

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

WRIT PETITION NO.3851 OF 2019

Ram Rajaram Kewte,
Age : 47 years, Occu: Service
R/o. Rahul Nagar, Parbhani,
Tq. & Dist. Parbhani

... **PETITIONER**

VERSUS

1. The State of Maharashtra,
through the Secretary,
Higher & Technical Education,
Mantralaya, Mumbai – 400 032.
2. The Director,
Higher & Technical Education
Department, Pune.
3. The Joint Director,
Higher & Technical Education
Department, Nanded Region,
Nanded.
4. The Director,
Board of College & University Development,
Swami Ramanand Teerth Marathwada
University “Dnyanteerth” Vishnupuri,
Tq. & Dist. Nanded.
5. Swami Ramanand Teerth Marathwada
University “Dnyanteerth” Vishnupuri,
Tq. & Dist. Nanded
through its Registrar.
6. Shri Jagdamba Vidya Prasarak Mandal’s
Purna, Tq. Purna, Dist. Parbhani
through its Secretary
7. Rajashri Shahu Mahavidyalaya,
Tq. Paithan, District Parbhani
through its Principal

... **RESPONDENTS**

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Advocate for Petitioner: Mr. Y.P. Deshmukh h/f. Mr. Anand D. Kawre
 AGP for Respondent Nos.1 to 3 : Ms. Vaishali N. Patil Jadhav
 Advocate for Respondent No.6 : Mr. V.J. Dhage h/f. Mr. Santosh B. Bhosale
 Advocate for Respondent No.7 : Mr. Vivek J. Dhage

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**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

Reserved on : 18.08.2022

Pronounced on 24.08.2022

JUDGMENT : (MANGESH S. PATIL, J.)

Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondent Nos.1 to 3. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is seeking Writ of Mandamus directing the respondent Nos.6 and 7, which are the Management and the College being run by it, to forward his salary bills from the date of his appointment i.e. 30.06.2009 to the respondent No.3 the Joint Director of Higher and Technical Education and take necessary steps for payment of arrears.

3. The petitioner claims to have been appointed as a lecturer of Library and Information Science from scheduled caste category pursuant to an advertisement dated 01.06.2009 and the appointment order dated 29.06.2009. He avers about having joined on 30.06.2009. He further avers that the respondent No.5 University has also granted approval to his such appointment. In spite of his several representations to the respondent No.3 the Joint Director, he was not paid any salary. The college failed to forward the bills. Hence this writ petition.

4. The learned advocate for the petitioner would vehemently submit that he was duly appointed by following all the rules and regulations and his appointment was also approved by the University. It was preliminary duty of the respondents, the Management and the College, to forward the pay bills but they have failed to do so. He had moved the respondent No.3 the Joint Director but in vain. The learned advocate would point out the copy of the advertisement, appointment order, order of approval and more importantly the communication dated 25.06.2009 and 31.03.2010 whereby the respondent No.3 the Joint Director had informed the respondent College that the course was approved as partially grant-in-aid basis. He would, therefore, submit that the petitioner is entitled to receive his hard earned salary at the earliest.

5. The learned advocate Mr. Dhage for respondent No.7 College referring to the affidavit-in-reply would submit that the post for these subjects for which the appointment was made was on non-grant basis. The respondent No.3 the Joint Director had specifically informed the petitioner about it and therefore salary bills could not have been forwarded. He would further point out that respondent No.3 has specifically informed the College that the post was on permanent non-grant basis and therefore the petitioner was not entitled to seek any direction for forwarding the bills.

6. Mr. Dhage holding for Mr. Santosh Bhosale for the respondent No.6 Management also submitted that the petitioner's appointment was on non-grant basis. There was no sufficient strength of students at any point of

time till 2015-16 whereas the petitioner claims to have been appointed in the year 2009 when there was absolutely no student for the course of B.A. (Library and Information Science). He would submit that the petitioner was appointed on the post which was not receiving any grant and the Management was paying him Rs.10,000/- per month. It was also an understanding that no sooner the post would start receiving the grant, the amount would be adjusted.

7. The learned AGP would submit that the approval to start these course in subject 'Library and Information Science' was granted *inter alia* subject to the condition that it would be run on permanent non-grant basis. The petitioner was not qualified for such appointment since he was not possessing NET/SET qualification. There was an error in the communications addressed to the respondent Management. It was erroneously mentioned that the courses to be started were on partially grant-in-aid basis. It has been specifically mentioned by the respondent No.3 in the affidavit-in-reply about such error. In fact, the order issued by the State Government dated 19.06.2008 granting permission to various Colleges to start courses specifically contained a stipulation that the Management would submit an undertaking that the Managements will not demand any grant for running such courses/branches/classes. They were also put to notice that they shall not start such courses/branches/classes without furnishing such undertaking to the respondent No.3 the Joint Director. The learned AGP, therefore, would submit that since the petitioner

was appointed on non-grant post, the Government is not under any obligation to pay salary to him and it is wholly the responsibility of the Management.

