

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.6550 OF 2015

Rajesh Baburao Kakade & Others ... Petitioners.

V/s.

The State of Maharashtra & Others ... Respondents.

Mr. Narendra A. Bandiwadkar a/w. Mr. Sagar A. Mane for the
Petitioners.

Mrs. S. S. Bhende, AGP for the Respondent Nos.1 and 5-State.

Ms. Vaishanavi Gujarati i/b Dr. Uday P. Warunjikar for Respondent
No.2.

Ms. Manjiri S. Parasnis for Respondent No.3.

**CORAM : NITIN JAMDAR AND
AMIT BORKAR, JJ.**

**DATE : 31 JANUARY 2022.
(Through Video Conferencing)**

P. C. :

Heard learned counsel for the parties.

2. The Petitioners, four in number were working with
Respondent No.4-College run by Respondent No.3-Institution.
Though the Petitioners have made various prayers, the learned
counsel for the Petitioners has pressed rights in respect of prayer
clauses (e), (f) and (g) which read thus:

(e) *By a suitable writ, order or direction this Hon'ble*

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Court be pleased to direct the Respondent Nos.3 and 4 to pay to Petitioners the arrears of salary from 1/1/2013 onwards till the date of termination of each Petitioners.

(f) By a suitable writ, order or direction this Hon'ble Court be pleased to direct the Respondent Nos.3 and 4 to deposit in the respective Provident Fund Accounts of the Petitioners, the contribution of Provident Fund together with the Employer's Contribution with arrears from 1/1/2013 onwards together with interest as per rules.

(g) By a suitable writ, order or direction this Hon'ble Court be pleased to direct the Respondent Nos.3 and 4 to pay to Petitioners the difference in salary for the post of Lecturer in the pay scale prescribed under the VI Pay Commission w.e.f. 1/1/2006, after deducting the amount of salary already paid to Petitioners.

3. The Petitioners are praying for a direction to Respondent

Nos.3 and 4 to pay arrears of salary from 1 January 2013. In respect of this prayer the Petitioners have pleaded in the petition that though the Petitioners were being paid, the same was not in accordance with the pay scale as per the respective posts. From 1 January 2013 payment of salary was totally stopped. The Petitioners have pleaded that they were not allowed to sign muster and discharge duties and their representations to the Deputy Director were unsuccessful.

4. In reply affidavit filed by Respondent Nos.2 and 3 the following averments are made:

"Insofar as averments made in para Nos.6 to 12 of the Writ Petition are concerned, I deny all what is stated therein toto. I say that the respondent No.3 was conducting unaided school and therefore there is no question of payment of salary as per VIth pay. So far as alleged termination of the Petitioners are concerned, the same was within the jurisdiction of the School Tribunal. In any case, I say and submit that the strength of the students of the D.Ed. College started decreasing year by year. For the year 2012-13 there were only 42 regular students were enrolled out of 150 and for the year 2013-14 no student has enrolled. I say that despite this the

Respondent No.3 has continued all the excess teaching staff and paid their salary. However, the strength of the students turned to zero and therefore, the Respondent No.3 had no option than to close down the D. Ed. College. I vehemently deny that they were considering admissions in the D. Ed. College as alleged. I deny that the Respondent No.3 with ulterior motive closed the D.Ed. College. On the contrary, due to poor admissions of the students that too in unaided school, which turned to zero students for the year 2013-14, the Respondent No.3's management has been left with no option to resolve to close down the D.Ed. College. I crave leave to refer to and rely upon the chart showing necessary admission for years as and when produced. I deny that the present Writ Petition is maintainable as alleged. I say that in Maharashtra most of the D.Ed. Colleges are closed due to lack of admissions of the students."

5. The learned counsel for the Petitioners has rightly

pointed out that the stand of Respondent No.3 that the Institution was unaided and therefore there was no question of payment of salary as per the Fifth pay commission, is incorrect. Since the Petitioners were employees of Respondent Nos. 3 and 4, the Respondent Nos.3 and 4 were under obligation to pay salary as per the applicable Rules. The averment in the reply also does not give specific explanation as to when termination took effect. Whether there were written orders of termination and on which date and by which order the college was closed down. After filing the reply and not giving particulars, the assertions made by the Petitioner that they have not been paid salary as per the Rule will have to be accepted.

6. As regards the prayer clause (f) is concerned the learned Counsel for the Petitioners and the learned counsel for Respondent Nos.3 and 4 stated that provident fund has been deposited. That be so, it is open to the Petitioners to withdraw the same as per Rules.

7. As regards the prayer clause (g) is concerned the aspect of liability of Respondent Nos.3 and 4 to pay arrears to the Petitioners has already been concluded by us as above and therefore the Respondent Nos.3 and 4 will have to take remedial steps.

8. In respect of prayer clause (g) as regards compliance with prayer clause (e) and (g) is concerned, we grant 12 weeks time to Respondent Nos.3 and 4 to make requisite payments to the Petitioners.

9. With these directions the Writ Petition is disposed of.

(AMIT BORKAR, J.)

(NITIN JAMDAR, J.)