
as Joint Director, Technical Education,
Aurangabad Regional office,
Osmanpura, Aurangabad.

... (No.5 is the
Non Applicant No.5 in CA)

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Shri S.S. Bora, Advocate for the petitioner.
Shri R.N. Dhorde, Senior Advocate, special counsel a/w Shri
S.B. Yawalkar, AGP for respondent Nos.1 and 2.
Shri P.S. Dighe, Advocate for respondent Nos.3 and 4.

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**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

DATE :- 12th October, 2021

ORAL JUDGMENT (Per *Ravindra V. Ghuge, J.*) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth prayer clauses B and C as under :-

“B. Writ of mandamus or any other appropriate writ or order or directions be issued against the respondents directing them to refund Rs.4,97,826/- to petitioner along with 18% p.a. bank interest deposited by petitioner to the treasury towards alleged excess payment to petitioners bank account as per the office record of Kamala Nehru Poly. (Pharmacy), Aurangabad.

C. Writ of mandamus or any other appropriate writ or order or directions be issued against the respondents directing them to add three non-compounded increments as awarded as

per para No.2(D)(iv) of Government Resolution No.2010/(34/10)/ TE-2 dated 20th August 2010 for Ph.D. to the pay scale of petitioner from 15.06.2013 and pension be revised as per 7th pay scale.

After revising pension of petitioner as per 7th pay scale, petitioner be awarded with all consequential benefits like gratuity, leave encashment during service, etc. on revised pay scale.”

3. We have considered the strenuous submissions of the learned advocate for the petitioner, the learned Senior Advocate as a Special Counsel along with the learned AGP on behalf of respondent Nos.1 and 2/ State and Directorate of Technical Education and the learned Advocate representing respondent Nos.3 and 4.

4. We have perused the judgment delivered by the coordinate bench of this Court dated 02.12.2019 in identical set of facts and circumstances, in Writ Petition No.9653/2017 filed by Dr.Vijay Ratanchand Katariya vs. The State of Maharashtra and others.

5. In the above backdrop, we are adverting to the factors, germane to the cause of action before us, which are as follows:-

- (a) The petitioner acquired Ph.D. on 15.06.2013.
- (b) She has completed service as a teacher from

03.10.1985, when she joined as a lecturer and superannuated as such, after 31 years of service.

(c) She has superannuated on 31.07.2016.

(d) All India Council for Technical Education (AICTE) has issued the notification dated 04.01.2016, which was published on 06.01.2016 in the Gazette of India part-III/ Section 4 and introduced a clarificatory clause related to incentive/ non compounded advance increments, relevant portion of which reads as under :-

Sl. No.	Issue	Clarification
25	Admissibility for Non-compounded advance increments/ Non compounded increments for higher qualifications (Degree and Diploma Institutions) as a incentive for Ph.D./ M.Tech. And other higher qualifications.	(i) There shall be no increments on completion of PDF/D.Sc. Fellowship programs. (ii) There shall be no advance increments for acquiring M.Tech./ M.Phil or Ph.D. degree to those who are already working as a regular faculty with lower qualification and where such higher basic qualifications are/ were essential for the post. (iii) Non- compounded advance increments (Three / Two/ One) on acquiring Ph.D./ M.Phil./ M.Tech. And other equivalent qualifications, while in service, wherever applicable tin AICTE Regulations, 2010 shall be granted in PB-3 (Rs.15600-39100) only. The advance increments for those who acquired Ph.D./ M.Phil./ M.Tech. And other equivalent qualifications, while in service are not allowed in the PB-4 (Rs.37400-67000).

