



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

WRIT PETITION NO.10874 OF 2017

Government Aided Technical Institutes
Employees Welfare Board (GATIWEB),
Through its Secretary,
Mr. Nandkishor S/o Jaynarayan Pande,
Age:- 58 years Occ:- Service,
R/o Tirumala Housing Society,
CIDCO, Aurangabad,
Tq. and Dist Aurangabad.

..Petitioner

Versus

1. State of Maharashtra,
Through it Secretary,
Higher and Technical Department,
Mantralaya, Mumbai.
2. The Director,
Directorate of Technical Education,
3, MahapalikaMarg, Mumbai.
3. Maulana Azad Education Society,
Through its Secretary,
Dr. Rafiq Zakaria Campus,
Rouza Baug, Aurangabad,
Tq. and Dist. Aurangabad.
4. Maulana Azad Education Society's,
Kamla Nehru Polytechnic (Pharmacy),
Through its Principal, Roza Baug,
Dr. Rafiq Zakaria Campus, Aurangabad,
Tq. and Dist. Aurangabad.
5. Shri Sharda Bhawan Shikshan Society,
Through its Secretary,
ITM Building, VIP Road,
Tq. and Dist. Nanded-431602.
6. Shri Sharda Bhawan Shikshan Society's,
Nanded College of Pharmacy,
Through its Principal,
Opp. Kasturba Matru Seva Kendra,

SSBES Campus, Nanded,
Tq. and Dist. Nanded-431605.

7. Mahatma Gandhi Taluka Shikshan Mandal,
Smt. Sharadchandrika S. Patil Institute of
Technology(D.Pharm.),
Through its Secreatry,
Tq. Chopda, Dist. Jalgaon-425107.
8. Mahatma Gandhi Shikshan Mandal's,
Smt. Sharadchandrika S. Patil Institute of
Technology, (D.Pharm),
Through its Principal,
Tq. Chopda, Dist. Jalgaon-425107.
9. Adarsh Shikshan Prasarak Mandal,
Through its Secretary,
Keshav Nagar, Ghatnagari Road,
Post Box No.39, Osmanabad,
Tq. and Dist. Osmanabad-413501.
10. Adarsh Shikshan Prasarak Mandal's,
Diploma in Pharmacy Institute,
Through its Principal,
Keshav Nagar, Ghatnagari Road,
Post Box no. 39, Osmanabad,
Tq. and Dist. Osmanabad-413501.
11. Jai Bhavani Shikshan Prasark Mandal,
Through its Secretary,
ITI Campus, Georai,
Tq. Georai Dist. Beed-431127.
12. Jai Bhavani Shikshan Prasark Mandal's,
Institute of Pharmacy,
Through its Principal,
Shivaji Nagar (Gadhi), Georai,
Tq. Georai, Dist. Beed-431127.
13. Marathwada Shikshan Prasarak Mandal,
Through its Secretary,
Deogiri College Campus, Aurangabad,
Tq. and Dist. Aurangabad-431001.
14. Marathwada Shikshan Prasark Mandal's,
Shri Shivaji Institute of Pharmacy,
Through its Principal, Basmat Road,

Post Box No.10,
Tq. and Dist. Parbhani-431401.

15. Panchakshri Shivacharya Trust,
Through its Secretary,
Kava Road, Basweshwar Chowk, Latur,
Tq. and Dist. Latur-413512.
16. Panchakshri Shivacharya Trust's,
Channa Basweshwar Institute of D. Pharmacy,
Through its Principal,
Kava Road, Basweshwar Chowk, Latur,
Tq. and Dist. Latur-413512.
17. Shree Shivaji Education Society,
Through its Secretary,
Panchwati Chowk, Gadege Nagar, Amrawati,
Tq. and Dist. Amrawati-444602.
18. Shree Shivaji Education Society's,
Dr. Panjabrao Deshmukh Polytechnic,
Through its Principal,
Shivaji Nagar, Panchwati chowk, Amrawati,
Tq. and Dist. Amrawati-444602.
19. Shikshan Prasarak Mandal,
Through its Secretary,
Godbole Plot, Dabki Road, Akola,
Tq. and Dist. Akola-444002.
20. Shikshan Prasark Mandal's,
Geetadevi Khandelwal Institute of Pharmacy,
Through its Principal,
Godbole Plot, Dabki Road, Akola,
Tq. and Dist. Akola-444002.
21. Shiksha Mandal,
Through its Secretary,
Jamnalal Bajaj Marg, Civil Lines, Wardha,
Tq. and Dist. Wardha-230507.
22. Shikshan Mandal's,
Acharya Shrimannarayan Polytechnic,
Through its Principal, Arvi Road, Pimpri,
Tq. and Dist. Wardha-442001.
23. Shikshan Prasarak Mandal,

