



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

Writ Petition No.2134/2022

1. Ankush Shikshan Sanstha, having its office at CRPF Gate No.3, Hingna Road, Digdoh Hills, Nagpur 440016, through its Secretary.
2. G.H. Raison College of Engineering CRPF Gate No.3, Hingna Road, Digdoh Hills, Nagpur 440016, through its Principal. Petitioners.

- Versus -

1. Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur, through its Registrar, Ravindranath Tagore Marg, Civil Lines, Nagpur.
2. The Grievance Committee constituted under Rashtrasant Tukdoji Maharaj Nagpur University, through its Chairman.
3. Surekha Sanjay Kadu, aged about 62 years, Occ.-Retired, R/o. Plot No.21, Kukade Layout, Wanjari nagar, Nagpur 440027. Respondents.

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2. The Grievance Committee constituted under Rashtrasant Tukdoji Maharaj Nagpur University, through its Chairman.

3. Anil s/o Natthuji Dongare, aged about 62 years,
Occ.-Retired, R/o. Plot No.185, Flat No.G-3,
Ganpati Apartment, Pandey Layout, Khamla,
Nagpur 440025. Respondents.

Mr. N.B. Kalwaghe, Advocate for petitioners in both the petitions.
Mr. Atul Pande, Advocate for respondent nos. 1 and 2.
Mr. Rahil Mirza, Advocate for respondent no.3 (WP No.2134/2022)
Mr. Atul Pande, Advocate for respondent nos. 1 and 2.
Mr. Onkar Deshpande, Advocate for respondent no.3 (WP No.2135/2022)

CORAM : R.M. Joshi, J.

Reserved on : 27-06-2025.

Pronounced on : 04-07-2025.

JUDGMENT

The issue involved in these petitions is as to whether the respondent no.3 ex-employees of the petitioner educational institution are entitled for the monetary benefits of 5th, 6th and 7th Pay Commissions from the date of their entitlement or for the period of three years prior to the filing of the proceeding before the Grievance Committee.

2. Since the facts of the case as well as the substantial issue involved in both the petition is common, by consent of both the sides the petitions are heard and decided by this common judgment.

3. These petitions take exception to the order dated 04-10-2021 passed by Grievance Committee constituted under the Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur in

Grievance Petition Nos.6/2019 and 7/2019, whereby the Committee has granted monetary benefits of 5th and 6th Pay Commissions to the respondent no.3 employees from the date of its approval along with the interest @ 9% per annum.

4. The facts which led to filing of these petitions can be narrated in brief as under :-

Petitioner no.1 is a Trust/Society registered under the Bombay Public Trust Act, 1950 as well as the Societies Registration Act, 1860. Petitioner no.1 is running petitioner no.2 unaided college which imparts education of engineering courses. Respondent no.3 in Writ Petition No.2135/2022 was working on the post of Laboratory Assistant whereas respondent no.3 in Writ Petition No.2134/2022 was appointed as a Clerk. There is no dispute about the fact that after completion of satisfactory probation, they were continued in the service and finally on attaining the age of superannuation there was a cessation of employment.

5. It is the case of the employees that in spite of their regular appointment they were not paid salary as per the Rules and that they were denied the benefits of 5th, 6th and 7th Pay

Commissions though applicable to petitioner no.2. Respondent no.3 made representation to petitioner no.2 for grant of the benefits of Pay Commissions during the period of their employment, however no benefits of Pay Commissions were not extended to them and on retirement they submitted representations dated 18-07-2017 and 18-08-2017. Since, these representations were rejected by petitioner no.2 on 24-08-2017, these employees preferred grievance petition before respondent no.2 i.e. Grievance Redressal Committee constituted under Section 79 of the Maharashtra Public Universities Act, 2016.

6. In the said petition, the employees had sought arrears, wages and gratuity etc to be recovered on the basis of pay scales determined by Pay Commissions. The petitioners appeared before the Committee and opposed the claim. Amongst other contentions, objection was raised with regard to the grievance not being raised by these employees earlier in respect of the pay scale applicable to them. It was also specifically contended that the petition/claim of the employees is barred by limitation. The Committee passed the impugned order granting the entire claim made by the employees and the petitioners were directed to pay

arrears of salary from 01-08-1999 to 31-10-2016. It was also held that the employees are entitled to get difference in gratuity on revision of pay scale. The payment was directed to be made along with interest @ 9% per annum. Petitioners being aggrieved by the said order preferred the present petitions.

