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

Civil Application (CAW) No. 1688 of 2023
in
Writ Petition No. 3287 of 2021

[Shri. Dr. Vasif Tausifuddin Ahmed and ors. **..vs..** The State of Maharashtra, Through its Secretary, Technical Education Department and ors.]

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mrs. Gauri Venkatraman, Advocate for the applicants/petitioners
Mr. N. S. Rao, AGP for respondents 1 and 2
Mr. N. P. Lambat, Advocate for respondent 3
Mr. J. B. Kasat, Advocate for respondent 4
Mr. F. T. Mirza, Advocate for respondents 5 and 6

CORAM : ROHIT B. DEO AND
M. W. CHANDWANI, JJ.

DATED : 10-7-2023

The petitioners are working as Professors, Associate Professors and Assistant Professors on the establishment of the sixth respondent – Babasaheb Naik College of Engineering, Pusad, District Yavatmal which is managed by the fifth respondent – Janta Shikshan Prasarak mandal, Pusad, District Yavatmal.

2. Writ Petition 3287/2021 in which the civil application is preferred initially sought direction that the unpaid salaries of the petitioners for the period of 35 months from September, 2018 be released along with the benefits of the recommendations of the Sixth and Seventh Pay Commissions. It appears

that as abundant caution, the petition is amended and prayer (a1) is incorporated which reads thus :

*"**a1)** by an appropriate Writ, Order and / or direction to direct the Respondent No. 5 and 6 to extend the benefits of pay fixation and other allowances as per 7th pay commission recommendations and further to fix the pay of the petitioners in the suitable pay-band (pay-scales) in terms of the 7th Pay commission recommendations (7th CPC) pay scales as adopted and implemented by all the regulating bodies i.e., Respondent No. 1 to 4 (State Government, AICTE, and University) with effect from 01/01/2016."*

3. This civil application is preferred seeking direction to the fifth and sixth respondent to release the outstanding dues of the petitioners towards the arrears of the unpaid salaries for the period November, 2018 onwards as per document 6 annexed to the civil application. Prayer (b) seeks direction that the salary of the petitioners as was paid prior to the passing of the orders dated 30-3-2022 and 1-4-2022 be restored.

4. Perusal of the chart - document 6 reveals that from November, 2018, the petitioners received Basic

Pay ranging from Rs. 69,240/- to Rs. 77,000/- with dearness allowance at the rate of 107%. This position is not disputed by the fifth and sixth respondents.

5. It is further not in dispute that the petitioners did not receive any salary from November, 2018 till March, 2022. It is in view of the interim order dated 1-4-2022 that some succor was provided to the petitioners and presumably other similarly situated employees.

6. We extract the order dated 1-4-2022.

> *"Heard learned Counsel for the parties.*
>
> *2) On 30 March 2022, following order was passed :*
>
> > *"Learned Counsel for Respondent Nos.5 and 6 states that reply on merits is yet not filed.*
> >
> > *2. The petition is earlier ordered to be taken up for disposal. While the petition awaits disposal, the learned Counsel for Petitioners states that an ad-interim issue as regards monthly payment to Petitioners and teachers working in the Respondent Institution should be made for the purpose of their survival. The learned Counsel for Petitioners states that keeping aside the*

claim for back-wages, 6th and 7th Pay Commission and Dearness Allowance for the present, an ad-interim arrangement at least for regular salary should be made.

3. The learned Counsel for Respondent management states that Respondent management is making efforts to pay some amount per month and the quantum thereof would be placed on record on the
next date.

4. At the request of learned Counsel for Respondent Nos.5 and 6 stand over to 1 April 2022."

3) Shri Mirza, learned Counsel for the Respondent Management has tendered an affidavit where it is stated that the Respondent Management will pay for the month of April 2022 basic salary to the Petitioners as per the chart annexed as Document No.2 to the affidavit. t is further stated that however, in future, if number of students drop, this amount may have to be altered.

4) We had passed an order on 30 March 2022 because the petition was to be listed for hearing and the pleadings of the parties were not complete. Considering this position, we direct that replies on behalf of the Respondents be filed within a period of two weeks from today. Rejoinder, if any, be filed within a week thereafter. The Respondent Management will pay to its employees as per the chart annexed as Document No.2 to the affidavit 50% of the amount within one week *and remaining 50% within two weeks from today. We make it clear that this is an ad hoc arrangement to ensure that because the petition is being adjourned for disposal, the Teachers should not be without any means of survival. Since we expect the petition to be considered on the next date or soon thereafter, this order is for the month of April 2022 and the aspect as regards payment for May 2022 will be considered on the next date.*

5) Place the petition on board for final disposal on 25 April 2022."

7. The next relevant order is dated 2-5-2022 which reads thus :

"An interim arrangement has been made, though for the month of April, 2022 as reflected in the order dated 01.04.2022, which now, shall be applicable for the months of May and June, 2022 as the issue of payment of regular salary has to be decided in the context of the demands made by the petitioners, which would be possible only upon final hearing of this petition.

2. The reply filed by the Management is taken on record.

3. The learned counsel for the petitioners submits that the respondents-Management should be directed to pay to the petitioners regular salary which includes, as per their own admission given by the Management, dearness allowance, house rent allowance, conveyance and children education

> *allowance. In fact, after these averments having been made in the reply submitted by the Management i.e. respondent nos. 5 and 6 on 13.11.2021, there has been an interim arrangement arrived at before this Court, which has been formulated by this Court in the order dated 01.04.2022 and so, at this stage, it cannot be directed by this Court to disturb the interim arrangement as made and the issue of regular salary can only be decided after hearing both the sides at length.*
>
> *Place this petition on 20.06.2022."*

8. Learned counsel for the petitioners submitted that order dated 2-5-2022 is rendered in the context of the prayer that the petitioners be paid regular salary, and at any rate, the admitted salary. We find that the coordinate Bench was persuaded not to modify the interim arrangement and observed that the issue of regular salary can only be decided after hearing both the sides at length.

9. The learned counsel for the fifth and sixth respondents Mr. Mirza fairly does not dispute that from 1-4-2022, the petitioners are paid only the basic salary and are not extended the benefit of dearness allowance etc. Mr. Mirza would have twin

submissions to canvass in support of his defence of the stand of the management. The first submission is that the payment is made as per interim orders passed and in the order dated 2-5-2022, the coordinate Bench observed that the issue of regular salary can be decided only after in-depth hearing and second submission is that the management does not have the funds to pay the basic salary and the dearness allowance. Mr. Mirza would submit that substantial amount is receivable by the management from the State Government and if the withheld amount is released, the employees can be paid their dues.

10. We may consider the latter submission first. Well entrenched position of law is that the employees cannot be denied salaries on the specious plea that the management has no funds. If any authority is required in support of said proposition, we may only refer to the observations of the Apex Court in paragraph 97 in the case of ***Secretary, Mahatma Gandhi Mission and another Vs. Bhartiya***

Kamgar Sena and others [(2017) 4 SCC 449] which read thus :

> *"97. Even otherwise, if the appellants are obliged under law, as we have already come to the conclusion that they are in fact obliged, it is for the appellants to work out the remedies and find out the ways and means to meet the financial liability arising out of the obligation to pay the revised pay scales."*

11. We are further not persuaded to consider the submission that since the management has not received certain amount from the State Government, the refusal to pay the dues is justified.

12. In so far as the first submission is concerned, the circumstances in which the coordinate Bench made the observation that regular salary can be considered only after in-depth hearing, are blurred. We note that the petitioners did not ask for salary in accordance with the recommendations of the Sixth or Seventh Pay Commissions. The expression "regular salary" used by the petitioners was only to connote the salary which the management did not dispute, and as a fact did pay to the petitioners till

October, 2018. We find that the entitlement of the petitioners to receive the salary which the management did pay till October, 2018 is not even an issue which we are required to determine in the petition much less “after in-depth hearing”. The entitlement of the petitioners and similarly situated faculty members to pay the basic with 107% dearness allowance is acknowledged, admitted and recognized by the management which has, as a fact, paid such salary to the petitioners till October, 2018.

13. The limited issue which falls for determination in the petition, and which issue may require in-depth hearing is whether the benefits of the Sixth and Seventh Pay Commission recommendations can be claimed by the petitioners. But then, the petitioners are not seeking such benefits at an interim stage and a fair statement is made by learned counsel Mrs. Venkatraman that entitlement to benefits of the Pay Commission recommendations may be decided when the petition is finally heard.

14. We do not find any justification why the petitioners must be deprived of at least the admitted salary. By admitted salary, we are referring to the basic pay and 107% dearness allowance, which admittedly the management paid to the petitioners and the other faculty members till October, 2018. Depriving the petitioner of the admitted salary, which aspect is not in dispute and not an issue which entails adjudication, would be akin to rubbing salt in the wound. We say so since the outcome of the petition is not going to have any bearing whatsoever on the entitlement of the petitioners to receive, and the liability of the management to pay, the admitted salary which the petitioners were receiving till October, 2018.

15. In this view of the matter, we dispose of the civil application with the following directions.

(i) We direct the 5th and 6th respondents to pay the petitioners the salary (basic pay and 107% dearness allowance) which was being paid to the petitioners till October, 2018 from August, 2023.

(ii) In so far as the arrears of the salary (basic plus 107% dearness allowance) from November, 2018 till July, 2023 is concerned, we direct the management to place on record an affidavit within the next four weeks laying down a timeline within which the management will be in a position to clear the arrears. If the affidavit of the management satisfies the employees, an order in terms of the affidavit shall be passed. If the offer or proposal of the management is not acceptable to the employees, we shall consider the said aspect at a later stage.

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Stand over to 22-8-2023.

(M. W. Chandwani, J.) **(Rohit B. Deo, J.)**

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