IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

25 WRIT PETITION NO.10652 OF 2019

Bhausaheb Lakshman Kalunke,
Age 47 yrs., Occ. Service,
R/o Jai Bhawani Nagar, Near Mukundwadi
Railway Station, Aurangabad.

… **Petitioner**

… **Versus** …

1 The State of Maharashtra,
Through Secretary,
Department of Technical Education,
Mantralaya, Mumbai – 32.

2 The Director of Technical Education,
Government of Maharashtra,
3, Mahapalika Marg, Mumbai – 400 001.

3 The Joint Director,
Technical Education, Regional Office,
Osmanpura, Aurangabad.

4 Dr. Babasaheb Ambedkar Marathwada
University, University Campus,
Aurangabad,
Through it's Registrar.

5 Maulana Azad Education Trust
Rouza Baugh, Aurangabad,
Through it's President/Chairman.

6 The Principal,
Y.B. Chavan Pharmacy College,
Dr. Rafiq Zakeria Campus,
Rouza Baugh, Aurangabad.

7 All India Council for Technical Education
Western Regional Office,
Industrial Assurance Building,
2nd Floor, V.N. road, Church Gate,
Mumbai – 400 020.

… **Respondents**

…

Mr. P.S. Shendurnikar, Advocate for petitioner
Mrs. V.N. Patil-Jadhav, AGP for respondent Nos.1 to 3
Mr. S.G. Chapalgaonkar, Advocate for respondent No.4
Mr. P.S. Dighe, Advocate for respondent Nos.5 and 6
Mr. C.V. Dharurkar, Advocate for respondent No.7

…

CORAM : SMT. VIBHA KANKANWADI AND Y.G. KHOBRAGADE, JJ.

DATE : 17th OCTOBER, 2022

JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 Petitioner was serving on the post of Sweeper from 15.09.1991 with respondent No.5. He was initially paid consolidated salary of Rs.650/- per month and then in the year 1999 it was increased to Rs.1,250/- per month. He was granted prescribed basic pay scale of Rs.2550 – 3200 with

effect from 01.10.2005 and on the basis of interim relief vide order dated 01.08.2005 passed by this Court in Writ Petition No.5939 of 2004 the respondent No.5 was directed to pay salary admissible to the post of Sweeper in the prescribed pay scale i.e. Rs.1,250/- per month from August, 2005. The said writ petition along with companion petitions came to be disposed of by common order of this Court on 09.10.2015. The prescribed pay scale in 2005 was as per the 5th Pay Commission and his gross salary was Rs.8,701/- till July, 2011. The petitioner being the non teaching employee of respondent No.5 and in respect of non teaching employees rules framed by the State Government under "Maharashtra Non-Agricultural University and Affiliated Colleges Standard Code (Revised Pay and Non-teaching Employees) Rules, 2009, the recommendations of the 6th Pay Commission and the revision was prescribed, the petitioner being the employee of non teaching staff is governed by these rules. The 6th Pay Commission came to be implemented with effect from 01.01.2006 to the Government employees, however, respondent Nos.5 and 6 had given effect to the 6th Pay Commission to the petitioner with effect from 01.08.2011. The petitioner along with other employees had preferred several representations on 08.07.2010, 24.08.2010, 08.12.2010, 21.12.2010, 08.04.2011 and 24.10.2011 to respondent No.6, however, there was no positive response. In fact, when the 6th Pay Commission came to be implemented from 01.01.2006, its implementation by respondent Nos.5 and 6 from August, 2011 is unjustifiable and it had caused financial loss to the petitioner as well as other employees. Thereafter also the petitioner had preferred representation on 15.01.2016 and 18.12.2018. In fact, the respondent No.5 Trust had given undertaking to respondent No.4 on 08.05.1995 assuring that the service conditions of the non teaching staff would be as per the prescribed rules of the university. The petitioner further states that some of the teaching and non teaching employees of Y.B. Chavan Pharmacy College, Aurangabad i.e. respondent No.6 had filed various writ petitions for grant of benefit in accordance with 6th Pay Commission and all those petitions came to be allowed by this Court on 23.02.2018. The respondent Management was directed to implement the pay scale as applied by the Maharashtra Government to its employees to the teaching and non teaching staff. The Management had challenged the order passed by this Court in those writ petitions dated 23.02.2018 by filing special leave petition before the Hon'ble Supreme Court bearing Special Leave to Appeal (C) No.(S)23811-23820/2018 and all of them came to be dismissed on 07.09.2018. The corollary of all those petitions and the orders therein is that the petitioner is entitled to get 6th Pay Commission pay scale from 01.01.2006. However, it has not been granted and, therefore, by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India with Article 14 of the Constitution of India the petitioner seeks directions against respondent Nos.5 and 6 to pay arrears of 6^{th} Pay Commission with effect from 01.01.2006 to 31.07.2011 and also to grant regular annual increments and regular Dearness Allowance as per the guidelines of the Government to the petitioner from 01.01.2006.

