(2022) 11 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 2683, 2684 Of 2021

Dr. Dinesh Kumar Omkarnath Agarwal And Others APPELLANT

Vs

State Of Maharashtra And Others RESPONDENT

Date of Decision : 17-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 162
All India Council for Technical Education Act, 1987 — Section 2(g), 2(h)
Maharashtra Public Universities Act, 2016 — Section 2(61), 8(3), 10, 12(7), 12(8), 71(20), 79, 108
University Grants Commission Act, 1956 — Section 2(f), 2(i), 3

Citation : (2022) 11 BOM CK 0056

Hon'ble Judges : Rohit B. Deo, J;Anil L. Pansare,J

Bench : Division Bench

Advocate : M.R. Chandurkar, N.S. Rao, N.P. Lambat, Dhiraj Bhoyar, R.B.Puranik

Final Decision : Partly Allowed

Judgement

Anil L. Pansare, J

1. In both the Petitions, Rule. Rule made returnable forthwith. Heard finally with consent of parties.

2. The petitioners in both the petitions were working as Professors in Respondent No.7-Bapurao Deshmukh College of Engineering, Sevagram, Wardha. They are not superannuated. The College is being run by Respondent No.6-Yeshwant Rural Education Society, Wardha.

3. The respondent No.1 is the State of Maharashtra through its Secretary, Technical Education; Mumbai; Respondent No.2 is the Director of Technical Education, Mumbai; Respondent No.3 is the Joint Director of Technical Education, Nagpur; Respondent No.4 is the All India Council for Technical Education, (AICTE); Respondent No.5 is the Rashtrasant Tukdoji Maharaj Nagpur University, Through its Registrar, Respondent No.6 is the Yeshwant Rural Education Society; through its Chairman; whereas the Respondent No.7 is Bapurao Deshmukh

College of Engineering, Wardha, run by the respondent no.6-Society.

4. We will hereinafter refer to the petitioners as 'teachers'; Bapurao Deshmukh College of Engineering as the 'College'; Yeshwant Rural Education Society, represented by Chairman as the 'Society'; the respondents representing All India Council for Technical Education as 'AICTE'; the respondent representing the State of Maharashtra as the 'State' and the respondent representing Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur as the 'University'.

5. The teachers are seeking directions against the College and the Management to pay arrears of difference of salary as per the recommendations of VI Central Pay Commission ('CPC' in short) with effect from 01.01.2006 till 31.12.2015 along with interest at the rate of 12 per cent per annum. They are seeking further directions against the Management and the College to pay arrears of difference of salary as per the recommendations of VII CPC from 01.01.2016 till the date of resignation with interest at the rate of 12 per cent per annum. The teachers are further seeking directions to the College and the Management to pay the balance gratuity amount forthwith with interest on period of delay in making payment of arrears/ gratuity as calculated by them. They are further seeking directions against the AICTE and the University to ensure the compliance of above reliefs. They are also seeking directions to the University to disaffiliate the College if compliance as aforesaid, is not made. Lastly, the teachers are seeking directions to the AICTE and the University to derecognize the College, on failure of compliance of the of the prayers made by them.

6. We have heard Mrs.M.R.Chandurkar, learned Advocate for the petitioners, Mr.N.S. Rao, learned Assistant Government Pleader for respondent Nos. 1 to 3; Mr. N.P. Lambat, learned Advocate for respondent no. 4, S/ Shri Dhiraj Bhoyar and S.G. Joshi, learned counsel for respondent no.5 and Mr. R.B. Puranik, learned counsel for respondent Nos. 6 and 7.

7. Mrs.Chandurkar, learned Advocate for the teachers submits that VI CPC was implemented with effect from 01.01.2006 till 31.12.2016. Thereafter VII CPC has been implemented w.e.f. 01.10.2016 and the teachers though are entitled, are being deprived of the revised pay as recommended by VI and VII CPC. The teachers have been appointed prior to 01.01.2006. On the point of payment of gratuity, she has referred to Clause (6) of Government Resolution (GR) dated 01.03.2019 which states that the retirement gratuity shall be calculated on the revised basic pay as mentioned in paragraph 4 of the GR. She further submits that the Management and College has admitted the claim of gratuity but have tendered excuse of financial crunch for not releasing the same. She has also drawn our attention to the notification issued by the AICTE, the Government Resolutions of the State, the office order issued by the University so also the provisions of the Maharashtra Public Universities Act, 2016 ("Act of 2016" in short) and the All India Council for Technical Education Act, 1987 ("Act of 1987" in short) and the rulings of this Court as well as the Hon'ble Supreme Court, to contend that the State the AICTE, the University, the Management and the

College have utterly failed in discharging their obligations which compelled the teachers to knock the doors of this Court.

