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(2023) 11 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 3753 Of 2023

Jayram Baburao More — APPELLANT

Vs

State Of Maharashtra And Others — RESPONDENT

Date of Decision : 21-11-2023

Acts Referred:
Constitution Of India, 1950 — Article 226

Citation : (2023) 11 BOM CK 0008

Hon'ble Judges : G. S. Kulkarni, J;Jitendra Jain, J

Bench : Division Bench

Advocate : Vaibhav Kulkarni, P. J. Gavhane, Dr. Rajendra Anbhule

Final Decision : Disposed Of

Judgement

G.S. Kulkarni, J

1. This proceeding under Article 226 of the Constitution brings before the Court the struggle of the petitioner, who was working as a Hamal to avail pension, having retired from the service of Savitribai Phule Pune University. The petitioner has rendered meritorious service as noted by us in our previous orders, despite which on untenable/technical grounds, for a period of two years from the date of his superannuation, (i.e., from 31 May, 2021) he was not paid pension. It is in these circumstances, contending that despite all necessary documents for payment of pension were supplied by the University to the Office of respondent nos. 1 to 3, the petitioner was being deprived of his legitimate entitlement to receive pension, the petitioner felt constrained to approach this Court by the present proceedings.

2. From the beginning of the present proceedings, we were wondering as to whether any person who superannuates after a long unblemished service should at all suffer such plight, after having rendered long service (in the present case of about 30 years) and be deprived of the basic entitlement of receiving pension, being the very source of livelihood. To our mind, such state of affairs is totally

unconscionable, when it is settled about forty years back in the decision of the Supreme Court in D. S. Nakara Vs. Union of India AIR 1983 SC 130 that the antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court was held to be swept under the carpet, by the decision of the Constitution Bench in Deoki Nandan Prasad Vs. State of Bihar AIR 1971 SC 1409. In such decision the Supreme Court had authoritatively ruled that pension is a right and payment of it does not depend on the discretion of the Government and would be governed by the rules. It was held that a Government servant falling within those rules was entitled to claim pension. It was also held that the grant of pension did not depend upon anyone's discretion. It was also held that only for the purpose of quantifying the amount having regard to the service and other allied matters, that it was necessary for the authority to pass an order to that effect, but the right to receive pension would flow to the employee not because of any such order but by virtue of the rules. The Supreme Court further held that the pension is neither a bounty nor a matter of grace depending on the sweet will of the employer. It was held that it was a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer for an assurance that in their old age they would not be left in lurch. It was held that it was not an incentive but a reward for past service.

3. From the large number of cases coming to this Court it appears that the above words interpreting the Constitutional provisions are more forgotten than applied and implemented in its true spirit.

4. We had heard this Writ Petition on the first occasion on 9 November, 2023 when considering the plea of the petitioner and being quite pained at the approach of respondent nos. 1 to 3, we had passed the following order:

"1. We have heard Mr. Vaibhav Kulkarni, learned counsel for the Petitioner, Ms. P. J. Gavhane, learned AGP for the Respondent (State), Dr. Rajendra Anbhule for Respondent No.4 and Mr. Keshav Tupe, Joint Director of Higher Education, Pune joined online.

2. ` Mr. Tupe is very fair to tell us that immediately the necessary steps can be taken to process the pension proposal of the Petitioner, who has retired as a Coolie from his long service with the University of Pune-Respondent No.4, stated to be service of almost 30 years. We have with the assistance of the learned counsel for the parties, we have perused the records. We find that the appointment of the Petitioner itself although was on a daily wages basis was of the year 1983. He was continued in service thereafter and regularly appointed. Also approval was granted even by the Education Department. He has drawn salary on a regular pay scale as awarded to him. It appears that he also received one promotion before he could retire on 31st May 2021. There are also documents to show that his performance he was exemplary, he was also granted certain meddles for his dedicated service with the Pune University.