- Through its Secretary,
Nabira Mahavidyalaya Campus, Dhantoli,
Tq. Katol, Dist. Nagpur-441302.
24. Shikshan Prasarak Mandal's,
Smt. Kusumtai Wankhede Institute of Pharmacy,
Through its Principal, Katol,
Tq. Katol and Dist. Nagpur-441302.
25. Women's Education Society,
Through its Secretary,
LAD College, Shankar Nagar, Nagpur,
Tq. and Dist. Nagpur-440010.
26. Women's Education Society's,
Women's Technical Education & Research Institute,
Through its Principal,
LAD College Campus, Seminary Hills, Nagpur,
Tq. and Dist. Nagpur-440006.
27. Anjuman Imdadut Tulba,
Through its Secretary,
Industrial Building, Quidwai Road, Malegaon,
Tq. Malegaon and Dist. Nashik-324203.
28. Anjuman Imdadut Tulba's,
Institute of Pharmacy,
Through its Principal,
Post Box No.-123, S. No.100, Pharmacy Nagar,
Tq. Malegaon, Dist. Nashik-423203.
29. Shri Mouni Vidyapeeth,
Through its Secretary,
Hutatma Murlidhar Nagar, Gargoti,
Tq. and Dist. Kolhapur-416209.
30. Shri Mouni Vidyapeeth's,
Institute of Civil and Rural Engineering(Aided),
Through its Principal,
Hutatma Murlidhar Nagar, Gargoti,
Tq. and Dist. Kolhapur-416209.
31. Modern Education Society,
Wadia College Campus,
Through its Secretary,
19, Late V K Jog Path, Pune,
Tq. and Dist. Pune-411001.

32. Modern Educations Soceity's,
Cusrow Wadia Institute of Technology(Aided)
19, Bundgarden Road, Pune,
Tq. and Dist. Pune-411001.
33. Kolhapur District Chemist Association,
Through its Secretary,
451,E, 307 to 317,
Chemist Bhavan, Keviz Plaza,
Station Road, Kolhapur
Tq. and Dist. Kolhapur-416001.
34. Kolhapur District Chemist Associaton's.
Institute of Pharmacy,
Through its Principal,
Airport Road, Ujalaiwadi, Kolhapur
Tq. and Dist. Kolhapur-416004.
35. Shri Swami Vivekanand Shikshan Sanstha,
Through its Secretary,
2130 E, Tarabai Park, Kolhapur,
Tq. and Dist. Kolhapur.
36. Shri Swami Vivekanand Shikshan Sansthas's,
Institute of Pharmacy,
Through its Principal,
Shri Shikshanmaharshi Dr. Bapuji Salunkhe
College Campus, Pandharpur, Road, Miraj,
Tq. Miraj and Dist. Sangli-416410.
37. Dakshin Solapur Taluka Shikshan Mandal,
Through its Secretary,
Ajoba Ganpati, Madhla Maroti, Solapur,
Tq. and Dist. Solapur-413004.
38. Dakshin Solapur Taluka Shikshan Mandal's,
College of of Pharmacy (Poly.),
Through its Principal, Jule Solapur Road, Solapur,
Tq. and Dist. Solapur-413004.
39. Deccan Education Society,
Through its Secretary,
Ferguson College Campus, Pune,
Tq. and Dist. Pune-411004.
40. Deccan Education Society's,

Technical Institute,
Through its Principal,
BMCC Road, Post Box No.816,
Deccan Gymkhana, Pune,
Tq. and Dist. Pune-411004.

41. Hyderabad(Sind) National Collegiate Board,
Through its Secretary,
4th Floor, KC College,
Vidyasagar Principal K M Kundanani Chowk,
124, Dinshaw Wachha Road,
CHURCHGATE, Mumbai-400020.
42. Hyderabad(Sind) National Collegiate Board,
K.M. Kundanani Pharmacy Polytechnic,
Through its Principal,
Opp. Ulhasnagar, Railway Station,
Thane-421003.
43. Shri Vile Parle Kelvani Mandal,
Through its Secretary,
Bhaidas Sabhagriha Building,
2nd Floor, Bhaktivedanta Swami Marg,
Vile Parle(West), Mumbai-400056.
44. Shri Vile Parle Kelvani Mandal's,
Shri Bhagubhai Mafatlal Polytechnic,
Through its Principal,
N.R.G. Gadkari Marg, Mumbai-400056.
45. Rachna Sansad,
Through its Secretary,
4th Floor, 278, Shankar Ghanekar Marg,
Behind Ravindra Natya Mandir,
Prabhadevi, Mumbai-400025.
46. Rachna Sansad's,
Rachna Sansad Academy of Architecture,
Through its Principal,
278, Shankar Ghanekar Marg,
Behind Ravindra Natya Mandir,
Prabhadevi, Mumbai-400025.