7. At the outset, learned Counsel for the petitioners makes a categorical statement that the petitioners do not wish to challenge the entire order of the Committee and the challenge in these petitions is restricted to the issue as to whether the employees are entitled for the benefits/arrears of the Pay Commission for the period of three years before the date of filing of the petitions before the Committee or for the entire period as claimed. It is his submission that even if it is accepted that the claim by itself is not barred by limitation, however, according to him in view of the settled position of law recovery of the wages should be restricted to the period of three years. It is his further submission that in the instant case except for the representation made in the year 2008, there was no positive action on the part of the employee to seek the benefits of Pay Commission and merely because a representation is made, that does not entitle these

employees to recover the arrears from year 1999 as directed by the Committee. By referring to each judgment sought to be relied upon, he submits that it can be seen from law laid down therein, it can be said that the employee would be entitled to receive benefits for the period of three years prior to the date of filing of the proceeding before the Committee and not for the entire period as claimed. Insofar as the grant of interest is concerned, it is his contention that the interest has been granted without recording any reason or justification therefor. He placed reliance on following case laws :-

- (a) **State of Madhya Pradesh and others vs Yogendra Shrivastava, reported in (2010) 12 SCC 538.**
- (b) **Union of India and others vs Tarsem Singh, reported in (2008) 8 SCC 648.**
- (c) **Manjul Shrivastava vs Government of Uttar Pradesh and others, reported in (2008) 8 SCC 652.**
- (d) **Jai Dev Gupta vs State of H.P. and another, reported in (1997)11 SCC 13.**
- (e) **Shiv Dass vs Union of India and others, reported in (2007) 9 SCC 274.**

- (f) Shri Maruti R. Wankhede vs Union of India and another
(Writ Petition No.8470/2019- Bombay High Court).
- (g) Hukumchand s/o Shivram Kumbhar and others vs Kisan
Vidya Prasarak Sanstha and others (Writ Petition
No.4099/2001-BHC-Aurangabad Bench)
- (h) Bhartiya Kamgar Sena and others Vs State of Maharashtra
and others, reported in 2012(3) Mh.L.J. 872.
- (i) Maharashtra Shikshan Samiti, Amravati and another vs State
of Maharashtra and others, reported in 2010(4) Mh.L.J. 365.
- (j) Global Trade Finance Ltd vs Sudarhsan Overseas Ltd and
another, reported in 2010(4) Mh.L.J. 367.
- (k) Keraleeya Samajam and another vs Pratibha Dattatray
Kulkarni (Dead) through LRs and others, (S.L.P. (C)
No.21660-21661/2019)
- (l) Pratibha Dattatray Kulkarni through Lrs and others V
Keraleeya Samajam and others (Writ Petition No.5311/2011 -
Bombay High Court).
- (m) Veena Haresh Sadwani and others vs The
President/Secretary Hyderabad (Sind) National Collegiate

Board and others, (Writ Petition No.9218/2012 and connected matters (Bombay High Court).

(n) Rangnath Vishnu Raskar vs The State of Maharashtra and others, (Petition for Special Leave to Appeal No.8124/2018).

(o) Jabalpur Bus Operators Association and others vs State of M.P. and others, reported in 2003(1) M.P.L.J. 513 (Madhya Pradesh High Court (Special Bench).

(p) Vinayak Dagaji Sarode vs Dhule Municipal Corporation and others, reported in 2019(2) Mh.L.J. 159.

(q) Rutesh and others vs State of Maharashtra, reported in 2023 SCC OnLine Bom. 2011 : (2023) 3 LLJ 606.

8. Learned Counsel for the respondent no.3 employees vehemently resisted the petition on the ground that there is no position of law that in all circumstances the employees would not be entitled to claim the benefits/arrears for the entire period and it must be restricted for three years. It is their submission that the facts of the present case are required to be considered in order to decide the said issue.

9. It is also argued that filing of representation itself indicates that the employees have raised grievance and since the said grievance was not even taken cognizance of by the petitioners, there is no justification to accept the contention of the petitioners.