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3. It appears from the record that the proposal for the Petitioner's pension on his retirement was forwarded by the Pune University to the office of the Joint Director and also to the Principal Secretary, Higher and Technical Education Department, with all supporting documents. It is seen from the letter of Pune University dated 14th December 2021, which itself was a detailed letter/proposal along with all the documents. However, responding to such letter, Dr. Kirankumar Bondar, Joint Director at the relevant time addressed a letter dated 21st February 2022 and thereafter, letter dated 16th June 2022 which in our opinion appears to be quite an insensitive and an arbitrary approach on the part of the said officer. From the said communication, as addressed to the Pune University, it appears that there was total non-application of mind, in regard to the tenure of the service as rendered by the Petitioner and his entitlement, being a permanent employee of the University to be awarded the pension, on his retirement. The Petitioner has suffered for 3 years as his pension proposal was entangled into enders communication between Dr. Kirankumar Bondar and repeated satisfaction of Dr. Bondar's queries by the University. In the previous order passed by us, we have expressed our pain and anguish on such approach of the said officer.

4. Learned counsel for the Petitioner has also drawn our attention to similar situation which had reached this Court in the case of Dilip Krushna Tadakhe & Ors. Vs. State of Maharashtra & Ors. in Writ Petition No.6168 of 2022 decided on 17th December 2013, in which the Court considering the Government Resolutions and similar situation as observed that the Government Resolutions were applicable and if there were any issues in regard to the employee being over age. The present case appears to be quite clear as already the age issue was condoned as the Government itself had recognised the entitlement of the Petitioner to continue in the service of the University and for which the University was awarded the appropriate grants. In the said decision as noted by us above, the Court in the circumstances had made the following observations in paragraph nos.2 and 3.

"2. On the earlier occasion, we called upon the Joint Director, Higher Education, Pune Region, Pune to take a decision as to how the petitioners are disentitled to pensionary benefits. The Joint Director, Higher Education has now placed on record a communication and in which she fairly states that the petitioner No.1 and petitioner No.2 have been appointed by the Pune University, although they did not qualify in terms of the requirement of age. Yet, this is a peculiar case, when petitioner No.1 belongs to a Scheduled Caste (namely Hindu Matang) and petitioner No.2 is a Hindu Teli. There was a specific Government Resolution which empowered condoning the requirement of age and in cases of over age candidates, who have put in otherwise meritorious and blemish-less services. That requirement can be dispensed with and pensionary benefits can be released. The Joint Director has taken a decision in terms of the Government Resolution dated 18th March, 2011 and has forwarded the proposal dated 7th June, 2011 and 17th June, 2011. Thus both candidates have been held to be entitled to draw pension after the deficiency in their initial appointment is

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condoned.

3. We do not see how such issues can be raised at this belated stage. The petitioners have crossed the retirement age and are requesting that pensionary benefits on par with other employees he made admissible to them and amounts be released. When the proposal was forwarded by the University, the names of both petitioners were included. In these circumstances, we do not see the State raising such frivolous and technical objections in case of these petitioners. However, now that the Joint Director has taken corrective steps, we do not wish to issue any direction and particularly for payment of costs individually by the Director. In the peculiar facts and circumstances and by warning that in the event such issues are raised in cases of Class-IV employees and at belated stage, the Court will pass orders imposing cost and personally to be paid by higher officials, that we direct that within a period of two weeks from today, the University shall forward a fresh proposal in addition to one already forwarded and with particular reference to the two petitioners. On receipt of the said proposal, the respondent Nos.1 and 2 shall take all necessary steps and release the pensionary benefits within a period of four weeks from the date of receipt of the said proposal."

5. Similar view was taken in another case in Shri Ashok Haribhau Sawant Vs. State of Maharashtra & Ors. in Writ Petition No.8830 of 2015. We are infact considering a similar situation in the present case. In the said decision, the Court had granted the relief, namely the pension was ordered to be released along with interest at the rate of 10%, the following observations as made by the Court:-

"4. It has been pointed out that, this Court has dealt with the identical issues in the following matters-

a) Order dated 10th January 2012 in Writ Petition No.6523 of 2011 in the matter of Madhukar Shankarrao Pawar & Ors. Vs. State of Maharashtra & Ors..

b) Order dated 17th December 2013 in Writ Petition No.6168 of 2012 in the matter of Dilip Krushna Tadakhe & Ors. Vs. State of Maharashtra & Ors.