..Respondents

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Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon, Advocate for
the Petitioner.

Mr. P. S. Patil, Addl. GP for Respondent Nos.1 and 2.

Mr. S. S. Rathi, Advocate for Respondent Nos.4, 6, 10, 12, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 38, 42, 44 and 46.

Mr. Rajendra Deshmukh, Senior Advocate a/w Mr. Joy Veer i/by Mr. A. P. Bakkad, Advocate for Respondent Nos.5, 7, 9, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 37, 39, 41 and 45.

Mr. A. R. Joshi, Advocate for Respondent No.35.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

JUDGMENT RESERVED ON :- 10th MAY 2024.

JUDGMENT PRONOUNCED ON :- 10th JUNE 2024.

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India, assailing Clause No.10 of the Government Resolution dated 21.08.2015 issued by the State of Maharashtra through its Higher and Technical Department-respondent no.1, by which a system for processing salary bills through computerized system namely HTE-Sevarth Pranali has been implemented throughout the State. The petitioner has further prayed to issue Writ of Mandamus or any other appropriate Writ against respondent nos.1 and 2 to decide pending proposal/representation made by the petitioner for release of 100% salary and allowances to its members through HTE-Sevarth Pranali, which is pending since 2016.

3. The petitioner contends that it is a registered Society under Bombay Public Trust Act, 1950, functioning under name and style as "Government Aided Technical Institutes Employees Welfare Board" (GATIWEB) and committed for welfare of its members, who

are employees of the Government Aided Technical Institutions under Directorate of Technical Education-respondent no.2.

4. The petitioner further contends that its members are employees of respondent nos.3 to 46 institutions, who are conferred with grant-in-aid, pursuant to Government Policy promulgated under Government Resolution dated 18.05.1978. The said Government Resolution prescribes Rules for assessment and release of grant-in-aid to Non-Government Engineering, Technical-Technological Colleges and Polytechnics in the State. According to the petitioner, entire estimated expenditure on pay and allowances, as sanctioned by the Government from time to time towards staff approved by the Director of Technical Education, is made admissible for the purpose of grant-in-aid. Even expenditure on pay and allowances, the expenditure on rent, taxes, books and periodicals for the library etc. are also made admissible for grants. In pursuance of said policy of the State, respondent nos.3 to 46 were receiving grant-in-aid. Consequently, the employees were paid 100% salary out of grant-in-aid. This system was in vogue till promulgation of the Government Resolution dated 21.08.2015, by which the system has been introduced to release the salary of the approved employees through HTE-Sevarth Pranali in respect of the institutions covered under the Directorate. However, Clause No.10 of the said Government Resolution stipulates that aided non-government "Arts as well as Technical Education Institutions covered under the Directorate are eligible for 90% grants." However, no care is taken to secure release of balance 10% salary. According to the petitioner, as a result of the aforesaid Clause, the right of the employees to receive 100% salary has been curtailed. There is no rational behind the introduction of the aforesaid Clause to release only 90% salary grants from HTE-Sevarth Pranali.

5. The petitioner further contends that impugned Clause No.10 of the Government Resolution dated 21.08.2015 is arbitrary and violates principles of natural justice. The employees are facing economical difficulties and financial duress since the Institutions are short of funds to regularly pay their rightful salary. The petitioner made several representations to respondent nos.1 and 2 ventilating grievances of its members. In response to such representations, respondent no.2 replied that the proposal has been already forwarded to the Government for increasing the revenue of the Government so that the members of the petitioner would get 100% salary. Although, proposal is still pending with the State Government, Joint Directors at Regional Offices have unlawfully declined to entertain request of respondent-Institutions for release of entire salary of employees through portal and directed them to arrange 10% part of salary expenditure at the level of institutions. Therefore, the petitioner seeks reliefs as prayed.

6. The respondent nos.1 and 2 filed affidavit-in-reply contending that the Rules for assessment and payment of grant-in-aid to the Non-Government Engineering, Technical and Technological Colleges and Polytechnics and other Technical Institutions in the State are published vide Government Resolution dated 18.05.1978 issued by the State of Maharashtra through its Education and Youth Services Department. As per Rule 9, maintenance grant @ 90% of the total admissible expenditure including salary and non salary components have been made admissible. The Institutions are required to meet out balance 10% of the expenditure. The grant-in-aid is subject to availability of the funds and cannot be claimed as a right by grantee Institutions. The Institutions are also permitted to collect Tuition Fees, Development Fees and other fees from the students. The tuition

fees collected per student can be adjusted for salary expenditures, subject to maximum 90% of the admissible grant-in-aid to the Institutes. The procedure for assessment of the grant-in-aid is prescribed under Clauses 4 and 5 of the Rules. The grants are normally paid on the basis of estimated recurring expenditure for that year, in four installments. The first three installments are paid as advance grant and the last installment is paid on receipt of the audited statement of the expenditure for the previous year. While releasing the 4th (last) installment, the excess grant paid, if any, during the preceding year is adjusted.