10. According to them, after representation was made in the year 2008, fresh appointment letters were issued to the employees and the contents of the said letter of appointment indicate that there was a stipulation of terminating their services without reasons. It is argued that the Management has pressurized the employees not to prefer any claim in respect of the benefits of Pay Commissions or else they would be terminated from the service. It is their submission that in the facts of the case, it needs to be held that the employees were prevented from raising the claim and therefore the limitation for the entitlement for three years prior to the filing of the grievance before the Committee would not apply to the present case. To support their submission reliance is placed on the following judgments :-

(a) Secretary, Mahatma Gandhi Mission and another vs Bhartiya Kamgar Sena and others, reported in (2017) 4 SCC 449.

- (b) **Keraleeya Samajam and another vs Pratibha Dattatray Kulkarni (Dead) through Lrs and others, (S.L.P. (C) No.21660-21661/2019).**
- (c) **Rangnath Vishnu Raskar vs The State of Maharashtra and others, (Petition for Special Leave to Appeal No.8124/2018).**
- (d) **D.Y. Patil College of Engineering and others vs All India Council for Technical Education and others, reported in 2019(3) SLR 721.**
- (e) **Barun Kumar s/o Manmohan Choudary and others vs The State of Maharashtra and others (WP No. 5134/2018 and connected matters).**

11. Learned Counsel for respondent no.3 in Writ Petition No.2134/2022 has placed reliance on the following judgment :

- (a) **Dr. Suryaprakash Dhaneria vs The State of Maharashtra and others, (Writ Petition No.5889/2006).**

12. At the outset it needs to mention that there is no challenge to the entitlement of the employees of the difference of wages on the basis of Pay Commissions recommendations.

Similarly, the claim made by the employees is found to be maintainable held to be within limitation is accepted by petitioner. Thus only question sought to be canvassed by the counsel for both sides and remains for the decision is about entitlement of actual benefits/ arrears for three years or for the entire period claimed.

13. Article 7 of the Limitation Act prescribes period of three years to be the limitation for wages in case of any other person as there is a provision in Article 6 about the recovery of wages by a seaman. Thus it can be said that the limitation for filing of the proceedings for recovery of the wages is three years. The petition/ claim filed by the employees before the Committee was held to be within limitation for the reason that for every month whenever the wages were not paid, cause of action continued for them to file the proceeding. This would entitle the employees to substantiate their contention about the proceeding by itself being within a period of limitation. However, question arises as to whether the petitioners would be entitled to receive the actual benefits if the proceeding is filed after lapse of considerable/inordinate time.

14. It is a case of the employees that they made representation for extending the benefits of Pay Commission, however their representation was not taken cognizance of and nor it was rejected too. Thus, it is claimed that when the representation was rejected in the year 2017, cause of action arose for the employees to file proceeding before the Grievance Committee. It is also contended that the Management of the petitioners prevented the employees from making such claim and therefore it cannot be said that there was any voluntary act on their part in not initiating the proceeding while they were in employment.

15. At this stage it should be relevant to take note of case law referred by both sides.

In **State of Madhya Pradesh and others** (supra)

Hon'ble Supreme Court has held in paragraph 18, that -

"18. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of

application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. [See: M.R. Gupta vs. Union of India - 1995 (5) SCC 628, and Union of India vs. Tarsem Singh 2008 (8) SCC 648]

Conclusion :

19. The appeals are allowed in part as follows:

- (i) We uphold the decision of the Tribunal, affirmed by the High Court that respondents are entitled to 25% of their pay, as NPA.*
- (ii) The respondents will be entitled to NPA @ "25% of pay" only upto 20.5.2003. Thereafter, the amended Rules will apply.*
- (iii) In so far as arrears, the respondents are entitled to recover the difference in NPA only in regard to the salary which accrued due during the three years prior to the date of filing of the original applications by the respondents before the Tribunal and not from the date of their appointments.*
- (iv) As a consequence, if the appellants, in pursuance of the orders of the Tribunal/High Court, had paid the difference in NPA, for any period beyond three years before the date of the respective original applications, they will be at liberty to recover the same from the respective respondents in 24 monthly instalments."*

In **Union of India and others vs Tarsem Singh**

(supra), while dealing with issue of grant of relief of arrears in case of belated service related claim it is held that-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."

16. In case of Jai Dev Gupta (supra) and Shiv Dass (supra) while dealing with the contention of filing of claim belatedly but with representations to the department it is held that it would not be permissible to make claim belatedly on ground of making representation.