8. In response, S/Shri Dhiraj Bhoyar/S.G.Joshi, learned counsel for the University submits that the grievance as sought to be agitated by the teachers before this Court squarely falls within the ambit of jurisdiction exercisable by the Grievance Committee, as constituted u/s 79 of the Act of 2016. According to him, there are provisions in the Act of 2016 to approach the Grievance Committee for the grievance raised in the petitions. The order passed by the Grievance Committee is appealable under the Act of 2016. There are provisions in the Act of 2016 by which penal action can be taken against the management and the College on their failure to comply with the orders passed by the Grievance Committee or the Appellate Court; so also, for contravention of the provisions of the Act of 2016. Disciplinary action against the affiliated College or recognised institution or Management thereof can be taken by the University in the event of violation of any of the conditions of affiliation /recognition, as prescribed under section 108 of the Act of 2016. Thus, it is argued that the University can take action against the Management and the College if found to be acting in violation of the conditions of affiliation/ recognition which, inter alia, includes implementation of the resolutions issued by the AICTE, so also the directions issued by the University and the State.

9. S/Shri Bhoyar/ Joshi, further submits that the University through Vice-Chancellor, has issued Direction No. 24 of 2020 for implementation of the revised pay-scales of the teachers in Universities and affiliated colleges as per the VII CPC and UGC regulations. The order refers to the GR dated 08.03.2019. The acceptance of Vice-chancellor of the aforesaid resolution is in exercise of his powers under section 12(7) of the Act of 2016. The order refers to Section 71(20) of the Act of 2016, to state that a statute is required to be made for implementing the Maharashtra GR dated 08.03.2019 prescribing the revised pay scale and service conditions of the teachers. It further records that the statute making process is time consuming and since it is found necessary and expedient to implement the aforesaid GR of Maharashtra Government with immediate effect, the direction in exercise of powers of Vice chancellor u/s 12 (8) of the Act of 2016 have been issued thereby directing all the concerned to implement the provisions of the GR dated 08.03.2019.

10. Mr. N.S. Rao, learned AGP for the State submitted that the issue involved is between the Management and its teachers. The State by passing Government Resolution (GR) dated 21.05.1983 has made a provision for opening of new technical and technological Colleges on 'no grant-in-aid' pattern. The College under question has received approval on no-grant-in-aid basis, whereas the administrative and financial matters like appointment of staff and payment of pay and allowances, service matters of staff etc., are under the purview of the Management and the Colleges and are not directly controlled by the State. The State, therefore, cannot interfere in the administrative/ financial matters of the

Management and the College. The responsibility to implement the pay-scale and to pay regular salary and to pay the arrears of salary is with the Management and the College. It is then submitted that AICTE being the apex body to regularize such technical institutions, is the proper authority to take necessary action against the Colleges for not implementing its regulations and guidelines.

11. Mr. N.P. Lambat, learned counsel for the AICTE has referred to AICTE (Redressal of Grievance of Faculty/Staff Members) Regulations, 2021. According to him, the grievance put forth by the teachers ought to be resolved by the Grievance Redressal Committee (in short "GRC") for faculty/staff members constituted by each institution. The regulation would also provide for appeal against the decision of the GRC which would lie before the concerned authority.

The Director of Technical Education, Grievance Redressal Cell established by the University can also look into the matter; so also the Director of Technical Education. According to him, the AICTE issues notifications on pay scales, qualification and service conditions from time to time in the wake of recommendations of the CPC. The last of such notification was issued on 01.03.2019 which pertains to the VII CPC. The copy has already been sent to all the States, including the State of Maharashtra, and were urged to implement the pay scales. According to him, it is for the concerned State Government to implement the revised pay-scales. Lastly, it is submitted that the AICTE only brings out regulations on pay-scales, service conditions etc. The appointment, termination is the subject-matter between the management and the State. The AICTE has not received any grievance /representation from the teachers and, therefore, no action has been taken.

12. Mr.R.B.Puranik, learned counsel for the Management and the College would submit that adequate alternate and efficacious remedy is available to the teachers for the grievance raised under section 79 of the Act of 2016. The Management does not dispute that the recommendations of the VI CPC were brought into force w.e.f. 01.01.2006. The Management has implemented the said recommendations w.e.f. 01.03.2010. The teachers have not raised any grievance of non-implementing the VI CPC w.e.f. 01.01.2006 for all these years and have slept over their alleged rights for last 14 years. They have raised the grievance for the first time through the present petitions. The relief to that extent, according to him, suffers from delay and laches and, therefore, cannot be granted, being time-barred. On the point of recommendations of the VII CPC, Mr. Puranik, would contend that the College under question is a private unaided Engineering College and that the VII CPC has not been made applicable to such Colleges. He would then contend that even the Government of Maharashtra has not issued any notification, order or resolution making recommendations of VII CPC applicable to unaided Engineering Colleges. He has referred to clause (1) of the GR dated 11.09.2019 to contend that it is made applicable to all Government aided and non-aided Institutions etc. The omission of private unaided Colleges and Institutions is significant and is a deliberate and conscious omission as the

State Government did not want the recommendations of VII CPC to be implemented by private unaided Colleges in the State. He has also referred to the provisions of the GR and AICTE notification, to contend that it is not made applicable to the unaided Colleges which we will refer to a little later. Broadly, the argument is that the GR dated 11.09.2019 and the AICTE Regulations are not applicable to private unaided Engineering Colleges.

13. So far as payment of gratuity is concerned, Mr. Puranik admits that the Management could not pay the complete amount of gratuity to the teachers due to the adverse financial condition. He, however, contends that the provisions of the Payment of Gratuity Act, 1972 ('Act of 1972' in short) are applicable to the College. The Hon'ble Supreme Court has held that the Gratuity Act is a complete Code in itself and that the said Act provides a forum for recovery of amount of gratuity payable to the employees like the petitioners. Hence, according to him, the claim of gratuity made by the teachers in the present petitions is not maintainable. In other words, the contention of the Management and College on the point of payment of gratuity is that alternate and efficacious remedy is available to the teachers and, therefore, their claim of gratuity is not maintainable.

14. Before we comment upon the stand taken by the State, University, AICTE and the Management, we may note the relevant facts. There is no dispute that the teachers were appointed by the Management in accordance with the Rules and also received approval from the State. The exception to it, is the petitioner No.2 Pankaj Narayan Patil in W.P. No. 2683/2021. Since his appointment is/was not approved, he cannot be said to be a teacher as defined under section 2 (61) of the Act of 2016, which recognizes only approved professors, assistant professors, etc. We will, therefore, not consider his grievance. The reference to the 'teachers' henceforth would include the petitioners in both the petitions, except the petitioner named above.

15. Thus, the teachers were appointed and their services were regularized in accordance with law. The Management and the College has implemented the VI CPC with effect from 01.03.2010. Thus, there is no dispute on the point of implementation of VI CPC except the dispute to the extent of date of implementation of the VI CPC which, according to the teachers, ought to have been implemented w.e.f. 01.01.2006.

16. The AICTE has brought into force the regulations titled, 'AICTE Regulations on Pay Scales, Service Conditions and Minimum Qualifications for the Appointment of Teachers and Other Academic Staff such as, Library, Physical Education and Training & Placement Personnel in Technical Institutions and Measures for the maintenance of Standards in Technical Education – (Degree) Regulations, 2019,' (hereinafter referred to as "Regulations of 2019"). Clause 1.2 thereof defines categories of institutions to whom the regulations apply. It provides that these regulations shall apply to all the degree level "technical institutions and Universities including deemed to be universities imparting

technical education and such other courses/ programs approved by AICTE and are as notified by the Council from time to time. Section 2 (h) of the Act of 1987 defines 'technical institution' so as to mean an institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions. Section 2 (g) of the Act of 1987 defines "technical education" to mean programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programmes or areas the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare. Section 2 (i) defines "University" to mean a University defined under clause (f) of Section 2 of the University Grants Commission Act, 1956 and includes an institution deemed to be a University under section 3 of the Act.

17. There is no dispute that the College run by the Management is undertaking courses of Engineering Technology and, therefore, is a "technical institution" as defined u/s. 2(h) of the Act of 1987. As such, it is not open to the Management and the College to contend that the Regulations of 2019 are not applicable to the private unaided Colleges since it is not disputed that the College (technical Institution) is approved by the AICTE.

18. Further, the Government of Maharashtra by passing resolution dated 08.03.2019 decided to implement and revise pay scales and terms and conditions of service in terms of the VII CPC and UGC Regulations, 2018. Clause (1) of the GR provides as under :

"1.0 COVERAGE:

The revised pay scales and other measures to the improvement of standards in Higher Education are applicable to all categories of full time teachers/ Librarians/ Director of Physical Education employed by the non-Agricultural Universities, National Law Universities, Deemed to be Universities, non-Government aided/ unaided Colleges, in the faculties of Arts, Science,Commerce, Humanities, law, Education, Social Sciences, Languages, Library Science, Physical Education, Journalism and Mass Communications, Music, Performing Arts, Visual Arts Other traditional Indian Art forms like Sculpture, etc. Drama and Yoga etc. in the State, Government Institutes and colleges.

However, unaided colleges/unaided Institutes/ unaided deemed to be Universities/ private Universities/ Open Universities will not be entitled for any financial assistance from the State Government and similarly in case of aided institutes the Government assistance will only be limited to the posts approved by the Government from time to time.

The revised scales are not applicable to teachers who retired on or before 31st December 2015 and who worked on re-employment on that date, including those whose period of re-employment was extended after that date.

The revised scales are not applicable to the Accompanists, Coaches, Tutors and Demonstrators."

19. Mr. Puranik, learned Advocate for the Management and the College submits that the above clause does not include engineering colleges or for that purpose, technical institutions. He contends that unaided Colleges/ institutes are not entitled for any financial assistance from the State Government and, therefore, there is a mandate that the State Government has no intention to apply the recommendations of the VII CPC to private unaided engineering colleges in the State.

20. We do not find any substance in the aforesaid submissions for more than one reasons. The Government of Maharashtra vide its subsequent GR dated 11.09.2019 considered the question of implementing the scheme of revision of pay scales in terms of the notification dated 01.03.2019 of AICTE and vide Clause 1.1 under the head of "Applicability" incorporated following provision:

"1.1 The revised pay scales together with conditions mentioned in this Government Resolution shall apply to teachers and other academic staff in Dr.Babasaheb Ambedkar Technological University, Lonere, Institute of Chemical Technology, Government Deemed University, Matunga Mumbai. All Government and Non-Government Aided Institutes, University affiliated and Autonomous Institutes conducting Professional Degree courses such as Engineering and Technology, Pharmacy, Architecture and such other courses/ programmes under the preview of AICTE."

It is, thus, clear that the revised pay scale has been made applicable to the teachers of the University affiliated Institutes conducting professional degree courses, such as engineering and technology etc. There is no dispute that the College under question run by the management is conducting professional degree courses of engineering and that the college is affiliated to the University and that the petitioners are the 'teacher' as defined u/s 2 (61) of the Act of 2016. The scheme of revision of pay scales is, therefore, applicable to teachers of the college under question. Even otherwise, the question of implementing the scheme of revision of pay scales as per AICTE Regulations coupled with the State Government's decision to implement the revised pay scales to the teachers of unaided private institutions is no more res integra.