7. It is further contention of the respondents that the Government Resolution dated 21.08.2015 introduced HTE-Sevarth, an online payment system for release of salary of the teaching and non-teaching staff. Through this system, 90% of the salary grant is disbursed. The system ensures direct disbursement of the salary in the account of the employee from the admissible grant-in-aid. Although representations have been made by the petitioner for increase in the salary grants, it has been refused since revenue deficit of the State has been increased to Rs.26,000/- crores and the State Government is not in a position to bear the extra burden on the State exchequer. However, the proposal for increasing the fees chargeable per student is still under consideration of respondent no.1 as advised by the Finance Department.

8. Mr. V. D. Hon, learned Senior Advocate appearing for the petitioner vehemently submits that Government Resolution dated 18.05.1978, issued by respondent no.1 through its Education and Youth Services Department, introduced rules for assessment and payment of grant-in-aid to the non-Government (a) Engineering Technical and Technological Colleges and (b) Polytechnics and

other Technical Institutions catering to (i) Degree and (ii) Diploma Courses have been introduced. Clause no.6 of the aforesaid Rules provides for “admissible expenditure for grant-in-aid”. Sub-Clause (i) of Clause 6 specifically provides that “entire estimated expenditure on payment and allowances as sanctioned by Government from time to time on staff approved by the Director of Technical Education is admissible, apart from the non-salary grants”. Consequently, the system was invoked to release 100% salary and allowances receivable to the employees of the Institutions through the grant-in-aid released by the State. However, on advent of the HTE-Sevarth Pranali under Government Resolution dated 21.08.2015 and particularly owing to misinterpretation of Clause No.10, the salary bills to the extent of 90% have been processed through HTE Sevarth Pranali without making any provision for release of balance 10% amount. He would submit that the right of the employees to receive 100% salary has been curtailed because of Clause No.10 of the Government Resolution dated 21.08.2015.

9. Mr. Rajendra Deshmukh, learned Senior Advocate and Mr. Swapnil Rathi, learned Advocate, appearing for the respondent-Institutions supports the contentions of the petitioner and point out that prior to 2015 there was no difficulty in payment of 100% salary allowances to the employees. However, the system introduced under Government Resolution dated 21.08.2015 has been misapplied by the respondents-authorities. They would further submit that the Government is under obligation to release 100% salary grants. The Institutions are bereft of the funds to meet-out additional 10% liability towards payment of salary and allowances to the employees. The ability of the Aided Institutions to generate revenue is curtailed, as the fees of the colleges has been

regulated and kept at minimal rates to ensure affordable education.

10. Mr. P. S. Patil, learned Addl. GP appearing for respondent nos.1 and 2 referring to the affidavit-in-reply submits that although salary expenses are admissible for grant-in-aid in entirety, the State Government has been committed to release consolidated sum @ 90% of the admissible expenditure towards both components namely salary and non-salary expenditure. He would submit that by way of Government Resolution dated 21.08.2015, the system has been introduced for payment of salary through computerized system i.e. HTE-Sevarth Pranali to ensure that the component of grant-in-aid released towards the expenditure on the salary and allowances directly reaches to the accounts of the beneficiaries. It was for the Institutions to arrange 10% of its contribution and make provision for release full salary to the employees. He would submit that the State has never undertaken release of 100% grant-in-aid towards salary expenses. He invites attention of this Court to Clause No.9 of the Government Resolution dated 18.05.1978 to contend that the maintenance grant was provisioned @ 90% of the total admissible expenditure or the deficit (admissible expenditure minus receipts whichever is less, on the budget estimates of the Institutions for the year). He would further submit that the same system had been continued even under subsequent Government Resolutions dated 04.09.1999 and 21.11.2012. He would, therefore, urge that there is no merit in the contentions raised in petition. To buttress his submissions, documents depicting flow of grant in aid, pre and post introduction of HTE Sevarth Pranali has been placed before us. Mr Patil further relies upon the judgment dated **20.09.2019** passed by this Court in ***Writ Petition No.170/2017*** in case of ***Swargiya***

Raghobaji Bachale Shikshan Prasarak Mandal, Wardha Vs. State of Maharashtra and Ors., judgment in case of ***Keraleeya Samajam and Others Vs. State of Maharashtra and Others***¹.

