IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4147 OF 2024

Bhujgonda Bhau Patil ***...Petitioner***

V/s.

The Chairman /Secretary of
Institution Shree Acharya Ratna
Deshbhushan Shikshan Prasarak
Mandal and Ors. ***...Respondents***

Mr. Ajay Rajenimbalkar *for the Petitioner.*

Mrs. M.S. Srivastava*, AGP for Respondent-State.*

CORAM: SANDEEP V. MARNE, J.
Dated: 13 March 2025.

P.C.:

1) The Petition challenges judgment and order dated 21 December 2023 passed by the Presiding Officer, Savitribai Phule, Pune, Shivaji and Solapur University and College Tribunal (**College Tribunal**), by which the Appeal preferred by the Petitioner is actually allowed. The Tribunal has directed fixation of Petitioner in pay scale of Rs.4500-6300 from academic year 1990-91 with consequential benefits. The Tribunal has also set aside the penalty of recovery of Rs.5/- per month from the pension of the Petitioner. The Tribunal has also directed award of increments to the Petitioner till the date of his

superannuation. The Tribunal has observed that the gratuity amount has already been paid to the Petitioner. Despite practically succeeding before the Tribunal, Petitioner has still chosen to file the present Petition with three grievances. First grievance of the Petitioner is that award of pay scale of 4,500-6300 from academic year 1990-91 is erroneous since the recommendations of the 4th Pay Commission were implemented from 1 January 1986. Petitioner therefore contends that his entitlement in the said pay scale is from 1 January 1986 and not from academic year 1990-91. Second grievance of the Petitioner is that his prayer for leave encashment has not been granted by the Tribunal. Third grievance is about non-payment of interest on pension.

2) I have heard Mr. Rajenimbalkar, the learned counsel appearing for the Petitioner and have considered the submissions canvassed by him. I have also gone through the findings recorded by the College Tribunal in the impugned judgment and order as well as relevant records of the case placed alongwith the Petition.

3) So far as the first grievance of the Petitioner about non-extension of pay scale of 4500-6300 from 1 January 1986 is concerned, the College Tribunal has relied upon Government Resolution (**GR**) dated 27 February 1989 by which the strength of grant-in-aid students was found to have crossed 1000 from the academic year 1990-91. The Tribunal has accordingly directed grant of pay scale of 4500-6300 from the academic year 1990-91.

It must be noted that what the Petitioner was prosecuting was essentially execution applications for execution of earlier orders, which had directed his reinstatement after setting aside termination. In execution proceedings, whether Petitioner could have raised the issue of extension of pay scale from 1 January 1986 is itself questionable. Furthermore, release of payment of dues of salary from 1 January 1986 by extending the pay scale would otherwise be hit by the principle of limitation. Ignoring these aspects, the Tribunal has conducted a factual enquiry as to whether the Petitioner could be awarded the benefit of pay scale and has accordingly awarded the pay scale of 4500-6300 to him from the academic year 1990-91. The Tribunal could have simply rejected the said prayer by holding that the said prayer could not be entertained in execution proceedings. However, considering the old age of the Petitioner, the Tribunal thought it appropriate to consider his prayer and has awarded the same from the academic year 1990-91. It is too optimistic for the Petitioner to expect that this Court would conduct a fresh enquiry about the date from which the pay scale is required to be extended to him. I am therefore not inclined to interfere in the order passed by the Tribunal directing extension of pay scale of 4500-6300 from academic year 1990-91.

4) So far as the second grievance is concerned, the same relates to non-payment of benefit of leave encashment. Mr. Rajenimbalkar would rely upon judgment of Division Bench of this Court in ***Maroti V/s. Chairman Maharashtra Gramin***

Bank and Another[1] which had in turn relied upon judgment of Division Bench of this Court in ***Dattaram Atmaram Sawant Vs. Vidharbha Konkan Gramin Bank***[2]**.** In both the cases, it appears that there were Regulations for payment of leave encashment. In the present case, the Tribunal has held that the scheme for extension of benefit of leave encashment to the Principals of affiliated colleges was introduced by the Government of Maharashtra w.e.f. 29 March 1997, whereas the Petitioner retired from service from 31 May 1996.

5) Mr. Rajenimbalkar would then rely upon relevant provision of the Statutes of Shivaji University Kolhaur, which made a provision for extension of earned leave. In my view, concept of extension of scheme of earned leave is completely different and distinct from the concept of payment of leave encashment. In a given case, the employer may make a scheme for extending the benefit of prescribed days of earned leave in a year to its employees. By availing the benefit of earned leave, the employee can absent himself from duties upto the period for which earned leave is admissible to him/her. As against the concept of availing earned leave, the concept of leave encashment is different and distinct, which allows the employee to accumulate earned leave upto specified period and encash the same at the time of retirement. Therefore, mere extension of scheme for earned leave would not *ipso facto* mean that the scheme of encashment is also implemented by the employer of the Petitioner. As rightly observed by the Tribunal, scheme of

1 2024 SCC OnLine Bom 1882.
2 Writ Petition No.12161 of 2019 decided on 2 May 2024.

leave encashment is implemented for the first time on 29 March 1997 after retirement of the Petitioner.

6) The third grievance of the Petitioner is about non-payment of interest on pension. However, the Tribunal has observed that though regular pension was not paid to the Petitioner, he was being paid provisional pension. Therefore, there is no question of awarding of any interest on the award of pension.

7) Considering the overall conspectus of the case, I do not find any valid reason to interfere in the impugned order passed by the College Tribunal. Petition is devoid of merits, and it is accordingly **dismissed.** It is however clarified that nothing observed in the present order shall come in the way of challenge, if and when set up by management, to order dated 21 December 2023.

[SANDEEP V. MARNE, J.]