5. We, therefore, find that the issue of raising an objection as regards the qualifying age at the time of recruitment, being raised at the fag end of the service of the Petitioner, has been dealt with by this Court and the said objection has been rejected. The observations of this Court in paragraph Nos. 2 and 3 in the order dated 17th December 2013 in the matter of Dilip Krushna Tadakhe (Supra), puts this issue to rest.

6. Considering the above, this Petition is allowed in terms of prayer clause (a). Insofar as the interest on the pension is concerned, we are granting 10% interest per annum on the pension amount, which should have been paid to the Petitioner within three months from the date of his superannuation i.e. on 31 May 2011. The said interest shall, therefore, be calculated w.e.f. 1st September 2011."

6. On a batch of petitions, Writ Petition No.5068 of 2018, Sulbha Shankar Kurne

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Vs. The State of Maharashtra through its Secretary & Ors., another coordinate bench of this Court had passed similar orders, the relevant observations in that regard are required to be noted, which reads thus:-

"3 On behalf of the Respondent, the grant of pension to the Petitioners is opposed on the ground that the Petitioners were over age at the time of their initial appointment and therefore, their appointment falls foul of the Government Resolution dated 28.01.1986 which fixed the upper age limit insofar as the nonteaching posts are concerned. Insofar as the issue as to whether the fact of the Petitioners being over age at the time of their initial appointment would disentitle them to pension after putting in long years of service with the University is concerned, the same is no more resintegra and is covered by various judgments/orders passed by the Division Benches of this Court. The same can be gainfully summarized herein below :

i) Order dated 10th January 2012 in Writ Petition No.6523 of 2011 in the matter of Madhukar Shankarrao Pawar & Ors. Vs. State of Maharashtra & Ors.

ii) Order dated 17th December 2013 in Writ Petition No.6168 of 2012 in the matter of Dilip Krushna Tadakhe & Ors. Vs. State of Maharashtra & Ors.

iii) Order dated 2 nd May 2017 in Writ Petition No.8830 of 2015 in the matter of Ashok Haribhau Sawant Vs. State of Maharashtra & Ors.

4 Hence, the objection as regards the Petitioners being over age at the time of recruitment, has been rejected by the Division Benches of this Court, therefore, the said issue has been put to rest. The orders passed by the Division Benches in the above Writ Petitions are in respect of the employees who are similarly situated as Petitioners as can be seen from the proposal sent by the University to the Director of Higher Education wherein the names of all the Petitioners are appearing along with the Petitioner in Writ Petition No.8830 of 2015 i.e. Ashok Haribhau Sawant.

5 In that view of the matter, the above Writ Petitions are required to be allowed and are accordingly allowed in terms of prayer clause (a). Since the Petitioners have been wrongly denied the benefit of pension they would be entitled to the arrears of pension with interest @ 6% p.a. from the date of their retirement till payment. We direct that the payment to be made on or before 31.12.2018 failing which the rate of interest would increase to @ 10% p.a."

7. Again in the case of Kunda Prakash Ranade Vs. State of Maharashtra Through Its Secretary Higher and Technical Edu. Dept. & Ors. in Writ Petition 2482 of 2020 alongwith a batch of petitions, a Division Bench of this Court deprecated such conduct of the department in denying the pension to the Petitioners therein, who were denied pension on the ground that the Petitioner were over age. The Court granted relief to the Petitioner by directing that the pension be paid and also the arrears of pension be granted by 12% interest per annum within a time bound schedule. The relief observations read thus:

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"1. ….

2. This issue has been considered by various Division benches of our Court in a number of cases, including the cases of Dilip Krushna Tadakhe & Ors. V/s State of Maharashtra & Ors. (decided on 17.12.2013), Shri Ashok Haribhau Sawant Vs. State of Maharashtra & Ors. (decided on 02.05.2017), Shamsundar @ Sham Laxman Madwal Vs. State of Maharashtra & Ors. (decided on 12.03.2018) and Sulbha Shankar Kurne Vs. The State of Maharashtra through its Secretary & Ors. (decided on 04.09.2018). It has been held in all these cases that objections regarding over age at the time of appointment could not be sustained for denying pension to the respective employees.