(e) The Director/ respondent No.2 herein issued the

communication dated 03.02.2016 to the Divisional Offices of the Education Department indicating as under :-

"तसेच पदवी अभ्यासक्रमाच्या संस्थांमध्ये ५ व्या वेतन आयोगामधील सहाय्यक प्राध्यापक हे सहाव्या वेतन आयोगामध्ये सहयोगी प्राध्यापक आहेत व सहाव्या वेतन आयोगानुसार सहयोगी प्राध्यापकासाठी Ph.D. हि शैक्षणिक अर्हता आवश्यक आहे. त्यामुळे दिनांक १/१/२००६ नंतर ज्या सहयोगी प्राध्यापकांनी Ph.D. हि शैक्षणिक अर्हता धारण केली असेल त्यांना ३ अतिरिक्त वेतनवाढी देण्यात येऊ नयेत. अशा प्रकारच्या वेतनवाढी आपल्या स्तरावर दिल्या गेल्या असतील तर त्यांच्या त्या वेतनवाढी काढून घेऊन त्यांची पुनः वेतननिश्चिती करण्यात यावी व झालेल्या अतिप्रदानाची वसुली संबंधितांकडून करण्यात यावी. व त्याबाबतचा अहवाल एकत्रित करून या संचालनालयास पाठविण्यात यावा."

(f) In view of the above communication, the Joint Director of Technical Education issued a communication to several colleges including respondent Nos.3 and 4/ college vide letter dated 01.04.2016, reproducing the above portion in his order.

(g) Misinterpreting the said order, the Principal of the respondent College, by computing interest on the amount, directed the petitioner to deposit the amount of Rs.4,97,826/-, which she had earned by virtue of the addition of three additional increments on completion of her Ph.D..

(h) The respondent/ Principal submits, by offering an

apology, that he misunderstood the meaning and import of the reproduced portion from the notification issued by the AICTE and the communications issued by respondent No.2 as well as the Deputy Director, Technical Education, Aurangabad Division. Because of such misunderstanding, the said provision introduced by the AICTE, which was not applicable to the case of the petitioner, was made applicable to her.

(i) Subsequently, this Court dealt with an identical issue in which, the present respondent Nos.3 and 4 are respondent Nos.4 and 5, in Writ Petition No.9653/2017, decided on 02.12.2019.

6. We, therefore, find it appropriate to reproduce paragraphs 2 to 9 from the order dated 02.12.2019 as under :-

- “2. *Petitioner, who has been employed in respondent No.5 pharmacy college after following due process is before us since a communication had been issued by the Principal seeking recovery of Rs.2,82,756/- in respect of three additional increments (three non-compoundable increments) in 18 installments at the rate of Rs.15,600/-.*
3. *Learned counsel for the petitioner submits that petitioner had acquired degree in pharmacy in 1994. By virtue of introduction of government resolution in 2010, petitioner had requested for three non compoundable increments in view of acquisition of doctorate of philosophy (Ph.D.) in pharmacy. Pursuant to the same his case had been*

forwarded by respondent No.5 and accordingly three non compoundable increments were given to the petitioner. It appears that subsequently some instructions with respect to acquisition of M. Pharmacy had been issued to the effect that the professors who have acquired Ph.D. after 1st January, 2006 would not be eligible to have three non-compoundable increments in institutions imparting bachelor level education. It appears that under some misapprehension, thereafter, impugned communication dated 14th October, 2016 has been issued.

4. *In response to the writ petition, respondents No. 1, 2 and 3 have submitted affidavit in reply and have stated in Paragraph No.4 thus:-*

“4. I say and submit that Respondent No.2 i.e. Directorate of Technical Education, Mumbai and Respondent No.3 i.e. Joint Director, Technical Education, Regional Office, Aurangabad have not issued any letter to Respondent No.5 i.e. Kamla Neharu Polytechnic (Pharmacy), Aurangabad to stop three non compoundable advance increments given to the petitioner acquiring Ph.D. degree as he is drawing PB-4 pay scale. Also Respondent No.2 and 3 have not issued any letter to recover the excess amount paid to the petitioner on account of three non compoundable advance increments as petitioner is drawing scale in PB-4 pay scale. Instead Respondent No.3 i.e. Joint Director, Technical Education, Regional Office, Aurangabad informed Respondent No.5 by its letter dated 07-01-2017 that he last para of letter of Respondent No.2 dated 03-02-2016 is only applicable for Degree institutes and it is not applicable for Diploma institutes. Copy of the letter dated 03-02-2016 issued by Respondent No.2 and letter dated 07-01-2017 issued by Respondent No.3 are annexed as Exhibit R-1 (Colly).”

