

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16503 OF 2023

RAYAT SHIKSHAN SANSTHA & ORS.	PETITIONERS
V/S	
GANESH BHANUDAS BODHE	RESPONDENT

WITH
WRIT PETITION NO.16511 OF 2023

RAYAT SHIKSHAN SANSTHA & ORS.	PETITIONERS
V/S	
VINAYAK SURYAKANT GHOLAP	RESPONDENT

WITH
WRIT PETITION NO.16512 OF 2023

RAYAT SHIKSHAN SANSTHA & ORS.	PETITIONERS
V/S	
TANAJI DATTU YADAV	RESPONDENT

WITH
WRIT PETITION NO.16553 OF 2023

RAYAT SHIKSHAN SANSTHA & ORS.	PETITIONERS
V/S	
BHARAT VITTHAL JADHAV	RESPONDENT

WITH
WRIT PETITION NO.16557 OF 2023

RAYAT SHIKSHAN SANSTHA & ORS.	PETITIONERS
V/S	
BHIMRAO BHAGHOJI DEVKULE	RESPONDENT

WITH
WRIT PETITION NO.16559 OF 2023

RAYAT SHIKSHAN SANSTHA & ORS.

....PETITIONERS

V/S

SANJAY SHAMRAO NANGARE

....RESPONDENT

...

Mr. Kiran Bapat a/w Mr. Prasanna Shahane i/b Mr. Milind Deshmukh for the Petitioners.

Mr. Pramod Kathane a/w Mr. Manoj G. Sawardekar for Respondent/s.

...

CORAM: SANDEEP V. MARNE, J.

DATE : JANUARY 30, 2024.

P.C.:

1 Rule. Rule is made returnable forthwith. By consent of the learned Counsel appearing for the parties, these Writ Petitions are taken for final hearing and disposal.

2 Petitioner- Rayat Shikshan Sanstha, Satara has filed these Petitions challenging orders dated 19 July 2023, 20 July 2023 and 21 July 2023 passed by the Industrial Court, Satara allowing applications filed by Respondents at Exhibit U-2 and granting interim relief in their favour by directing the Petitioners to deposit in the Industrial Court the unpaid amount of dearness allowance, difference between the salary actually paid and salary payable as per the 7th Pay Commission recommendations with effect from 1 January 2016. The Industrial Court has further

directed the Petitioners to deposit in the Industrial Court difference of amount of Provident Fund contribution between the amount which is already deposited and the amount which was being deposited prior to December 2019 with the Provident Fund Authorities.

3 Respondents are working with Petitioner-Educational Institution on various posts and have filed various Complaints before the Industrial Court, Satara under provisions of section 28 of the Maharashtra Recognition of Trade Unions and Prevention Unfair Labour Practices Act, 1971 (**MRTP & PULP Act**). Their grievance in the Complaints is about non-payment of dearness allowance in accordance with various notifications issued by the Government of Maharashtra since July 2015. The second grievance of the Respondents is about failure on the part of the Petitioners to extend the benefits of 7th Pay Commission with effect from 1 January 2016. The third grievance of the Respondents is about failure on the part of the Petitioners to deposit the Provident Fund contribution @ 12% of basic pay plus grade pay plus dearness allowance after January 2020 onwards.

4 With the above three grievances, Respondents have invoked the jurisdiction of the Industrial Court. In their Complaints, Respondents filed applications at Exhibit U-2 seeking interim relief for deposit of amounts arising out of arrears of dearness allowance as well as arrears of 7th Pay Commission and difference in Provident Fund contribution in

the Industrial Court during pendency of the Complaints. Petitioners have filed Reply to the applications at Exhibit U-2 taking defence inter alia that the 7th Pay Commission recommendations are not applicable to the Petitioner-Institution. Petitioners have also raised the defence of limitation while opposing the claim of the Respondents. The Industrial Court has proceeded to pass interim orders by allowing the applications at Exhibit U-2 by orders dated 19 July 2023, 20 July 2023 and 21 July 2023 directing Petitioners to deposit in the Industrial Court amounts towards arrears of dearness allowance, 7th Pay Commission difference as well as provident fund contribution.