21. Mrs.Chandurkar, learned counsel for the petitioners/ teachers has relied upon the judgment of the Hon'ble Supreme Court in the case of Secretary, Mahatma Gandhi Mission and another vs. Bhartiya Kamgar Sena, reported in (2017) vol.4 SCC 449. The Government of Maharashtra had issued GR dated 12.08.2009 taking a decision to implement the revised pay to the teachers in terms of VI CPC recommendations. While dealing with the applicability of the revised pay to the teaching staff of various affiliated colleges, the views were expressed in the following terms:-

" 70. We are now left only with the GR dated 12.08.2009 which laid down the policy of the Government of Maharashtra to adopt the pay scales stipulated by the Government of India in its Scheme dated 31.12.2008 insofar as the teaching staff of the various affiliated colleges are concerned and the Rules framed by the Government of Maharashtra dated 7.10.2009 in exercise of the power under section 8(3) insofar as the non-teaching staff are concerned.

71. While the GR dated 12.08.2009 is specific in its declaration that the elaborate Rules contained therein dealing with the pay scales of the various cadres of the teaching staff the educational institutions mentioned therein, it does not make any distinction between aided and unaided colleges. However, the GR does not purport to be one made in exercise of the power under section 8(3) of the Universities Act. It is agreed on all hands at the Bar that the expression "Government Resolution" in the Maharashtra Administrative jargon means a decision taken either in exercise of the authority of the State under Article 162 of the Constitution of India or in exercise of the authority under some statutory provision. No doubt the GR does not refer to the source which authorises the exercise of the power for revising the pay scales of the teaching staff of the various educational institutions mentioned therein. The mere absence of the recital of the source of power in our opinion cannot determine the legal status of the instrument or deprive the instrument of its efficacy.

72. The difference between the authority of the State flowing from Article 162 of the Constitution or Section 8(3) of the Maharashtra Universities Act is twofold. Firstly, the statutory authority under section 8(3) could be abrogated anytime by the legislature while the constitutional authority under Article 162 cannot be abrogated by the State Legislature. Secondly, the procedural requirements for the exercise of the power vary depending upon the nature of the source of the power, but the existence of power itself cannot be doubted .

73. In our opinion, the GR dated 12.08.2009 can be safely construed to be one made in exercise of the power under Section 8(3) of the universities Act conferring a legal right on the teaching staff of the affiliated colleges irrespective of the fact whether they are aided or not.

74. The Colleges run by the appellants are admittedly colleges affiliated to the universities functioning under the Act. Therefore, their teaching staff would be entitled to the revised pay scales in terms of the GR dated 12.08.2009."

22. By applying the law laid down as above, it can be construed that the GR dated 08.03.2019 and 11.09.2019 were made in exercise of the powers under Section 8(3) of the Act of 2016 conferring a legal right on the teaching staff of the affiliated Colleges.

The College under question is admittedly College affiliated to the University. Therefore, the teachers will be entitled to the revised pay scales in terms of the aforesaid GRs.

23. Further, the Hon'ble Supreme Court in the case of P.A. Inamdar & others vs.

State of Maharashtra & others : (2005) vol.6 SCC 537, while dealing with the question of implementing the revised pay scales to the teachers of a minority institution, observed that the professional educational institutions constitute different classes from undergraduate education and the merit and excellence assumes special significance in the case of professional courses and that this aspect needs to be kept in mind. It is then observed that if there are no meritorious excellent teachers, the students selected even on the basis of merit may not become excellent professionals and that if the service conditions of such institutions are not similar to the teachers of other institutions, the quality teachers will not get attracted to such institutions and that will definitely affect the standard of education in such institution.

24. The ruling highlights the significance of uniform service conditions of the teachers working in the technical institutions. The standard of education is relatable to the service conditions of the teachers and, therefore, teachers of unaided Colleges cannot be left out of such service conditions.

25. Significantly, the object of the Act of 1987 is to promote qualitative improvement of technical education in relation to the planned qualitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. Section 23 of the Act of 1987 deals with powers of AICTE to make regulations and in terms thereof various regulations like the regulations pertaining to implementation of revised pay of V, VI and VII CPC have been made. These regulations include amongst others, the pay scales and career advancement scheme for the teachers of technical institutions and Universities. If the revised pay as provided under the regulations is not paid to the teachers like the present petitioners, the object of establishment of AICTE itself will be defeated. Further, the GR dated 08.03.2019 under Clause 25 (i) under the head of 'Procedure to be adopted by the Universities and Director of Higher Education' provides as under :-