17. Division Bench of this Court in case of Maruti Wankhede (supra) has summarized propositions of law as under -

"12. It would be proper for us, at this stage, to summarize the propositions of law deducible from the authorities cited at the bar and those considered therein for the purpose of consideration of its application to the present case. They are:

(i) When an order is passed by a Court/Tribunal to consider or deal with a representation of an individual raising a stale or a dead claim and such claim is rejected even on merits on an impression that failure to do so may amount to disobedience of the order of the

Court/Tribunal, such an order does not revive the stale or dead claim, nor amount to some kind of "acknowledgment of a jural relationship" to give rise to a fresh cause of action. [C. Jacob (supra)];

(ii) Disposal of proceedings by seemingly innocuous orders directing consideration of representation though result in quick 24-WP-8470-2019 or easy disposal of cases in overburdened adjudicatory institutions but such orders do more disservice than service to the cause of justice. [P. Venkatesh (supra)];

(iii) Denial of pay fixation of an employee, while he is in service, not in accordance with the rules resulting in payment of a quantum of salary not computed in accordance with the rules can give rise to assertion of a continuing wrong against such act giving rise to the cause of action each time he is paid less than his entitlement and so long as such employee is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of such wrong computation. [M.R. Gupta (supra)];

(iv) Even if a delayed claim relating to disability pension is found to be of substance on merits and succeeds, the arrears should be restricted to three years prior to filing of the writ petition. [Tarsem Singh (supra)];

(v) When the issue relates to fixation of salary or payment of any allowances, the challenge is not barred by limitation or doctrine of laches, as the denial of benefit occurs every month when the salary/allowances are paid thereby giving rise to a fresh cause of action based on continuing wrong. [Yogendra Shrivastava (supra)]; and

(vi) If a petition is filed beyond a reasonable period, say three years, normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about 24-WP-8470-2019 three years. [Shiv Dass Vs. Union of India, reported in (2007) 9 SCC 274]."

Similar is view of Division Bench of this Court in case of Hukumchand Kumbhar (supra) and Bhartiya Kamgar Sena (supra).

18. On the other hand, in case of Barun Kumar Choudhary (Writ Petition No.5134/2018 and other petitions), Division Bench of this Court has observed in paragraph 82 as under -

"82. On the legal issue regarding restricting the monetary claim in writ jurisdiction to three years prior to filing the petition, though the parties have cited various decisions, we intend to examine the decisions which are close to the facts of the case. In Tarsem Singh (supra), the Hon'ble Supreme Court made a distinction between the grant of claims, which affects others and which claims do not affect the rights of third party such as difference between grant of permissions and arrears for the past period. In the case before the Hon'ble Supreme Court the delay was of 16 years where the respondent was discharged from Indian Army in the year 1983 and approached the High Court in the year 1999. In Shiv Dass (supra), the Hon'ble Supreme Court took note of inordinate

delay of the Petitioner before the Court and emphasized even in the case of recurring cause of action such as payment of pension may not be the ground to overlook the delay, however, the Hon'ble Supreme Court clarified that it would depend on the fact of each case and in that context held that normally the reasonable period would be of three years. The case of Kulbir Singh (supra), was arose from a civil suit filed and, therefore, entirely different considerations would apply. It is not necessary to refer all the cases as it is not in dispute that normally the Court would restrict the monetary claim to three years preceding filing of cases even in the case of continuous wrong if there is a gross and unexplained delay. However, this rule will have to be applied after examining the facts of each case. The decisions relied upon by the Employees, where facts and circumstances are identical to the case at hand, a view has been taken not to restrict the payment of arrears to three years preceding. We will examine those decisions as they would be most relevant."

19. It is thus held that entitlement for the period beyond three years would depend upon fact of each case and normally the reasonable period would be three years. It is further recorded therein that Management therein by recognizing entitlement of non teaching staff had paid their dues by a compromise without raising the argument of three years. A note was taken by the Court of series of representations made from year 2011 to 2017

and hence it is held that it cannot be said that the employees had given up their right. In case of Dr. Suryaprakash Dhaneria (supra) also continuous representations were made by employee.