11. We have considered the submissions advanced by the learned Advocates appearing for the respective parties. We have gone through pleadings and documents tendered into service on behalf of the respective parties. Having considered the submissions and the pleadings, it can be noticed that initially, State of Maharashtra had introduced a policy to provide maintenance grant @ of 75% to technical institutions on their admissible expenditure or the deficit, whichever is less on their budget estimates for the year on the basis of audited expenditure. However, in the year 1977 the Government decided to increase maintenance grant to 90% considering increase in expenditure of the Colleges. The policy has been introduced vide Government Resolution dated 29.10.1977. In defiance to the aforesaid policy, Government Resolution dated 18.05.1978 has been issued to notify the Rules for the assessment and payment of grant-in-aid to the Non-Government Engineering, Technical and Technological Colleges and Polytechnics in the State catering to Degree and Diploma Courses.

12 It is apposite to refer relevant Clauses of the said Government Resolution. Clause No.3 states that ***“the grant shall be paid subject to the availability of fund. It cannot be claimed as of right by the grantee institutions”***. Clause No.4 stipulates that “the grant shall normally be paid in a year on the basis of the estimated recurring expenditure for that year, in four installments. The first three installments shall be paid as advance grant and the last installment shall be paid on receipt of the audited statement of expenditure for the previous year. The excess

¹ (2004) 2 Mah LJ 171.

grant, if any, is adjusted". Clause No.6 stipulates list of what constitutes **“admissible expenditure grant-in-aid:**

- (i) Entire estimated expenditure on pay and allowance as sanctioned by Government from time to time on staff approved by the Director of Technical Education, Maharashtra State, Bombay as per prescribed norms and the Management's contribution towards C.P.F. at the rate prescribed by Government from time to time as per Contributory Provident Fund rules approved by Government for the Institution concerned.
- (ii) Entire anticipated expenditure on rent and taxes as may be admissible under the rules, and insurance for the building, including equipment, library etc., as may be approved by the Director of Technical Education, Maharashtra State, Bombay.
- iii) Entire anticipated expenditure on books and periodical for the library upto the ceilings prescribed in Rule 8, based on the intake capacity.
- iv) All other anticipated expenditure not covered under (i), (ii) and (iii) above on admissible items shown in Schedule "A" hereto, upto the ceilings prescribed in Schedule "B" hereto, based on the sanctioned capacity."

Clause No.7 deals with “inadmissible expenditure for grant-in-aid.” Clause No.8 provides for “scale of admissible expenditure on Library, periodicals, reading rooms etc.. The ***Clause No.9 specifically deals with percentage of admissible expenditure to be provided by the State, which states as under:***

“The maintenance grant shall be paid at the rate of 90% of the total admissible expenditure or the deficit (Admissible expenditure minus receipts whichever is less, on the budget estimates of the Institutions for the year, subject to the condition that the excess of shortfall if any, shall be adjusted in the following year, on the basis of the actual audited expenditure. ***The ceilings mentioned above shall be taken into consideration while calculating admissible expenditure of the deficit.***”

13. The Schedule-A under Government Resolution provides the list of items for calculation of expenditure admissible for maintenance grant-in-aid, which includes pay and dearness allowance. The Schedule-B provides for Course-Wise Ceilings for expenditure. The plain reading of the aforesaid Clauses would demonstrate that although the Government of Maharashtra has approved the Rules for assessment and payment of grant-in-aid to non-Government Engineering Technical and Technological Colleges and other Institutions with effect from 01.04.1977 with concurrence of the Finance Department vide its unofficial reference dated 29.12.1977, the maintenance grant only @ 90% of the total admissible expenditure or the deficit is provisioned. Although Clause No.6 provides for the list of admissible expenditure, which includes entire estimated expenditure on pay and allowance as sanctioned towards approved staff, the total maintenance grant is restricted @ 90% of total admissible expenditure. The component of salary grant or non-salary grant is not independently considered for the purpose of maintenance grant provisioned @ 90%. Therefore, submission advanced on behalf of the petitioner that the State Government has provisioned for 100% salary expenditure under the Rules promulgated w.e.f. 18.05.1978 cannot be countenanced. It is true that while working out the admissible expenditure, 100% of pay and allowances will have to be counted alongwith other admissible expenditure specified under Clause No.6. However, Clause No.9 further clarifies that the maintenance grant shall be provided @ of 90% of the total admissible expenditure. Clause No.12 prescribes that the budget estimates in respect of recurring and non-recurring expenditure shall be separated. However, there is no separate provision for salary and non-salary grants. This system appears to have been consistently implemented without there being any objection. The State

Government has consistently released consolidated sum @ 90% of the admissible expenses including expenditure on salary till the date. The Institutions are, therefore, expected to meet out 10% share of the admissible expenses from its own source. The State Government has never committed release of 100% salary grants. The commitment of State appears for 90% of grants towards admissible heads including salary expenditure. The policy of state to release 90% grants towards admissible expenditure has been in vogue since 1977 without objection or challenge either by petitioner or respondent institutions.