5. *In view of the aforesaid it appears that impugned communication dated 14th October, 2016 has been rendered untenable as the same is based on instructions not relatable to petitioner's case. The impugned communication, therefore, is set aside. The impugned recovery, accordingly is not to be*

effected from petitioner.

6. *Learned counsel for petitioner, at this stage, submits that since 2016 salary is not being paid to the petitioner with non compoundable increments.*
7. *In the circumstances, all the legitimate dues be restituted to the petitioner according to position as would have been if such communication had not been issued.*
8. *Learned counsel for respondent No. 5 submits that Respondent No. 5 would give all possible assistance for such restitution.*
9. *Rule is made absolute accordingly. The writ petition is allowed in the aforesaid terms and stands disposed of.”*

7. Admittedly, the notification issued by the AICTE as well as the communications issued by respondent No.2/ Director and the Deputy Director, would be applicable to the institutes imparting education for the degree courses and the same are not applicable to the institutes which impart education for diploma courses. Moreover, the said notification would apply from the date it has been published, which is 06.01.2016 covering cases who have acquired Ph.D. or higher educational qualifications thereafter.

8. It is, therefore, obvious from the notification of the AICTE as well as the judgment delivered by this Court in the case of Dr.Vijay Katariya (supra), that three increments earned by the petitioner will have to be computed for calculating her

pensionary benefits and the same will have to be added accordingly.

9. Considering the above, the issue is that the petitioner was made to deposit an amount of Rs.4,97,826/-, inclusive of interest and had to suffer mental agony. The stand taken by the Management before us clearly indicates that the Management is apologetic and the cause of action compelling the petitioner to approach us, arose prior to the judgment delivered by this Court in the case of Dr.Vijay Katariya (supra). We, therefore, do not find an element of deliberate or willful act on the part of the Principal, inasmuch as, the petitioner does not allege bias and prejudice against the Principal. Hence, we are of the view that as the amount was deposited in the Treasury and is with the Government, nominal interest could be directed to be paid on the said amount to balance the equities. The said amount was deposited on 01.08.2018 with the Treasury at Aurangabad.

10. In view of the above, we are of the view that the respondent Principal has not acted deliberately or willfully so as to cause any harassment to the petitioner. We do not find any allegation of bias and prejudice against the Management. We do not find that the Management had any antipathy towards the

petitioner. As such, no interest is required to be paid by respondent Nos.3 and 4.

11. The learned Senior Advocate has strenuously opposed the Civil Application filed by the petitioner seeking action for perjury. We have perused the affidavit filed by the non applicant No.5 Mahesh Shivankar, who is the Joint Director of Technical Education. In the backdrop of his affidavit, we have perused his communication dated 01.04.2016, which is a general instruction issued to various institutions including respondent No.3/ Institution. Those institutions who have been served with such communication include those who impart education for the diploma courses. Non applicant No.5 has not kept the petitioner in focus, by any stretch of imagination, so as to harass her. He does not even know the petitioner and as such, there cannot be a deliberate act on his part to cause any injury to her.

12. We find that the submissions of the learned Senior Advocate are well placed. The element of deliberately and intentionally misleading this Court with the aid of a purported false affidavit, which is likely to cause a legal injury to the petitioner, does not appear to be borne out, in our view.

13. As such, this Writ Petition is allowed in terms of

prayer clauses B and C, save and except, the quantum of interest amount, which we quantify at the rate of 6% per annum w.e.f. 01.08.2018, to be paid through the State Exchequer. The amount of Rs.4,97,826/- along with 6% interest per annum from 01.08.2018, shall be paid till 31.01.2022.

14. Respondent No.4/ Principal shall forward a proper proposal as well as the corrected/revised pension proposal including the three increments, to respondent No.2 so as to ensure that it reaches the said authority on or before 30.10.2021. Respondent No.2 shall ensure that the said proposal is cleared expeditiously so as to ensure that the amount along with interest as directed above is paid to the petitioner, on or before 31.01.2022. Needless to state, respondent No.2 would forward the revised pension papers to the Auditor and Accountant General at Nagpur, on or before 15.12.2021.

15. Rule is made partly absolute in the above terms.

16. The Civil Application filed by the petitioner would not survive and stands disposed off.

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(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)