5 I have heard Mr. Bapat, the learned Senior Counsel appearing for the Petitioners and Mr. Kathane, the learned Counsel appearing for the Respondents.

6 After having considered the submissions canvassed by the learned Counsel appearing for the parties, it is seen that the main issue involved in the Complaints filed by the Respondents is about applicability of various notifications issued by the Government of Maharashtra effecting increase in the dearness allowance from time to time. It is Respondents' grievance that though dearness allowance has been revised by the Government of Maharashtra from time to time from July 2015, the Respondents' have not applied such hike in the dearness allowance while paying the salaries to the Respondents. Similarly it is Respondents'

grievance that though 7th Pay Commission recommendations are made effective from 1 January 2016, Petitioners are not paying salaries to the Respondents in accordance with the 7th Pay Commission scales. On the contrary it is the case of the Petitioners that neither notifications issued by the Government of Maharashtra effecting increase in dearness allowances nor recommendations of 7th Pay Commission are automatically applicable to the Petitioner-Institution. It is possibly the case of the Petitioner-Institution that unless it voluntarily adopts various notifications issued by the Government of Maharashtra and that unless it makes applicable the recommendations of the particular Pay Commission, it cannot be forced to pay to its employees salaries in accordance with any notifications issued by the Government of Maharashtra or recommendations made by any Pay Commission.

7 In my view there is thus clear contest between the parties about entitlement of the employees to receive dearness allowance as notified by the Government of Maharashtra for time to time and also to receive salaries as per the 7th Pay Commission scale. Unless this contest is decided, the Industrial Court cannot direct that the amounts arising out of arrears of dearness allowance and difference of 7th Pay Commission scales must be deposited in the Court by way of interim order.

8 Also of relevance is the fact that the prayer made by the Respondents for payment of difference of dearness allowance from July 2015 as well as payment of difference of salaries as per the 7th Pay

Commission scale from 1 January 2016 will have to be considered in the light of limitation provided for under the MRTU and PULP Act. Though receipt of less salary may give rise to recurring cause of action, limitation would apply qua arrears. This is the law expounded by the Apex Court in its judgment in *Union of India vs. Tarsem Singh*. (2008) 8 SCC 648. The Industrial Court will have to apply its mind to the aspect of limitation as well while deciding the entitlement of Respondents to receive arrears from July 2015 or January 2016, even if it comes to a conclusion that the Petitioner-Institution is bound to apply notifications of Government of Maharashtra and recommendations of Pay Commission to its employees.

9 In my view the nature of prayers made in the Interim Application filed by the Respondents are such that the same could be considered only at the time of final hearing of the Complaints. In that view of the matter, the orders passed by the Industrial Court are clearly unsustainable. In the event the Respondents succeed in their Complaints, they will receive arrears of dearness allowance, salary and Provident Fund contribution. However to expect the Petitioners to deposit the amount of arrears of dearness allowance, difference of 7th Pay Commission scale and difference of Provident Fund contribution at an interim stage is clearly speculative. I, therefore, find the order dated 19 July 2023 passed by the Industrial Court to be totally unsustainable.

10 The Writ Petitions accordingly succeed. The orders dated 19 July 2023, 20 July 2023 and 21 July 2023 passed by the Industrial Court, Satara are set aside. The Industrial Court is requested to expedite the hearing of Complaints filed by Respondents. Mr. Bapat fairly makes a statement that the Written Statements to the Complaints would be filed within a period of four weeks from today. The Industrial Court shall make an endeavour to decide Complaints as expeditiously as possible preferably within a period of one year from today.

11 With the above directions, the Writ Petitions are allowed. Rule is made absolute.

(SANDEEP V. MARNE, J.)

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signed by
SUDARSHAN
RAJALINGAM
KATKAM
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Correction carried out in view of the speaking to the minutes order dated 12.02.2024.