Gitalaxmi

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 13427 OF 2023
IN
WRIT PETITION NO. 10108 OF 2022

Dr Jayeshkumar Dhirubhai Patel & Ors ...Applicants

In the matter between

Dr Jayeshkumar Dhirubhai Patel & Ors ...Petitioners

Versus

Union of India through The Secretary, Dept of Higher Education & Ors ...Respondents

---

Mr Ramesh Ramamurthy, *with Saikumar Ramamurthy, Kavita Anchan, Seema Sorte & Karthik Pillai, for the Applicants/Petitioners.*
Mr Hiten Venegavkar, *with Aayush Kedia, for Respondent Nos. 2 to 4.*
Mr Rui Rodriques, *for Respondent No. 5.*
Mr Niranjan Shimpi, *for Respondent No. 6.*

CORAM: G. S. Patel & Neela Gokhale, JJ.
DATED: 7th August 2023

PC:-

1. On 17th July 2023, in the Interim Application filed by the Petitioners we passed the following order::

> "**1.** Mr Shimpi appears for the 7th Respondent but he is

unwell and unavailable today. Mr Rodrigues appears for the University Grants Commission.

2. On 24th November 2022, we declined ad-interim relief to continue funding. The background to this is noted below. We directed the filing of Affidavits in Reply.

3. The Petitioners are faculty members of the 7th Respondent society, the Shree Machhi Mahajan Education Society, Nani Daman. It is sued through its chairman. The Petition challenges an order of 13th June 2022 of the Union Territory Administration of Dadra and Nagar Haveli and Daman and Diu through the Director (Higher and Technical Education). By that order, the 7th Respondent was informed that the Union Territory had decided to suspend the grant-in-aid provided to the 7th Respondent college. It was said that this was issued with the approval of the competent authority.

4. The prayers in the Petition, including the interim prayers, are at pages 26 to 28 and they read as follows:

"(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or other appropriate writ, order or direction calling for the record and proceedings leading to the passing of the impugned order dated 13th June 2022 (Exhibit "KK") and after examining the legality and propriety of the same this Hon'ble Court be pleased to quash and set aside the same.

(b) that this Hon'ble Court be pleased to issue an pursuance of prayer clause (a) above a writ of mandamus or any other appropriate wirt, order or direction in the nature of mandamus directing the Union Territory Administration to continue to pay the 100% grant-in-aid to the respondent No.7 society college as done in the past and permit the Respondent No.7 society college to continue to run the said college as before and allow the respondent No.7 society college to intake or give admission to students in the First

Year and operate the said college as per the norms of the UGC and the University.

(c) that this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondents and particularly the Respondent-Union Territory Administration and the Respondent No.7 management to grant the petitioners all their pending service benefits including payment in the 7th Pay Commission pay scale from 1st January 2016 with consequential re-fixation and payment of arrears arising there from, all the difference in emoluments along with grant of higher pay scale/promotion due to the petitioners from the due date with consequential fixation of pay and payment of consequential arrears arising there from and grant all other service benefits due to the petitioners from the due date and make payment of the said arrears along with interest at the rate of 18% per annum from the due date till payment.

(d) that this Hon'ble Court in the alternative be pleased to issue a writ of mandamus or other appropriate writ, order or direction in the nature of mandamus directing the Union Territory Administration to take over the entire management of the college of education (B.Ed.) run by the respondent No.7 society and protect the service benefits of the petitioners who are permanent employees and treat them as permanent employees in such college after such taking over, without requiring the petitioners to again undergo any fresh selection and without disturbing the service conditions of the Petitioners and also directing the Union Territory Administration to grant the petitioners all due service benefits to them including the 7th Pay Commission pay scale, due promotions and continuity of service in respect of their service rendered in the previous grant-in-aid educational institutions before joining the Respondent No.7 college.

(e) pending the hearing and final disposal of this Writ Petition this Hon'ble Court be pleased to stay the further operation of the impugned order dated 13th June 2022 (Exhibit "KK") passed by the Union Territory Administration.

(f) pending the hearing and final disposal of this Writ Petition this Hon'ble Court be pleased to direct the Union Territory Administration to continue the grant-in-aid to the respondent No.7 college society college and in any case make payment of the salary of the petitioners from March 2022 onwards and continue to pay the said salary from month to month during the pendency of this Writ Petition."

5. Prima facie, we are unable to see how we can issue a mandamus to a Government to continue grant-in-aid. That is a a policy or executive decision. Prayer clause (a) to quash the impugned order at page 88 is merely a temporary reprieve because it would only suspend the suspension of grant-in-aid, but even that would depend on whether the Petitioners as faculty members are able to show that they have a constitutional or legally enforceable right to such relief. Prayer clause (c) is a final prayer which has bundled in it a relief against the 7th Respondent to pay all benefits including Seventh Pay Commission enhancements. There is no interim relief that is directed against the 7th Respondent. This is important because the complaint by the Petitioners is that they have been without salaries since April 2022.