3. The learned AGP on behalf of the Respondent-State is unable to point out any distinguishing feature in the facts of the present case from the facts of these other cases.

4. Accordingly, Rule is made absolute and the petitions are allowed in terms of prayer clause 'c' in each of the petitions.

5. Since the Petitioners' pensions have been delayed due to no fault of theirs and despite law stated by this Court in a number of cases, the Respondents are directed to pay the Petitioners' dues with interest at the rate of 8% p.a. on delayed payment of pension from the date of the respective due dates and until payment. We direct the Respondent-State to pass appropriate orders and release the pensionary dues as expeditiously as possible and in any event, within a period of six weeks from today. In case the Petitioners' dues are not released within six weeks from today, the dues shall carry interest at the rate of 12 % p.a. from expiry of six weeks and until payment."

8. The case before us is not different from what has been noted by us hereinabove, infact in our opinion, this case is a gross case and completely infected by a totally callus approach of Dr. Kirankumar Bondar and who in our opinion has unwarrantedly created a situation of raising queries which were totally irrelevant as also disregarded the Government Resolutions as also the decisions of this Court on similar issues. Such issues were covered by existing Government Policies. We accordingly have no manner of doubt that the Petitioner needs to be granted reliefs.

9. However, the present Joint Director-Mr. Keshav Tupe is before us as noted above who has taken a fair stand. He submits that he has recently taken over the charge and realising the facts of the case, he would consider all the relevant material and make an appropriate proposal to the State Government which is required to be sanctioned by the Secretary Education.

10. Though the Court closes for Diwali vacation tomorrow and we are under tremendous pressure for large number of urgent orders to be made available to the parties, we have still considered to pass such a detailed order considering the fact that here is the petitioner before us who is retired after 30 years of service

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as Hamal / Coolie. He is a senior citizen, he is suffering every day for the pension not being paid to him. In these circumstances, certainly our conscience would not permit to delay passing any order on a situation which is before us. As all others, the petitioner also needs to be happy, having devoted his entire life in the service in the University, by receiving his legitimate entitlement of pension and more particularly considering the ensuing festival season.

11. We accordingly adjourn the present proceedings for tomorrow i.e. 10th November 2023 to be taken at 4.30 p.m.

12. In the meantime, the Joint Director is directed to immediately present the proposal which is already in his office for approval of the Secretary of the Education Department. The Secretary of the Education Department is directed to grant approval to such proposal.

13. Considering the observations as made by us above, we hope that the concerned officer will show utmost sensitivity to these matters, when it concerns pension and more particularly, the settled principles of law in that regard as laid down in catena judgments of the Supreme Court.

14. In this context, we may refer the decision of the Supreme Court in the case of Dr. Uma Agarwal Vs. State of U.P. & Anr. (1999) 3 SCC 438, wherein, the Supreme Court has expected of utmost sensitivity of such issues and the facts which need to be taken by the concerned officers. In Paragraph 2 of the Supreme Court's case reads as under:-

"Now-a-days, several writ petitions are being filed in this Court and various High Courts seeking relief for disbursement of retiral benefits, because of inordinate delays in payment of these benefits. As Krishna Iyer, J. stated in State of Mysore Vs. C. R. Sheshadri & Ors. [SCC P.312, Para 8],

"a retired government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the superannuated public servant - not unusual in government", it is becoming necessary to issue directions, in several cases, for early payment of these dues. In yet another case in State of Kerala & Ors. Vs. M. Padmanabhan Nair [1985 (1) SCC 429], this Court had occasion to point out (at SCC p.430, para 2) that usually "the delay occurs by reason of non-production of the L.P.C (last pay certificate) and the N.L.C.(no liability certificate) from the concerned departments" but both the documents pertain to matters, records whereof would be with the government departments. It was observed that inasmuch as the date of retirement of every government servant was very much known in advance, it was difficult to appreciate why the process of collecting the requisite information and issuance of the abovesaid two documents should not be completed well before the date of retirement so that the payment of gratuity amount could be made on the date of retirement or on the following day and the pension, at the expiry of the following month. This Court stated that the necessity for prompt payment of the retirement dues to a government servant immediately after his

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retirement could not be over-emphasised and it would not be unreasonable to direct that there would be a liability to pay penal interest on these retirement benefits. In several cases, decided by this Court, interest at the rate of 12% per annum has been directed to be paid by the State."