14. It appears that on 04.09.1999, the Government Resolution has been issued and 100% salary expenditure is made admissible to some of the Technical Institutions run by the public Universities or managed by state authorities. However, the system of 90% grant-in-aid continued for the non-Government Institutions. Clause No.6 of the said Government Resolution again crystallized aforesaid aspects. There is no challenge to said Government Resolution till this date.

15. Perusal of the Government Resolution dated 21.08.2015 indicates that the Government has adopted management technique titled as HTE-Sevarth through a software developed by Tata Consultancy Services to ensure smooth disbursement of the salary of the employees working in Aided Technical Institutions. It provides modalities for release of the salary through the software. The responsibilities of the Director, Joint Director and the respective Principals of beneficiary institutions have been earmarked. The Institutions are mandated to process the salary bills of approved employees through HTE-Sevarth Pranali. It ensures disbursement of the salary directly in the bank accounts of the respective

employees. Apparently, the State Government was intended to move to the regime of the direct benefit transfer and ensure that beneficiaries receive the credit without any delay using the tools of information technology. However, the petitioner appears to have been aggrieved by Clause No.10 of the Government Resolution, which stipulates to disburse 90% salary through HTE-Sevarth Pranali leaving balance 10% to be disbursed at the level of the Institutions. The system has been implemented throughout the State of Maharashtra. However, from the contentions raised by the respondent-Institutions, it can be gathered that the ability of the Aided Institutes to generate revenue is curtailed, as tuition and other fees receivable from students has been regulated by state and moderated to ensure affordable education, whereas the salary expenditure has been exponentially grown up because of implementation of 6th and 7th Pay Commission, as compared to other admissible expenditures. Although the Institutions are receiving 90% maintenance grants towards admissible expenditure, the salary component has grown up exponentially and Institutions are struggling to meet out 10% share towards salary expenditure through their own income. The Institutions have therefore, raised the demand that the State shall make provision for 100% salary expenditure and release maintenance grants @ 90% for other admissible expenses. As discussed in aforesaid paragraphs, it is not discernible from the State policy that at any point of time state has assured independent grant in aid @ 100% towards salary expenditure. The consolidated grant-in-aid has been provisioned @ 90% of total admissible expenditure which includes expenditure on salary @ 100%. In other words, state has undertaken to release 90% of the total admissible expenditure without considering salary expenditure as independent component. Therefore, the contentions raised on behalf of the petitioner that the Government was obliged

to release 100% salary expenditure by way of grant-in-aid cannot be accepted. The interpretation of different clauses of government resolutions relied by petitioner to contend that prior to introduction of HTE Sevarth Pranali under GR Dated 21.08.2015, 100% salary component was borne by state appears to be fallacious. We have perused actual flow of grants from material tendered before us since before introduction of HTE Sevarth Pranali in favour of some of the beneficiary institutions and found substance in contentions raised by respondent authorities. Therefore we are not inclined to accept contention of petitioner that impugned clause No. 10 of GR dated 21.08.2015 has either curtailed any existing right of members of petitioner or adversely deviated from policy in vogue, pertaining to release of maintenance grants admissible for institutions.

16. It is true that there is exponential rise in the salary expenditure on advent of 6th and 7th Pay Commission, which is made applicable to the employees like the members of the petitioner. It is also possible that because of the regulations confining the amount of fees to be collected from the students, the income of the Institutions fall short to manage the expenditure. However, that itself cannot be the ground to declare Clause No.10 of the Government Resolution dated 21.08.2015 to be unjust and arbitrary. In fact, the petitioner could not make out any case to show that the said Clause has introduced any stipulation that would adversely affect the entitlement of the employees working in the Aided Institutions i.e. beneficiaries of the grants. As observed in the aforesaid paragraphs, Sevarth Pranali has been introduced to regulate the process so that proportionate part of maintenance grant, released by the State, shall reach to the salary account of employees without intervention of the Management or Institutions.

The interpretation of impugned clause 10 of GR adopted by petitioner to contend that the State Government has curtailed the benefit receivable to petitioner's members appears to be based on misinterpretation and misconception of facts or it is fallacious. In fact, as rightly pointed out on behalf of the respondent-State, under impugned clause an arrangement is made for swift disbursement of salary directly to the employees accounts from maintenance grants released by Government.

17. Although, during the course of arguments it is contended that the Educational Institutions affiliated to Agricultural and non-Agricultural Universities are receiving 100% salary grants, however members of the petitioner have been discriminated. We find that no foundation is laid down in the petition for that purpose. There is nothing to demonstrate that the employees working in those Institutions are similarly situated and the policy of the State Government discriminates among the similarly situated employees. It is also contended that the few Technical Institutions like Shri Guru Gobind Singhji Institute of Engineering and Technology, Nanded are receiving 100% salary grants. However, it is not disputed that the management of such Institutions is with the State Government or Public Universities, unlike Trusts or Societies. In this background, no case is made out to invoke Article 14 of the Constitution of India, particularly when no foundational pleadings and supporting material is placed into service before us to make out case of discrimination to support such contentions.

