

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14102 OF 2024**

1) Smt. Sunita Gorakhnath Deshmukh)
Age: 58 years, Occu. - Service)
R/a : 'Sugam' S.No.27/7, Ganesh Nagar)
Near Ram Mandir, Ambegaon Pathar)
Pune 411 046)
2) Mr. Sharad Laxman Korekar)
Age - 56 years, Occu. - Service)
R/a: At post Pargaon, Tal. Daund, Dist. Pune)Petitioners

V/s.

1) State of Maharashtra through Secretary,)
Higher and Technical Education)
having its Office at Mantralaya Annex,)
Mumbai - 400 032)
2) Director of Higher Education,)
Maharashtra State, having Office at 3, B.J.)
Road, Central Building Pune 411 001)
(Email: director.dhepune@nic.in))
3) Joint Director of Higher Education,)
Pune Region, Pune having Office at 17,)
Dr. Ambedkar Road, Pune Division,)
Pune - 411 001)
(E.mail jdhepune@gmail.com))
4) The Secretary,)
Shri Shivaji Maratha Society)
425, Shukrawar Peth, Pune 411 002)
5) The Principal)
SBB alias Appasaheb Jedhe Arts, Commerce)
and Science College,)
425, Shukrawar Peth, Pune 411 002)Respondents

Mr. Vaibhav Kulkarni a/w. Mr. Yash Agarwal, Mr. Prathamesh
Deshpande and Ms. Disha Rathod for the Petitioners.
Mr. S.H. Kankal, AGP for the State.
Mr. Prathamesh Bhargude for Respondent Nos.4 and 5.

**CORAM : RAVINDRA V. GHUGE &
GAUTAM A. ANKHAD, JJ.
DATE : 10th JULY, 2025**

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.) :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioners have put forth the following prayers :

(a) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950 quashing and setting aside the letter dated 23.08.2024 passed by the Joint Director, Higher Education, Pune & directing the Respondent No.2 & 3 to condone / set aside the objection of "Over-Age" raised against the services of Petitioners and their services be regularized under Maharashtra State Government Grantable status and Respondent No.2 & 3 be directed to fix the salaries of the all the Petitioner No.2 under the 7th Pay Commission as per the G.R. issued by the Dept. of Higher and Technical Education, Mantralaya, Mumbai dt. 07.09.2019 & further direct that the arrears of salary of the Petitioner No.1 as per the 7th Pay Commission be paid.

(b) This Hon'ble Court he directs the Respondent No.2 & 3 to release all the post retiral benefits to the Petitioner No.1.

(c) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ, order or direction in the nature of Mandamus under Article 226 directing the Respondent No.3 to continue the payment of salary grant of the Petitioner No.2 to the Respondent No.4 & 5 at par with other grant-

in-aid colleges which includes the salary grant of the Petitioners as per the 7th Pay Commission.

3. The issue emerging from this Petition is that the State Authorities are not condoning the objection of overage with reference to these two Petitioners, after having condoned gross overage objections of 167 candidates.

4. Petitioner No.1 was overage by 7 years, at the time of her appointment as Assistant Librarian. Petitioner No.2 was overage by 5 years and 11 months, when he was appointed as a Peon (wrongly typed as Asst. Librarian in the Petition memo). Similarly situated employees had approached this Court in **Writ Petition No.2557 of 2021 (Mrs. Satyawati Chandrakant Tamhankar v/s The State and others)**. By a speaking order dated 23rd December, 2021, this Court concluded in paragraph nos.12 to 15, as under :

12. In our view, the principles of law laid down by this Court in the cases of Dilip Krushna Tadakhe & Ors. (supra) and Shri Ashok Haribhau Sawant (supra) apply to the facts of this case. We are respectfully bound by the said judgments. We do not propose to take a different view in the matter.

13. The appointment of the petitioner was already confirmed as far back as 19th December 2006. The petitioner stood retired after about 10 years from the date of confirmation of service of the petitioner as permanent. The State Government however, did not raise the issue of overage at the

stage of initial appointment of the petitioner while confirming the appointment of the petitioner and thus cannot be allowed to raise such issue after retirement to deny the claim for pension.

14. The question whether the petitioner was overage at the time of appointment could have been gone into by the Education Officer at the time of approval of the appointment of the petitioner and not at the time of retirement. The impugned action on the part of the respondents refusing to pay pension though various recommendations made by various authorities directing condonation of overage at the time of appointment is totally illegal, perverse and is contrary to the principles of law laid down by the this Court in the cases of Dilip Krushna Tadakhe & Ors. (supra) and Shri Ashok Haribhau Sawant (supra). We are of the opinion that the petitioner is entitled to payment of pension with interest.

15. We accordingly pass the following order :-

(i) The respondents are directed to release payment of pension and other pensionary benefits payable to the petitioner within four weeks from today with interest @ 10 % p.a. to be after expiry of three months from the date of her superannuation.

(ii) If the petitioner is entitled to pay benefits on the basis of the recommendations made as per the 6th Pay Commission, the same shall also be considered separately. A separate order in that regard shall be passed by the Deputy Director of Education after considering the representation of the petitioner.

(iii) If the petitioner makes a representation within two weeks from today, the same shall be considered within four weeks from the date of receipt of such representation in

accordance with law.

(iv) If any payment is payable as per the 6th Pay Commission to the petitioner, the same shall be paid within two weeks from the date of decision.

(v) If the order is adverse against the petitioner, the petitioner would be at liberty to file appropriate proceedings.

(vi) Writ petition is allowed in aforesaid terms. Rule is made absolute accordingly. No order as to costs.

