IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.294 of 2024

Ankush Shikshan Sanstha, Nagpur & Another vs. Dr. Dilip Kumar Merkap and others.

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

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Shri V. P. Marpakwar, Advocate for petitioners.
Shri A. I. Sheikh, Advocate for respondent no.1.
Shri D.R.Bhoyar, Advocate for respondent nos. 2 to 4.

CORAM :- NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.
DATE :- 19th MARCH, 2024.

Heard the learned counsel for the parties.

2. Challenge in the petition is to the order of the Grievance Committee, delivered on 15.10.2022 whereby the following directions have been issued to the petitioners.

> *13. In view of the above findings recorded by the Committee, the Committee has passed the following order:*
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> *(i) The applicant is entitled to the revised pay-scales with other benefits as per the recommendations of 6th Pay-Commission from 07.01.2014 to 31.12.2015 and to the revised pay scale with other benefits as per recommendation of 7th Pay Commission from 01.01.2015 and it is to be continued as per applicable rules.*
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> *(ii) The non-applicant no. 1 & 2 shall calculate the differences of salary and other benefits for which the applicant is entitled as per the recommendations of 6th Pay Commission and 7th Pay Commission in accordance with the relevant Govt.Resolution/Circular issued by the Govt. of Maharashtra and release the payment in favour of the applicant within four months from the date of this order. The non-applicant nos. 1 and 2 are further directed to comply the requirement as per service rules.*
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> *(iii) If the non-applicant nos. 1 & 2 fails to release the payment within the period of four months, they shall be liable to pay interest at rate of 8% per annum on the unpaid amount from the date of this order.*
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> *(iv) If the non-applicant nos. 1 & 2 fails to comply the aforesaid direction, the applicant shall be entitled to take legal action against the non-applicant no.1 and 2 by taking recourse of relevant provisions, according to law.*

3. It is the case of the petitioners that petitioner no.1-Society is managing petitioner no.2-Law College, which is un-aided. Pursuant to an advertisement and interview, the respondent no.1-employee came to be appointed vide appointment order dated 02.01.2014 as an 'Assistant Professor of Law'. His appointment was approved by the University on 18.01.2014.

4. Since the respondent-employee was not paid full salary, with dues, according to the respondent-employee, which are due from January 2014 to September 2020, total amounting to Rs.33,60,825/-, he approached the Grievance Committee of the University, which has passed the order impugned thereby directing the petitioners to release the entire arrears of salary in favour of the respondent-employee.

5. Mr. V.P. Marpakwar, learned counsel appearing for the petitioner-Society, made two fold submissions; (a) The respondent-employee was working and drawing salary from two educational institutions which can be inferred from material placed along with the petition. It is claimed that such material was received only after filing of the present petition and that too, under the Right to Information Act, 2005. In such an eventuality, his contention is, this Court is required to be sensitive of the fact that the respondent-employee cannot draw salary from two different institutions as he being a permanent full-time employee of the petitioners; and (b) Considering the nature of salary or income drawn by the respondent-employee from other institutions, in view of the Government Resolution dated 14.11.2018, the respondent-employee has drawn more salary than the admissible pay-

scale hence he cannot get unjust enrichment out of his dual employment. It is claimed that the said fact is suppressed by the respondent-employee from the Grievance Committee and that being so, the interference is warranted.

6. The learned counsel for the petitioner has urged that the scheme of Section 79 of the Maharashtra Public Universities Act, 2016 contemplates the Grievance Committee to be consisting of seven members, however, the decision of the Grievance Committee is by only three members. As such, there was no sufficient quorum to infer that the decision was rendered by a lawfully constituted committee.

7. As against above, it is brought to our notice that there was no second employment of the respondent-employee. It was on hourly contributory basis and the petitioner-Society has not paid full salary to him but has paid on hourly basis, per lecture. The said employment was obtained by the respondent-employee pursuant to no objection granted by the petitioner-Society and that being so, it is not open for the petitioners to question the said issue and that too, by way of an afterthought in the present petition as the said issue was not canvassed before the Grievance Committee.

As against above, Mr. V.P. Marpakwar, has disputed that the no objection was issued in favour of the respondent-employee in regard to the second honorary appointment of the respondent-employee.

8. While countering the aforesaid submissions, the counsel for the respondents would urge that the respondent no.1 is entitled for the pay-scale as recommended by the University Grants Commission.

According to them, there was no second permanent employment opted by the respondent no.1. It is claimed that it only on the basis of honorary appointment the respondent no.1 has discharged the duties that too after obtaining no objection from the petitioner-Institute. It is claimed that what is paid by the education institution with whom the respondent no.1 has discharged honorary duties was an honorarium and not salary. It is claimed that by way of afterthought, the present petition has been moved questioning the decision of the Grievance Committee.

9. The respondent-University has further claimed that even if the required number of members of the Grievance Committee prescribed under Section 79 of the Act of 2016 is seven, however, in the Direction No.12 of 2022 issued by the respondent-University the same is prescribed as three. It is claimed that the Grievance Committee was justified in passing the order impugned.

10. In rejoinder, the learned counsel for the petitioner has claimed that the petitioner-Society has never issued 'no objection' to the respondent no.1 for getting honourary placement with other institution.

11. We have considered the rival submissions.

12. The fact about the appointment of the respondent-employee on the post of Assistant Professor vide appointment order dated 02.01.2014 is not a fact in dispute. The petitioners have disputed the entitlement of the respondent no.1-employee to the salary as per the UGC guidelines on the grounds; (a) that he is gainfully employed in

some other institution; and (b) he cannot draw salary from two different institutions contrary to the agreement of the employment.

13. The aforesaid plea was never raised by the petitioners before the Grievance Committee even though sufficient opportunity was given to the petitioners.

14. Perhaps, the petitioners have failed to raise the aforesaid plea before the Grievance Committee having regard to the fact that they themselves have given no objection to the respondent-employee for working on honourary basis with other law colleges wherein he has been paid honourarium. Even if the petitioner-Society has disputed such no objection, this Court is not required to go into such disputed question of fact at the behest of the petitioners which are canvassed by way of afterthought, it is for the petitioners to establish the said fact before the appropriate forum. The order passed by the Grievance Committee is holding the field since last more than one and half years.

15. The respondent-employee, through Writ Petition No. 2118 of 2023, has sought implementation of the said order and it is only after such petition was preferred by the respondent-employee, the petitioner-Institution, by way of afterthought, has preferred the present petition so as to evade the financial liability of payment of arrears of salary as per the UGC guidelines.

16. In the aforesaid background, it cannot be said that the appointment of the respondent-employee on the honourary basis will act as an embargo on his right to claim the salary as per the UGC guidelines.

17. That being so, the petition does not call for any interference as no illegality or material irregularity could be noticed. The petition as such fails and it is accordingly dismissed. No costs.

(ABHAY J. MANTRI, J.) **(NITIN W. SAMBRE, J.)**

Andurkar.