18. It is sought to be contended that the impugned Government Resolution, particularly Clause No.10 is the administrative instructions issued by the Government and, if any, Clause

mentioned therein is contrary to the Rules of 1978, having force of Statute in view of Article 309 of the Constitution of India, the administrative instructions would not override the Rules. We have considered the aforesaid submissions, however, as discussed in aforesaid paragraphs, no inconsistency is pointed out in the Rules introduced under Government Resolution dated 1978 and system for disbursement of the salary introduced under the impugned Clause No.10. The introduction of the impugned Clause No.10 under the Government Resolution dated 21.08.2015 nowhere curtails or obliterates any right of the Institution or the employees accrued under Rule. Basic policy to release 90% grants of the admissible expenditure is still in vogue and distribution of 90% of the funds has been ensured towards salary through the software, out of admissible grant-in-aid to the Institutions. The impugned clause of Government Resolution nowhere curtails 90% admissible grants including salary expenses as prescribed under Rules of 1978.

19. Mr. Deshmukh, learned Senior Advocate appearing for the respondents in support of his contentions relies upon the judgment of the Supreme Court of India in case of ***All India Judges' Association and Others Vs. Union of India and Others***² to contend that the Government is obligated to loosen its purse recurrently pursuant to such decision and when it is obligatory on the part of the Government to provide for expenditure it cannot raise the grievance that it would enhance the financial burden on the State exchequer. He relies upon paragraph no.16, which states as under:

"The contention with regard to the financial burden likely to be imposed by the directions in question, is equally misconceived. Firstly, the courts do from time to time hand down decisions which have financial implications and the

Government is obligated to loosen its purse recurrently pursuant to such decisions. Secondly, when the duties are obligatory, no grievance can be heard that they cast financial burden. Thirdly, compared to the other plan and non-plan expenditure, we find that the financial burden caused on account of the said directions is negligible. We should have thought that such plea was not raised to resist the discharge of the mandatory duties. The contention that the resources of all the States are not uniform has also to be rejected for the same reasons. The directions prescribe the minimum necessary service conditions and facilities for the proper administration of justice. We believe that the quality of justice administered and the caliber of the persons appointed to administer it are not of different grades in different States, Such contentions are ill-suited to the issues involved in the present case.”

20. Mr. Deshmukh, learned Senior Advocate would further rely upon the Full Bench decision of Orissa High Court in case of ***Aruna Kumar Swain and Anr. Vs. State of Orissa and Ors.***³ and submits that the State would not issue any Order or Rule without its economical capacity and once Rule/Order is issued, the plea of lack of economic capacity cannot be allowed to be raised to nullify the same Order or Rule. He would submit that once the respondent-State has accepted the responsibility to release grant-in-aid and made the entire salary expenditure as admissible towards grants, the State would be under obligation to carry forward its decision. The impugned Clause No.10 introduced by the Government Resolution dated 21.08.2015 restricting the disbursement of 90% salary through HTE Sevarth Pranali is arbitrary.

21. In our considered view, the both aforesaid judgments would not assist cause of petitioner or managements of institutions. The Supreme Court of India in case of ***All India Judges’ Association and Others*** (supra) was dealing with the expenditure to be

³ AIR 2014 ORISSA 116.

incurred by the State towards services of members of District Judiciary in the Country and consequential statutory obligation of the State. The directions were issued to prescribe minimum necessary service condition and facility for proper administration of justice. In that situation, the Supreme Court pleased to observe that it is Government's obligation to loosen its purse recurrently in discharge of its Constitutional obligation. In the present case, we are dealing with the claim pertaining to the grant-in-aid receivable by the Institutions. Similarly, the Full Bench judgment of the Orissa High Court in case of ***Aruna Kumar Swain and Anr.*** (supra) is based on the provision contained in Orissa Education Act that creates statutory and enforceable right in favour of appointee to get salary. The Full Bench held that such right cannot be defeated by pleading financial incapacity and the Writ Court can ensure enforcement of such right in exercise of jurisdiction under Article 226 of the Constitution of India. In the present case, no such statutory right has been created under the Scheme promulgated under the Government Resolution of 1978 and nothing is pointed out to us that withdraws or curtails the benefits receivable to the employees due to the impugned Government Resolution, particularly impugned Clause No.10 therein.