"(i) As per the provisions of the Maharashtra University Act, 2016, Universities are primarily responsible for ensuring equitable and quality education in their jurisdiction by adopting all possible measures especially proper selection and appointment of lecturers etc. In view of above, Universities shall fix the revised pay of all the teachers and equivalent cadres under their jurisdiction as per this scheme and further certify that

"All the teachers have been lawfully appointed,

"The pay of each teacher has been properly fixed as per this scheme and

"In case it is found that any excess payment has been made on account of incorrect fixation and unlawful appointees the same shall be recovered by the Government from the grants (including salary grants) payable to the Universities and Colleges"

(emphasis now)

26. Considering the object of the Act of 1987 and the Act of 2016 coupled with the provisions made in the AICTE notification dated 01.03.1989 and the GR dated 08.03.2019 read with GR dated 11.09.2019 and then guided by the judgment of the Hon'ble Supreme Court in the cases of Mahatma Gandhi Mission (supra), coupled with the significance of implementing uniform service conditions, as envisaged in the case of P.A. Inamdar (supra), we are of the considered view that the revised pay scale as recommended by VII CPC will be applicable to the teachers.

27. We may not be wrong if we say that the respondents though are acquainted with aforesaid status, have failed to implement the same on one or the other pretext. Firstly, the Management and the College have failed to implement the scheme under the pretext of non-applicability of the AICTE notification and Government Resolutions, knowing fully well the provisions made therein and the settled position of the law. Secondly, the State, the AICTE and the University have failed to ensure implementation of the scheme through the Management and the College, though well equipped with a plethora of provisions.

28. The reply filed by the University indicates that there is a mechanism to get the scheme implemented but have failed to do so and only a statement is made that action can be taken. The AICTE has simply referred the grievance to the Management for redressal through GRC, the in-built mechanism. The State has kept its hands away on the premise that the grievance is between the Management and the teachers and that the State is not responsible for its redressal. We are pained to note the irresponsible stand taken by these authorities.

29. The respondent-authorities ought to have taken a proactive role in ensuring that such scheme is implemented well within time, so that the teachers are not required to approach this Court for redressal of their fundamental grievance viz. the salary. The failure is despite having in place the provisions to deal with the Management and Colleges who refuse to implement such schemes.

30. The Act of 1987 provides u/s 10, the functions of the Council which includes amongst others, withholding or discontinuance of grant in respect of courses/ programmes to such technical institutions which failed to comply with the directions given by the Council within a stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of the Council. The AICTE Regulations of 2016 provides, under Regulation 10, for the action in the case of violation of regulations. Regulation 10.3 provides as under :

"10.3 Non-fulfillment of faculty student, ratio, not adhering to pay scales and/or qualifications prescribed for teaching staff:

Institutions not adhering to pay scales and/ or qualifications prescribed for faculty for more than 12 months not maintaining prescribed faculty student ratio shall be liable to any one or more of the following punitive actions by the Council.

* Suspension of approval for NRI and supernumerary seats, if any, for one Academic year.

*Reduction in sanctioned intake

*No admission in respective Course(s) for one Academic year

*Withdrawal of approval in the respective Course(s) *Withdrawal of approval of the Institution

The Council may also initiate penal action for not disbursing the salary of the faculty and staff members regularly.”

(emphasis now)

31. Thus, the institutions which are not adhering to the pay scales prescribed for faculty for more than 12 months, the Council is empowered to take punitive action including withdrawal of the approval of the institution. In the present case, the AICTE instead of invoking the relevant provision has taken a stand that it has not received any grievance for taking necessary action. Similar provisions exist in the Act of 2016 but for the will of the University, the provisions are on papers only.

32. It is true that the teachers have not approached the AICTE or the University for redressal of their grievance. Firstly, they ought not to, as the management, the State, the AICTE and the University were duty bound to get the scheme implemented and secondly, the moment the teachers approached this Court, the AICTE and the University, having come to know of the grievance of the teachers, ought to have taken necessary steps to redress their grievance, than to file reply shirking responsibilities.