3 Affidavit-in-reply on behalf of respondent Nos.5 and 6 has been filed. It is affirmed by Dr. Abubakar Salam Bawazir, who appears to be the in-charge Principal of Y.B. Chavan College of Pharmacy, run by the Trust. The factual aspects about filing of writ petitions earlier by the other employees and the orders passed therein is admitted. The only point that has been tried to be raised on behalf of the respondent Nos.5 and 6 that the present writ petition suffers from delay and latches. It is stated that the petitioner has not explained the gross delay of more than 10 years in approaching this Court.

4 Heard learned Advocate Mr. P.S. Shendurnikar for petitioner, learned AGP Mrs. V.N. Patil-Jadhav for respondent Nos.1 to 3, learned Advocate Mr. S.G. Chapalgaonkar for respondent No.4, learned Advocate Mr. P.S. Dighe for respondent Nos.5 and 6 and learned Advocate Mr. C.V. Dharurkar for respondent No.7.

5 The learned Advocate for the petitioner has taken us through the various orders passed in the writ petitions by the colleagues of the petitioner

against present respondent Nos.5 and 6 and he submitted that in fact, by way of interim order that was passed by this Court on 01.08.2005 the interim order about implementation of 5th Pay Commission was granted to the petitioner also and thereafter that interim order came to be confirmed on 09.10.2015. Thereafter the 6th Pay Commission was implemented with effect from 01.01.2006 to the Government employees, however, it appears that it was not made applicable to the petitioner and his colleagues working with respondent Nos.5 and 6. Copies of representations in which the petitioner is the signatory have been produced on record. It is right from 08.07.2010 onwards. Some of the colleagues, who were the signatories to those representations, had filed various writ petitions before this Court and by common order passed on 23.02.2018 this Court allowed those petitions. The learned Advocate for the petitioner submits that the relief that was granted under Clause (B) of the operative order in those writ petitions made it compulsory to respondent Nos.5 and 6 and they should implement the pay scales suggested by 6th Pay Commission not only to the petitioners therein but also to the other teaching and non teaching staff members. Therefore, it was not necessary for the petitioner to once again approach this Court and further in the special leave petition the order passed by this Court came to be confirmed. There is no question of the present petition suffering from delay and latches. It was the fault of the respondent Nos.5 and 6 for which the petitioner cannot be held responsible. Even after the representations at a subsequent point of time when relief has not been granted the petitioner is constrained to approach this Court.

6 The learned Advocate for the petitioner has relied on the decision in **Dr. Suryaprakash Dhaneria vs. State of Maharashtra and others, 2018(3) Mh.L.J. 567**, wherein this Court was required to deal with similar point, that is, so called delay of the petitioner to approach the Court. After taking note of the decision by Hon'ble Apex Court in **Secretary, Mahatma Gandhi Mission and another vs. Bhartiya Kamgar Sena and others, (2017) 4 SCC 449** it was concluded that pay commission recommendations having been accepted by the State and made applicable, the employees working in such institutions would be entitled to receive the benefits of the recommendations and the petition came to be allowed.