22. The Supreme Court in case of ***Aruna Kumar Swain and Anr.*** (supra) while dealing with the Orissa (Non-Government Colleges, Junior Colleges and Higher Secondary Schools) Grant-in-Aid Order, 1994 observed that the grant-in-aid is not absolute right and no Writ can be issued for that purpose. Similarly, the Division Bench of this Court in case of ***Swargiya Raghobaji Bachale Shikshan Prasarak Mandal, Wardha*** (supra) relying upon the judgment of the Madras High Court in case of ***Maria Grace Rural Middle School, Venkatarayapuram Vs. Government of***

Tamil Nadu and Ors.⁴ observed that the grant-in-aid is neither fundamental right, nor a statutory right and it depends upon the economic capacity of the State. This being legal position, we are of the view that none is entitled to receive grant-in-aid as a matter of right, and it is solely the discretion of the State Government. The similar view has been taken by this Court while interpreting the provisions of Secondary School Code. This court observed in paragraph no.19 that the grant-in-aid cannot be claimed as of right. There is no legal or Constitutional right insofar as grant-in-aid is concerned. The Rules set out above themselves make the aforesaid aspect clear. The Rules provide for grant-in-aid from public fund. All grants are subject to availability of funds and no secondary school can claim the same as of right.

23. The Supreme Court of India in case of **The State of Uttar Pradesh and Ors. Vs. Principal Abhay Nandan Inter College and Ors. (Civil Appeal No.865/2021)** dated **27.09.2021**, in paragraph nos.29 to 31 observed thus:

“29.We will first take up the right of institutions qua the aid. A decision to grant aid is by way of policy. While doing so, the government is not only concerned with the interest of the institutions but the ability to undertake such an exercise. There are factors which the government is expected to consider before taking such a decision. Financial constraints and deficiencies are the factors which are considered relevant in taking any decision qua aid, including both the decision to grant aid and the manner of disbursement of an aid.

30.Once we hold that right to get an aid is not a fundamental right, the challenge to a decision made in implementing it, shall only be on restricted grounds. Therefore, even in a case where a policy decision is made to withdraw the aid, an institution cannot question it as a matter of right. Maybe, such a challenge would still be available to an institution, when a grant is given to one institution as against the other institution which is similarly placed. Therefore, with the grant of an aid, the conditions come. If an institution does not

want to accept and comply with the conditions accompanying such aid, it is well open to it to decline the grant and move in its own way. On the contrary, an institution can never be allowed to say that the grant of aid should be on its own terms.

31. We are dealing with a case where aid is not denied in toto but sought to be given in different form. The reason for such a decision is both efficiency and economy. When such a decision is made as a matter of policy and is being applied not only to educational institutions but spanning across the entire State in every department, one cannot question it and that too when there is no express arbitrariness seen on the face of it.”

24. The aforesaid legal position makes it abundantly clear that the grant-in-aid is not “a right” that can be enforced invoking Writ jurisdiction of the Court unless it has been backed by the statutory obligation of the State. It cannot be disputed that the Educational Institutions are under obligation to pay salary to its employees irrespective of the fact that they receives grant-in-aid or not. The Supreme Court of India in case of ***Secretary, Mahatama Gandhi Mission and Another Vs. Bhartiya Kamgar Sena and Others***⁵ has upheld the contentions of the employees of Private Affiliated Colleges to receive salary at par with the employees working in the Aided Institutions and deprecated classification amongst non-teaching staff of Aided and Unaided Colleges affiliated to the University and consequently issued a direction to release the salary accordingly. Plea regarding financial deficit raised by the Management was also turned down with the observation that it is for the management to work out the remedy and find out ways and means to meet the financial liability arising out of obligation to pay salary as per revised pay scales. It is, therefore, clear that it is the duty of the management to arrange for the funds to discharge their statutory obligation to ensure 100% salary in tune with the prescribed pay scales. The employees cannot be deprived of their

statutory entitlement. However, to meet out such deficit, the State Government cannot be put to an obligation to release grant-in-aid in addition to 90% maintenance grants provided under the Scheme of 1978. In that view of the matter, we do not find any substance in the first prayer of the petitioner by which Clause No.10 of the Government Resolution dated 21.08.2015 has been impugned.

25. So far as the second prayer seeking direction to decide the proposal, which is pending since 2016 is concerned, respondent nos.1 and 2 in their affidavit in reply clarified that such proposal is declined in view of the remark by the Finance Department. The State has clearly declined to release the additional grant-in-aid to meet out 10% salary expenditure. As such, it appears that no proposal is pending with the Government as on the date. Only issue pending for consideration with the State Government is as regards to the enhancement of the fees chargeable to the students. We hope and trust that the State will appropriately consider to enhance the fees receivable to the Institutions from the students so that the Institutions can adequately resourced to meet out the part of the expenditure towards salary of the employees in tune with the increased burden on account of implementation of 6th and 7th Pay Commission.

26. In view of the aforesaid observations, there is no merit in the Writ Petition. The Writ Petition stands dismissed.

27. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE