

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8348 OF 2021

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1. Ambaprasad Madhukar Naniwadekar)
Age: 50 years, Occp.: Service)
R/o. 2 'Arya', Mangalmurti Colony)
By-pass Road, Agarbhag, Jaysingpur)
Tal. Shirol Dist. Kolhapur- 416101)
2. Prashant Ramchandra Patil)
Age: 45 years, Occp.: Service)
R/o. 34/75, 'Meera' Kalanagar,)
Madhavnagar Road, Sangli- 416416)

....Petitioners

Versus

1. The State Of Maharashtra through the)
Secretary, Higher and Technical)
Education and Employment)
Department, Mantralaya,)
Mumbai – 400032)
2. The Vice-Chancellor,)
Shivaji University, Vidyanagar,)
Kolhapur-416004)
3. Registrar, Shivaji University)
Vidyanagar, Kolhapur-416004)
4. The Secretary, Dr. J.J. Magdum Trust)
Gat No. 118, Shirol Kolhapur)
By-pass Road, Jaysingpur)
Dist. Kolhapur-416101)
5. The Principal, Dr.J.J. Magdum College)
of Engineering Gat No. 289 (314/330))

Shirol-Wadi Road, Agarbhag,)
Jaysingpur, Dist. Kolhapur-416101)Respondents

Mr. Suresh Pakale, Senior Advocate a/w Mr. Nilesh Desai i/b
Mr. Shankar M. Katkar for Petitioners.

Mr. Uday P. Warunjikar a/w. Mr. Sumit Kate, for Respondent No. 4
and 5.

Mr. Vikram N. Walawalkar for Respondent Nos. 2 and 3 (Shivaji
University).

Mr. S B Kalel, AGP for the Respondent-State.

**CORAM: NITIN JAMDAR &
M.M. SATHAYE, JJ.**

DATE : 8 AUGUST 2024

ORAL JUDGMENT (Per Nitin Jamdar, J.)

Rule. Rule returnable forthwith. Respondents waive service.
Taken up for final disposal.

2. The Petitioners are working with Respondent No.5 College,
run by Respondent No.4 Education Trust. Respondent Nos. 2 and 3
are the Vice Chancellor and Registrar of the Shivaji University.
Respondent Nos. 1 is State through Secretary, Higher and Technical
Education and Employment Department, Mumbai.

3. Petitioners were appointed as Lecturers in Mechanical
Engineering on 10 September 1999. They were qualified for the post

of Lecturer and were duly selected by the Selection Committee of the Respondent University. The Respondent University granted approval to the selection of the Petitioners. On 1 August 2000, the 5th pay scale of Rs. 8000-275-13500 applicable to the post of Lecturer was given to the Petitioners, and they were placed on the basic scale of Rs. 8000/- applicable to the post of Lecturer. Petitioner No. 1 completed his Masters in Engineering in February 2007, and Petitioner No. 2 completed his Masters of Engineering in February 2010. As per the Government Resolution dated 18 December 1999 and the Rules framed for the Career Advancement Scheme, a lecturer becomes eligible for the implementation of the time scale of Lecturer (Senior Scale) after completing six years' service as a Lecturer and completing the required course. The Petitioners were granted the time scale of Lecturer (Senior Scale) on 10 September 2005. On 20 August 2010, the 6th Pay Scales were implemented from 1 January 2006. After that, the Petitioners were placed in the pay band of Rs. 37400-67000 and designated as Associate Professors. On 15 December 2012, the Respondent Institute submitted an application to the Respondent University for approval of the placement and implementation of the time scale of Lecturer (Senior Scale) and Lecturer (Selection Grade) for the Petitioners.

4. A Scrutiny Committee was constituted to scrutinise and verify education, qualification, service books, self-appraisal reports, etc. On 24 May 2013, the Scrutiny Committee interviewed the Petitioners

and verified all the documents for approval. Petitioner No. 1 was placed in Pay Scale Rs.37400-67000 with a Grade Pay of Rs.9000/- with designation of the Associate Professor in October 2013 and the Petitioner No. 2 in October 2015. On 18 February 2021, the Respondent Institute issued a letter to the Petitioners that since the Respondent University has not communicated its approval for placement of the Petitioners in the post of Lecturer (Senior Scale) and Lecturer (Selection Grade), their designation as Associate Professor was withdrawn and the amount paid to the Petitioners under said grades is recovered. The communication informed the Petitioners that their pay scale has been reverted and their unpaid salary adjusted towards the excess amount paid to the Petitioners.