33. On the point of delay and laches, Mr. Puranik, learned Advocate for the Management and the College, has drawn our attention to the judgment in the case of Bhartiya Kamgar Sena vs. State of Maharashtra (2012) vol.3 MhL.J. 872 wherein the coordinate bench of this Court at Aurangabad (Coram: Naresh H.Patil and T.V. Nalawade, JJ), declined the prayer sought by the petitioners therein for the payment of arrears in respect of revised pay scale in terms of V CPC, on the ground that the revised pay was made applicable with effect from 01.01.1997 and the petition was filed in the year 2010. The Bench took the view that the teachers came very late for the said relief and due to laches such a relief cannot be granted. The Court took such a view in the light of what it observed in the earlier paragraphs viz. the private unaided College has to make its own arrangement to implement the revised pay and for making such own arrangement, they are entitled to revise fees structure in view of the needs of the Institutions. The coordinate bench found that it is too late (in the year 2010) to revise the fees of the students who passed out when the V CPC was implemented i.e. during the period from 01.01.1996 to the year 2000. The Court accordingly held that it would not be proper to allow the Management to recover the fees from the future students of the institution in respect of arrears of salary

of the petitioners therein.

34. However, in Writ Petition No. 5134/2018 with connected petitions, while dealing with similar issue, the coordinate Bench of this Court, of which one of us was a Member (Anil L. Pansare, J.), has taken a different view by rejecting the argument of the Management that the arrears of salary should be calculated only for three years prior to filing of the petition. The said view was taken because the employees therein were continuously agitating for their dues through representations and that therefore the three years' embargo to claim arrears was held to be not applicable.

35. Thus, the reason for taking the aforesaid view was that the petitioners therein were pursuing their demand by way of representations. In other words, the petitioners therein did not sleep over their rights. The learned counsel for petitioners/ teachers failed to show any document by which it could be said that the teachers in the present case have pursued their demand during the period from 01.01.2006 to 01.03.2010 or immediately thereafter or even after the judgment of the Hon'ble Supreme Court in the case of Mahatma Gandhi Mission (supra) which came to be passed in the year 2017. In that sense, we find substance in the submissions of the Management that, for the absence of any justification for belated claim, the teachers are not entitled for arrears of pay in terms of VI CPC for the period from 01.01.2006 till 01.03.2010, by which date the management implemented the recommendation of VI CPC.

36. So far as alternate remedy is concerned, we do not find it appropriate, at this stage, to relegate the matter to the Grievance Committee though the remedy was available to the teachers and though they ought to have approached the Grievance Committee prior to approaching this Court. However, having travelled so far where multiple interim orders were passed by this Court, we would entertain the present petitions as a special case. Similarly, the teachers need not be relegated to the competent authority under the Act of 1972 for their grievance of not releasing the payment of gratuity as the Management and the College have admitted the claim but put forth the difficulty in releasing the same due to adverse financial position. The Principal of the College has even sent an email dated 11.01.2021 (Annexure 17) to the petitioner no.1 in W.P. No.2683/2021 along with other petitioners, in response to the grievance of non-release of gratuity, admitting that the amount of gratuity is pending due to weak financial condition of the Institute and that assurance has been given that the gratuity amount shall be released after improving the situation. Thus, having admitted the claim in clear terms, we do not find it appropriate to relegate the matters to the competent authority under the Act of 1972.

37. Even otherwise, the grievance of salary and gratuity so made by the teachers, according to us, ought not to have arisen at the first instance and ought not to have reached this Court. There is a serious failure on the part of the respondents in accepting and implementing the recommendations of VII CPC. We find the approach of the Management and the college as unjustified. We can only

hope that in future this court will not be required to deal with such a fundamental issue of salary of teachers who otherwise are one of the sources of building nation by imparting quality education to the youngsters and pupils in professional courses, like Engineering and Technology, Architecture, Town Planning, Management, Pharmacy etc. Accordingly, we reject the contentions of the Management and College that the teachers should be relegated to the Grievance Committee in terms of the provisions of the Act of 2016.

38. On the point of delay and laches, however, we do find merit in the submissions of the Management/College that belated attempt on the part of the teachers to seek implementation of revised pay in terms of VI CPC from 01.01.2006 to 01.03.2010 is not permissible. The teachers having not pursued the remedy for a substantial period of about 14 years, they are not entitled for the said claim/ demand.