15. We may reiterate that we were pained to see a person who has retired as a Coolie suffering in this manner, we thus have a hope that the pension to the Petitioner would be sanctioned and released and he would be paid the arrears of pension.

16. Depending on the orders which would be passed by the appropriate officers, further appropriate orders on the present petition would be required to be passed tomorrow."

5. Thereafter, the petition was taken up for hearing on 10 November, 2023, which was the last working day before the Court closed for the Diwali vacation. The Court recorded the stand taken by the State Government that the provisional pension is being paid to the petitioner, however, being not satisfied with the fact that mere payment of provisional pension would do any justice to the petitioner, we passed an order that the State Government needs to make payment of the pension to the petitioner. Considering the special attention this case would deserve, we decided to assemble for today's vacation hearing only for this matter. It would be necessary to note our order dated 10 November, 2023, which reads thus:

"1. In this case in which the petitioner retired as a Hamal / Coolie, we had passed a detailed order dated 9 November 2023 directing that the petitioner be paid pension.

2. We are not at all satisfied on compliance of our order dated 9 November 2023. We were hopeful that Mr. Tupe, Joint Director, who appeared before us and who assured that our orders would be complied and the legitimate pension payable to the petitioner, would be finalized / sanctioned and released as also similar directions to the Secretary of the Education Department, are all rendered insignificant, as what has been placed before us is an order of provisional pension dated 9 November 2023 granting Rs. 5865/- as provisional pension to the petitioner and that too from June,2021 to November 2021. As to on what basis and understanding of which paragraph of our order, such provisional pension order was issued, is not understood. In fact issuing of such provisional pension order is contrary to our directions in paragraph 15 of our order dated 9 November 2023 amounting to breach of our said order, which we may have to deal as the law would mandate.

3. Today being the last day before the Court closes for the Diwali Vacation, we had kept the present matter after the proceedings of Special Bench comprising of Hon'ble the Chief Justice and one of us (G.S. Kulkarni, J.) are over. Accordingly, this Bench has assembled specially for this case at 5.50 p.m. However, in the peculiar facts of the case, considering what has been expressed by us in the

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earlier order that a person like petitioner who retired as coolie after rendering 30 years of services is treated in a most unfair manner and arbitrarily. He is not being paid pension since last more than 2 years. Hence, we propose to take up this matter during the Court vacation i.e. on 21 November 2023, to pass further appropriate orders on what was observed by us in the earlier order and in the above paragraphs.

4. However as a matter of immediate concern, considering the submissions as made by the learned AGP who also agrees that the said order of provisional pension is not in compliance of our orders dated 9 November 2023, on instructions, the learned AGP has fair stand to submit that the compliance can be brought about, if some more time is granted. We accordingly, adjourn the proceedings to 21 November 2023.

5. Accordingly, we direct that by 21 November 2023, the respondents shall comply with the directions as contained in paragraph 15 of our order dated 9 November 2023. We direct that necessary steps be taken including any step if required to be taken by the Accountant General to release the payment in favour of the petitioner.

6. We may reiterate that this is a gross case, and in the event, our orders are not implemented, we would direct the Secretary, High and Technical Education Department, Government of Maharashtra and the Joint Director of Education Mr. Keshav Tupe, who are under an obligation to comply with our order, to remain present before this Court as may be directed, so that we can pass further appropriate orders including in respect of breach of the present orders.

7. In the meantime, the provisional pension order dated 9 November 2023 for the period of six months which is a small amount be calculated and as a special case be paid to the petitioner by 5 p.m. tomorrow by a Government Pay Order or e-transfer to the petitioner's bank account. Such amount shall be adjusted / taken into consideration, in the regular pension as payable to the petitioner. Ordered accordingly.

8. We may also observe that any breach of the order of payment of provisional pension by tomorrow 5 p.m. as noted by us above, shall be treated as intentional disobedience of this order. This is in view of the fact that the said amount payable to the petitioner is clearly set out in the provisional pension order.

9. Parties to act on the authenticated copy of this order.

10. Stand over to 21 November 2023."

6. On the above backdrop, the parties are before us.

7. Today Ms. Gavhane, learned AGP has tendered a communication dated 20 November, 2023 as addressed to her by Shri Ajit Bawiskar, Deputy Secretary, Higher and Technical Education Department, Government of Maharashtra in which it has been recorded that the petitioner's pension has been finally fixed, as

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also the arrears of pension are already released and received by the petitioner. The said communication is taken on record and marked "X" for identification. The relevant paragraphs of such letter as borne out by the record of the Government are required to be noted, which reads thus:

(Official transaction)

"……..

3. …..

A) The amount of Rs. 101700/- of provisional pension for the period of six months from June, 2021 to November, 2021, sanctioned to Shri Jayram Baburao More, has been deposited in his account No. 20063031550 on 11th November, 2023.

B) Under the Government Letter NO. C.M.2311/M.No.35/Vi.Shi.-1 dated 10th November, 2023, approval has been granted to condone the higher age of Shri Jayram Baburao More at the time of appointment.

C) Under the Order NO. PPO No. M112306609746 dated 13.11.2023, of the Office of the Accountant General, Mumbai, approval has been granted to the Pension matter of Shri More.

D) Below-mentioned amounts have been deposited in the pension account of Shri Jayram Baburao More on the date 17th November, 2023.

1) Amount of Rs.4,22,640/- towards the Pension for the period from the month of December, 2021 to October, 2023.

2) Commutation amount Rs.2,30,678/-,

3) Amount of Gratuity Rs. 67,480/- (Rs. 1,70,085 – Rs.1,02,605 of recovery of excess payment)".

8. Ms. Gavhane, on instructions of Mr. Keshav Tupe, Joint Director of Higher Education, Pune who is present in the Court, has brought to our notice the 'pension payment order' dated 13 November 2023 issued in favour of the petitioner by the Chief Accountant General (1), Maharashtra, Mumbai, which indicates that pension as payable to the petitioner has been finally fixed. A copy of which is stated to be issued to the petitioner. A copy of the same is also being furnished to the advocate for the petitioner.

9. Mr. Kulkarni, learned counsel for the petitioner has also placed on record a letter dated 20 November, 2023 of the petitioner as addressed to the Assistant Director of Education, Pune Division informing him of the arrears of pension being credited to his account. A copy of the same is taken on record and marked "X-1" for identification.

10. Mr. Kulkarni, learned counsel for the petitioner states that in view of the fair stand as taken by the department, the petitioner would not intend to prosecute

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this petition any further and the same can be disposed of recording a receipt of the arrears of pension by the petitioner.

11. In the light of above developments, we are of the opinion that further adjudication of the petition is not called for. However, henceforth the petitioner be paid his monthly pension with regularity and without default.

12. Before parting, we appreciate the fair stand as taken by the State Government and particularly of Mr. Keshav Tupe, Joint Director of Higher Education and Mr. Ajit Bawiskar, Deputy Secretary, Higher and Technical Education in putting an end to the petitioner's ordeal.

13. While parting we may also record that this case is certainly an eye-opener that if the officers promptly consider the grievances of the pensioners like the petitioner, there would be no need for the pensioners to approach the Courts. We may observe that many of such issues, in fact, do not require adjudication and can stand resolved at the level of the department, provided there is a willingness to do so, of the officers of the State Government.

14. With due appreciation to the efforts taken by the said officers as also Ms. Gavhane, learned AGP to conclude the present litigation, we put an end to the present proceedings.

15. The petition accordingly stands disposed of in the above terms.

16. No costs.

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