6. The approach of the 7th Respondent is set out in a representation of 27th June 2022 that it made to the Secretary, Higher and Technical Education of the Union Territory Administration. A copy is from pages 91 to 93 at Exhibit "LL". At page 92 we find a statement by the 7th Respondent that since the financial assistance had been suspended for the academic session 2002–2023, it was impossible for the college to sustain and therefore, and in these circumstances, the management had decided (it appears unilaterally) to “hand over” the college to Union Territory along with present trainees and permanent staff. Implicit in this statement is the acceptance by the 7th Respondent of the impugned order at page 88 suspending the grant-in-aid. Consistent with this approach, but unfortunately not to the Petitioners’ benefit, is the fact that the 7th Respondent has not assailed the impugned order on its own.

7. Both Mr Ramamurthy and Mr Gunjkar, learned Advocate holding for Mr Shimpi, seek time to take instructions. Whether the 7th Respondent is to be made independently liable for the dues of the Petitioners is a matter that we have not considered today and we leave all contentions open in that regard.

8. We are also not finally deciding whether the 7th Respondent can even now assail the impugned order at page 88 (and which is dated 13th June 2022) undoubtedly Mr Shimpi will need to take instructions in that behalf as well.

9. We have previously declined ad-interim relief (order dated 17th January 2023). We have only permitted the filing of a separate Interim Application which has indeed been filed. The prayers in the Interim Application are not substantially different from those in the Petition. These are set out at page 14 of the Interim Application and prayer clauses (a) and (b) of the Interim Application read thus:

“(a) That this Hon’ble Court may be pleased to stay the further operation of the impugned order dated 13th June 2022 (Exhibit “KK” to WP).

(b) That this Hon’ble Court may be pleased to direct the Respondent and Respondents 2 to 5 in particular to release the grant-in-aid to the college from the April, 2022 onwards and also direct the the payment of the salary and other emoluments to the Petitioners and other staff of the

> Respondent No.7 society college from April, 2022 forthwith and also continue releasing the grant-in-aid every month thereafter till the final disposal of the Petition".
>
> **10.** We are unable in these circumstances and on this framing of the Petition and the IA to grant any interim relief. We accede to the request of Mr Ramamurthy and learned Advocate holding for Mr Shimpi to grant some time.
>
> **11.** List the matter on 7th August 2023."

2. The Interim Application seeks reliefs that, if granted, would more or less dispose of the Petition itself. In particular, prayer clause (b) of the Interim Application at page 14 reads:

> "(b) That this Hon'ble Court may be pleased to direct the Respondent and Respondents 2 to 5 in particular to release the grant-in-aid to the college from April 2022 onwards and also direct the payment of the salary and other emoluments to the Petitioners and other staff of the Respondent No. 7 society college from April 2022 forthwith and also continue releasing the grant-in-aid every month thereafter till the final disposal of the Petition."

3. This is to be read with the reliefs in the Writ Petition from prayer clauses (a) to (d) at pages 26 and 27:

> "(a) That this Hon'ble Court be pleased to issue a writ of certiorari or other appropriate writ, order or direction calling for the record and proceedings leading to the passing of the impugned order dated 13th June, 2022 (Exhibit "KK") and after examining the legality and propriety of the same this Hon'ble Court be pleased to quash and set aside the same;
>
> (b) That this Hon'ble Court be pleased to issue in

pursuance of prayer clause (a) above a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Union Territory Administration to continue to pay the 100% grant-in-aid to the Respondent No. 7 society college as done in the past and permit the Respondent No. 7 society college to continue to run the said college as before and allow the Respondent No. 7 society college to intake or give admission to students in the First Year and operate the said college as per the norms of the U.G.C. and the University;

(c) That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondents and particularly the Respondent-Union Territory Administration and the Respondent No. 7 management to grant the Petitioners all their pending service benefits including payment in the 7th Pay Commission pay scale from 1st January, 2016 with consequential re-fixation and payment of arrears arising there from, all the difference in emoluments along with grant of higher pay scale/promotion due to the Petitioners from the due date with consequential fixation of pay and payment of consequential arrears arising there from and grant all other service benefits due to the petitioners from the due date and make payment of the said arrears along with interest at the rate of 18% per annum from the due date till payment;

(d) That this Hon'ble Court in the alternative be pleased to issue a writ of mandamus or other appropriate writ, order or direction in the nature of mandamus directing the Union Territory Administration to take over the entire management of the college of education (B.Ed.) run by the Respondent No. 7 society and protect the service benefits of the petitioners who are permanent employees and treat them as permanent employees in such college after such taking over, without requiring the petitioners to again

> undergo any fresh selection and without disturbing the service conditions of the Petitioners and also directing the Union Territory Administration to grant the petitioners all due service benefits to them including the 7th Pay Commission pay scale, due promotions and continuity of service in respect of their service rendered in the previous grant-in-aid educational institutions before joining the Respondent No. 7 college;"

4. The four Petitioners, who all are the faculty of the educational institution called "Shree Machhi Mahajan Education Society's College of Education, Nani Daman". ***The 1st Petitioner is the principal. Mr Venegavkar for the Union Territory Administration says on oral instructions that the 1st Petitioner has since taken employment elsewhere, and the 3rd Petitioner has taken voluntary retirement.***

5. As we noted, the challenge was to the withdrawal by the Union Territory of grant-in-aid to the college. The 7th Respondent is the society that runs the college.

6. In our order of 17th July 2023, we noted the society's response of 27th June 2022 saying that since it could not sustain the college following a withdrawal of the grant-in-aid, its management had "decided to hand over the college of education" to the Union Territory.

7. The difficulty is that the Union Territory does not want the college. Most of all, it does not want the responsibilities. That is why it withdrew the grant-in-aid in the first place.

8. As far as the Petitioners are concerned, we are unable to see how they have any locus or right to demand the continuance of grant-in-aid. They undoubtedly have a right to receive or recover their unpaid salaries, wages, dues and emoluments and all other monetary benefits. But they cannot claim, in our view, that these *must* be paid by the Union Territory Administration or that they can compel the Union Territory Administration to continue in perpetuity the grant-in-aid.

9. It is the stand of the 7th Respondent Society that is the most curious. It seems not to have challenged so far the decision of the Union Territory. It could well be argued that it has instead accepted that decision and, therefore, decided to hand over the college to the Union Territory (which the Union Territory has not accepted).

10. There is no Writ Petition filed by the 7th Respondent assailing the decision of the Union Territory Administration cancelling the grant-in-aid. Mr Shimpi has tendered a fairly substantial Affidavit in Reply and Mr Venegavkar points out that this is really an Affidavit in Reply only in name, but contains grounds similar to those that one might expect to see in a Writ Petition.

11. Mr Shimpi asks for relief, but when he does so he asks for the impossible. He wants us to grant relief to the 7th Respondent against Respondents Nos. 1 to 4 without the 7th Respondent ever filing a Writ Petition of its own. He says that the 7th Respondent supports the teachers. The next argument is that the 1st Petitioner is the principal of the college and therefore, the 7th Respondent must be deemed to be a Petitioner along with the faculty. Perhaps the less said of this line of argument the better.

12. Certainly, the teachers have a right to their salaries, wages etc. These will be on the basis of their last drawn salary. Of course, these need to be checked and verified, and it would be unrealistic to expect the four Petitioners to self-certify the amounts that are due to them.

13. Mr Venegavkar readily assures the Court and the Petitioners of the cooperation of the Director (Higher and Technical Education), the 4th Respondent in assessing the amounts that are due to the Petitioners. ***So far as the 1st Petitioner is concerned, the amount is to be assessed obviously until he took up employment elsewhere, if that is true; and for the 3rd Petitioner until voluntary retirement.***

14. It is then open to the Petitioners to take all possible steps in recovery in regard to these amounts as cleared or certified by the 4th Respondent. That amount as certified by the 4th Respondent read with the present order may be dealt with as an executable order of this Court against the properties and assets of the 7th Respondent.

15. Mr Ramamurthy states that the claims of the four Petitioners will be submitted to the 4th Respondent by 21st August 2023. The 4th Respondent will endeavour to process them for certification process by 31st August 2023.

16. Having regard to the wording of prayer clause (c) of the Writ Petition, we have no doubt that the 7th Respondent will be required to pay to the Petitioners the amounts as finally certified by the 4th Respondent, and that payment must be made within four weeks from the certification.

17. We say nothing in regard to the merits of the 7th Respondent's case against the Union Territory, if any. If so advised, the 7th Respondent may adopt appropriate steps in that regard.

18. The Affidavit in Reply of the 7th Respondent is to be filed in the Registry.

19. No further orders are possible in this Writ Petition and it is disposed of in these directions but with no order as to costs.

20. In view of disposal of Writ Petition, Interim Application No. 13427 of 2023 also stands disposed of.

(Neela Gokhale, J) **(G. S. Patel, J)**

Note : This order is modified by an order dated 10th August 2023 passed on a praecipe. Corrections are shown in bold and italics.

GITALAXMI KRISHNA KOTAWADEKAR Digitally signed by GITALAXMI KRISHNA KOTAWADEKAR Date: 2023.08.10 21:34:29 +0545