5. In pursuance to the above directions, the overage aspect of the said Petitioner Mrs. Satyawati Chandrakant Tamhankar (supra), was condoned by this Court drawing a conclusion that when a candidate's proposal is before the State Authorities for grant of approval to his/her appointment, if there is any deficiency or legal impediment in the appointment of such a candidate, the Authorities have to raise such an objection at the appropriate time and in the face of a valid objection, the appointment could be declared as being illegal.

6. In the case before us, both these Petitioners have been working for more than 25 years. Both of them have been granted approval and the Shalarth ID. It is a presumption that the competent Authority has scrutinized the case of these two Petitioners and after

being convinced that there is no illegality or irregularity in their appointment, that the approval and the Shalarth ID were granted.

7. The learned AGP has strenuously opposed this Petition by referring to the affidavit in reply dated 6th March, 2025 filed by the Joint Director of Higher Education, Pune Region, Dr. Ashok Uddhav Ubale. He specifically draw our attention to paragraph no.5 to support the contention that the appointment order of Petitioner No.1 was not available in the documents tendered by Respondent Nos.4 and 5. With regard to the appointment of Petitioner No.2, it is set out in paragraph no.5 that the procedure was not followed in terms of Rule 3 and 4 of the Standard Code, 1984. Again with reference to Petitioner No.1, it is set out in paragraph no.7 that the recruitment process was not conducted strictly as per the Rules as there was no advertisement or constitution of a Selection Committee.

8. It is undisputed that Petitioner No.1 was appointed on 31st July, 2007 as an Assistant Librarian. Petitioner No.2 was appointed on 2nd May, 2003 as a Peon (wrongly typed as “Assistant Librarian” in the Petition). Petitioner No.1 superannuated on 31st May, 2024 and Petitioner No.2 would be superannuating on

31st May, 2029. All these years, no objection was raised by the Department. After having worked for more than 15 years with due approval and a Shalarth ID, it is now too late to raise these objections in the year 2024, and that too after Petitioner no. 1 has superannuated.

9. There is one more aspect to this case. The Government issued a Resolution dated 15th March, 2024 to deal with around 167 employees who suffered the same objection of being overage when they were appointed. Based on such Government Resolution, the State took a decision and condoned the deficiency vide the said Government Resolution. Serial No.85 set out in the Annexure to the Government Resolution pertains to a case of Smt. Jaya Jalindhar Memane, working with Appasaheb Jedhe College (Respondent No.5 herein), which indicates that, the objection that she is overage by 10 years, was condoned. Another case is at Serial No.87 of Smt. Manjiri Narayan Bhoyrekar, working with Pratishthan's College of Arts, Commerce and Science at Baramari, wherein the overage factor was of 9 years, 3 months and 22 days. Yet another case is at Serial No.91 pertaining to Smt. Lata Namdev Bangal, working with Home Science Women's College at Loni, wherein the overage factor was of 7 years, 8 months and 12 days. The over-age

deficiency in all such 167 cases, was condoned.

10. Taking a holistic view of the facts and circumstances recorded above, we conclude that after more than 1 ½ decades of employment/post retirement, it would be unfair for the State to refuse to condone the aspect of overage with regard to both these Petitioners. Moreover, the State as a Model employer, is not expected to take shifting stands with regard to different cases. It needs to follow a singular/uniform pattern and if, for the reasons and logic, that the cases to the extent of 167 candidates are accepted and the overage factor and the irregularities are condoned, we find that in this case, the State ought not to have taken the stand as is reflected from the affidavit in reply, dated 6th March, 2025.

11. To complete the formalities, we direct the Management to submit the appointment order of Petitioner No.1 to Respondent No.3, within 15 days from today.

12. In view of the above, **this Petition is allowed** in terms of prayer clauses (a), (b) and (c), as quoted above.

13. Needless to state, the interest on the delayed payment of the retirement dues including the pension amount, excluding gratuity, shall be computed at the rate of 6% simple interest per annum for the period of delay until the amounts are paid to Petitioner No.1. To the extent of Petitioner No.2, the interest would also be at the same rate for the outstanding salaries (unpaid salaries), if any.

14. To the extent of gratuity to be paid to Petitioner No.1, the rate of interest would be 10% in the light of the notification dated 1st October, 1987 issued by the Ministry of Labour, Government of India. The unpaid retirement benefits/outstanding salaries/Gratuity, shall be paid to the respective Petitioners within a period of 60 days from today.

15. **Rule is made absolute in the above terms.**

16. At the request of the learned Advocate for the Management and since the learned Advocate for the Petitioners shows his magnanimity in suggesting that a lenient view be taken, the order dated 24th April, 2025 issuing bailable warrants to Respondent Nos.4 and 5, shall stand recalled. We record the

statement of Respondent Nos.4 and 5, that they are voluntarily depositing a sum of Rs.7,500/- each, in this Court within a period of three weeks, by way of a donation.

17. By consent of all parties, the said amount shall be equally donated for a public cause, and the Registry of this Court shall transfer the amount to the following entities :

1. In Defense of Animals

Account No.04060100019102

Bank Name :Bank of Baroda

Branch – Chandavarkar Road Branch, Matunga

IFSC : BARB0CHANDA ('0' is a digit not alphabet)

MICR No.: 400012046

2. National Association for the Blind

Account No : 3740000100008551

Bank : Punjab National Bank

Branch : Worli Seaface

IFSC Code : PUNB0374000

(GAUTAM A. ANKHAD, J.)

(RAVINDRA V. GHUGE, J.)