20. The principle which could be culled down from the judgments supra are that -

- (i) A claim of wages/difference is tenable even if filed beyond three years.
- (ii) In case such claim is made belatedly ordinarily Court would restrict the same for period of three years.
- (iii) Mere making of representation, would not entitle the claim for period beyond three years, if the claim is made belatedly.
- (iv) There is no fixed rule of restricting or not the benefits for three years only on/or it would depend upon facts of each case.

Keeping in mind the position of law laid down in the binding precedents and above principles, the facts of present case are appreciated.

21. Admittedly, employees except making one representation in year 2008, have not made any attempt to seek

the right in respect of Pay Commissions. What is sought to be contended that they were pressurized by Management in not raising the claim and circumstances on record as claimed by the employees support this plea. To support this submission reference is sought to be made to the letter of appointment issued by petitioner no.2 to the employee wherein there is a stipulation of termination of services of the employees without assigning reason with other conditions. Private employers often imposes such condition in the letter of appointment, however the position of law is quiet settled to say that such stipulation in the letter of appointment is irrelevant and that the services of an employee cannot be terminated same and except by following due process of law. Perusal of the letter issued to Mr. A.N. Dongare, indicates that pursuant to his application and subsequent interview he came to be appointed. Pertinently no action in this regard was taken by the employees for the entire long period of their employment and as such now it is not open for the employees to claim that due to the issuance of said letter of appointment, they were prevented from raising the claim.

22. Once it is claimed that the petitioners were prevented from doing so, by pressurizing or otherwise actual prohibition must be established. When the employees themselves claim that the representation was made in the year 2008, in spite of this there was no adverse/drastring action against the employee by petitioner no.2 and therefore in the facts of the case it cannot be said that the employees were actually prohibited from raising the claim. If such unsubstantiated stand is allowed to be accepted then in every case it would be sufficient for an employee to simply state that he was prohibited from raising the claim and therefore he is entitled for the entire claim and the same cannot be restricted for the period of three years. There cannot be any presumption that the Management would prevent the employee from taking action as provided by law and such allegation must be proved by cogent material.

23. Insofar as the case of the employees about the representation being made is concerned, undeniably except for one representation in year 2008, there is not even follow up of the same leave apart initiating any proceedings. As held by Hon'ble Supreme Court mere making of representation would

not extend the period of limitation and entitles an employee to claim monetary benefits for period beyond three years. In case of Barun Kumar Choudhary (supra), the Management had paid dues to non teaching staff without raising embargo of three years and further in the said case there was series of representations and pending over a period of 6 years and hence it was held that employees had not given up their rights. In contrast, in the present case after representation of year 2008 there is absolutely nothing till year 2017 i.e till superannuation of employees. As such employees cannot get benefit of the said judgment.

24. Though there cannot be any straight jacket formula to say that an employee would be entitled for the monetary benefits for a restricted period of three years before the date of filing of the proceeding, unless it is shown that the employee apart from mere making a representation had taken some positive steps to assert his right in accordance with law, which is absent in this case. The claim has been made for period from 01-08-1999 to 31-10-2016, on 15-04-2019. Thus the first claim relates back to 20 years and last of such claim after 2 and half years of superannuation. The claim therefore made for period beyond

three years could be said to be stale or dead claim and certainly beyond reasonable period.

25. The employees however have made representation in 2017 i.e after attaining age of superannuation, which came to be rejected by Management as it is thereafter cause of action accrued a fresh to them to file proceedings before Grievance Committee and thus he would be entitled to seek claim for a period of three years before representation of year 2017. As a result of above discussion, it is held that the employees herein are entitled for the arrears for the period of three years before the date of their superannuation.

26. Insofar as the interest awarded by the Committee @ 9% per annum on the said amount is concerned, once it is held that the employees are entitled to receive the said amount, withholding of the same by the petitioners is not only unjust, but also unmerited enrichment for Management. Since the said amount has been used by the petitioners which run educational institution, the interest awarded by the Committee @ 9% per annum is just and proper and therefore does not deserve any interference.

27. In view of the above, both the petitions stand partly allowed in following terms :

- (a) The impugned orders passed by the Grievance Committee stand confirmed except the direction of payment of arrears of wages.
- (b) It is held that the employees are entitled for the arrears of wages for the period of three years prior to the date of their superannuation alongwith interest @ 9% per annum.

(R.M. Joshi, J.)