6.1 Further, he relied on the decision in **Barun Kumar s/o Manmohan Choudhary and others vs. The State of Maharashtra and others in Writ Petition No.5134 of 2018** decided by this Court (Nagpur Bench) on 19.04.2022. In this case, apart from **Secretary, Mahatma Gandhi Mission** (supra) note was also taken of **Dr. Suryaprakash Dhaneria** (supra). It was observed that in **Dr. Suryaprakash Dhaneria** (supra) there was representations made by the petitioner and, therefore, those representations will have to be considered and they do not restrict the entitlement of the petitioner to a time period. Therefore, the normal reasonable period of three years for grant of such financial benefits was not considered at all. He, therefore, prayed for allowing the writ petition in its entirety.

7 Learned Advocate Mr. P.S. Dighe appearing for respondent Nos.5 and 6, as aforesaid, has mainly contested the petition on the point of delay. He relied on **State of Orissa and another vs. Mamata Mohanty** [(2011) 3 SCC 436], **Ghulam Rasool Lone vs. State of Jammu and Kashmir and another** [(2009) 15 SCC 321], **Senior Divisional Manager, Life Insurance Corporation of India Limited and others vs. Shree Lal Meena** [(2019) 4 SCC 479] and **S.S. Balu and another vs. State of Kerala and others** [(2009) 2 SCC 479. In all these cases Hon'ble Supreme Court has held that there is inordinate delay on the part of the respective petitioners. It was held that the provisions of Limitation Act, 1963 do not apply in writ jurisdiction, however, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and latches. Learned Advocate appearing for respondent Nos.5 and 6 has also relied on **Sanjay Rangnath Patare and others vs. The State of Maharashtra and others, Writ Petition No.8390 of 2015** decided by this Court

on 03.12.2018, wherein also the petitioners were the members of teaching and non teaching staff of respondent No.7 Junior College of Pharmacy run by respondent No.6 Society therein, and the grievance was that they were not paid salary as per the recommendations of 5^{th} and 6^{th} Pay Commission. Therein the benefits of payment have been granted to the petitioners to be made as per 6^{th} Pay Commission in tune of Government Resolutions three years prior to the filing of writ petition. He also pointed out that respondent No.6 therein has approached the Hon'ble Supreme Court by filing Special Leave Petition (Civil) Diary No.6364 of 2020 challenging the said order in the writ petition but it is still pending before the Hon'ble Supreme Court. Delay has been condoned by order dated 27.05.2020, notices have been issued, however, payment of all the amount paid under the High Court's order have been directed to be made within the period of six months from that date. Based upon these decisions the learned Advocate appearing for respondent Nos.5 and 6 initially submitted that the petition suffers from delay and latches and, therefore, it has to be dismissed. Alternatively, it is said that the relief should be restricted to three years.

8 At the outset, when the objection to the writ petition is limited on the point of delay and latches only, we will have to consider, as to whether the respondent Nos.5 and 6 would be justified in taking such kind of defence.

9 The documents and the orders produced on record are not in dispute and it can be seen from the order passed by this Court in writ petition No.5939 of 2004 dated 01.08.2005 that it was filed by one Shaikh Abdul Sattar s/o Shaikh Khairatti against the present respondent Nos.5 and 6 and other respondents. On that day interim relief was granted. The petitioner therein was working on the post of Laboratory Attendant, who is also stated to be the Class-IV employee and the present petitioner also at that time was Class-IV employee in the category of Sweeper. The said interim order came to be confirmed on 09.10.2015. It was along with other two writ petitioners also, and all those petitioners were working on the post of Laboratory Attendant. The petitioner has stated on oath that in view of the interim order that was passed by this Court though that order was passed in a particular writ petition; the petitioner says that even he was given benefit and his pay was fixed as per the 5th Pay Commission. This fact is not denied by the respondent Nos.5 and 6. Thereafter after the 6th Pay Commission came into effect it was made applicable by the Government to its employees from 01.01.2006 and it was expected that it ought to have been made applicable to the institutions like respondent Nos.5 and 6, that is, to their teaching and non teaching staff from that day itself. That was not made applicable and, therefore, several representations have been made by various employees to respondent No.6. They are right from 08.07.2010 onwards. The present

