

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

**WRIT PETITION NO. 6177 OF 2021**

Shirdi Sai Rural Institute's  
Arts, Commerce and Science College  
and Anr.

..Petitioners

V/s.

The State of Maharashtra and Ors.

..Respondents

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Mr. V.D. Hon, Senior Counsel i/b Ashwin V. Hon for the  
Petitioner.

Mr. K.N. Lokhande, AGP for the Respondent/State.

Mr. V.P. Golewar h/f A.R. Joshi for Respondent No. 3.

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**CORAM : C.V. BHADANG &  
SANDIPKUMAR C. MORE, J.J.**

**RESERVED ON : 5 JULY 2022**

**PRONOUNCED ON : 19 AUGUST 2022**

(Signed judgment is pronounced by Sandipkumar C. More, J. as per clause (i) of Rule 1 of Chapter XI of Bombay High Court Appellate Side Rules, 1960 as C.V. Bhadang, J. is sitting at Mumbai)

**JUDGMENT (PER : C.V.BHADANG, J.)**

. The challenge in this petition is to the communication dated 20 January 2021 of the second respondent Director of Education (Higher Education) Pune, thereby returning the proposal for pay fixation of the second petitioner on the post of Assistant Professor on the ground that there is no provision for holding lien for more than five years.

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2. The second petitioner, was appointed as a lecturer in Chemistry in the first petitioner college at Rahata, District Ahmadnagar on 17 August 2004. The respondent university approved the appointment on 24 December 2004. The second petitioner was appointed/transferred on the post of Principal in Arts, Commerce and Science College at Kolhar of the said Trust and he accordingly joined the post at Kolhar on 7 September 2010. The respondent university granted necessary approval to the appointment of the second petitioner as a Principal on 29 September 2010. It may be mentioned that on the request of the second petitioner, the management had kept lien of the petitioner on the post of Assistant Professor, for a period of two years. On 23 August 2012 the lien was extended for a period of three years till 6 September 2015. The respondent university had approved the same on 15 March 2014. On 27 August 2015, the second petitioner applied for a further extension and the same was extended till 6 September 2020 as per the resolution passed by the management in its meeting held on 1 September 2015.

3. On 8 June 2020, the second petitioner tendered his resignation from the post of Principal, seeking permission to join his original post of Assistant Professor in Chemistry. The management after considering the resignation/request of the second petitioner, relieved him from the post of Principal, permitting him to join the post of Assistant Professor in

Chemistry with effect from 9 June 2020. On 22 June 2020 a proposal for fixation of pay of the second petitioner was sent to the Joint Director. The Director by the impugned communication has refused to fix the pay and has returned the proposal for the reason that there is no provision for grant/holding of lien beyond a period of five years.

4. We have heard the learned counsel for the parties. With the assistance of the learned counsel, we have gone through the record.

5. Mr. Hon, the learned senior counsel for the petitioners submitted that the impugned communication is against the relevant provisions of the Maharashtra Civil Services Rules 1981, the statutes framed by the Pune university in particular statute no 413 and the Government Resolution dated 8 March 2019 and others framed from time to time. It is submitted that the approved staffing pattern of the first petitioner college, where the second petitioner was initially appointed in the year 2004 and then allowed to resume as a Assistant Professor in Chemistry on 9 June 2020 shows five admissible posts in Chemistry out of which two were vacant. It is submitted that even assuming that the lien could not have been kept/retained beyond five years, the post was lying vacant and was not occupied by any other incumbent. It is submitted that there was no prohibition for

permitting the second petitioner to occupy his original post as an Assistant Professor in Chemistry after he relinquished the post of Principal. The learned senior counsel has placed reliance on the University Grants Commission (Minimum qualification for Appointment of Teachers and other Staff in Universities and colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations 2018 ('2018 Regulations' for short). He submitted that the second respondent has not considered the relevant provisions, while returning the proposal for pay fixation.