8. We have considered the rival submissions and perused the papers. We are surprised to note at the out set that the stand of respondent Nos.6 and 7 i.e. Management and the College is self contradictory. In one breath they admit that the petitioner's appointment was on non-grant basis and that they were paying him Rs.10,000/- per month but at the same time they are contending that there were no students for number of years for the course for which the petitioner was allegedly appointed which stand is suggestive of the fact that they are even bold enough to deny the appointment of the petitioner in the first place. The conduct deserves to be deprecated.

9. Be that as it may, the fact of issuance of advertisement and issuance of appointment order has not been specifically controverted by the respondent Management and the College. Rather they admit about such appointment and he having worked on the post and they having paid him Rs.10,000/- per month.

10. The respondent State has emphatically denied that the petitioner was appointed to a post which was receiving grant-in-aid. Rather it has produced the order dated 19.06.2008 issued under Section 82 (4) of the Maharashtra Universities Act, 1994. It is in respect of granting permission to various colleges to run new courses or impart education in

new branches/fields. The name of the respondent No.7 College appears at serial No.36 and reads that it was accorded permission to run the course of Bachelor of Arts in Library and Information Science. The first condition subject to which such permission was granted required the concerned colleges to furnish an undertaking not to demand grants at any time for running such courses. In view of such an order, it is quite evident that the respondent Nos.6 and 7 had started the courses of Bachelor of Arts in Library and Information Science subject to such terms and conditions by undertaking not to demand grants.

11. True it is that in couple of communications, dated 25.06.2009 and 31.03.2010 (Exhibit-H), which are the letters addressed by the respondent No.3 the Joint Director to the Headmaster of the Respondent No.7 College, the words 'अंशतः अनुदानित' (partially grant-in-aid) appeared. We have no hesitation to conclude that indeed it was an error in as much as the very source for starting a course of Bachelor of Arts in Library and Information Science was the order dated 19.06.2008 which contained the aforementioned stipulation as a condition for starting the course. We, therefore, proceed on the premise that though the petitioner was appointed by the respondent No.6 Management and was serving in the respondent No.7 College as a lecturer from 30.06.2009, the post was on non-grant basis and consequently there was no question of forwarding any salary bill to the Government since it would be wholly the responsibility of the respondent Management to pay the salaries, as has been laid down in the following

decisions :

- i. **Dr. Suresh Baliram Gajbhare Vs. The State of Maharashtra and Ors.**
(WP No.8388/2014, dated 21.09.2019)
- ii. **Syed Waseem Syed Sahab Vs. The State of Maharashtra and Ors.**
(WP No.9962/2017 dated 17.04.2018)
- iii. **Abasaheb Eknath Solanke Vs. The State of Maharashtra and Ors.**
(WP No.1848/2017 dated 10.09.2018)

12. Consequently, the petitioner is not entitled to seek any mandamus directing the respondents to forward and process his salary bills since the State has not been under any statutory obligation to pay the salary. However, as has been laid down in the aforementioned decisions, it is the primary responsibility of the respondent No.6 Management and the respondent No.7 College to pay the salary of the petitioner since they had appointed him by following recruitment process in spite of being aware that the course for which he was appointed was not entitled to receive any grant-in-aid.

13. Resultantly, the petitioner is entitled to claim salary from 30.06.2009 and the respondent Nos.6 and 7 are under obligation to pay it. However, since the petitioner is approaching this Court after a lapse of number of years, we deem it appropriate to restrict such claim for arrears to a period of three years next before the petition which is filed on 21.02.2019. As far as the scale of salary is concerned, since the petitioner was appointed as a lecturer, he would be entitled to receive the salary as has been held in the matter of Dr. **Dr. Suresh Baliram Gajbhare** (supra) in the pay scale of

Rs.8000-275-13500 which is the pay scale of a full time lecturer.

14. The petition is partly allowed. The prayer seeking direction to the respondent to forward/process pay bills of the petitioner is dismissed.

15. However, the respondent Nos.6 and 7 shall pay to the petitioner regular salary in the pay scale of Rs.8000-275-13500. All arrears for a period of three years next before the filing of the petition i.e. from 21.02.2016 till date shall be paid within a period of 12 weeks from today.

16. The Rule is made absolute in above terms.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)

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