petitioner is one of the signatories to those representations. Even in the representation dated 08.04.2011 it was made known that since petition is still pending they would be approaching the Court. Important point to be noted herein that the petition that was filed by Shaikh Abdul Sattar s/o Shaikh Khairatti i.e. Writ Petition No.5939 of 2004 was finally disposed of on 09.10.2015, that is, after a period of about 11 years. A statement was made on behalf of the petitioner in that case before this Court that the petitioners are getting regular salary on prescribed pay scale and those petitioners were also promoted to the higher post. It appears that the said petition was disposed of in terms of the interim order. No doubt, the petition could have been amended but it appears that since the pay scale was granted to those petitioners it was not pressed.

10 The second aspect, that is, required to be noted is that further several other colleagues i.e. employees from teaching and non teaching staff of respondent Nos.5 and 6 had approached this Court by filing various writ petitions i.e. Writ Petition No.9904 of 2011 and companion matters and those matters came to be allowed by this Court by order dated 23.02.2018. The directions given in those petitions are important. Before that it can be take a note of that this Court observed "Thus, minority educational institution is bound to implement the pay scales adopted/prescribed by the State

Government for teaching and non teaching staff" and then, Clause (B) and (C) of the operative order has been passed thus -

> (B) The State Government and authorities like Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, All India Council for Technical Education etc. are hereby directed to see that the respondent-management implements the pay scales suggested by 6th Pay Commission as applied by the Maharashtra Government to the petitioners, teaching and non teaching staff members with effect from 1st January, 2006.
>
> (C) If the respondent-management fails to implement the recommendations in respect of application of pay scales, the State Government, respective University and All India Council for Technical Education are to take steps for withdrawal of affiliation given by the respective University and withdrawal of recognition given by All India Council for Technical Education."

It can further be seen that Special Leave to Appeal (C) No(s).23811-23820/2018 preferred before Hon'ble Apex Court by respondent Nos.5 and 6 came to be dismissed on 07.09.2018 challenging the aforesaid order. Thus, it is to be noted that the said order passed by this Court was not restricted to the petitioners therein only. But it is in respect of the other teaching as well as non teaching staff members. In Clause (B) after the word 'petitioners' there is comma, which is separating the petitioners from other teaching and non teaching staff members. In fact, it was the duty on the part of the State Government, respondent No.2 and 3 to see that the order passed by this Court was implemented in its letter in spirit, however, that has not been done. The petitioner cannot be single doubt now, to say that the 6^{th} Pay Commission cannot be made applicable to him. Rather it is to be noted that the petitioner is getting pay scale as per 6^{th} Pay Commission from 01.08.2011. His prayer is to the effect of that it should be made applicable for the period between 01.01.2006 to 31.07.2011. When the entitlement of the petitioner to receive the pay scale as per 6^{th} Pay Commission is not in dispute, then, how it can be made applicable from a different date has not been explained by respondent Nos.5 and 6. Respondent Nos.5 and 6 on their own whims cannot change the dates regarding the implementation of the 6^{th} Pay Commission. When it has been already observed by this Court that the respondent Nos.5 and 6 were bound to implement the pay scales prescribed by the State Government under the said pay commission, the petition absolutely does not suffer from delay and latches on the count that he was making representations continuously and his colleagues had approached this Court, in which this Court had directed the 6^{th} Pay Commission to be implemented to all the teaching and non teaching staff members. The ratio laid down in the decisions relied by the learned Advocate for respondent Nos.5 and 6 on the point of delay and latches cannot be disputed, however, the basic difference on the facts will have to be considered and those facts have been already enumerated. Further, the decision in Writ Petition No.8390 of 2015 passed by this Court in 03.12.2018 is under challenge before the Hon'ble Apex Court. Again in the facts of that case this Court had come to the conclusion that no plausible reason is given as to why the petitioners have not moved the Court immediately upon the introduction of the Government Resolution in the year 2010 and writ petition was filed in the year 2015. Here, the first representation by the petitioner and his colleagues is on 08.07.2010.