6. The learned AGP for the contesting respondent No. 2 has submitted that there is no provision for grant/extension of lien beyond the period of five years and thus, the second petitioner could not have been allowed to retain lien beyond the period of five years. He therefore submitted that the proposal has rightly been returned. The learned AGP has referred to the affidavit in reply of Dr Kirankumar Bondar, in this regard. The learned AGP has pointed out Government Resolution dated 23 August 2010 and 15 March 2011, in order to submit that the proposal has rightly been returned.

7. We have carefully considered the rival circumstances and the submissions made. The relevant facts are not in dispute and are in fact matters of record. The second petitioner was appointed as a Lecturer in Chemistry in the first petitioner college

at Rahata on 17.8.2004. He was appointed as a Principal in Arts, Commerce and Science College at Kolhar on 7.9.2010 initially retaining a lien for two years on his original post which was extended for three years and thereafter, for five years that is upto 6.9.2020. The petitioner tendered his resignation on 8.6.2020 to the extent of his post of Principal, which was considered by the management and he was allowed to resume/join his original post of Assistant Professor in Chemistry. The various appointments as above have been approved by the university. The proposal sent for fixation of pay of the second petitioner has been returned solely on the ground that there was no provision for extension/retention of lien beyond a period of five years. While on behalf of the petitioners reliance is placed on the statute No. 431 framed by the university and the 2018 regulations of the University Grants Commission (UGC) and the Government Resolution dated 8 March 2019 the second respondent is relying on the Government Resolution dated 23 August 2010 and 15 March 2011.

8. Regulation No. V of the 2018 Regulations reads thus :

*V. College Principal and Professor (Professor's Grade)*

*A. Eligibility:*

*(I) ....*

*B. Tenure*

*i) A college Principal shall be appointed for a period of five years, extendable for another term of five years on the basis of performance assessment by a Committee appointed by the University, constituted as per these regulations."*

*ii) After the completion of his/her term as Principal, the incumbent shall join back his/her parent organisation with the designation as Professor and in the grade of the Professor.*

(Emphasis supplied)

9. Government Resolution dated 8.3.2019 pertains to the revision of Pay Scales of Teachers in Non Agricultural Universities, National Law Universities, Affiliated Colleges Government Colleges/Institutes as per 7<sup>th</sup> Pay Commission, Clause V(B) of the said Resolution titled Tenure of a College Principal reads thus:

*V(B) Tenure:*

*A college Principal shall be appointed for a period of five years, extendable for another term of five years on the basis of performance assessment by a Committee appointed by the University, constituted as per these Rules.”*

Note appended to Clause 11

*“Note:*

*i. The existing academic pay scale of a person shall be protected on appointment as principal provided that the person was drawing salary on Government aided post.*

*ii. Principals would continue to have lien in their main academic post where they would continue to get notional promotions while they are functioning as Principals. After completion of their tenure as Principal, they would go back to their academic post and draw salary due in such respective academic posts*

and would not continue to have the Principal's pay.

*iii. If a person appointed as Principal joins his earlier position in the parent organisation without completing his five term, he shall draw salary of his respective academic post and would not continue to have Principal's pay."*

(Emphasis Supplied)

10. We find that the impugned communication does not consider or refer to these provisions on which reliance is placed on behalf of the petitioners. We find that it would be appropriate, if the second respondent, reconsiders the matter in light of the reliance placed on behalf of the petitioners. It is appropriate that the second respondent which is the competent authority considers these aspect, instead of we dwelling on the same in the first instance.

11. In such circumstances, the following order is passed:

**ORDER**

(i) The writ petition is partly allowed.

(ii) The impugned communication dated 20.01.2021 is hereby set aside.

(iii) The second respondent shall reconsider the proposal for fixation of pay of the second petitioner in accordance with law and in the context of the reliance placed on behalf of the petitioners.

(iii) The petitioners would be at liberty to file a brief synopsis of their grounds in support of the claim for fixation of pay scale within four weeks from today.

(iv) The second respondent shall decide the claim within six weeks thereafter.

(v) It will be open to the second respondent to grant an opportunity of hearing to the petitioners or their representatives.

(vi) Rule is partly made absolute in the aforesaid terms, with no order as to costs.

**SANDIPKUMAR C. MORE, J.**

**C.V. BHADANG, J.**