39. Mr. Puranik has also drawn our attention to the directions dated 16.10.2020, issued by the Vice-Chancellor directing the affiliated colleges to implement the VII CPC. According to Mr. Puranik these directions were valid for a period of six months only and since the six months have been completed, the directions stand lapsed.

40. Though, Mr. Puranik is correct in contending that the directions have been lapsed in terms of Section 12 (8) of the Act of 2016; the fact, however, remains that the University found it necessary to implement the provisions of the GR dated 08.03.2019 and, therefore, without waiting for the statute to come into effect and considering the necessity of timely implementation of the revised pay, the Vice Chancellor has issued such directions which only indicate the importance of expeditious implementation of revised pay. The Management and College, therefore, are well advised to look at their own shortcomings instead of finding loopholes to avoid implementation of the scheme.

41. To sum up, the AICTE vide notification dated 01.03.2019 made a regulation of 2019 by which the revised pay scale as stipulated in the regulations in terms of VII CPC recommendation has been applied to the teachers in Technical Institutions and the revised pays scale was made effective from 01.01.2016. The Government of Maharashtra vide GR dated 08.03.2019 read with GR dated 11.09.2019 has decided to implement the revision of pay scales of the teachers appointed in the affiliated Colleges. The provisions of Regulation of 2019 and the GR dated 03.03.2019 and 22.09.2019 are applicable to the University affiliated technical institutes which includes the present College. Even otherwise the Hon’ble Apex Court in the Mahatma Gandhi Mission (supra) has held that such regulations and the decision of the State Government would be applicable and revised pay scales will be applicable to the University affiliated technical institutes, viz. private unaided colleges. The Vice Chancellor, in exercise of his powers conferred under section 12 (7) of the Act of 2016 has accepted the decision of the Government of Maharashtra made through GR dated 08.03.2019 on revision of pay scale of teachers in non-Agricultural Universities, National Law

Universities, affiliated Colleges, Government Colleges, Institutes as per the VII CPC and UGC regulations. The Vice Chancellor accordingly issued direction No.24/2020 dated 16.10.2020 for implementation of the provisions made in GR, the significance of which is elucidated in the earlier paragraphs. There is thus no merit in the contentions of the management and the College that the aforesaid regulations and GR are not applicable to it.

41. The teachers were thus, wrongfully deprived of their legitimate entitlement and, therefore, we are inclined to grant them relief including the relief of interest which according to us, would be reasonable, if it is granted at the rate of 6 per cent per annum from the date of their entitlement till realization of the arrears of salary.

42. Accordingly, we proceed to pass the following order :

(i) Both the Writ Petitions are partly allowed.

(ii) The petitioners, except the petitioner no.2 in W.P. No.2683/2021, are entitled for the revised pay scales with other benefits including payment of gratuity, in terms of recommendations of VI (but w.e.f. 01.03.2010) and VII Central Pay Commissions (w.e.f. 01.01.2016).

(iii) The respondent no.2-Director of the Technical Education, Mumbai, shall compute the amount which is due and payable, in terms of the recommendations of the VI and VII Central Pay Commissions, as aforesaid, in accordance with AICTE regulations and the GR issued by the Government of Maharashtra. The computation of the amount shall be made within a period of four weeks from the date of receipt of this order.

(iv) The respondent nos. 6 and 7 shall release the payment in favour of the petitioners, within a period of four months thereafter.

(v) The respondent nos.1 to 5 shall ensure that the amount so computed shall be released within the stipulated period.

(vi) The respondent nos. 1 to 5 shall take appropriate action against the respondent nos. 6 to 7 in accordance with the provisions of the Act of 1987 and the Act of 2016 including action of withdrawal/derecognition of the Technical Institution and /or withdrawal of affiliation, as the case may be if the amount as computed is not released, as directed.

(vii) The petitioner no.2 in WP No.2683/2021 is not entitled for the reliefs because he is not 'teacher' as defined under section 2 (61) of the Act of 2016. However, he is at liberty to approach the appropriate forum for redressal of his grievance.

Rule made absolute in the aforesaid terms, with no order as to costs.