11 We rely upon the reasons given by this Court in **Dr. Suryaprakash Dhaneria** (supra) and **Barun Kumar s/o Manmohan Choudhary** (supra). In **Dr. Suryaprakash Dhaneria** (Supra) it has been observed thus -

> "18. Once it is concluded that it was obligatory on the part of the management to make the payment of salary as per the Vth Pay Commission recommendations, refusal or denial to make the payment would not shift the blame to the petitioner. By refusing to make the payment, the management has committed a wrong and when the petitioner waited for the management to take a decision and approached this Court after he was exasperated and exhausted, accepting the contention of the management that delay would deprive him of the benefits, would amount to accepting the contention that delay would legalise an illegality. We are of this view since we are taking cognizance of the representations made by the petitioner to the management, which would indicate that he was not sleeping over his

rights."

Further, in **Barun Kumar s/o Manmohan Choudhary** (supra) various decisions of the Hon'ble Supreme Court as well as this Court were considered and in para Nos.89 and 90 it is observed thus -

> "89 Having considered the above position, it is clear that there is a liability cast upon the Management to pay the arrears of the 6th Pay Commission and other dues. It is not a matter of charity. At the time of seeking recognition/approval, the Management has to give an undertaking that all stating dues will be paid. The issue as to whether the 6th Pay Commission would apply to un-aided Institutions, such as present Management, was decided by the Supreme Court in the case of *Secretary, Mahatma Gandhi Mission* (supra). This decision was rendered on 5th January 2017. The Employees and their Association had made representations to the Management. All the Petitioners in these petitions are appointees prior to the date of the decision of the Supreme Court. The Petitioners Employees filed the petitions once the Supreme Court rendered the decision and legal rights arose. There is no indication in the decision of the Supreme Court in the case of *Secretary, Mahatma Gandhi Mission* (supra) that the dues need to be restricted to three years.
>
> 90 The Division Benches of this Court, having considered the legal position, have taken the view that if a representation is made, it will be unjust to deprive the teaching and non-teaching staff of the benefits of the 6th Pay Commission. There is no reason why we should take a different view. We, therefore, uphold the contention of the Employees that they are entitled to their dues as prayed for from the

date of their entitlement and reject the contention of the Management that its liability to pay the Employees will be three years prior to filing of the petitions."

12 Further, in this case, in view of the fact that the employees were lawfully deprived of their legal entitlement, interest @ 6% per annum was granted. We are also inclined to adopt the same approach, in view of the fact that in spite of a specific order passed by this Court in Writ Petition No.9904 of 2011 and companion matters on 23.02.2018, which was then confirmed by the Hon'ble Supreme Court; yet, the present petitioner has been deprived of his legal dues. We discard the objection taken by the respondent Nos.5 and 6 that the petition suffers from delay and latches as well as that the dues can be restricted to three years period prior to the filing of the petition is rejected.

13 For the aforesaid reasons, following order is passed.

ORDER

1 The petition stands allowed.

2 The petitioner is entitled to receive the entire arrears and dues from respondent Nos.5 and 6 i.e. the Management and college in respect of the 6th Pay Commission with increased Dearness Allowance as well as the

regular annual increments with effect from 01.01.2006 to 31.07.2011.

3 The above said dues should be paid before 31.12.2022 together with interest @ 6% per annum till its realisation.

4 Rule made absolute in above terms.

(Y.G. Khobragade, J.) **(Smt. Vibha Kankanwadi, J.)**

agd