5. The Petitioners have filed a petition challenging the communication by Respondent Management dated February 18, 2021. They are seeking a direction for Respondent Nos. 4 and 5 Education Institute to return the amount to them. Alternatively, they are seeking a direction for the University to grant formal approval for the implementation of the time scale of Lecturer (Senior Scale) and Lecturer (Selection Grade). Both the Respondent Education Institute and the Respondent University have filed their replies. Additionally, Petitioner No. 1 has filed an additional affidavit and rejoinder.

6. The Petitioners contend that the action of the Respondent

Management in unilaterally withdrawing the pay scale is entirely arbitrary. No details have been given and they have adjusted sixteen months unpaid salary. It is submitted that the action of the Respondent Management is illegal and unjust and should be quashed and set aside. The Respondent Education Institute has filed a reply affidavit to contest the petition. The Respondent Management has submitted that there is no approval received from the Respondent University. The amount was paid to the Petitioners since they went on hunger strike, and when it was realised that Respondent Management, without any approval, had paid excess salary and allowance, recovery has been initiated and there is no illegality in the same.

7. According to us, the issue lies in a narrow compass, and it is crystallised in view of the stand taken by Respondent University. The reply affidavit is filed by Respondent University on 25 February 2022. This affidavit has made the position clear. The relevant part of the affidavit reads thus:

“5. The process begins with Career Advancement Scheme proposals being submitted by the concerned College to the University in individual cases of lecturers. The University, after receiving such proposals from College, constitutes a Scrutiny Committee comprising of Chairperson of the governing body of the College, nominee of the Vice-Chancellor, nominee of reserved category, Women's representative, a member nominated by the State Government, nominee of the Vice-Chancellor (Subject Expert) and other Subject Experts along with the Principals and HOD of the concerned

subjects from the College. The Scrutiny Committee makes an individual report of each candidate and submits it to the University along- with all other documents and then the University, based on the individual report, grants its 'letter of approval' in the name of the candidate. The process is carried out scrupulously by University with cooperation from the concerned College. Hereto annexed and marked as Exhibit - 1 is a copy of the Career Advancement Scheme proforma.

6. In the present case, the Petitioners seem to have appeared before the scrutiny committee comprising of members as aforestated. After report of the scrutiny committee, the University has sent all individual files/proposals to concerned College/Management Respondent Nos.4 and 5. It was expected that the College/Management would send the files/proposals back to the University after getting signatures of the President of the Management, Principal of the College as required. I say that Respondent Nos.4 & 5 have failed to submit the same to the University and therefore the University has not issued 'Letter of Approval' in the name of the Petitioners. In spite of absence of such approval from the University, Respondent Nos.4 and 5 had applied the benefits to the Petitioners on its own. The College/Management ought to have applied the benefits only after receiving the 'Letters of Approval' from the university. Later on, it seems that after realizing the error on their part, Respondent Nos.4 and 5 have taken steps to retrieve back the benefits so conferred upon the Petitioners and against that action, the Petitioners have approached this Hon'ble Court. Therefore, the University should not be held responsible for the acts and deeds of the College and Management."

8. Factual position and the stand of the respective parties indicate only a procedural aspect. On the substantive part, the Petitioners

have appeared before the Scrutiny Committee, and the report was also submitted, a right accrued to the Petitioners, which should not be taken away for the lack of the signatures of the President/Principal of the Education Institute for the formal approval.

9. We are informed that some of the Petitioners have now retired. Due to the recovery which is made, their pensionary benefits are substantially affected.

10. Therefore, we are of the opinion that once substantial compliance was made of appearing before the Scrutiny Committee, the Petitioners can not be prejudiced by the procedural part which was only a formality. This can be rectified by the Respondents by taking *post facto* action. The Scrutiny Committee has already been held in favour of the Petitioners, and now only the issuance of approval order to be passed by the University remains. As regards individual cases, as the University itself has stated on the affidavit, they have been examined by the Scrutiny Committee.

11. Therefore, we direct that the Respondent Education Institute will send correspondence documents to the University by *post facto* placing the signatures on the files/proposals within a period of four weeks from today. After this procedural formality is completed, the University, upon examination of the cases of each Petitioner, will issue letter/s of approval, with its copy sent to Petitioners for the record. Once the letter of approval is so issued, the lacuna pointed out in the impugned order having been removed, the Respondent

Education Institute will return the amount which has been recovered from the Petitioners, within a period of three months from the date of issuance of formal letter of grant of approval.

12. Rule is made absolute in the above terms. The writ petition is disposed of.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)